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OF THE

PHILIPPINES

FOR THE PERIOD

OCTOBER 3 - 10, 2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 7972. October 3, 2018]

ANGELITO CABALIDA, *petitioner, vs.* **ATTY. SOLOMON A. LOBRIDO, JR. and ATTY. DANNY L. PONDEVILLA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 8; RULE 8.02 THEREOF, VIOLATED WHEN A LAWYER NEGOTIATED WITH A CLIENT OF ANOTHER LAWYER WITHOUT THE LATTER BEING CONSULTED; PENALTY IN CASE AT BAR.— Atty. Pondevilla's actions violated Canon 8.02 of the Code of Professional Responsibility when he negotiated with Cabalida without consulting Atty. Lobrido. Canon 8, Rule 8.02 of the Code of Professional Responsibility provides that: 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. This failure of Atty. Pondevilla, whether by design or because of oversight, is an inexcusable violation of a canon of professional ethics and in utter disregard of a duty owing to a colleague. Atty. Pondevilla fell short of the demands required of him as a lawyer and as a member of the Bar. For these infractions, the Court imposes upon Atty. Pondevilla a penalty of six months suspension from the practice of law in line with jurisprudence.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); PROHIBITS GOVERNMENT OFFICIALS OR EMPLOYEES FROM ENGAGING IN THE PRIVATE PRACTICE OF THEIR PROFESSION UNLESS THEY ARE AUTHORIZED AND SUCH PRACTICE WILL NOT CONFLICT OR TEND TO CONFLICT WITH THEIR OFFICIAL FUNCTIONS; CASE AT BAR.— [B]y his admissions, Atty. Pondevilla was engaged in the practice of law while also employed as a City Legal Officer. x x x Atty. Pondevilla was also a named partner in a law office during his tenure as a City Legal Officer, which shows his active engagement in the practice of law. x x x Atty. Pondevilla thus engaged in the unauthorized practice of law, in violation of Section 7(b)(2) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, in relation to Memorandum Circular No. 17, series of 1986, which prohibits government officials or employees from engaging in the private practice of their profession unless: 1) they are authorized by their department heads, and 2) that such practice will not conflict or tend to conflict with their official functions.

3. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 1, RULE 1.01 THEREOF; A LAWYER'S ENGAGEMENT IN THE UNLAWFUL PRACTICE OF LAW IS A CONTRAVENTION THEREOF; PENALTY IN CASE AT BAR.— Atty. Pondevilla's engagement in the unlawful practice of law, through disregard and apparent ignorance of Sec. 7(b)(2) of Republic Act No. 6713, is a contravention of Canon 1, Rule 1.01 of the Code of Professional Responsibility. x x x The Court holds Atty. Pondevilla administratively liable, even in the absence of further investigation, by reason of his admissions of facts on record. x x x A penalty of another six months suspension from the practice of law is further imposed on Atty. Pondevilla, thus bringing his suspension to a period of one year.

4. ID.; ID.; DISBARMENT AND DISCIPLINE OF ATTORNEYS; DECISION BY THE BOARD OF GOVERNORS; SHALL BE IN WRITING AND SHALL CLEARLY AND

DISTINCTLY STATE THE FACTS AND REASONS ON WHICH IT IS BASED; CASE AT BAR.— [T]he Court frowns upon IBP-BOG's one paragraphed resolutions for it does not clearly and distinctly state the facts and the reasons on which it is based, as required by Section 12(b), Rule 139-B of the Rules of Court. Time and again, the court consistently holds that such form does not satisfy the procedural requirements of the Rules of Court because it makes the entire petition vulnerable for a remand. The requirement, which is akin to what is required of the decisions of courts of record, serves an important function. For aside from informing the parties the reason for the decision to enable them to point out to the appellate court the findings with which they are not in agreement, in case any of them decides to appeal the decision, it is also an assurance that the Board of Governors, reached his judgment through the process of legal reasoning.

5. **ID.; ID.; ID.; IN DISCIPLINARY PROCEEDINGS AGAINST LAWYERS, THE ONLY ISSUE IS WHETHER THE OFFICER OF THE COURT IS STILL FIT TO BE ALLOWED TO CONTINUE AS A MEMBER OF THE BAR; CLAIM FOR DAMAGES IS NOT PROPER THEREIN.—** As for the damages, the Court refuses to rule on Cabalida's claim for damages. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern therefore is the determination of respondent's administrative liability. Furthermore, disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers. Thus, this Court cannot rule on the issue of the amount of money that should be returned to Cabalida.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

Before Us is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure of the Resolutions issued by

the Board of Governors of the Integrated Bar of the Philippines (IBP) dated December 29, 2012[1] and September 27, 2014.[2]

The lone issue to be resolved by this Court is:

"Whether the Board of Governors of the IBP gravely erred in exonerating Respondents despite the commission of acts violative of the Code of Professional Responsibility."[3]

Petitioner Angelito Cabalida (Cabalida) avers to be a high school undergraduate who was drawn into a legal battle over property rights and in the process found himself dealing with two law practitioners herein named respondents Atty. Solomon Lobrido, Jr. and Atty. Danny Pondevilla.

Cabalida believes that he had been wronged by both respondents-lawyers on account of which he lost a piece of real estate property located at Rio Vista Homes, Barangay Tacoling, Bacolod City and covered by Transfer Certificate of Title (TCT) No. T-227214 registered in his name.

The present case, which began as an issue involving land ownership, sales and mortgages, concludes with a reminder to members of the Bar of the proper discharge of their duties in their practice of law. It also covers a proper reading and interpretation of the 1997 Rules of Civil Procedure and a review of a decision of the Board of Governors of the Integrated Bar of the Philippines (IBP-BOG).

This is an opportune time for this Court to articulate, once again, the very essence of principled legal practice based on our Code of Professional Responsibility and the Canons of Professional Ethics to serve as a guide to all legal practitioners.

We proceed with the factual and procedural background of this case.

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[1] *Rollo,* p. 486.

[2] *Id*. at 514-515.

[3] *Id*. at 546.

Civil Case No. 30337 for Ejectment with Damages[4] was instituted before the Municipal Trial Court in Cities (MTCC) of the City of Bacolod, Negros Occidental by Cabalida against Reynaldo Salili (Salili) and Janeph Alpiere (Alpiere). Cabalida alleged in his complaint that he is the owner of a parcel of land, on which a residential property stands, located in Rio Vista Homes Subdivision, Barangay Taculing, Bacolod City, registered under Transfer Certificate Title No. T-227214 in his name. Alan Keleher (Keleher), an Australian national, gifted the property to Cabalida by virtue of their special relationship and they lived therein until they encountered a minor misunderstanding. Cabalida returned to his family residence in Purok Pag-asa, Barangay Estefania, Bacolod City while Keleher continued living in the property. Keleher then hired Alpiere as his house help who would clean the property every Saturday.

On April 4, 2005, Keleher committed suicide inside the property. Since Keleher had no family in the Philippines, Alpiere, as his house help, was assigned by the Australian Embassy to arrange the disposition of Keleher's body and to sell his personal properties to produce funds for the funeral expenses. Cabalida assisted Alpiere in preparing a memorial for Keleher in Alisbo Funeral Homes. After selling Keleher's personal properties, however, Alpiere kept the proceeds of the sale and failed to return to the funeral homes. Thus, Cabalida bore the obligation of paying Alisbo Funeral Homes in order to finally dispose Keleher's body.

Cabalida thereafter returned to his property to find it locked. He learned that Alpiere bolted the property because Keleher failed to pay him his salary, refusing to open the gates to anyone until he receives proper compensation. Cabalida requested the police and the barangay to assist him in entering his property but they refused to get involved in the absence of a court order. Later, Cabalida learned that Alpiere leased the property to Salili. Cabalida approached Salili and requested him to vacate the

[4] *Id*. at 8-13.

property but Salili refused and instead dared Cabalida to institute a civil action.

Aggrieved by the situation, Cabalida filed a complaint for ejectment[5] in the Office of the *Lupong Tagapamayapa* of Barangay Taculing, Bacolod City on August 12, 2005, but no settlement was reached. On August 19, 2005, Cabalida sent a demand letter[6] to Alpiere and Salili, ordering them to vacate the property and to pay the rent. Since the demand proved futile, Cabalida availed the legal services of herein respondent Atty. Solomon Lobrido (Atty. Lobrido) for purposes of representing him in a civil action for Ejectment against Alpiere and Salili. At the time of said action, Atty. Lobrido was a partner in Ramos, Lapore, Pettiere and Lobrido Law Offices. On September 23, 2005, Lobrido filed Civil Case No. 30337 for Ejectment with Damages against Alpiere and Salili in the MTCC.

For their part, Alpiere and Salili availed the legal services of herein respondent Atty. Danny L. Pondevilla (Atty. Pondevilla), who at the time was a partner in Basiao, Bolivar and Pondevilla Law Office and was concurrently a City Legal Officer (CLO) of Talisay City, Negros Occidental for the years 2004-2007. In their Answer with Counterclaim[7] dated October 10, 2005, Alpiere and Salili stated that Cabalida was merely a dummy of Keleher because the latter cannot register the property under his name. Cabalida had also surrendered his interests over the property when he abandoned Keleher, and turned over the title of the property and the deed of sale for a considerable amount. Alpiere thereafter bought the property for ₱161,000.00, as evidenced by a deed of sale,[8] and later sold the same to Emma Pondevilla-Dequito (Pondevilla-Dequito), Pondevilla's sister, who leased the property to Salili.

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[5] *Id*. at 16.

[6] *Id*. at 17.

[7] *Id*. at 18-21.

[8] *Id*. at 22.

In his Reply to Counterclaim[9] dated October 13, 2005, Cabalida admitted that he left a blank pre-signed deed of sale in Keleher's possession. Keleher and Cabalida allegedly had an understanding that Keleher could dispose the property to a buyer of their choice with or without the presence of Cabalida. Alpiere however stole the deed of sale and falsified it by inserting his name as vendee. Furthermore, it was impossible that Cabalida would have sold the property to Alpiere for ₱161,000.00 especially that weeks before the alleged sale, they were adversaries in the failed mediation with the barangay.

Civil Case No. 30337 was then set for Preliminary Conference on February 23, 2006 but was reset to May 17, 2006. In between those periods, the parties, with their respective lawyers, Atty. Lobrido and Atty. Pondevilla (respondents for brevity), met for a possible amicable settlement at Atty. Pondevilla's office. In their initial meeting, the parties agreed that the defendants would no longer pursue the case in exchange for ₱150,000.00.[10] Three days thereafter, Cabalida, unassisted by Atty. Lobrido, returned to Atty. Pondevilla's office to finalize the amicable settlement. Atty. Pondevilla conveyed to Cabalida that his clients decided to increase the amount to ₱250,000.00. The new terms were embodied in a Memorandum of Agreement that was prepared by Atty. Pondevilla but it only contained the signatures of Alpiere and Pondevilla-Dequito because Salili wanted to ponder on its terms for two more weeks. Cabalida on the other hand signed the Memorandum of Agreement on the belief that he can sell the property to a prospective buyer who was willing to purchase the same for ₱1,300,000.00. For the time being, however, Cabalida considered mortgaging his property and thus hired Lydia S. Gela (Gela) and Wilma Palacios (Palacios), real estate brokers, to assist him in the mortgaging process.

Atty. Pondevilla presented the Memorandum of Agreement to the MTCC on May 17, 2006 but moved for the resetting of the Preliminary Conference, which was granted, because Salili

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[9] *Id*. at 23-24.

[10] *Id*. at 272.

has not yet signed the Memorandum of Agreement. The Preliminary Conference was moved to June 14, 2006. On said date however, counsels for both parties requested for the provisional dismissal of Civil Case No. 30337 on the belief that the parties are close to arriving at an amicable settlement.

Cabalida again met with Atty. Pondevilla on June 17, 2006. This time, he was accompanied by his brokers, Gela and Palacios, and by Danilo Flores (Flores), a common friend of Cabalida and Keleher. Atty. Pondevilla entered into a Trust Agreement with Cabalida and his companions as evidenced by a document, entitled Trust Agreement, which was prepared by Atty. Pondevilla on the same day. The Trust Agreement provides that Cabalida, Gela, Palacios and Flores received in trust ₱250,000.00 from Atty. Pondevilla with the obligation to return the same upon release of the proceeds of the mortgage over the property covered by TCT No. 277214. Upon signing the Trust Agreement, Atty. Pondevilla released TCT No. 227214. In truth there was no money "received in trust."

Cabalida, again unassisted by Atty. Lobrido, returned to Atty. Pondevilla's office on July 2, 2006 to finalize his amicable settlement with Salili and Alpiere. Atty. Pondevilla prepared a new Memorandum of Agreement which contained the same terms as its earlier version but no longer listed Salili as a party or signatory. Nonetheless, Cabalida signed the revised Memorandum of Agreement, which provides:

WITNESSETH:

WHEREAS, [Alpiere and Pondevilla-Dequito] are the holder[s] of the land title of the property described as TCT No. T-227218, located at Bacolod City;

WHEREAS, [Cabalida] filed an ejectment case now pending before Br. 4, of the Municipal Trial Court, Bacolod City against [Alpiere and Pondevilla-Dequito], and [Salili];

NOW THEREFORE, the parties hereto agree to settle the case amicably by the following terms and conditions:

1. [Alpiere and Pondevilla-Dequito] will no longer claim the lot subject of the case and will allow the mortgage of the property

by the registered owner ANGELITO CABALIDA and [Alpiere and Pondevilla-Dequito] will turnover possession of the original title.

2. That [Cabalida] will pay [Alpiere and Pondevilla-Dequito] the amount of Two Hundred Fifty Thousand Pesos (₱250,000.00) immediately upon execution of this document.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, this 2nd day of July, 2006 at Bacolod City, Philippines.

(signed)
JANEPH ALPIERE

(signed)
ANGELITO CABALIDA

(signed)
EMMA L. PONDEVILLA[-DEQUITO][11]

On July 19, 2006, Metropol Lending Corporation (MLC) informed Cabalida that the loan has been released in Philippine National Bank (PNB). Immediately after claiming the loan, Cabalida paid ₱250,000.00 to Atty. Pondevilla for which Atty. Pondevilla issued a receipt[12] cancelling the trust agreement.

After receipt of ₱250,000.00 from Cabalida, Atty. Pondevilla submitted the Memorandum of Agreement to the MTCC on August 7, 2006. Simultaneously, Atty. Pondevilla submitted his Ex-parte Manifestation with Motion to Withdraw, with the following averments:

That it is hereby manifested that Angelito Cabalida and Janeph Alpiere already entered into a Memorandum of Agreement to amicably settle the case dated July 2, 2006; x x x.

That it is further manifested that in case the case will be revived against the remaining defendant Reynaldo Salili, he will be withdrawing as his counsel due to conflict of interest as he is already formally joining the law office of the plaintiff.

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[11] *Id*. at 27.

[12] *Id*. at 26.

PRAYER

WHEREFORE, it is respectfully prayed to this Honorable Court to note the manifestation to grant his withdrawal as counsel for the defendant Reynaldo Salili.[13]

In its Decision[14] dated August 17, 2006, the MTCC rendered a judgment in accordance with the terms and conditions that were stipulated in the Memorandum of Agreement after finding that "the Memorandum of Agreement is not contrary to law, morals and public policy."

On September 18, 2006, Atty. Lobrido filed an Ex-parte Motion to Withdraw[15] as Cabalida's counsel stating therein that it was upon Cabalida's request and with his conformity. Atty. Adrian Arellano (Atty. Arellano) filed his Formal Entry of Appearance[16] for Cabalida on the same date and filed a Motion to Amend Decision praying that the order be amended to include Salili as he refused to vacate the property. The pertinent provisions of the motion thus provides:

4. That to buy peace and to facilitate the termination of the case, Plaintiff had mortgaged his aforementioned property in order to produce the amount which he utilized to settle this case with [Alpiere and Pondevilla-Dequito];

5. That [Salili], a lessee of the aforestated disputed property, merely derives his right to lease the property from the alleged right of [Pondevilla-Dequito], whose alleged right is now extinguished because of the settlement she had entered into with the Plaintiff who has now an unquestionable rights over the disputed property;

6. That Defendant Salili has no more leg to stand on [*sic*] with the settlement of this case with defendant Alpiere and claimant [Pondevilla-Dequito];

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[13] *Id*. at 29.

[14] *Id*. at 30-31; penned by Judge Danilo P. Amisola.

[15] *Id*. at 32.

[16] *Id*. at 34.

7. Henceforth, Defendant Salili should now be ordered to vacate the premises, pay the corresponding rentals from the time he occupied the aforementioned property up to the present, and damages at the discretion of the Honorable Court.[17]

The MTCC issued an Order[18] on September 25, 2006 stating that the Memorandum of Agreement did not bind Salili because he was not one of its signatories. Hence, Civil Case No. 30337 continued only against Salili until it was ultimately dismissed on January 24, 2008,[19] when Cabalida failed to appear on time for the Preliminary Conference.

In the meantime, Cabalida was unable to pay off his debt to MLC thus his property was foreclosed and sold in a public auction.

On October 8, 2007, the Regional Trial Court of Bacolod City sent a Notice of Extrajudicial Sale of Real Estate Mortgage[20] to Cabalida, alleging as follows:

To satisfy the outstanding indebtedness of the Mortgagor ANGELITO CABALIDA of Block 81, Lot 17, Purok Pag-asa, Brgy. Estefania, Bacolod City with the Mortgagee in the amount of SEVEN HUNDRED FIFTY-ONE THOUSAND TWO HUNDRED FIFTY PESOS (₱751,250.00), exclusive of interest and other charges, the Mortgagee [Metropol Lending Corp.], through this Office, pursuant to Act 3135, as Amended, will SELL at PUBLIC AUCTION on Nov 08, 2007 at Bacolod City Hall of Justice, between the hours of 10:00 a.m. until 11:00 a.m., whatever rights, interest and participation the Mortgagor has in the real estate mortgaged property with all its improvements.

Cabalida now comes before the Court, through the Office of the Bar Confidant, instituting the present administrative complaint with the allegations that respondents engaged in various unethical acts which caused the loss of his property.

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[17] *Id*. at 37.

[18] *Id*. at 40.

[19] *Id*. at 398.

[20] *Id*. at 45.

Cabalida asserts in his complaint that respondents colluded to dispossess him of his property. Atty. Pondevilla was already a member of Lobrido's law firm as early as their initial meeting for the amicable settlement of Civil Case No. 30337. In the said meeting, respondents convinced Cabalida that the best course of action for him was to obtain a loan in order to come up with ₱250,000.00 as payment to Alpiere. This was made even after the respondents learned that Cabalida was in communication with a prospective buyer who was willing to purchase the property for ₱1,300,000.00. Atty. Pondevilla also withheld the possession of TCT No. T-227214 from Cabalida and placed it in the custody of his office staff until Cabalida's property was mortgaged to MLC. As for the issuance of the Trust Agreement, Cabalida claims that he did not receive ₱250,000.00 in trust from Atty. Pondevilla.

Cabalida also alleges in his complaint that the loan from the mortgage was distributed as follows: ₱250,000.00 to Atty. Pondevilla, in view of the Trust Agreement, ₱86,000.00 to the brokers, ₱50,000.00 to Atty. Lobrido, ₱3,000.00 to Atty. Pondevilla's office staff, and an unspecified amount for Atty. Lobrido's appearance fee and for the filing fee.

The complaint also provides that Atty. Lobrido did not assist Cabalida when he entered into the Memorandum of Agreement on July 2, 2006. Atty. Lobrido also made it appear that his withdrawal as counsel was due to Cabalida's insistence when it was Atty. Lobrido himself who advised Cabalida to look for a new counsel as his work was already over.

Thus, Cabalida claims that the unethical acts of respondents clearly violated the Code of Ethics. Respondents took advantage of their knowledge of the law as against him who was not even a high school graduate. He prays that their actions merit disbarment and that they be held liable for damages equivalent to the value of the property lost.

In support of his allegations Cabalida submitted, among others, the Trust Agreement that he entered into with Atty. Pondevilla; the receipt for the cancellation of the Trust Agreement; the

Memorandum of Agreement between Alpiere and Cabalida, and the Motions to Withdraw of respondents.

In his Comment[21] filed on January 8, 2009, Atty. Lobrido alleged that Cabalida never declared that the property costs more than ₱1,000,000.00. Atty. Lobrido also denies that Atty. Pondevilla joined his law firm as early as the initial meeting for the amicable settlement of Civil Case No. 30337 and that the main reason for their meeting was to enter into a compromise, as encouraged by the courts.

Atty. Lobrido also avers that he was not consulted nor was a privy to the Memorandum of Agreement. He learned of the Memorandum of Agreement only after it was submitted to the MTCC, when Cabalida complained of the excessive rates of the brokers. It was at this time that he reminded Cabalida of his unpaid acceptance fee of ₱15,000.00, and not ₱50,000.00, which he deems fair and reasonable. Finally, Atty. Lobrido states that Cabalida consented to his withdrawal as counsel because it was for reasons of propriety since Atty. Pondevilla was about to join their law firm. Atty. Lobrido has not kept track of the case thereafter.

On the other hand, Atty. Pondevilla professes in his Comment,[22] filed on January 8, 2009, that the idea of mortgaging the property came from Cabalida and his brokers. As to the circumstances surrounding the Memorandum of Agreement, Atty. Pondevilla avers that Cabalida fully understood its contents and that it has been notarized by another lawyer. Atty. Pondevilla also alleged that Alpiere complied with his obligations as stated in the Memorandum of Agreement, and that the fault lies with Cabalida and Atty. Arellano when they failed to immediately act on the decision of the MTCC. Finally, Atty. Pondevilla claims that he joined Atty. Lobrido's law office only after he withdrew as counsel of Alpiere and Salili.

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[21] *Id*. at 243-246.

[22] *Id*. at 248-253.

In a Resolution[23] dated February 4, 2009, the Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation or decision.

The IBP Commission on Bar Discipline set the case for mandatory conference on April 17, 2009. Flores appeared as a representative of Cabalida stating that Cabalida cannot appear because he was looking for a lawyer who can assist him in the administrative case. Respondents however appeared in their own behalf. In his Order[24] dated April 17, 2009, Commissioner (Comm.) Wilfredo E.J.E. Reyes (Reyes) reset the mandatory conference to May 12, 2009. On the aforementioned date, only respondents were present when the case was called for mandatory conference. Cabalida arrived, with his legal counsel Atty. Ma. Agnes Hernando-Cabacungan (Atty. Cabacungan), but only after the mandatory conference was again reset to June 16, 2009, as per Order[25] of Comm. Reyes.

Cabalida, represented by Atty. Cabacungan, and respondents appeared on June 16, 2009. In his Order,[26] Comm. Reyes terminated the mandatory conference and stated therein that the mandatory conference order shall be issued after it has been reviewed and corrected by the parties. Comm. Reyes also directed the parties to file their respective verified position papers, attaching thereto certified true copies of documentary exhibits and affidavits of witnesses. The case was then set for clarificatory hearing on August 14, 2009.

The parties appeared in the clarificatory hearing on August 14, 2009. The Mandatory Conference Order,[27] was furnished to the parties on the same day and it contained the admissions of Cabalida and the respondents. The admissions of respondents were limited to the following:

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[23] *Id*. at 254.

[24] *Id*. at 261.

[25] *Id*. at 263.

[26] *Id*. at 266.

[27] *Id*. at 423-424.

1. Complainant engaged the services of Atty. Solomon Lobrido sometime in September 23, 2005 for the purpose of filing a[n] Ejectment case against [Janeph] Alpiere and Reynaldo Salili which case was filed before the Municipal Trial Court of Bacolod City, Branch 4.
2. That the respondent in that case which is docketed as Ejectment Civil Case No. 30337 filed a responsive pleading, an answer and they were represented thereat by Atty. Danny Pondevilla.
3. That during the pendency of this ejectment case, Atty. Lobrido advised complainant to just settle the case with the respondent in this case so as not to prolong the litigation during the pre-trial stage of the case.
4. Atty. Danny Pondevilla admit on the stipulation on the Memorandum of Agreement, what was stated in the Memorandum of Agreement. [*sic*]

Cabalida, on the other hand, admitted:

1. That it was [Cabalida] who hired a broker to assist him.[28]

In his Order[29] dated August 14, 2009, Comm. Reyes stated that the parties signed the final version of the mandatory conference order and exchanged position papers. Another clarificatory hearing was scheduled on September 17, 2009.

All the parties were present for the clarificatory hearing on September 17, 2009. In his Order issued on the said date, Comm. Reyes terminated the clarificatory questioning between the parties and deemed it submitted for resolution.

Comm. Reyes rendered his Report and Recommendation[30] on January 19, 2010 finding that:

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[28] *Id*.

[29] *Id*. at 425.

[30] *Id*. at 487-500.

The counsel of the complainant, Atty. Lobrido, advised his client to settle the case with the respondent in the ejectment case. It would appear that the complainant negotiated directly with Atty. Danny Pondevilla without the assistance of his counsel Atty. Lobrido, Jr. and Atty. Pondevilla came out with a Memorandum of Agreement with the complainant, Angelito Cabalida.

The narration of Atty. Pondevilla in his answer is hereto quoted:

> "During the preliminary conference of the case, the court advised to talk on the possible settlement of the case and for the meantime have the case into the archive.
>
> Complainant Angelito Cabalida went to the undersigned respondent's office at Talisay City because at that time, he was holding office at Talisay City Hall being the City Legal Officer of the City and offered to talk about the settlement of the case. The undersigned then talked to his client Janeph Alpiere about his proposal and said that if Angelito Cabalida will pay the amount of Two Hundred Fifty Thousand Pesos (₱250,000.00) he will no longer claim over [*sic*] the property.
>
> Angelito Cabalida then asked the undersigned respondent to give him time to find money because he is trying to find [a] buyer for the lot, however, he failed to find one and instead went again to the office of the undersigned at Talisay City together with his two brokers who offered him help [to] mortgage his property.
>
> A Memorandum of Agreement then was entered by my client Janeph Alpiere and let my sister signed [*sic*] the Memorandum of Agreement to afford complainant Angelito Cabalida a complete security that Janeph Alpiere as well as my sister [will] no longer claim the property because in the answer that we filed it was said that the property was already sold to my sister.
>
> In order to make sure that my client Janeph Alpiere will be paid the amount of Two Hundred Fifty Thousand Pesos, the undersigned respondent then let Angelito Cabalida and the two other broker[s] [sign] a Trust Receipt because the undersigned is thinking that Angelito Cabalida might not give any consideration to my client after he will receive a copy of the Title and the amount of the loan. [*sic*]

The provision in the Memorandum of Agreement is [*sic*] very much simple which I would like to quote, to wit:

1. That my client Janeph Alpiere as well as my sister will no longer claim over the property and will turn-over possession on the Original Title.

2. That Angelito Cabalida will pay my client the amount of Two Hundred Fifty Thousand Pesos (₱250,000.00).

That after the execution of the said Memorandum of Agreement which was notarized by a Notary Public in their presence, [complainant] Angelito Cabalida with the two other broker[s] again went to the office of the undersigned and asked for time to give the money as they were processing the loan on the property. After several days, they informed the undersigned that they already have the loan and they will have the check change to [*sic*] a bank and requested my secretary to get the amount as the undersigned has his out of town hearing at that time.

After payment of the amount of consideration based on the Memorandum of Agreement, the undersigned respondents immediately submitted it to the court and ma[d]e a proper Manifestation as well as motion to withdraw insofar as defendant Reynaldo Salili is concerned because the undersigned respondent will be joining the Law Office of Lapore, Lobrido, Ramos and Petierre upon verbal negotiation with a friend Atty. Arnel Lapore. [*sic*]

That the undersigned respondent joined the law office of Lapore, Lobrido, Ramos and Petierre after the settlement of my client Janeph Alpiere and complainant Angelito Cabalida.

After the filing of the Manifestation with Motion to Withdraw as counsel for Reynaldo Salili on the ground that the undersigned will be joining the law office of the plaintiff's counsel, the court rendered a Decision based on the Memorandum of Agreement, the same [not being] contrary to law and public policy.

This is the version of Atty. Pondevilla insofar as how he was able to secure the Memorandum of Agreement with the complainant in this case. His allegations also [show] that after the Memorandum of Agreement was finalized, he made a proper manifestation as well as

motion to withdraw insofar as Reynaldo Salili [was] concerned because he was joining the Law Offices of Lapore, Lobrido, Ramos and Petierre.

Atty. Lobrido on the other hand confirm[ed] that a settlement was encouraged by the Court and he told the complainant that he would explore settlement with Atty. Pondevilla.

However, in Paragraph no. 8 of Atty. Lobrido's answer, [he] admitted to [the] Court that the respondent ha[d] no participation in the Memorandum of Agreement and that it came to his knowledge only after it was submitted to the Court for approval.

Clearly on the part of Atty. Lobrido, he did not actively assist his client Angelito Cabalida in negotiating with Atty. Danny Pondevilla.

After the memorandum of agreement was submitted, both lawyers withdrew as counsel. An analysis of the memorandum of agreement entered into by Angelito Cabalida would readily show that his right was not protected due to the following reasons:

1. Angelito Cabalida will pay the amount of Php250,000.00 but not all defendants to the complaint signed the agreement.

2. Surprisingly, only Janeph Alpiere signed the agreement and the other party, the sister of Atty. Pondevilla, was included as party [to] the agreement. Reynaldo Salili, one of the defendants, was not included in the memorandum of agreement.

The memorandum of agreement submitted to the Court was designed to fail because Reynaldo Salili, one of the defendants, was not a party and did not sign the agreement.

The complainant Angelito Cabalida filed this case for the simple reason that he felt betrayed by his counsel Atty. Lobrido who was suppose[d] to assist him in the memorandum of agreement against the other counsel Atty. Pondevilla who after submitting the memorandum of agreement for approval by the Court, manifested and moved for his withdrawal as counsel for the other defendant Reynaldo Salili.

Both respondents would want to make an impression [*sic*] that it is a mere coincidence that Atty. Pondevilla joined the Law Office of Atty. Lobrido a few months after the filing of the memorandum of agreement.

The actuation of Atty. Lobrido of not assisting his client during the negotiation violates the Code of Professional Responsibility while the action of Atty. Pondevilla of negotiating with the party who is not assisted by his counsel is [a] blatant violation of the Code of Professional Responsibility.

The undersigned Commissioner would like to give both the respondents the benefit of the doubt that there was no collusion in their actions however, individually both counsels have violated the Code of Professional Responsibility.

The act of Atty. Danny L. Pondevilla of negotiating with the party who was not assisted by counsel is a blatant violation of the Code of Professional Responsibility.

x x x x x x x x x

Atty. Solomon A. Lobrido, Jr. failed to assist his client during the negotiation which led to the act of his client in signing the agreement without the assistance of counsel. If his lawyer was present during the signing, the lawyer would notice that not all the defendants in the case have signed the agreement and that the case was not being resolved completely.

Under Canon 18 – A lawyer shall serve his client with competence and diligence. Atty. Lobrido clearly had the obligation to exert his best effort, [and] best judgment in the prosecution of litigation entrusted to him. He should have exercise[d] care and diligence in the application of his knowledge to his client's cause.

As the counsel for the complainant, Atty. Lobrido had the duty to safeguard the client's interest while he was handling the case of complainant, Cabalida.

x x x x x x x x x

In the case at bar, Atty. Lobrido failed to render the proper legal assistance to his client.

It is respectfully recommended that both respondents be meted a penalty of six (6) months suspension for violation of the Code of Professional Responsibility. Atty. Solomon A. Lobrido, Jr. for failing to assist his client for violation of Canon 18 and for Atty. Danny L. Pondevilla [for] negotiating [with] a party without assistance of counsel for violation of Canon 8.

In its Resolution No. XX-2012-660 dated December 29, 2012, the IBP Board of Governors (IBP-BOG) reversed the findings of Comm. Reyes with the following recommendations:

Resolution No. XX-2012-660
Adm. Case No. 7972
Angelito Cabalida vs.
Atty. Solomon Lobrido, Jr.
And Atty. Danny Pondevilla

RESOLVED to REVERSE as it is hereby unanimously REVERSED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for lack of merit the case is hereby ***DISMISSED*** *with Warning to be more circumspect in their dealings and repetition of the same or similar act shall be dealt with more severely.*[31]

Cabalida filed a Motion for Reconsideration[32] dated April 5, 2013 with the IBP-BOG praying that a harsher penalty of suspension or disbarment be meted out to respondents, as well as payment of damages amounting to ₱1,000,000.00 as compensation for the property that he lost.

The IBP-BOG issued Resolution No. XX-2014-592 dated September 27, 2014, which maintains:

Resolution No. XXI-2014-592
Adm. Case No. 7972
Angelito Cabalida vs.
Atty. Solomon Lobrido, Jr.
And Atty. Danny Pondevilla

RESOLVED to DENY Complainant's Motion for Reconsideration, there being no cogent reason to reverse the findings and the resolution subject of the motion, it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2012-660 dated December 29, 2012 is hereby ***AFFIRMED***.[33]

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[31] *Id*. at 486.

[32] *Id*. at 501-503.

[33] *Id*. at 514.

Cabalida filed a Petition for Review on *Certiorari*[34] on May 15, 2015, with the lone issue, to wit:

> Whether the Board of Governors of the IBP gravely erred in exonerating respondents despite the commission of acts violative of the Code of Professional Responsibility.

Cabalida further discusses:

> 5. At the onset, it bears emphasizing that the IBP Board of Governors' reversal of the initial recommendation by the Investigating Commissioner was never justified. Cabalida travelled all the way from the province to secure a copy of the December 29, 2012 resolution only to be informed by the attending staff that the initial recommendation for respondents' suspension, along with the single page reversal of the same sans any discussion, constitutes the entire decision of the IBP. Clearly, this is in violation of the rules governing disbarment and discipline of attorney under Rule 139-B of the Rules of Court, Section 12(a) of which provides:
>
> > "Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report."[35]

After a thorough review of the records, the Court adopts the findings of Comm. Reyes but modifies the penalty to be imposed on one of the respondents.

At the outset, the records do not support Cabalida's allegations that respondents colluded to deprive him of his property. Cabalida failed to convince that respondents were colleagues as early as the initial meeting for the amicable settlement. While Cabalida fully recounted his encounter with Pondevilla which led to the creation of the Trust Agreement and the Memorandum

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[34] *Id*. at 539.

[35] *Id*. at 547.

of Agreement, the participation of Atty. Lobrido has always been narrated vaguely. Cabalida also submitted an envelope bearing the office address of Atty. Lobrido which included Atty. Pondevilla as one of the partners. The envelope is however dated April 13, 2009 which is almost three years after Atty. Lobrido withdrew as Cabalida's counsel. No conflict of interest can thus be attributed to respondents during this period.

The MTCC Order[36] dated May 17, 2006 however bares the participation of the respondents in the Memorandum of Agreement. The MTCC Order provides:

> When this case was called for preliminary conference, Atty. Danny Pondevilla, counsel for the defendant appeared in court. Atty. Pondevilla showed to the Court the Amicable Settlement that he prepared already signed by the parties except for defendant Reynaldo Salili who is asking for about two weeks for him to sign the same.
>
> As prayed for by Atty. Danny Pondevilla, reset for the last time the preliminary conference in this case on June 14, 2006, at 8:30 in the morning. Atty. Pondevilla is directed to exert utmost effort to have the Amicable Settlement ready before the next scheduled hearing.
>
> Atty. Danny Pondevilla is notified of this Order in open court.
>
> Furnish copy of the Order Atty. Solomon Lobrido, counsel for the plaintiff.

The Court Order shows that 1) Atty. Pondevilla prepared the Amicable Settlement, in the form of Memorandum of Agreement; 2) Salili was the only party in Civil Case No. 30337 that has not signed the Memorandum of Agreement; 3) Atty. Pondevilla was directed by the Court to ensure that the Memorandum of Agreement is ready before the next hearing; and 4) Atty. Lobrido was furnished a copy of the Order. This document supports the findings of Comm. Reyes that respondents were remiss in their duties as lawyers and officers of the court.

It is a fundamental rule that official duty is presumed to have been performed regularly, thus it is presumed that the

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[36] *Id*. at 294.

aforementioned court order has been furnished accordingly to Atty. Lobrido. Atty. Lobrido's bare denial of knowledge of the negotiations for and the submission of the Memorandum of Agreement must fail. His failure to represent Cabalida in the negotiations for the Memorandum of Agreement shows gross neglect and indifference to his client's cause. Hence, there was abject failure to observe due diligence. Atty. Lobrido has therefore violated Canon 18 of the Code of Professional Responsibility and Canon 18.03 which provides:

> Canon 18 – A lawyer shall serve his client with competence and diligence.
>
> x x x x x x x x x
>
> Canon 18.03 A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Competence is a professional obligation. A member of the legal profession owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability. Public interest demands that an attorney exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice. Verily, the entrusted privilege to practice law carries with it the corresponding duties not only to the client but also to the court, to the bar and to the public. A lawyer's inability to properly discharge his duty to his client may also mean a violation of his correlative obligations to the court, to his profession and to the general public.[37]

The Court fully adopts the findings of Comm. Reyes that Atty. Lobrido failed to render proper legal assistance to his client and imposes upon him six (6) months suspension from the practice of law.

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[37] *Emiliano Court Townhouses Homeowners Association v. Dioneda*, 447 Phil. 408, 414 (2003).

On the other hand, the MTCC Order[38] also reflects that Atty. Pondevilla prepared the Memorandum of Agreement. The uncontroverted facts of the decision of the MTCC dated September 17, 2007 further suggests that Atty. Pondevilla actively participated in the negotiation of the Memorandum of Agreement:

> On the scheduled date, **[Atty. Pondevilla] manifested that the parties have arrived at an amicable settlement and asked for 10 days within which to submit the compromise agreement among the parties to the case**. Accordingly the hearing was set on May 17, 2006.
>
> On the apportioned date, **Atty. Pondevilla showed to the Court the Amicable Settlement already signed by the parties**, except for defendant Reynaldo Salili, who was asking for about two weeks to sign said document. As prayed for by counsel, the preliminary conference was reset for the last time on June 14, 2006.
>
> On June 14, 2006, counsel for both sides agreed to have the case provisionally dismissed until after they can finalize the amicable settlement.
>
> On August 7, 2006, the Court was in receipt of an Ex-Parte Manifestation With Motion to withdraw as counsel for defendant Reynaldo Salili, **filed by Atty. Danny L. Pondevilla with a Memorandum of Agreement executed among plaintiff Angelito Cabalida, defendant Janeph Alpiere and a certain Emma Pondevilla [Dequito].**
>
> With the Memorandum of Agreement as basis, the Court rendered a Decision based on compromise dated August 17, 2006.

The transcript of stenographic notes (TSN)[39] in the hearing on June 16, 2009 further affirms Atty. Pondevilla's undertaking in the Memorandum of Agreement:

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[38] *Rollo*, pp. 336-341.

[39] *Id.* at 471.

COMM. REYES:

Can I ask you clarificatory question? [Was] this Memorandum of Agreement entered into as a result of the trial or as a compromise agreement as a result of a filing of the case?

ATTY. PONDEVILLA:

During the pre-trial conference, Your Honor, we were advised by the judge to settle the case, Your Honor, and in fact, I think they archive the case for the meantime. When the pre-trial conference was conducted, Your Honor, we were advised by the Judge to settle the case and have the case archive[d], Your Honor, [in] the meantime that we talk[ed] on the settlement, Your Honor, of the case. **And after that, Your Honor, with the agreement reached by the parties (sic), Your Honor, I submit[ted] the Memorandum of Agreement to the court, Your Honor, as a basis of its decision.**

COMM. REYES:

I am just surprised that when our clients normally enter into a Memorandum of Agreement/compromise we are almost sure to be assisted by counsel in the said agreement. You just forgot…

ATTY. LOBRIDO:

This came the rapt (sic), Your Honor…

COMM. REYES:

For clarification, if you feel you can answer.

ATTY. PONDEVILLA:

Because they mutually agree[d], Your Honor, and we just put what [h]as been agreed upon by the parties.

x x x x x x x x x

COMM. REYES:

And you agreed to submit a Memorandum of Agreement signed by your client and the other party without informing the adverse counsel?

ATTY. PONDEVILLA:

It was submitted to the court, Your Honor.

COMM. REYES:

Yes, but you submitted to the court but are you not aware that you might be in trouble for submitting a compromise agreement wherein the adverse party was not assisted by counsel.

ATTY. PONDEVILLA:

Because my client, Your Honor, [was] assisted by me, Your Honor.

COMM. REYES:

Yes.

ATTY. PONDEVILLA:

And my concern is my client.

COMM. REYES:

Yes, are you trying to tell me that you negotiated with other party without the assistance of counsel?

ATTY. PONDEVILLA:

I did not negotiate actually, Your Honor, it was they who came to the office, Your Honor, and **I said that my client is offering that if he is paid the amount of ₱250,000.00 he will give the title to their possession,** Your Honor, and the title was given to them, Your Honor. It was complied [with].

COMM. REYES:

Yes, but they entered into a Memorandum of Agreement without the knowledge of their counsel. Obviously, that's the implication of your position. Pañero, you came to know of the compromise agreement only after it was submitted to the court?

ATTY. LOBRIDO:

Yes, Your Honor.

COMM. REYES:

Meaning he was signing the documents without the assistance of counsel?

ATTY. PONDEVILLA:

It was notarized by other counsel, Your Honor, and I think the notary public explain[ed] what he is signing, Your Honor, because it was notarized by…

COMM. REYES:

So, now you are saying that it was notary public who assisted the…

ATTY. PONDEVILLA:

It will be, Your Honor. x x x.[40] (Emphasis ours.)

Atty. Pondevilla's participation in the negotiation for the Memorandum of Agreement ensued when he relayed Alpiere's terms to Cabalida. The same terms that Pondevilla relayed to Cabalida were then faithfully stated in the Memorandum of Agreement. Thus, Pondevilla cannot dilute his role in the creation of the Memorandum of Agreement to that of a spectator. The notary public's presence also does not remedy the situation especially that his obligation is only towards ensuring the authenticity and due execution of the instrument. Atty. Pondevilla knew that Atty. Lobrido was Cabalida's counsel thus he should have, at the very least, given notice to Atty. Lobrido prior to submission of the Memorandum of Agreement to court.

Atty. Pondevilla's actions violated Canon 8.02 of the Code of Professional Responsibility when he negotiated with Cabalida without consulting Atty. Lobrido. Canon 8, Rule 8.02 of the Code of Professional Responsibility provides that:

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.

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[40] TSN, June 16, 2009, pp. 471-478.

This failure of Atty. Pondevilla, whether by design or because of oversight, is an inexcusable violation of a canon of professional ethics and in utter disregard of a duty owing to a colleague. Atty. Pondevilla fell short of the demands required of him as a lawyer and as a member of the Bar.[41]

For these infractions, the Court imposes upon Atty. Pondevilla a penalty of six months suspension from the practice of law in line with jurisprudence. *Binay-an v. Addog*,[42] imposed a penalty of six months suspension on a lawyer who issued an affidavit of desistance with opposing parties but without informing their counsel.

On another point, by his admissions, Atty. Pondevilla was engaged in the practice of law while also employed as a City Legal Officer. This can be gathered from Atty. Pondevilla's statement in his position paper dated July 23, 2009, to wit:

> The court records will clearly show that the **address of the undersigned [Pondevilla] when he filed his Answer with Counterclaim is Basiao, Bolivar Law Office having been connected with that Law Office at that time and also concurrently holding office at City Legal Services Offices of Talisay City, Negros Occidental, being a City Legal Officer of the City from 2004 to 2007.** In fact when he filed his motion to withdraw, counsel was using that address until he resigned from the office.[43]

There is no doubt that Atty. Pondevilla acted as counsel for Alpiere and Salili in Civil Case No. 30337, by preparing their pleadings, appearing in court in their behalf, and negotiating for them with the opposing party. In addition, his submission of Motion to Withdraw affirms his standing as counsel of Alpiere and Salili.

Atty. Pondevilla was also a named partner in a law office during his tenure as a City Legal Officer, which shows his active

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[41] *Camacho v. Pangulayan*, 385 Phil. 353, 357 (2000).

[42] A.C. No. 10449, July 28, 2014 (Resolution).

[43] *Id*. at 367.

engagement in the practice of law. The Counterclaim and Reply to Counterclaim in Civil Case No. 30337 list his address as:

BASIAO, BOLIVAR & PONDEVILLA LAW OFFICE

By:

ATTY. DANNY L. PONDEVILLA
Counsel for the Defendant
Room 254, Plaza Mart Bldg.
Araneta Street, Bacolod City[44]

Furthermore, Salili's Verification[45] in his Counterclaim for Civil Case No. 30337 also shows that Atty. Pondevilla was likewise a notary public in 2005.

Atty. Pondevilla thus engaged in the unauthorized practice of law, in violation of Section 7(b)(2) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, in relation to Memorandum Circular No. 17, series of 1986, which prohibits government officials or employees from engaging in the private practice of their profession unless: 1) they are authorized by their department heads, and 2) that such practice will not conflict or tend to conflict with their official functions.[46]

The pertinent provision of Republic Act No. 6713 provides:

> 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
>
> (b) *Outside employment and other activities related thereto*. — Public officials and employees during their incumbency shall not:
>
> x x x x x x x x x

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[44] *Rollo*, p. 374.

[45] *Id*. at 375.

[46] *Fajardo v. Alvarez*, 785 Phil. 303, 316 (2016).

(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[.]

On the other hand, Memorandum Circular No. 17,[47] s. 1986, provides:

The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:

"Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors", subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.

Atty. Pondevilla's engagement in the unlawful practice of law, through disregard and apparent ignorance of Sec. 7(b)(2) of Republic Act No. 6713, is a contravention of Canon 1, Rule 1.01 of the Code of Professional Responsibility which provides:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

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[47] Dated September 4, 1986.

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

Lawyers are servants of the law, *vires legis*, men of the law. Their paramount duty to society is to obey the law and promote respect for it.[48]

The Court holds Atty. Pondevilla administratively liable, even in the absence of further investigation, by reason of his admissions of facts on record. This here is an application of the principle of *res ipsa loquitur*. In several instances, the Court has sanctioned lawyers for their blatant misconduct even in the absence of a formal charge and investigation because their admissions are sufficient bases for the determination of their administrative liabilities.[49]

A penalty of another six months suspension from the practice of law is further imposed on Atty. Pondevilla, thus bringing his suspension to a period of one year. This is in congruence with *Lorenzana v. Fajardo*[50] and *Catu v. Rellosa*,[51] which imposed six month suspension on respondent lawyers when they engaged in private practice while subsequently employed in government service, in the absence of authorization from their respective department heads.

On a final note, the Court frowns upon IBP-BOG's one paragraphed resolutions for it does not clearly and distinctly state the facts and the reasons on which it is based, as required by Section 12(b), Rule 139-B of the Rules of Court.[52] Time

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[48] *Catu v. Rellosa*, 569 Phil. 539, 550 (2008).

[49] *Query of Atty. Silverio-Buffe*, 613 Phil. 1, 22-23 (2009).

[50] 500 Phil. 382, 390 (2005).

[51] *Supra* note 48.

[52] Rule 139-B Disbarment and Discipline of Attorneys

Sec. 12. *Review and recommendation by the Board of Governors*.

x x x x x x x x x

b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the

and again, the court consistently holds that such form does not satisfy the procedural requirements of the Rules of Court because it makes the entire petition vulnerable for a remand.[53] The requirement, which is akin to what is required of the decisions of courts of record, serves an important function. For aside from informing the parties the reason for the decision to enable them to point out to the appellate court the findings with which they are not in agreement, in case any of them decides to appeal the decision, it is also an assurance that the Board of Governors, reached his judgment through the process of legal reasoning.[54] However, considering that the present controversy has been pending resolution for quite some time, that no further factual determination is required, and the issues being raised may be determined on the basis of the numerous pleadings filed together with the annexes attached thereto, we resolved to proceed and decide the case on the basis of the extensive pleadings on record, in the interest of justice and speedy disposition of the case.[55]

Perhaps this is the best time as any for this Court to remind members of the Philippine Bar the wordings of a covenant in the Magna Carta. "To no man will we sell, to no man will we refuse, or delay, right or justice."[56]

As for the damages, the Court refuses to rule on Cabalida's claim for damages. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern

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complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, *clearly and distinctly stating the facts and the reasons on which it is based*. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the investigator's report.

[53] *Malonso v. Principe*, 488 Phil. 1, 15-16 (2004).

[54] *Teodosio v. Nava*, 409 Phil. 466, 474 (2001).

[55] *Pormento, Sr. v. Pontevedra*, 494 Phil. 164, 177 (2005).

[56] Senate President Neptali Gonzales, "The Mission of the Law;" **I Kept the Faith**, 1999.

therefore is the determination of respondent's administrative liability. Furthermore, disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers. Thus, this Court cannot rule on the issue of the amount of money that should be returned to Cabalida.[57]

WHEREFORE, premises considered, Atty. Danny L. Pondevilla is found guilty of violation of Canon 8, Rule 8.02 and unauthorized practice of law and is ordered **SUSPENDED** from the practice of law for a period of **ONE (1) YEAR** effective immediately upon receipt of this decision. Atty. Solomon A. Lobrido, Jr. is also ordered **SUSPENDED** from the practice of law for a period of six (6) months for failure to render proper legal assistance to his client. Respondents are further **WARNED** that a repetition of the same or similar offenses shall be dealt with more severely.

Let a copy of this Resolution be **FORWARDED** to the Office of the Bar Confidant, to be appended to the personal records as attorneys of Atty. Solomon A. Lobrido, Jr. and Atty. Danny L. Pondevilla. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

Bersamin, J., on official business.

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[57] *Heenan v. Espejo*, 722 Phil. 528, 537 (2013).

SPECIAL SECOND DIVISION

[A.C. No. 9832. October 3, 2018]

LOLITA R. MARTIN, *complainant, vs.* **ATTY. JESUS M. DELA CRUZ,** *respondent.*

SYLLABUS

REMEDIAL LAW; JUDGMENTS; WHEN THERE IS A CONFLICT BETWEEN THE *FALLO*, OR THE DISPOSITIVE PORTION, AND THE BODY OF THE DECISION OR ORDER, THE *FALLO* PREVAILS; AN EXCEPTION IS WHEN ONE CAN CLEARLY AND UNQUESTIONABLY CONCLUDE FROM THE BODY OF THE DECISION THAT THERE WAS A MISTAKE IN THE DISPOSITIVE PORTION, THEN THE BODY OF THE DECISION PREVAILS; CASE AT BAR.— It is true that when there is a conflict between the *fallo*, or the dispositive portion, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order, which becomes the subject of execution, while the body of the decision or order merely contains the reasons or conclusions of the court ordering nothing. However, as an exception, **"[when] one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail**." In the present case, a perusal of the body of the Resolution unquestionably shows complainant's entitlement to the restitution of the ₱60,000.00 acceptance fee. Unfortunately, the dispositive portion of the said Resolution did not reflect an order for respondent to restitute such amount, not because of any substantial consideration but merely because of an unwitting clerical omission. In *Tuatis v. Spouses Escol*, the Court reiterated the rule that "[when] there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final," as in this case. Certainly, "this Court cannot be precluded from making the necessary amendment thereof, so that the *fall*o will conform to the body of the said decision." In this light, the Court therefore deems it proper to amend the dispositive portion of the Resolution

to reflect complainant's entitlement to the restitution of the ₱60,000.00 acceptance fee.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In 2013, complainant Lolita R. Martin (complainant) filed a letter-complaint[1] against respondent Atty. Jesus M. Dela Cruz (respondent) for the latter's failure to return, despite several demands, the acceptance fee in the amount of ₱60,000.00 that he received from complainant.

In a Resolution[2] dated September 4, 2017, the Court found respondent administratively liable for violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility, and accordingly, suspended him from the practice of law for six (6) months effective from the finality of the said Resolution. On the matter of restitution, the Court held that the order for respondent to return the ₱60,000.00 acceptance fee is proper,[3] to wit:

As regards restitution, the Court has, in several cases, allowed the return of acceptance fees when a lawyer completely fails to render legal service. As applied to this case, the order for respondent to return the ₱60,000.00 is, therefore, proper. Indeed, an acceptance fee is generally non-refundable, but such rule presupposes that the lawyer has rendered legal service to his client. In the absence of

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[1] *Rollo*, p. 1. The letter was dated February 10, 2013 and addressed to Ombudsman Conchita Carpio Morales. In a letter dated February 26, 2013, the Office of the Ombudsman indorsed complainant's letter to the Court for appropriate action (*id*. at 7). On July 1, 2013, complainant also sent a handwritten letter-complaint to the Office of the President regarding the same matter (*id*. at 14). On even date, the Presidential Action Center of the Office of the President indorsed complainant's letter to the Office of the Bar Confidant (*id*. at 13).

[2] *Id*. at 301-306. See also *Martin v. Dela Cruz*, A.C. No. 9832, September 4, 2017.

[3] *Id*. at 305.

such service, the lawyer has no basis for retaining complainant's payment, as in this case.[4]

Notably, however, the dispositive portion of the Resolution did not contain a directive for respondent to restitute the aforementioned amount to complainant, but only decreed respondent's suspension from the practice of law. The dispositive portion thereof reads:

> **WHEREFORE**, respondent Atty. Jesus M. Dela Cruz (respondent) is found **GUILTY** of violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.
>
> The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.
>
> Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal record as 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**.[5]

When complainant filed a Motion for Execution[6] dated October 24, 2017, praying that a writ of execution be issued in her favor, the requested writ, which would enable her to retrieve the ₱60,000.00 acceptance fee she previously paid, could not be issued since no such directive to restitute appears in the dispositive portion of the Resolution, keeping in mind the general

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[4] See *Martin v. Dela Cruz*, *supra* note 2.

[5] *Id*. See also *rollo*, p. 306.

[6] *Rollo*, pp. 309-310.

rule that it is the *fallo* of a decision which is controlling.[7] As such, the Office of the Second Division Clerk of Court submitted a query to the Court, to wit:

> *Considering that the Resolution dated 4 September 2017 expressly warrants the restitution of the ₱60,000.00 acceptance fee to complainant, may the dispositive portion of the said Resolution be AMENDED to include a directive to respondent to return to complainant the amount of ₱60,000.00 which the latter paid as acceptance fee?*[8] (Italics in the original)

This query is the matter now before the Court. Accordingly, the Court deems it proper to make the necessary clarification.

It is true that when there is a conflict between the *fallo*, or the dispositive portion, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order, which becomes the subject of execution, while the body of the decision or order merely contains the reasons or conclusions of the court ordering nothing.[9] However, as an exception, "**[when] one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail**."[10]

In the present case, a perusal of the body of the Resolution unquestionably shows complainant's entitlement to the restitution of the ₱60,000.00 acceptance fee. Unfortunately, the dispositive portion of the said Resolution did not reflect an order for respondent to restitute such amount, not because of any substantial consideration but merely because of an unwitting clerical omission. In *Tuatis v. Spouses Escol*,[11] the Court reiterated

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[7] See *People v. Lacbayan*, 393 Phil. 800, 810 (2000).

[8] See Second Division Agenda dated July 2, 2018, Item Number 189.

[9] *Cobarrubias v. People*, 612 Phil. 984, 996 (2009).

[10] *Id*. *People v. Cilot*, G.R. No. 208410, October 19, 2016, 806 SCRA 575, 593; emphasis supplied. See also *People v. Lacbayan*, *supra* note 7, at 809; and *Spouses Rebuldela v. Intermediate Appellate Court*, 239 Phil. 487, 494 (1987).

[11] 619 Phil. 465 (2009).

the rule that "[when] there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final,"[12] as in this case.[13] Certainly, "this Court cannot be precluded from making the necessary amendment thereof, so that the *fallo* will conform to the body of the said decision."[14] In this light, the Court therefore deems it proper to amend the dispositive portion of the Resolution to reflect complainant's entitlement to the restitution of the ₱60,000.00 acceptance fee.

It bears stressing that the Court's original Resolution dated September 4, 2017 had already settled the issue of whether or not complainant is entitled to restitution, and no further discussion is needed to that effect. However, the amendment of the dispositive portion thereof must be made for complainant to effectively execute the Court's judgment on that aspect; hence, this Resolution. Moreover, so as to avoid any confusion, the Court is prompted to note that respondent's six (6)-month suspension shall begin not from the date he would receive this Resolution but the date of his receipt of the original Resolution dated September 4, 2017, which date shall be indicated in the Manifestation that he is required to file before this Court signifying the start of his suspension from the practice of law.

WHEREFORE, the dispositive portion of the Court's Resolution dated September 4, 2017 is hereby **AMENDED** to read as follows:

> **WHEREFORE**, respondent Atty. Jesus M. Dela Cruz (respondent) is found **GUILTY** of violating Rules 18.03

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[12] *Id*. at 485.

[13] Records show that respondent received his copy of the Resolution on October 18, 2018 (see LBC Tracking, *rollo*, p. 312) and has not filed any motion for reconsideration within the reglementary period (see 1st Indorsement from the Office of the Bar Confidant dated March 23, 2018; *id*. at 307).

[14] *Supra* note 11, at 485. See also *So v. Food Fest Land, Inc.*, 657 Phil. 604, 606 (2011).

and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Further, respondent is **ORDERED** to return to complainant Lolita R. Martin the acceptance fee he received from the latter in the amount of ₱60,000.00 within ninety (90) days from the finality of this Resolution. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let copies of this Resolution be furnished to 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 throughout the country.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Peralta,* and *Reyes, A. Jr., JJ.,* concur.

Caguioa, J., on leave.

SECOND DIVISION

[A.M. No. 18-08-79-MeTC. October 3, 2018]

RE: DROPPING FROM THE ROLLS OF MR. VICTOR R. LAQUI, JR., Cash Clerk II, Office Of The Clerk Of Court, Metropolitan Trial Court, Manila.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; DROPPING FROM THE ROLLS; NON-DISCIPLINARY IN NATURE; WARRANTED, EVEN WITHOUT PRIOR NOTICE, WHEN AN EMPLOYEE HAS BEEN CONTINUOUSLY ABSENT WITHOUT APPROVED LEAVE FOR AT LEAST 30 DAYS; CASE AT BAR.— The [Section 107-a-1, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service] warrants the dropping from the rolls of the name of the employee who has been continuously absent without approved leave for at least 30 days even without prior notice. Hence, Laqui should be separated from service or dropped from the rolls in view of his continued absence since March 1, 2018. x x x Laqui, by going on AWOL, grossly disregarded and neglected the duties of his office. He failed to adhere to the highest standards of public accountability imposed on those in government service. The Court likewise noted that separation from the service for unauthorized absences is non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee or in disqualifying him from re-employment in the government, in accordance with Section 110, Rule 20 of the 2017 RACCS.

R E S O L U T I O N

A. REYES, JR., *J.*:

The present administrative matter concerns Victor R. Laqui, Jr. (Laqui), Cash Clerk II, Office of the Clerk of Court of the Metropolitan Trial Court (MeTC) of Manila.

It appears from the records of the Employees' Leave Division (ELD), Office of Administrative Services (OAS), Office of the Court Administrator (OCA) that Laqui has not submitted his Daily Time Records (DTRs) from March 2018 up to the present. He has likewise failed to seek leave for any of his absences. Thus, he has been on absence without official leave (AWOL) since March 1, 2018.[1]

In the transmittal letter[2] dated May 9, 2018, Executive Judge Andy S. De Vera informed the OCA that Laqui did not submit his DTR for the month of April 2018 for the reason that the latter was on AWOL.

On May 16, 2018, the OCA issued a Memorandum[3] ordering the withholding of Laqui's salaries and benefits for his failure to submit his DTR from March 2018 to April 2018.

The OCA, on the basis of the records of its different offices, informed the Court of the following: **(a)** Laqui has not filed an application for retirement; **(b)** he is still in the plantilla of personnel, and thus, considered to be in active service; **(c)** he is not an accountable officer, and **(d)** no administrative case is pending against him.[4]

Recommendation of the OCA

In its Report[5] dated August 9, 2018, the OCA recommended that Laqui's name be dropped from the rolls effective March 1, 2018 for having been on AWOL. The OCA further recommended that his position be declared vacant and he be informed of his separation from service or dropping from the rolls. The OCA,

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[1] *Rollo*, p. 1.

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

[3] Signed by OAS-OCA Chief of Office Caridad A. Pabello and approved by Court Administrator Jose Midas P. Marquez; *id*. at 6.

[4] *Id*. at 7.

[5] Signed by Court Administrator Jose Midas P. Marquez, Assistant Court Administrator Maria Regina Adoracion Filomena M. Ignacio and OAS-OCA Chief of Office Caridad A. Pabello; *id*. at 1-2.

nonetheless, pointed out that he is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.[6]

Ruling of the Court

The recommendation of the OCA is well-taken.

Section 107 a-1, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (RACCS)[7] states:

> **Section 107.** ***Grounds and Procedure for Dropping from the Rolls.*** — Officers and employees who are absent without approved leave, have unsatisfactory performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefore arises subject to the following procedures:
>
> **a. Absence Without Approved Leave**
>
> 1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.
>
> He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address.
>
> x x x x x x x x x. (Underscoring Ours)

The foregoing provision warrants the dropping from the rolls of the name of the employee who has been continuously absent without approved leave for at least 30 days even without prior notice. Hence, Laqui should be separated from service or dropped from the rolls in view of his continued absence since March 1, 2018.

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[6] *Id*. at 2.

[7] Promulgated by the Civil Service Commission through Resolution No. 1701077 dated July 3, 2017.

Prolonged unauthorized absence causes inefficiency in the public service.[8] A court employee's continued absence without leave disrupts the normal functions of the court.[9] It contravenes the public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty, and efficiency.[10]

The Court has also repeatedly held that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility.[11] We cannot countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[12]

Laqui, by going on AWOL, grossly disregarded and neglected the duties of his office. He failed to adhere to the highest standards of public accountability imposed on those in government service.[13]

The Court likewise noted that separation from the service for unauthorized absences is non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee or in disqualifying him from re-employment in the government, in accordance with Section 110,[14] Rule 20 of the 2017 RACCS.

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[8] *Re: Dropping from the Rolls of Rowie A. Quimno*, A.M. No. 17-03-33-MCTC, April 17, 2017.

[9] *Id.*

[10] *Re: AWOL of Ms. Borja*, 549 Phil. 533, 536 (2007).

[11] *Re: Absence Without Official Leave of Mr. Faraon*, 492 Phil. 160, 163 (2005).

[12] *Re: AWOL of Ms. Borja*, *supra* note 10.

[13] *Re: Absence Without Official Leave of Mr. Borcillo*, 559 Phil. 1, 4 (2007).

[14] **Sec. 110.** *Dropping from the Rolls; Non-disciplinary in Nature*. This mode of separation from service for unauthorized absences or unsatisfactory

In light of the foregoing, the Court adheres to the evaluation and recommendation of the OCA, and thus refrains from imposing the administrative penalties of forfeiture of benefits and disqualification from re-employment.

WHEREFORE, Victor R. Laqui, Jr., Cash Clerk II, Office of the Clerk of Court, Metropolitan Trial Court of Manila, is hereby **DROPPED** from the rolls effective March 1, 2018 and his position is declared **VACANT**. He is, however, still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon him at Block 16, Lot 2, Arellano Street, Katarungan Village, Poblacion, Muntinlupa City, the last known address appearing on his 201 file.

SO ORDERED.

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

Caguioa, J., on leave.

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or poor performance or physical or mental disorder is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.

[*] Designated as additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[A.M. No. P-18-3875. October 3, 2018]
(Formerly OCA IPI No. 16-4577-P)

CARLOS GAUDENCIO M. MAÑALAC, *complainant, vs.* **HERNAN E. BIDAN, Sheriff IV, Regional Trial Court, Branch 53, Bacolod City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; VIOLATED SECTION 10 (C) OF RULE 39, RULES OF COURT WHEN HE/SHE ENFORCED THE WRIT WITHOUT NOTICE OR BEFORE THE EXPIRATION OF THE THREE-DAY PERIOD; CASE AT BAR.— It is hornbook law that "[a] sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39." x x x In *Calaunan v. Madolaria*, this Court ruled that "[f]ailure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension" pursuant to Section 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil Service. Indeed, under Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which applies to the instant case, simple neglect of duty is classified as a less grave offense and is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense. At the risk of belaboring a point, while it is settled that respondent sheriffs duty to implement the writ was ministerial, it is equally settled that it was respondent sheriffs mandated duty to first demand that PI One peaceably vacate the subject lot within three working days after service of the writ.

2. ID.; ID.; ID.; ID.; ID.; ABSENT A SHOWING OF MALICE AND BAD FAITH AND THE SHERIFF'S VIOLATION OF THE PROCEDURE IN THE IMPLEMENTATION OF THE WRIT IS NOT SO GRAVE, APPRECIATION OF ONE

EXTENUATING CIRCUMSTANCE IS PROPER IN CASE AT BAR.— With respect to the proper penalty, this Court notes that the OCA had appreciated one extenuating circumstance, *i.e.* "[respondent's] violation of the procedure in the implementation of the writ is not so grave and absent a showing of malice and bad faith". Under Section 49(a), Rule 10 of the RRACCS, "the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Hence, suspension for one month and one day should be the appropriate imposable penalty. Even then, it has been held in some cases that suspension would not be practical as respondent's work would be left unattended, for which reason a fine may be imposed instead, so that he can perform the duties of his office without interruption. Corollary thereto, it has been held that since sheriffs are actually discharging frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section 47(1)(b), Rule 10 of the RRACCS. Balancing all the equities in this case, this Court takes the view that the proper imposable fine should be equivalent to respondent sheriff's salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, having in view Sections 47(2) and (6), Rule 10 of the RRACCS.

D E C I S I O N

DEL CASTILLO, *J.*:

The present administrative case arose from the notarized Complaint-Affidavit[1] filed with the Office of the Court Administrator (OCA) by Carlos Gaudencio M. Mañalac (Mañalac), for and on behalf of Philippine One Investment (SPV-AMC), Inc. (hereinafter PI One), against Hernan E. Bidan, Sheriff IV, Branch 53, Regional Trial Court (RTC), Bacolod City, Negros Occidental (respondent sheriff).

Complainant accused respondent sheriff with gross misconduct, grave abuse of authority, and conduct prejudicial to the best interest of the service relative to his actuations in

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[1] *Rollo*, pp. 1-7.

SP Case No. M-6682, entitled "*In the matter of Petition for Rehabilitation with Prayer for Staying All Claims, Actions and Proceedings Against Philippine Investment One (SPV-AMC), Inc. v. Metropolitan Bank and Trust Company*," and in Commercial Court Case No. 05-057, entitled "*In the Matter of the Petition for Corporate Rehabilitation; Medical Associates Diagnostics Center, Inc., petitioner*."

Complainant alleged that PI One was a special purpose vehicle created under Republic Act No. 9182, otherwise known as the Special Purpose Vehicle Law of 2002; that it was undergoing corporate rehabilitation before Branch 149 of the RTC Makati in SP Case No. M-6682; that in said case, RTC-Branch 149 had issued a Stay Order dated September 23, 2008, which covered, among others, Transfer Certificate of Title No. 166-2015000786 registered in its name (subject lot); that it acquired the subject lot pursuant to a foreclosure proceeding because of the failure of Medical Associates Diagnostics Center, Inc. (MADCI) to pay off its mortgage on the subject lot; that it came into lawful possession of the subject lot by virtue of a Writ of Possession issued by Branch 61 of the RTC of Kabankalan City as shown in that court's Order of October 20, 2015; that in the afternoon of May 13, 2016, its office (PI One), received a call from its security guards stationed in the subject lot to the effect that the former owner of the property Dr. Enigardo Legislador, Jr. in the company of respondent sheriff, as well as certain civilians, and security guards, "stormed" the subject lot in an apparent illegal take-over of the same; that its in-house counsel remonstrated with respondent sheriff that it had not received any court order, notice, writ or any other process in respect to the subject lot, which at the time was under *custodia legis* of the RTC-Makati, hence the take-over was illegal and should not be implemented; that as an officer of the court, respondent sheriff knew, or ought to have known, that he must first serve upon the adverse party, the court order, notice, writ or any other process before he (respondent sheriff) could proceed with its implementation; that respondent sheriff knew, or ought to have known, too, that a motion for the issuance of a writ of execution always contains a notice to the adverse party; that

respondent sheriffs blatant disregard of established law and procedure deprived complainant of its rights to due process, and unlawfully dispossessed it of the subject lot; that respondent sheriffs overzealous implementation of the court's processes, which was vitiated by lack of proper notice to the adverse party, constituted grave abuse of authority and conduct prejudicial to the best interest of the service.

In his Comment,[2] respondent sheriff countered that his impugned actions came within the ambit of his official duties as a court sheriff; that eight days before the alleged illegal take-over, or on May 5, 2016, Branch 53 of RTC-Bacolod issued an Order[3] which categorically declared that the foreclosure over the subject lot and that all proceedings thereon were null and void; that he proceeded with the implementation of the questioned Writ of Execution in good faith; that it is settled that it was his ministerial duty to execute a valid writ; and that complainant had not presented any substantial evidence to show that he acted beyond or outside his legal authority; hence it is presumed that he performed his official duties in due course. Respondent sheriff thus prayed that the Complaint-Affidavit be dismissed.

The OCA Report and Recommendation

In its Memorandum dated November 15, 2016,[4] the OCA recommended that respondent sheriff be found guilty of abuse of authority and conduct prejudicial to the service, and that he be penalized with a fine of ₱10,000.00, plus a strong warning that a repetition of the same or similar offense shall be dealt with more severely by the Court.

The OCA cited verbatim the dispositive portion of the Order dated May 5, 2016, which was quoted in the writ of execution, to wit:

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[2] *Id*. at 33-37.

[3] *Id*. at 38-52; the OCA Memorandum (*Id*. at 58) referred to the Order dated May 5, 2016 as "the 'Decision' dated May 5, 2016".

[4] *Id*. at 56-60; signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office Legal Office Wilhelmina D. Geronga.

Furthermore, the court hereby declares the FORECLOSURE of the property of petitioner [MADCI], including the hospital, and subsequent proceedings taken thereafter as NULL and VOID. **PI One is ORDERED TO RESTORE IMMEDIATELY** petitioner to the possession of the [subject lot] and the hospital and its facilities. Pending compliance with the ORDERS above-stated, petitioner is hereby RESTORED to its ACTIVE STATUS in the above-entitled case.[5] (Emphasis in the original)

The OCA held that the order to restore possession of the subject lot to MADCI was directed at PI One, and not at respondent sheriff; that respondent sheriff should have served a copy of the writ of execution on PI One, even as he ought to have accorded reasonable tie and opportunity unto PI One to comply therewith; that it was only after PI One had in fact unjustifiably refused to surrender possession of the subject lot to MADCI, that respondent sheriff was well in his right or authority to oust PI One therefrom, conditioned upon the fact that prior and proper notice had been made upon PI One's counsel; that respondent sheriff should not have immediately taken possession of the subject lot and should not have placed MADCI in possession thereof on the very day of the issuance of the writ of execution, without prior notice to PI One's counsel; that respondent sheriffs interpretation of the Order and the writ of execution was clearly erroneous, if for no other reason than that respondent sheriff utterly failed to give notice to the other party that such a writ had in fact been issued, and to demand that PI One surrender possession of the subject lot within three days from the issuance of the writ, pursuant to Section 10(c), Rule 39, in relation to Section 2, Rule 13 of the Rules of Court; that respondent sheriff should have known that notice to the client and not to the counsel of record is not notice at all within the meaning of the law; that the requirement of notice is based on the rudimentary tenets of justice and fair play; that while respondent sheriffs duty in the execution of a writ was purely ministerial, he ought to have known that it was his bounden

[5] *Id*. at 53.

duty to scrupulously observe and comply with the Rules of Court in implementing the court's orders, writs, and processes; and that considering that respondent sheriffs violation was not tainted with malice or bad faith, a fine of ₱10,000.00 is appropriate under the circumstances.

Ruling

It is hornbook law that "[a] sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39."[6] Thus it is provided —

SECTION 10. *Execution of judgments for specific act*. —

x x x x x x x x x

(c) *Delivery or Restitution of Real Property*.— The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

In *Calaunan v. Madolaria*,[7] this Court ruled that "[f]ailure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension"[8] pursuant to Section 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil

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[6] *Calaunan v. Madolaria*, 657 Phil. 9 (2011).

[7] *Id*.

[8] *Id*. at 9-10.

Service. Indeed, under Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[9] which applies to the instant case,[10] simple neglect of duty is classified as a less grave offense and is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense.

At the risk of belaboring a point, while it is settled that respondent sheriffs duty to implement the writ was ministerial,[11] it is equally settled that it was respondent sheriffs mandated duty to first demand that PI One peaceably vacate the subject lot within three working days after service of the writ.

With respect to the proper penalty, this Court notes that the OCA had appreciated one extenuating circumstance, *i.e.* "[respondent's] violation of the procedure in the implementation of the writ is not so grave and absent a showing of malice and bad faith"[12] Under Section 49(a), Rule 10 of the RRACCS, "the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Hence, suspension for one month and one day should be the appropriate imposable penalty. Even then, it has been held in some cases that suspension would not be practical as respondent's work would be left unattended, for which reason a fine may be imposed instead, so that he can perform the duties of his office without

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[9] Civil Service Commission (CSC) Resolution No. 1101502, promulgated on November 8, 2011, and published on November 21, 2011.

[10] The RRACCS has been repealed by the CSC Resolution No. 1701077, promulgated on July 3, 2017, also known as the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS); Section 124, Rule 23 thereof provides that, "[t]he provisions of the existing RRACCS shall continue to be applied to all pending cases which were filed prior to the effectivity of these Rules, provided it will not unduly prejudice substantive rights"; Section 125, Rule 23 thereof states that, "[said] Rules shall take effect after fifteen (15) days from date of publication in the Official Gazette, or in a newspaper of general circulation."

[11] *Sabijon v. De Juan*, 752 Phil. 110, 122 (2015).

[12] *Rollo*, p. 60.

interruption.[13] Corollary thereto, it has been held that since sheriffs are actually discharging frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section 47(1)(b), Rule 10 of the RRACCS.[14]

Balancing all the equities in this case, this Court takes the view that the proper imposable fine should be equivalent to respondent sheriff's salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, having in view Sections 47(2) and (6), Rule 10 of the RRACCS, to wit:

> SECTION 47. *Penalty of Fine*.— The following are the guidelines for the penalty of fine:
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> x x x x x x x x x
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> 2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of

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[13] *Mariñas v. Florendo*, 598 Phil. 322, 331 (2009).

[14] *Cabigao v. Nery*, 719 Phil. 475, 485 (2013), citing Section 47 (1) (b), Rule 10 of the RRACCS, *viz*.

> SECTION 47. *Penalty of Fine*. — The following are the guidelines for the penalty of fine:
>
> 1. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:
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> x x x x x x x x x
>
> b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function; and
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> x x x x x x x x x

six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.

x x x x x x x x x

6. The fine shall be paid to the agency imposing the same, computed on the basis of respondent's salary at the time the decision becomes final and executory.

x x x x x x x x x[15]

WHEREFORE, Hernan E. Bidan, Sheriff IV, Branch 53, Regional Trial Court, Bacolod City, Negros Occidental, is hereby found **GUILTY** of simple neglect of duty for which he is hereby ordered to pay a **FINE** equivalent to one (1) month and one (1) day of his salary, computed on the basis of his salary at the time the decision becomes final and executory.

SO ORDERED.

Leonardo-de Castro, C.J., Jardeleza, and *Tijam, JJ.*, concur.

Bersamin, J., on official leave.

THIRD DIVISION

[G.R. No. 197626. October 3, 2018]

RAUL S. IMPERIAL, *petitioner, vs.* **HEIRS OF NEIL BAYABAN and MARY LOU BAYABAN,** *respondents.*

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[15] See also *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017, 823 SCRA 44, 57-58.

SYLLABUS

1. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; DOCTRINE OF VICAROUS LIABILITY; EMPLOYERS ARE DEEMED LIABLE OR MORALLY RESPONSIBLE FOR THE FAULT OR NEGLIGENCE OF THEIR EMPLOYEES BUT ONLY IF THE EMPLOYEES ARE ACTING WITHIN THE SCOPE OF THEIR ASSIGNED TASKS; BURDEN OF PROVING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP AND THAT THE EMPLOYEE WAS ACTING WITHIN SCOPE OF HIS/HER ASSIGNED TASKS RESTS WITH THE PLAINTIFF; CASE AT BAR.— Specifically for employers, they are deemed liable or morally responsible for the fault or negligence of their employees but only if the employees are acting within the scope of their assigned tasks. An act is deemed an assigned task if it is "done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage." x x x One of the issues in *Castilex* was determining who had the burden of proving that the act was within the scope of the employee's assigned tasks. On this issue, this Court said that the burden of proving the existence of an employer-employee relationship and that the employee was acting within the scope of his or her assigned tasks rests with the plaintiff under the Latin maxim "*ei incumbit probatio qui dicit, non qui negat*" or "he who asserts, not he who denies, must prove." Therefore, it is not incumbent on the employer to prove that the employee was not acting within the scope of his assigned tasks. Once the plaintiff establishes the requisite facts, the presumption that the employer was negligent in the selection and supervision of the employee arises, disputable with evidence that the employer has observed all the diligence of a good father of a family to prevent damage. Though vicarious, the liability of employers under Article 2180 is personal and direct. Applying the foregoing, this Court finds that respondents have discharged the burden of proof necessary to hold Imperial vicariously liable under Article 2180 of the Civil Code.

2. ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF NEGLIGENCE IN THE SELECTION AND SUPERVISION OF EMPLOYEE, NOT DISPUTED IN CASE AT BAR.— With

respondents having discharged their burden of proof, the disputable presumption that petitioner Imperial was negligent in the selection and supervision of Laraga arises. Contrary to petitioner's claim, there was no shifting of burden on him to prove that Laraga was acting outside of his assigned tasks. Rather, petitioner had to put forward evidence that he had exercised due diligence in the selection and supervision of Laraga as his driver to be relieved of liability. Unfortunately for petitioner, he miserably failed to dispute the presumption of negligence in his selection and supervision of Laraga. As the Regional Trial Court and the Court of Appeals found, he only gave self-serving testimonies without the requisite documentary proof that he had enrolled Laraga in a formal driving school. At best, he only established that he had financed the fees needed for Laraga to obtain his driver's license, which is hardly the due diligence contemplated in Article 2180 of the Civil Code. Considering that petitioner failed to dispute the presumption of negligence on his part, he was correctly deemed liable for the damages incurred by the Bayaban Spouses when the tricycle they were riding collided with the van driven by petitioner's employee, Laraga.

3. REMEDIAL LAW; EVIDENCE; PROOF OF PRIVATE DOCUMENT; OFFICIAL RECEIPTS OF HOSPITAL AND MEDICAL EXPENSES ARE PRIVATE DOCUMENTS WHICH MAY BE AUTHENTICATED EITHER BY PRESENTING AS WITNESS ANYONE WHO SAW THE DOCUMENT EXECUTED OR WRITTEN, OR BY PRESENTING AN EVIDENCE OF THE GENUINENESS OF THE SIGNATURE OR HANDWRITING OF THE MAKER; CASE AT BAR.— Official receipts of hospital and medical expenses are not among those enumerated in Rule 132, Section 19. These official receipts, therefore, are private documents which may be authenticated *either* by presenting as witness anyone who saw the document executed or written, *or* by presenting an evidence of the genuineness of the signature or handwriting of the maker. In insisting that respondents should have presented as witnesses the persons who signed the official receipts, petitioner ignores the first manner of authenticating private documents. Respondent Mary Lou testified as to the circumstances of the accident and the expenses she and Neil had incurred as a result of it. The official receipts were issued

to her and Neil upon payment of the expenses. Since the official receipts were issued to respondent Mary Lou, her testimony, therefore, is a competent evidence of the execution of the official receipts.

4. **CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; MORE THAN NOMINAL BUT LESS THAN ACTUAL OR COMPENSATORY DAMAGES, MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED, BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY; AWARD THEREOF, PROPER IN CASE AT BAR.—** [A]part from the actual damages for the hospital and medical expenses that respondents have incurred, this Court finds that respondents are entitled to temperate damages for loss of earning capacity. Temperate or moderate damages, which are more than nominal but less than actual or compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered, but its amount cannot, from the nature of the case, be proved with certainty. Temperate damages must be reasonable under the circumstances. While respondents failed to put forward definite proof of income lost during confinement and post-therapy, they still suffered pecuniary loss when they were incapacitated to work. Under the circumstances, the ₱100,000.00 awarded by the Regional Trial Court is reasonable to compensate them for the income that the Bayaban Spouses could have earned as a second-mate seaman and a pharmacist, respectively. As opposed to the Court of Appeals' ruling, temperate damages may still be awarded to respondents despite previous award of actual damages because the damages cover distinct pecuniary losses. The temperate damages awarded cover the loss of earning capacity while the actual damages cover the medical and hospital expenses.

APPEARANCES OF COUNSEL

Kapunan Imperial Panaguiton & Bongolan for petitioner.
Medina Libatique & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

The burden of proving that a negligent act of an employee was performed within the scope of his or her assigned tasks rests with the plaintiff. When the plaintiff has discharged this burden, as in this case, the presumption that the employer was negligent arises, and the employer must put forward evidence showing that he or she had exercised the due diligence of a good father of a family in the selection and supervision of the employee. Failing to dispute this presumption renders the employer solidarily liable with the employee for the quasi-delict.

This resolves a Petition for Review on Certiorari[1] filed by Raul S. Imperial (Imperial) assailing the Court of Appeals March 18, 2011 Decision[2] and July 11, 2011 Resolution[3] in CA-G.R. CV No. 93498. The Court of Appeals found Imperial solidarily liable with his employee and driver, William Laraga (Laraga), for the damages suffered by spouses Neil Bayaban (Neil) and Mary Lou Bayaban (Mary Lou) (collectively, the Bayaban Spouses) as a result of Laraga's negligent operation of the van owned by Imperial.

On December 14, 2003, at about 3:00 p.m., two (2) vehicles, a van and a tricycle, figured in an accident along Sumulong Highway, Antipolo City. The Mitsubishi L-300 van with plate number USX 931 was owned and registered under Imperial's name, and was driven by Laraga. The tricycle with plate number DU 8833 was driven by Gerardo Mercado (Mercado).[4]

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[1] *Rollo*, pp. 9-28.

[2] *Id*. at 30-39. The Decision was penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario of the Tenth Division, Court of Appeals, Manila.

[3] *Id*. at 41-42. The Resolution was penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario of the Former Tenth Division, Court of Appeals, Manila.

[4] *Id*. at 31 and 87.

On board the tricycle were the Bayaban Spouses, who sustained injuries.[5] They were brought to Unciano Hospital where the attending physician found that Neil suffered the following:

> Fracture Open Type III-B, Complete Comminuted, Displaced, middle Third Tibia, Fracture Closed, Complete comminuted displaced, Middle Third Femur, right Fracture, closed complete disp. Lateral Tibial plateau knee joint left.[6]

As for Mary Lou, she was found to have suffered the following:

> Fracture closed, complete, comminuted, Displaced distal radius left (Frykmann VIII), Dislocation, ulnocarpal/ulnoradial jt. left, Fracture, closed, complete, transverse, displaced, middle-distal 3rd Humerus right.[7]

For the injuries they sustained, the Bayaban Spouses had to undergo therapy and post-medical treatment.[8]

The Bayaban Spouses demanded compensation from Imperial, Laraga, and Mercado for the hospital bills and loss of income that they sustained while undergoing therapy and post-medical treatment.[9] When neither Imperial, Laraga, nor Mercado heeded their demand, the Bayaban Spouses filed a Complaint[10] for damages before the Regional Trial Court of Antipolo City, impleading Imperial, Laraga, and Mercado as defendants. In their Complaint, they prayed for ₱311,760.75 as actual damages, US$1,900.00 per month representing Neil's unearned income as a second-mate seaman, ₱7,600.00 per month representing Mary Lou's unearned income as pharmacist, ₱200,000.00 as moral damages, and ₱20,000.00 as attorney's fees.[11]

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[5] *Id*.

[6] *Id*. at 52.

[7] *Id*. at 53.

[8] *Id*. at 31.

[9] *Id*.

[10] *Id*. at 43-48.

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

In his Answer,[12] Imperial denied liability, contending that the van was under the custody of one Rosalio Habon Pascua (Pascua). According to Imperial, he lent the van to Pascua who needed it in fixing the greenhouse and water line pipes in Imperial's garden somewhere in Antipolo.[13] Imperial admitted that he had employed Laraga as family driver[14] but contended that he had exercised due diligence in the selection and supervision of Laraga.[15] He even allegedly sponsored Laraga's formal driving lessons. Furthermore, Laraga was allegedly acting outside the scope of his duties when the accident happened considering that it was a Sunday, his rest day.[16]

Before the case proceeded to trial, Neil died on May 23, 2006.[17] He was substituted by his heirs, namely, Mary Lou and their children, Donna Grace and Dan Geofrey (the Heirs of Neil Bayaban).[18]

In its March 15, 2009 Decision,[19] the Regional Trial Court ruled in favor of the Bayaban Spouses. It found Laraga negligent and the proximate cause of the accident, i.e., overtaking another vehicle and, in the process, colliding with the tricycle that carried the Bayaban Spouses on the other side of the road.[20] As for Imperial, it ruled that he failed to prove that he had exercised due diligence in the selection and supervision of Laraga, his employee; thus, he was presumed negligent and was likewise held liable for damages to the Bayaban Spouses.[21]

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[12] *Id*. at 57-63.

[13] *Id*. at 59.

[14] *Id*.

[15] *Id*. at 61.

[16] *Id*. at 60.

[17] *Id*. at 74.

[18] *Id*. at 13, *see* footnote 8.

[19] *Id*. at 87-90. The Decision, docketed as Civil Case No. 04-7131, was penned by Presiding Judge Ronaldo B. Martin of Branch 73, Regional Trial Court, Antipolo.

[20] *Id*. at 88-89.

[21] *Id*. at 89.

The Regional Trial Court held that the official receipts presented in evidence substantiated the Bayaban Spouses' claim for reimbursement of medical and hospital expenses.[22] However, it found the certificates of employment inadequate to prove the amount of their unearned income.[23] Nevertheless, Mary Lou, for her own behalf, and the Heirs of Neil Bayaban were awarded ₱100,000.00 as temperate damages. Moral damages and exemplary damages of ₱50,000.00 each and attorney's fees of ₱25,000.00 plus costs of suit were awarded to them as well.[24]

The dispositive portion of the Regional Trial Court March 15, 2009 Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of Plaintiffs and against Defendants Raul Imperial and William Laraga, ordering the said Defendants to pay, jointly and severally, the following:
>
> 1. Actual damages in the amount of Php 462,868.83 for medical expenses and Php 100,000.00 for lost earnings during medical treatment;
> 2. Moral damages in the amount [of] ₱50,000.00;
> 3. Exemplary damages in the amount of ₱50,000.00;
> 4. Attorney's fees, inclusive of appearance fees, in the amount of Php 25,000.00, plus cost of suit.
>
> SO ORDERED.[25]

Imperial appealed this Decision to the Court of Appeals.[26] Nevertheless, the Court of Appeals maintained his liability, ruling that "the registered owner of a motor vehicle is primarily and directly responsible for the consequences of its operation,

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[22] *Id*.

[23] *Id*. at 89-90.

[24] *Id*. at 90.

[25] *Id*.

[26] *Id*. at 91.

including the negligence of the driver, with respect to the public and all third persons."[27] He could not escape liability by arguing that it was Laraga's day off when the accident happened or that the van was in the custody of Pascua because neither Laraga nor Pascua was presented in court to confirm his assertions.[28]

The Court of Appeals likewise found that Imperial failed to prove that he had exercised due diligence in the selection and supervision of Laraga. Apart from his bare allegation that he had financed the formal driving lessons of Laraga, he failed to present documentary evidence that he did so. He could not even remember the name of the driving school where Laraga had allegedly enrolled.[29]

However, the Court of Appeals deleted the award of temperate damages because the claim was allegedly not substantiated. It added that temperate and actual damages were mutually exclusive and could not be awarded at the same time.[30]

The dispositive portion of the Court of Appeals March 18, 2011 Decision[31] read:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision dated 15 March 2009 of the Regional Trial Court of Antipolo, Branch 73 in Civil Case No. 04-7131 is hereby **AFFIRMED with MODIFICATION**, deleting the award of temperate damages in the amount of ₱100,000.00 for lost earnings during medical treatment.

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[27] *Id*. at 34, citing *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*, 579 Phil. 418 (2008) [Per *J*. Austria-Martinez, Third Division] citing *Equitable Leasing Corp. v. Suyom*, 437 Phil. 255 (2002) [Per *J*. Panganiban, Third Division], and *First Malayan Leasing and Finance Corp. v. Court of Appeals*, 285 Phil. 229 (1992) [Per *J*. Griño-Aquino, First Division].

[28] *Id*. at 35.

[29] *Id*. at 36-37.

[30] *Id*. at 38.

[31] *Id*. at 30-39.

SO ORDERED.[32] (Emphasis in the original)

Imperial filed a Motion for Reconsideration,[33] which the Court of Appeals denied in its July 11, 2011 Resolution.[34]

On August 23, 2011, Imperial filed a Petition for Review on Certiorari[35] before this Court. Mary Lou and the Heirs of Neil Bayaban filed a Comment[36] to which Imperial replied.[37] Upon the directive[38] of this Court, the parties filed their respective Memoranda.[39]

Citing *Castilex Industrial Corporation v. Vasquez, Jr.,*[40] petitioner maintains that he is not liable because respondents failed to discharge their burden of proving that Laraga was acting within the scope of his assigned tasks at the time of the accident.[41] Furthermore, the official receipts of the medical and hospital bills, though original, were allegedly not authenticated as required under Rule 132, Section 20[42] of the

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[32] *Id*. at 38.

[33] *Id*. at 134-143.

[34] *Id*. at 41-42.

[35] *Id*. at 9-28.

[36] *Id*. at 150-160.

[37] *Id*. at 163-167.

[38] *Id*. at 202-202-A, Resolution dated March 11, 2013.

[39] *Id*. at 188-201, Memorandum for Petitioner, and *rollo*, pp. 176-187, Memorandum for Respondents.

[40] 378 Phil. 1009 (1999) [Per *C.J.* Davide, First Division].

[41] *Rollo,* pp. 195-199.

[42] RULES OF COURT, Rule 132, Sec. 20 provides:

Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Rules of Court. Therefore, these receipts are not competent evidence of the actual damages sustained by Neil and respondent Mary Lou.[43]

Respondents point out Imperial's admission that Laraga was his employee, specifically, his family's stay-in driver. Thus, even though the accident happened on a Sunday, they contend that "it [was] not far-fetched to conclude that . . . Laraga had always been utilized as a driver by the petitioner and his family during Sundays,"[44] as this is allegedly the "common practice under Philippine set up."[45] They maintain that Laraga was acting within the scope of his assigned tasks when the accident happened.[46]

Additionally, respondents contend that petitioner failed to prove that he exercised due diligence in the selection and supervision of Laraga by failing to present the original receipts showing that he had enrolled Laraga to a formal driving school. The contention that Imperial shouldered Laraga's expenses in obtaining a driver's license is hardly the due diligence of a good father of a family required to absolve him from liability as Laraga's employer.[47]

Lastly, respondents argue that original receipts of medical and hospital bills are sufficient proof of the actual damages they have sustained; hence, they need not be authenticated to be competent proof of their claims.[48]

Based on the pleadings submitted, the issues for this Court's resolution are the following:

Any other private document need only be identified as that which it is claimed to be.

[43] *Rollo,* pp. 199–200.

[44] *Id*. at 182.

[45] *Id*.

[46] *Id*. at 182-183.

[47] *Id*. at 183-184.

[48] *Id*. at 184-185.

First, whether or not the Court of Appeals shifted the burden on petitioner Raul S. Imperial to prove that his employee, William Laraga, was not acting within the scope of his assigned tasks; and

Second, whether or not the original receipts of the medical and hospital bills presented by respondents Neil Bayaban and Mary Lou Bayaban are not competent evidence of the actual damages that they have sustained considering that the receipts were not authenticated.

This Petition must be denied.

I

Articles 2176 and 2180 of the Civil Code provide:

> 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.
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> . . . . . .
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> 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.
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> . . . . . .
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> 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.
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> . . . . . .
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> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Articles 2176 and 2180 of the Civil Code were derived from Articles 1902[49] and 1903[50]of the Spanish Civil Code of 1889. Article 2176 defines "quasi-delict" as the fault or negligence that causes damage to another, there being no pre-existing contractual relations between the parties. On the other hand, Article 2180 enumerates persons who are vicariously liable for the fault or negligence of persons over whom they exercise control, whether absolute or limited.

This Court explained the legal fiction of vicarious liability in *Cangco v. Manila Railroad Co*.[51] Though involving Articles 1902 and 1903 of the Spanish Civil Code of 1889, *Cangco*'s explanation of the law's rationale remains relevant considering

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[49] SPANISH CIVIL CODE OF 1889, Art. 1902 provided:

Article 1902. Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done.

[50] SPANISH CIVIL CODE OF 1889, Art. 1903 provided:

Article 1903. The obligation imposed by the next preceding article is enforcible, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

The father, and, in case of his death or incapacity, the mother, is liable for any damages caused by minor children who live with them.

Guardians are liable for damages done by minors or incapacitated persons subject to their authority and living with them.

Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which [they are] employed, or on occasion of the performance of their duties.

The State is subject to the same liability when it acts through a special agent, but not if the damage shall have been caused by the official upon whom property devolved the duty of doing the act performed, in which case the provisions of the next preceding article shall be applicable.

Finally, teachers or directors of arts and trades are liable for any damage caused by their pupils or apprentices while they have charge of them.

The liability imposed by this article shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage.

[51] 38 Phil. 768 (1918) [Per *J.* Fisher, *En Banc*].

that Articles 1902 and 1903, and the present Articles 2176 and 2180 are similarly worded. In *Cangco*:

> With respect to extra-contractual obligation arising from negligence, whether of act or omission, it is competent for the legislature to elect—and our Legislature has so elected—to limit such liability to cases in which the person upon whom such an obligation is imposed is morally culpable or, on the contrary, for reasons of public policy, to extend that liability, without regard to the lack of moral culpability, so as to include responsibility for the negligence of those persons whose acts or omissions are imputable, by a legal fiction, to others who are in a position to exercise an absolute or limited control over them. The legislature which adopted our Civil Code has elected to limit extra contractual liability—with certain well-defined exceptions—to cases in which moral culpability can be directly imputed to the persons to be charged. This moral responsibility may consist in having failed to exercise due care in one's own acts, or in having failed to exercise due care in the selection and control of one's agents or servants, or in the control of persons who, by reason of their status, occupy a position of dependency with respect to the person made liable for their conduct.[52]

Specifically for employers, they are deemed liable or morally responsible[53] for the fault or negligence of their employees but only if the employees are acting within the scope of their assigned tasks. An act is deemed an assigned task if it is "done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage."[54]

Filamer Christian Institute v. Court of Appeals[55] explained when an act is within the scope of an employee's assigned tasks so as to hold an employer liable under Article 2180. In *Filamer*,

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[52] *Id*. at 775-776.

[53] *Id*. at 776.

[54] *Filamer Christian Institute v. Intermediate Appellate Court,* 287 Phil. 704, 710 (1992) [Per *J*. Gutierrez, Jr., Third Division], *citing* Manuel Casada, 190 Va 906, 59 SE 2d 47 [1950].

[55] 268 Phil. 516 (1990) [Per *C.J.* Fernan, Third Division].

Daniel Funtecha (Funtecha) was a working scholar of Filamer Christian Institute (Filamer) and had the duty of sweeping the school passages for two (2) hours every morning before his classes in exchange for free tuition. On October 20, 1977, at about 6:30 p.m., Funtecha was driving the Pinoy jeep owned by Filamer along Roxas Avenue in Roxas City when the jeep struck Potenciano Kapunan, Sr. (Kapunan), a pedestrian. Kapunan sustained injuries and was hospitalized for 20 days.[56]

Kapunan first filed a criminal case for reckless imprudence resulting in serious physical injuries against Funtecha, reserving the right to file an independent civil action for damages. Funtecha was found guilty as charged and was sentenced accordingly. As for the civil action for damages, Kapunan sued Funtecha, Filamer, and the school director and president, Agustin Masa (Agustin).[57]

The Regional Trial Court[58] and the Court of Appeals[59] both found Funtecha and Filamer liable. On appeal, this Court reversed the lower courts and absolved Filamer for finding no employer-employee relationship between them. According to this Court, driving the school's Pinoy jeep was outside the scope of Funtecha's employment as sweeper within the school grounds.[60]

On reconsideration,[61] however, this Court reversed itself and found Filamer solidarily liable with Funtecha. It found that Funtecha resided with the family of the school president, Agustin, whose son, Allan Masa (Allan), was the school guard and driver of the Pinoy jeep that served as school service. After driving the students home, Allan's duty included going back to the school for his shift then driving home the school jeep so he

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[56] *Id*. at 518.

[57] *Id*. at 519.

[58] *Id*. at 519-521.

[59] *Id*. at 521.

[60] *Id*. at 523-524.

[61] *Filamer Christian Institute v. Intermediate Appellate Court,* 287 Phil. 704 (1992) [Per *J*. Gutierrez, Jr., Third Division].

could use it to fetch the students the next morning. On the day of the accident, Allan was on his way home from duty when Funtecha, who was with him, requested to drive the jeep. Negotiating a dangerous curve and blinded by the glaring lights of a fast moving truck, Funtecha swerved to the right and accidentally hit Kapunan.[62] Under these circumstances, this Court said that Funtecha "was not having a joy ride [and] not driving for the purpose of his enjoyment or for a 'frolic of his own' but ultimately, for the service for which the jeep was intended by the . . . school."[63]

An employee's act was deemed outside his assigned tasks and his employer was absolved in *Castilex Industrial Corporation v. Vasquez, Jr.*[64] In *Castilex*, a managerial employee of Castilex Industrial Corporation (Castilex) was driving a company-issued pick up which collided with the motorcycle driven by Romeo So Vasquez, who later died as a result of the accident. His parents sued the managerial employee and Castilex for damages.[65] The trial court[66] and the Court of Appeals[67] held Castilex solidarily liable with the managerial employee, but on appeal, this Court reversed and absolved Castilex. This Court found that the managerial employee was not acting within the scope of his assigned tasks when the accident happened. It was 2:00 a.m., way beyond office hours, and the managerial employee had just got out of a restaurant dubbed as a "haven for prostitutes, pimps, and drug pushers and addicts."[68] In other words, the activity that the managerial employee was doing when the accident happened was not for the account of Castilex or in furtherance of the employee's assigned tasks.

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[62] *Id*. at 709-710.

[63] *Id*. at 710.

[64] 378 Phil. 1009 (1999) [Per *C.J.* Davide, First Division].

[65] *Id*. at 1012-1013.

[66] *Id*. at 1013.

[67] *Id*. at 1013-1014.

[68] *Id*. at 1022.

One of the issues in *Castilex* was determining who had the burden of proving that the act was within the scope of the employee's assigned tasks. On this issue, this Court said that the burden of proving the existence of an employer-employee relationship and that the employee was acting within the scope of his or her assigned tasks rests with the plaintiff under the Latin maxim "*ei incumbit probatio qui dicit, non qui negat*" or "he who asserts, not he who denies, must prove."[69] Therefore, it is not incumbent on the employer to prove that the employee was not acting within the scope of his assigned tasks.[70] Once the plaintiff establishes the requisite facts, the presumption that the employer was negligent in the selection and supervision of the employee arises, disputable with evidence that the employer has observed all the diligence of a good father of a family to prevent damage.[71] Though vicarious, the liability of employers under Article 2180 is personal and direct.[72]

Applying the foregoing, this Court finds that respondents have discharged the burden of proof necessary to hold Imperial vicariously liable under Article 2180 of the Civil Code.

There is no question here that Laraga was petitioner's driver, hence, his employee, as this fact was admitted by petitioner. This Court likewise finds that respondents have established that Laraga was acting within the scope of his assigned tasks at the time of the accident. It was 3:00 p.m.[73] and Laraga was driving in Antipolo City, where, as alleged by petitioner, his greenhouse and garden were located.[74] It is worth noting that according to petitioner, he loaned the van to Pascua for the

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[69] *Id*. at 1018.

[70] *Id*.

[71] CIVIL CODE, Art. 2176. See *Cangco v. Manila Railroad Co.,* 38 Phil. 768, 774 (1918) [Per *J*. Fisher, *En Banc*].

[72] *Cangco v. Manila Railroad Co.*, 38 Phil. 768, 773 (1918) [Per *J*. Fisher, *En Banc*].

[73] *Rollo,* p. 87.

[74] *Id*. at 59.

maintenance of his greenhouse and the repair of the water line pipes in his garden. The logical conclusion is that Laraga was driving the van in connection with the upkeep of petitioner's Antipolo greenhouse and garden. Laraga was driving the van in furtherance of the interests of petitioner at the time of the accident.

The defense that Sunday was supposedly Laraga's day off fails to convince. There is no proof whatsoever of the truthfulness of this allegation, with Laraga not having appeared in court to testify on this matter.[75]

With respondents having discharged their burden of proof, the disputable presumption that petitioner Imperial was negligent in the selection and supervision of Laraga arises. Contrary to petitioner's claim, there was no shifting of burden on him to prove that Laraga was acting outside of his assigned tasks. Rather, petitioner had to put forward evidence that he had exercised due diligence in the selection and supervision of Laraga as his driver to be relieved of liability.

Unfortunately for petitioner, he miserably failed to dispute the presumption of negligence in his selection and supervision of Laraga. As the Regional Trial Court and the Court of Appeals found, he only gave self-serving testimonies without the requisite documentary proof that he had enrolled Laraga in a formal driving school. At best, he only established that he had financed the fees needed for Laraga to obtain his driver's license, which is hardly the due diligence contemplated in Article 2180 of the Civil Code.

Considering that petitioner failed to dispute the presumption of negligence on his part, he was correctly deemed liable for the damages incurred by the Bayaban Spouses when the tricycle they were riding collided with the van driven by petitioner's employee, Laraga. It must be noted that the accident happened because Laraga tried to overtake another vehicle and, in doing so, drove to the opposite lane when the van collided with the

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[75] *Id*. at 35.

approaching tricycle. Laraga was negligent in operating the van. *Pleyto v. Lomboy*,[76] cited in the Regional Trial Court March 15, 2009 Decision, is on point:

> A driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and not to proceed if he cannot do so in safety. When a motor vehicle is approaching or rounding a curve, there is special necessity for keeping to the right side of the road and the driver does not have the right to drive on the left hand side relying upon having time to turn to the right if a car approaching from the opposite direction comes into view.[77] (Citation omitted)

II

Petitioner nevertheless claims that the official receipts of the medical and hospital bills are not competent evidence of the actual damages allegedly sustained by the Bayaban Spouses for not having been authenticated. He, therefore, cannot be held liable for unsubstantiated claims for actual damages.

Petitioner's argument lacks merit.

Under the rules of evidence, documents are either public or private. Public documents are those exclusively enumerated in Rule 132, Section 19 of the Rules of Court. These include written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; documents acknowledged before a notary public except last wills and testaments; and public records, kept in the Philippines, of private documents required by law to be entered there. When public documents are presented in evidence, they are *prima facie* evidence of the facts stated there, and thus, need not be authenticated.[78]

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[76] 476 Phil. 373 (2004) [Per *J.* Quisumbing, Second Division].

[77] *Id*. at 385-386.

[78] RULES OF COURT, Rule 132, Sec. 23.

As for private documents, i.e., those not enumerated in Rule 132, Section 19, they must be authenticated, or their due execution and authenticity proven, per Rule 132, Section 20 of the Rules of Court, thus:

> Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
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> (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.

Official receipts of hospital and medical expenses are not among those enumerated in Rule 132, Section 19. These official receipts, therefore, are private documents which may be authenticated *either* by presenting as witness anyone who saw the document executed or written, *or* by presenting an evidence of the genuineness of the signature or handwriting of the maker.

In insisting that respondents should have presented as witnesses the persons who signed the official receipts, petitioner ignores the first manner of authenticating private documents. Respondent Mary Lou testified as to the circumstances of the accident and the expenses she and Neil had incurred as a result of it.[79] The official receipts were issued to her and Neil upon payment of the expenses. Since the official receipts were issued to respondent Mary Lou, her testimony, therefore, is a competent evidence of the execution of the official receipts.

With respondent Mary Lou testifying as to the execution and issuance of the official receipts, they were duly authenticated, contrary to petitioner's claim. There being no question that the official receipts were all in the original, they were the best evidence of their contents,[80] specifically, of the actual damages

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[79] *Rollo,* p. 88.

[80] RULES OF COURT, Rule 130, Sec. 3.

incurred by the Bayaban Spouses. The Regional Trial Court correctly admitted the receipts in evidence.

III

Furthermore, apart from the actual damages for the hospital and medical expenses that respondents have incurred, this Court finds that respondents are entitled to temperate damages for loss of earning capacity.

Temperate or moderate damages, which are more than nominal but less than actual or compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered, but its amount cannot, from the nature of the case, be proved with certainty.[81] Temperate damages must be reasonable under the circumstances.[82]

While respondents failed to put forward definite proof of income lost during confinement and post-therapy, they still suffered pecuniary loss when they were incapacitated to work. Under the circumstances, the ₱100,000.00 awarded by the Regional Trial Court is reasonable to compensate them for the income that the Bayaban Spouses could have earned as a second-mate seaman and a pharmacist, respectively. As opposed to the Court of Appeals' ruling, temperate damages may still be awarded to respondents despite previous award of actual damages because the damages cover distinct pecuniary losses.[83] The temperate damages awarded cover the loss of earning capacity while the actual damages cover the medical and hospital expenses.[84]

In sum, respondents have proven by preponderance of evidence that Laraga, petitioner's employee, was acting within the scope of his assigned tasks at the time of the accident. The presumption of negligence on the part of petitioner in his selection and

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[81] CIVIL CODE, Art. 2224.

[82] CIVIL CODE, Art. 2225.

[83] See *Philtranco Service Enterprises, Inc. v. Paras,* 686 Phil. 736, 757 (2012) [Per *J.* Bersamin, First Division].

[84] *Id*.

supervision of Laraga as an employee arose, a presumption that he has miserably failed to dispute. Consequently, petitioner is solidarily liable with Laraga for the damages sustained by the Bayaban Spouses.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals March 18, 2011 Decision in CA-G.R. CV No. 93498 is **AFFIRMED** with the **MODIFICATION** that the award of temperate damages to respondents Mary Lou Bayaban and the Heirs of Neil Bayaban is **REINSTATED**. Consequently, Raul S. Imperial is ordered to pay Mary Lou Bayaban and the Heirs of Neil Bayaban the following: ₱462,868.83 as actual damages representing medical expenses; ₱100,000.00 as temperate damages for loss of earning capacity; ₱50,000.00 as moral damages; ₱50,000.00 as exemplary damages; and ₱25,000.00 as attorney's fees, inclusive of appearance fees plus cost of suit. The total amount shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.[85]

SO ORDERED.

Peralta (Chairperson), Reyes, A. Jr., and *Reyes, J. Jr., JJ.,* concur.

Gesmundo, J., on official business.

SECOND DIVISION

[G.R. No. 199654. October 3, 2018]

ISIDRO A. BAUTISTA, *petitioner, vs.* **TERESITA M. YUJUICO,** *respondent.*

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[85] *Nacar v. Gallery Frames,* 716 Phil. 267, 283 (2013) [Per *J.* Peralta, *En Banc*].

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; DEFINED AS A WILLFUL DISREGARD OR DISOBEDIENCE OF A PUBLIC AUTHORITY; MAY EITHER BE CIVIL OR CRIMINAL IN NATURE.—** [T]he power to punish for contempt is inherent in all courts for purposes of preserving order in judicial proceedings and enforcing the court's judgments, orders and mandates. In this regard, the Court has defined contempt as follows: Contempt of court has been defined as a willful disregard or disobedience of a public authority. x x x Contempt may be either *civil* or *criminal* in nature, depending on the contumacious act. When the act is directed against the authority and dignity of the court or a judge acting judicially, or when it obstructs the administration of justice and tends to bring the court into disrepute or disrespect—the contempt is criminal. But if the act constitutes a failure to comply with an order of a court or judge for the benefit of the opposing party, or an offense against the party in whose behalf the violated order was made—the contempt is civil in nature. In other words, contempt is criminal when its purpose is to punish, but it is civil if the purpose is to compensate.

2. **ID.; ID.; ID.; POWER OF CONTEMPT MUST BE EXERCISED ONLY WHEN NECESSARY IN THE INTEREST OF JUSTICE; CASE AT BAR.—** Despite the inherent nature of the power to cite in contempt, courts are constantly reminded that this should be exercised in the preservative, not on the vindictive, principle. **As a drastic and extraordinary measure, the power to punish for contempt must be exercised only when necessary in the interest of justice.** In this case, Isidro was cited in indirect contempt of court for initially failing to comply with the directive to release the amount representing the payment of just compensation to Teresita. x x x Considering the absence of willful disobedience or an obstinate refusal on the part of Isidro, the Court does not find Isidro guilty of indirect contempt. His reasons for failing to immediately comply with the directive of the trial court were sufficiently justified. As a corrective, not a retaliatory, measure, courts should refrain from exercising this power lacking any deliberate attack or disrespect on the court's dignity. The Court remains guided by the principle that the power of contempt is

exercised only when there is clear and contumacious refusal to obey the courts. Courts should use the power of contempt sparingly, judiciously, and with utmost self-restraint.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; DUE PROCESS CONSIDERATIONS IN THE EXERCISE OF THE STATE'S INHERENT POWER OF EMINENT DOMAIN; CASE AT BAR.— In this particular case, the Court would be remiss not to notice the circuitous manner by which the City of Manila delayed the payment of just compensation to the prejudice of Teresita, and collaterally, Isidro. **Hidden under the guise of bureaucratic processes, both parties in this case suffered from the delay in the payment of just compensation long due and demandable from the local government unit.** The expropriating agency or instrumentality, therefore, should make sure that the funds for the payment of just compensation are always readily available. The government should bear in mind that due process considerations in the exercise of the State's inherent power of eminent domain is two-fold: (1) the determination of the correct amount of compensation for the taking of the property; and (2) the *prompt* payment of such amount within a reasonable time from its taking. There should be compliance with both requirements; otherwise, the guarantee of due process would be an empty right.

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Philippines.
Villaraza Cruz Marcelo & Angangco for respondent.

D E C I S I O N

A. REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, praying for the reversal of the Court of Appeals' (CA) Decision[2] dated December 8, 2011 in CA-G.R.

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[1] *Rollo*, pp. 10-36.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Josefina Guevara-Salonga and Florito S. Macalino concurring; *id*. at 41-54.

CR No. 32900. In this decision, the CA affirmed the Decision dated November 3, 2008 of the Regional Trial Court (RTC) of Manila,[3] finding petitioner Isidro A. Bautista (Isidro) liable for indirect contempt of court, and directing him to pay a fine of Thirty Thousand Pesos (Php 30,000.00), attorney's fees in the same amount, plus the costs of suit.

Factual Antecedents

This case arose from a complaint for expropriation filed by the City of Manila against respondent Teresita M. Yujuico (Teresita). Teresita was the registered owner of a property with an approximate area of 3,979.10 square meters (subject property),[4] covered by Transfer Certificates of Title Nos. 71541, 71548, 24423, 71544 and 71546, situated along Solis Street, near Juan Luna Street, in Manila's Second District.[5] The City of Manila intended to use the subject property for the construction of the Francisco Benitez Elementary School.[6] For this purpose, the City Council of Manila enacted an ordinance, which provided that an amount equivalent to the current fair market value of the subject property will be allocated out of the Special Education Fund.[7] The case was docketed as Civil Case No. 96-79699, and raffled to Branch 15 of the RTC of Manila.

The complaint for expropriation was granted in the Decision dated June 30, 2000 of the RTC, which fixed the fair market value of the subject property at Php 18,164.80 per sq m, while the improvements were valued at Php 978,000.00. In total, the City of Manila was directed to pay the amount of Php 73,257,555.00 as just compensation for the subject property and its improvements, minus the amount of Php 5,363,289.00 already deposited with the trial court. This means that the City of Manila

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[3] *Id*. at 55-68.

[4] *Id*. at 358-361.

[5] *Id*. at 364-368.

[6] *Id*. at 358.

[7] *Id*. at 369.

was liable for the balance of Php 67,894,266.00, with interest at the rate of 6% *per annum* from the time the City of Manila took possession of the subject property on July 15, 1997, until its full payment to Teresita.[8]

The judgment on just compensation became final and executory. On June 28, 2001, the RTC of Manila issued a Writ of Execution commanding the deputy sheriff to commence the execution of the Decision dated June 30, 2000.[9] The sheriff thereafter served a Notice of Garnishment on the funds of the City of Manila in the Land Bank of the Philippines, YMCA Branch, Manila (Land Bank, YMCA Branch).[10]

The City of Manila moved to quash the notice of garnishment. But the RTC denied this motion in its Order dated August 2, 2001 on the basis of the City of Manila's earlier manifestation. Its manifestation before the trial court pertained to the appropriation made by the City School Board (CSB) of Manila, in the amount of Php 36,403,170.00, for the expropriation of the subject property. Since Teresita has received the amount of Php 5,363,289.00 earlier deposited with the trial court, the RTC directed the release of the remaining amount of Php 31,039,881.00 deposited with Land Bank.[11]

The trial court further directed the CSB to pass a resolution for the payment of the remaining balance due to Teresita within 30 days from notice. The order was served on the CSB of Manila on August 3, 2001.[12]

On August 14, 2001, Teresita followed up the status of CSB's compliance with this directive. She likewise submitted a manifestation with the trial court on August 30, 2001, requesting the City of Manila and the CSB to notify her once they have

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[8] *Id*. at 379-393.

[9] *Id*. at 394-395.

[10] *Yujuico v. Hon. Atienza, Jr*., 509 Phil. 442, 452 (2005).

[11] *Id*.

[12] *Id*. at 453.

passed the required resolution.[13] Regrettably, the 30-day period lapsed but neither the City of Manila nor the CSB replied to Teresita. She thus sent a formal letter of demand on September 10, 2001, seeking their compliance with the RTC's Order dated August 2, 2001.[14]

Teresita also filed a petition for *mandamus* on June 7, 2002, impleading the officials and members of the CSB as respondents.[15] In her petition, Teresita sought to compel the passage of a resolution appropriating the necessary amount for the payment of the remaining balance of the just compensation awarded in her favor.[16] The *mandamus* petition was docketed as Civil Case No. 02-103748, and assigned to Branch 15 of the RTC of Manila.

In a Decision[17] dated October 9, 2002, the trial court granted Teresita's petition for *mandamus*, and directed the CSB to pass the resolution for the appropriate amount:

> WHEREFORE, premises considered, the petition is GRANTED, and the [CSB] are hereby ordered to immediately pass a resolution appropriating the necessary amount; and the corresponding disbursement thereof, for the full and complete payment of the remaining balance of the court-adjudged compensation due and owing to [Teresita].
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> SO ORDERED.[18]

The CSB moved for the reconsideration of this decision but the trial court denied this motion. The Decision dated October 9, 2002 granting the petition for *mandamus* eventually became final and executory. Teresita moved for the execution of this

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[13] *Id*.; *rollo*, pp. 151-152.

[14] *Yujuico v. Hon. Atienza, Jr., id*.; *rollo*, pp. 152-153.

[15] *Rollo*, pp. 149-159.

[16] *Id*. at 158.

[17] *Id*. at 160-162.

[18] *Id*. at 162.

judgment, which the trial court granted in its Order[19] dated March 12, 2003.

On March 14, 2003, the CSB filed a petition for relief from judgment, with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction. The CSB argued that, due to excusable negligence, they failed to appeal from the judgment of the trial court granting the petition for *mandamus*. While the prayer for injunctive relief was denied, the trial court nonetheless granted the CSB's petition for relief in an Order[20] dated June 25, 2004.

Aggrieved, Teresita challenged the trial court's Order dated June 5, 2004 before this Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court.[21] The case was docketed as G.R. No. 164282, entitled "*Teresita M. Yujuico v. Hon. Jose L. Atienza, Jr., et al*."

In a Decision promulgated on October 12, 2005, the Court ruled that it was improper for the trial court to grant the CSB's petition for relief from judgment. The Court rejected the CSB's argument that the failure of the clerk from the Office of the City Legal Officer (OCLO) of Manila to notify the handling lawyer is "a pardonable oversight."[22] The Court therefore held that:

> WHEREFORE, the petition is GRANTED. The Order of the trial court dated 25 June 2004, granting respondents' Petition for Relief from Judgment is REVERSED and SET ASIDE and **its Decision dated 9 October 2002, ordering respondents to immediately pass a resolution for the payment of the balance of the court-adjudged compensation due petitioner, is REINSTATED**.

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[19] *Id*. at 75.

[20] *Id*. at 122-123; see also *Yujuico v. Hon. Atienza, Jr.*, *supra* note 10, at 456-457.

[21] *Rollo*, p. 123.

[22] *Yujuico v. Hon. Atienza, Jr.*, *supra* note 10, at 462.

Let a copy of this Decision be furnished the [CA] for its information and guidance in relation to CA-G.R. No. 86692 entitled Teresita M. Yujuico v. Hon. Jose L. Atienza, Jr., et al.

SO ORDERED.[23] (Emphasis Ours)

The Court's ruling in G.R. No. 164282 eventually attained finality, and an Entry of Judgment was issued on February 8, 2006.[24] On April 25, 2006, Teresita again moved for the execution of judgment, which the CSB opposed.[25] The trial court denied the CSB's opposition and granted Teresita's motion. In its Order dated June 6, 2006, the RTC directed the issuance of a writ of execution,[26] which ordered the sheriff of Branch 15, RTC of Manila to execute the judgment.[27]

In the meantime, on October 16, 2007, the CSB issued Resolution No. 700, series of 2007, which resolved to pay the amount of Php37,809,345.47 to Teresita as complete payment for the expropriation of the subject property.[28]

Following this resolution, a Notice of Garnishment dated January 11, 2008 was sent to the Land Bank, YMCA Branch, addressed to the attention of Branch Manager Isidro, garnishing CSB's properties in the possession of the bank.[29] On January 17, 2008, a Sheriff's Report was issued stating that neither the Land Bank nor Isidro, has replied to the order of garnishment.[30]

Notably, prior to the issuance of the sheriff's report, the Assistant Vice President of Land Bank, Atty. Rosemarie M.

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[23] *Id*. at 469.

[24] *Rollo*, pp. 178-179.

[25] *Id*. at 181-188.

[26] *Id*. at 192-194.

[27] *Id*. at 195-199.

[28] *Id*. at 200-201.

[29] *Id*. at 202-203.

[30] *Id*. at 204-205.

Osoteo (Atty. Osoteo), sent a letter dated January 16, 2008 to the sheriff, in response to the notice of garnishment. In this letter, Atty. Osoteo informed the sheriff that the CSB "does not have any existing garnishable/leviable account, property or asset with [Land Bank, YMCA Branch] as of this date."[31] Atty. Osoteo further stated that despite the issuance of Resolution No. 700, they have no record of any deposit account in the name of the City of Manila that was opened for purposes of paying the claim. She likewise informed the sheriff that the Notice of Garnishment was referred to the City of Manila for appropriate action.[32]

Having failed to obtain the payment of just compensation, Teresita filed a Motion for Examination pursuant to Sections 36 to 38, Rule 39 of the Rules of Court.[33] The trial court granted the motion in its Order[34] dated February 11, 2008.

The examination proceeded on February 28, 2008. During this hearing, Isidro testified that upon receiving the Notice of Garnishment dated January 11, 2008, he referred the matter to the Land Bank Litigation Department.[35] Isidro further stated that the City of Manila maintained an account with the YMCA Branch, which was denominated as the Special Education Fund (SEF), an account separate from the General Fund.[36]

On April 28, 2008, the trial court issued an Order directing the Land Bank, YMCA Branch to apply the amount stated in CSB Resolution No. 700 for the satisfaction of the award of just compensation to Teresita, *viz*.:

Considering that the [CSB] had already issued Resolution No. 700 Series of 2007, approving the release of ₱37,809,345.47 for the

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[31] *Id*. at 83.

[32] *Id*.

[33] *Id*. at 84-88.

[34] *Id*. at 90.

[35] *Id*. at 235.

[36] *Id*. at 239.

expropriation of the 2,834.1[-sq-m] lot currently occupied by the Francisco Benitez Elementary School, the branch manager of Land Bank YMCA Branch is hereby directed to apply the said amount to the satisfaction of the judgment in this case pursuant to Section 40, Rule 39 of the Rules of Court.

SO ORDERED.[37]

On April 30, 2008, the sheriff issued a Notice to Deliver Amount of Judgment and/or Follow Up in Garnishment, addressed to the Manager of the Land Bank, YMCA Branch.[38]

On the same day, the sheriff attempted to serve a copy of the Order dated April 28, 2008 and the Notice dated April 30, 2008 to Isidro. Since Isidro was out of their office at that time, the sheriff made a second attempt to personally serve the order on May 2, 2008.[39]

On May 5, 2008, the OCLO of Manila, through Atty. Renato G. Dela Cruz (Atty. Dela Cruz), sent a letter to Isidro in reference to the garnishment of the City of Manila's SEF.[40] Atty. Dela Cruz stated in his letter that the disbursement of funds cannot be allowed unless the certificates of title over the subject property are transferred in the name of the City of Manila. Since Teresita supposedly refused to surrender the owner's duplicate copy of the titles, the City of Manila was compelled to stop the order of payment. Atty. Dela Cruz further stated that the local officials concerned may be held liable if the payment or the garnishment of the amount should push through without the prior transfer of the title.[41]

Consequently, the Land Bank, through Atty. Osoteo, replied to the sheriff in a letter dated May 7, 2008. Atty. Osoteo stated that since the subject funds are public property, the account of

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[37] *Id*. at 91.

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

[39] *Id*. at 109-110.

[40] *Id*. at 784-786.

[41] *Id*. at 786.

the City of Manila may not be garnished.[42] Also, considering the earlier objections of the OCLO of Manila, Atty. Osoteo informed the sheriff that they cannot release the amount of Php 37,809,345.47. The sheriff was then advised to coordinate with the City of Manila for this purpose.[43]

Failing again to execute the judgment, the sheriff submitted his report dated May 8, 2008, which stated that Isidro refused to comply with the order unless there is a specific direction from the OCLO of Manila.[44] Unsatisfied with the action of Land Bank, Teresita filed a Petition for Indirect Contempt dated May 15, 2008, impleading Isidro in his capacity as the Branch Manager of the Land Bank, YMCA Branch.[45] She argued that Isidro unjustifiably failed to comply with the lawful orders of the trial court directing the payment of just compensation in her favor. Teresita thus prayed to hold Isidro liable for indirect contempt and for the award of damages in the amount of Php 500,000.00.[46]

Isidro filed his Comment on June 26, 2008.[47] Thereafter, the trial court conducted oral arguments on the petition for indirect contempt on June 30, 2008.[48] The parties were also granted 30 days to submit their respective memoranda.[49]

Ruling of the RTC

After the submission of their memoranda, the RTC promulgated its Decision[50] dated November 3, 2008, granting the petition for indirect contempt:

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[42] *Id*. at 312-313.

[43] *Id*. at 313.

[44] *Id*.

[45] *Id*. at 92-105.

[46] *Id*. at 105.

[47] *Id*. at 255-261.

[48] *Id*. at 1049-1106.

[49] *Id*. at 1106.

[50] Rendered by Presiding Judge Virgilio V. Macaraig; *id*. at 55-68.

WHEREFORE, premises considered, judgment is hereby rendered finding [ISIDRO], Branch Head of Land Bank-YMCA Branch, Guilty of indirect contempt under Sections 3(b) and (d), Rule 71 of the Rules of Court. He is hereby ordered to pay a fine of Thirty Thousand Pesos (₱30,000.00) upon the finality of this judgment.

[Isidro] is also ordered to pay attorney's fees in the amount of ₱30,000.00 plus costs of suit.

SO ORDERED.[51]

The trial court ruled that there was no justifiable reason for the Land Bank, YMCA Branch, through its Branch Manager Isidro, to refuse compliance with the order of payment of just compensation.[52] The City of Manila already has an existing fund with the Land Bank for this purpose.[53] Isidro therefore should have complied with the directive to release the amount to Teresita.

Disagreeing with the decision of the RTC, Isidro moved for the reconsideration of its Decision dated November 3, 2008.

Pending the resolution of Isidro's motion in the indirect contempt case, a Notice of Garnishment/Follow-up in Garnishment and/or to Deliver Amount of Judgment dated November 5, 2008, was again sent to Isidro in relation to the *mandamus* case.[54] This was soon followed by a Sheriff's Notice to Deliver Money Judgment on November 19, 2008.[55]

When the sheriff failed to secure the payment of just compensation, he submitted his report dated November 20, 2008 to the trial court where he observed that:

On this date, November 20, 2008, in accompany of Mr. Roberto Dayao (*sic*), [Teresita's] authorized representative, we talked anew

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[51] *Id*. at 68.

[52] *Id*. at 59.

[53] *Id*. at 64.

[54] *Id*. at 278-280.

[55] *Id*. at 276-277.

with [Isidro], in his office (Land Bank) and demanded compliance to the notice of garnishment (*Annex "A"*) and Notice to Deliver Money Judgment (*Annex "B"*)

However, [Isidro] categorically stated that the ball of contention is no longer in his hands but with the City of Manila (*sic*). He further averred that every legal process served upon him, appertaining to this case is always being elevated to their Litigation Department and that office in return, will coordinate with the City Legal Officers. He averred furthermore that they have office procedures that are being followed and he will only act if there is an approval from their counsel and the City of Manila.[56]

Prompted by the continued inability of Isidro to satisfy the judgment award in her favor, Teresita filed a Motion for the Issuance of a Warrant of Arrest in the indirect contempt case.[57] The trial court denied this motion in its Order[58] dated January 8, 2009.

Meanwhile, in a letter dated December 19, 2008, the City Treasurer of Manila, Erlinda O. Marteja, sent a letter to Isidro allowing the release of Php 37,809,348.47, thus:

Notably, the Court has ruled on the original expropriation case as far back as June 30, 2000 (Civil Case No. 96-79699) awarding the properties to the City and ordered the payment of just compensation in favor of [Teresita]. Both decisions have become final and executory.

We are likewise aware that due to non-payment of the outstanding balance, you were adjudged guilty of indirect contempt for your much appreciated gallant refusal to comply with the orders of the Court to release the judgment amount.

Inasmuch as the [CSB] has Passed Resolution No. 700 s. 2007 approving the release of [₱37,809,345.47] from the [SEF] Account representing the unsettled balance still due to [Teresita] and in light of the fact that there exist[s] no more valid legal impediment to the

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[56] *Id*. at 859.

[57] *Id*. at 281-290.

[58] *Id*. at 305-306.

payment of just compensation as declared by the Court, this Office concurs with your initiative as the most prudent recourse in faithful compliance with the judicial mandate.[59]

Soon after, Isidro transmitted a manager's check for the amount of Php 37,809,345.47 to the trial court, in compliance with its Order dated April 28, 2008 and the Sheriffs Notice to Deliver Money Judgment dated November 19, 2008.[60]

On January 8, 2009, Isidro filed an Urgent Manifestation with Motion for Leave to File Attached Supplemental Motion for Reconsideration, informing the trial court that it has released the foregoing amount in satisfaction of the award of just compensation to Teresita.[61] By virtue of said compliance, Isidro thus argued that the present petition for indirect contempt was rendered moot and academic.[62]

Unfortunately, prior to Isidro's filing of the supplemental motion for reconsideration, the trial court had denied Isidro's motion for reconsideration in an Order[63] dated January 6, 2009.

Ruling of the CA

Isidro appealed the adverse ruling to the CA.[64] After the filing of the parties' respective briefs,[65] the CA issued its challenged Decision[66] dated December 8, 2011, dismissing the appeal:

WHEREFORE, the instant appeal is DISMISSED for lack of merit and the Decision dated November 3, 2008 of the [RTC] of Manila, Branch 37, in Civil Case No. 08-119278 is AFFIRMED *IN TOTO*.

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[59] *Id*. at 292.

[60] *Id*. at 291, 297.

[61] *Id*. at 293-294.

[62] *Id*. at 300.

[63] *Id*. at 307.

[64] *Id*. at 308.

[65] *Id*. at 899-934, 951-996.

[66] *Id*. at 41-54.

SO ORDERED.[67]

The CA rejected the argument of Isidro that the proceedings have been rendered moot by his subsequent compliance with the directive of the trial court. According to the CA, the liability for contempt already attached when Isidro disobeyed the order of the trial court.[68]

In light of the CA's decision affirming the judgment of the trial court, Isidro appealed to the Court *via* a Rule 45 petition. Isidro is arguing that as a depositary bank, Land Bank had no authority to determine which of the accounts belonging to the City of Manila were appropriated for the satisfaction of the judgment obligation.[69] He also invokes the exercise of good faith on his part, having merely observed the bank's procedure in dealing with notices of garnishment.[70] Finally, Isidro argues that the petition for indirect contempt already became moot and academic by the subsequent satisfaction of the order directing the release of the amount to Teresita.[71]

In essence, this Court is faced with the issue on whether the CA committed a reversible error in dismissing the appeal of Isidro from the judgment finding him liable for indirect contempt.

Ruling of the Court

For reasons discussed below, the Court grants the petition.

The actions of the petitioner are not contumacious.

At the onset, it bears stressing that the power to punish for contempt is inherent in all courts for purposes of preserving order in judicial proceedings and enforcing the court's judgments,

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[67] *Id*. at 53.

[68] *Id*. at 52-53.

[69] *Id*. at 26.

[70] *Id*. at 27-28.

[71] *Id*. at 29-32.

orders and mandates.[72] In this regard, the Court has defined contempt as follows:

> Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase contempt of court is generic, embracing within its legal signification a variety of different acts.[73]

Contempt may be either *civil* or *criminal* in nature, depending on the contumacious act. When the act is directed against the authority and dignity of the court or a judge acting judicially, or when it obstructs the administration of justice and tends to bring the court into disrepute or disrespect—the contempt is criminal. But if the act constitutes a failure to comply with an order of a court or judge for the benefit of the opposing party, or an offense against the party in whose behalf the violated order was made—the contempt is civil in nature. In other words, contempt is criminal when its purpose is to punish, but it is civil if the purpose is to compensate.[74]

Despite the inherent nature of the power to cite in contempt, courts are constantly reminded that this should be exercised in the preservative, not on the vindictive, principle. **As a drastic and extraordinary measure, the power to punish for contempt must be exercised only when necessary in the interest of justice.**[75]

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[72] *Bank of the Philippine Islands v. Labor Arbiter Calanza, et al.,* 647 Phil. 507, 514 (2010), citing *Inonog v. Judge Ibay*, 611 Phil. 558, 568 (2009).

[73] *Lorenzo Shipping Corporation, et al. v. Distribution Management Assn. of the Phils., et al*., 672 Phil. 1, 10 (2011).

[74] *Burgos v. Pres. Macapagal-Arroyo, et al*., 668 Phil. 669, 721 (2011).

[75] *Radio Philippines Network, Inc., et al. v. Yap, et al*., 692 Phil. 288, 309 (2012).

In this case, Isidro was cited in indirect contempt of court for initially failing to comply with the directive to release the amount representing the payment of just compensation to Teresita. Isidro justified his failure to obey by citing the bank's policy of referring the garnishment of accounts to the Land Bank, Litigation Department.[76] He argued that as a mere branch manager of the YMCA Branch, he was duty bound to refer the garnishment to the Litigation Department for appropriate action.[77]

The records indeed show that when Isidro received the notices of garnishment from the sheriff, he exerted efforts to coordinate with the City of Manila—as the primary judgment obligor liable for the payment of just compensation, and with the Land Bank, Litigation Department—as the garnishment concerns a legal issue with one of the bank's account holder.

In response, the OCLO of Manila sent a letter to Isidro on November 29, 2007, categorically instructing Isidro *not* to release any amount pursuant to the Notice of Garnishment.[78] In another letter dated May 5, 2008, the OCLO of Manila also again advised Isidro that there was a stop order for the release of the payment to Teresita because she lacked several documentary requirements for the disbursement of the SEF.[79]

The Land Bank, Litigation Department also responded to the sheriff's notices of garnishment accordingly:

1. With respect to the Notice of Garnishment dated January 11, 2008,[80] the Land Bank, Litigation Department sent a letter dated January 16, 2008, which stated that the CSB has no existing garnishable/leviable account, property or asset with the YMCA Branch. It further stated that despite the existence of Resolution No. 700 approving the release of

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[76] *Rollo*, p. 258.

[77] *Id*. at 27.

[78] *Id*. at 787.

[79] *Id*. at 784.

[80] *Id*. at 81-82.

Php 37,809,345.47, the City of Manila does not maintain any deposit account intended for the payment of the claim. The Land Bank thus referred the notice to the City of Manila for appropriate action.[81]

2. As regards the Sheriff's Notice to Deliver Amount of Judgment and/or Follow Up in Garnishment dated April 30, 2008,[82] the Land Bank, Litigation Department replied through a letter dated May 7, 2008. In this letter, the sheriff was informed that the City Legal Officer of Manila advised Land Bank regarding its objection to the garnishment of its funds. For this reason, Land Bank maintained that it cannot accede to the release of the amount.[83]

By virtue of the instructions of the City of Manila, and relying on the advice of the Land Bank, Litigation Department, Isidro—the manager of the branch where the City of Manila maintained its account—necessarily refused to release the money of its depositor to the sheriff. The fiduciary nature of banking requires banks to observe high standards of integrity when dealing with the accounts of its depositors. The Court has always enjoined banks to treat its depositors' accounts with meticulous care—evidently obliging banks to exercise a degree of diligence higher than that of a good father of a family.[84] This duty, of course, extends to the bank's employees, and banks, in turn, must ensure that their employees observe the same high level of integrity and performance.[85]

Verily, Isidro was guided by this standard when he explained his inability to comply with the notices of garnishment to the sheriff. Isidro could not have been expected to unceremoniously

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[81] *Id*. at 83.

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

[83] *Id*. at 312-313.

[84] *Central Bank of the Philippines v. Citytrust Banking Corp*., 597 Phil. 609, 615 (2009), citing *The Consolidated Bank and Trust Corp. v. CA*, 457 Phil. 688, 702 (2003).

[85] *Westmont Bank v. Dela Rosa-Ramos, et al.,* 698 Phil. 23, 31 (2012).

part with the money of Land Bank's depositors, especially when it involves the public funds of a local government unit. As an employee of Land Bank, Isidro was fundamentally responsible for the account of the City of Manila, and making sure that any disbursement is in order.

Under these circumstances, Isidro's exercise of prudence is warranted. The account of the City of Manila involves public funds, which is ordinarily exempt from execution.[86] As such, there was no deliberate or unjustified refusal on the part of Isidro to comply with the trial court's directive to release the amount in Teresita's favor. Isidro clearly acted in good faith, without intending to disregard the dignity of the trial court.[87]

Furthermore, Isidro's good faith is clearly manifest in the fact that he wasted no time in preparing the manager's check for the amount of Php37,809,345.47,[88] immediately after the City Treasurer of Manila acceded to its release in a letter dated December 19, 2008.[89] He also transmitted this check to the trial court,[90] and informed the sheriff of this development straightaway.[91]

Considering the absence of willful disobedience or an obstinate refusal on the part of Isidro, the Court does not find Isidro guilty of indirect contempt. His reasons for failing to immediately comply with the directive of the trial court were sufficiently justified. As a corrective, not a retaliatory, measure, courts should

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[86] *Rallos v. City of Cebu, et al*., 716 Phil. 832, 853 (2013); See *University of the Phils., et al. v. Judge Dizon, et al.*, 693 Phil. 226, 253 (2012); See also *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al.*, 733 Phil. 62, 75 (2014).

[87] *Gateway Electronics Corp. v. Land Bank of the Phils*., 455 Phil. 196, 209 (2003).

[88] *Rollo*, p. 291.

[89] *Id*. at 292.

[90] *Id*. at 297.

[91] *Id*. at 298.

refrain from exercising this power lacking any deliberate attack or disrespect on the court's dignity. The Court remains guided by the principle that the power of contempt is exercised only when there is clear and contumacious refusal to obey the courts. Courts should use the power of contempt sparingly, judiciously, and with utmost self-restraint.[92]

The government should take measures in ensuring the prompt and judicious payment of just compensation in expropriation proceedings.

The Court understands the predicament of registered owners of parcels of land, which are expeditiously expropriated by the government without immediate payment of just compensation. More often than not, the former owners are left holding the bag, with no other recourse but to remain patient in recovering the award of just compensation. The Court in no less than *Yujuico v. Atienza, Jr., et al.*,[93] which significantly cited older jurisprudence on this matter, recognized the prejudice this causes Teresita and other owners similarly-situated:

> While this Court recognizes the power of LGU to expropriate private property for public use, it will not stand idly by while the expropriating authority maneuvers to evade the payment of just compensation of property already in its possession.
>
> The notion of expropriation is hard enough to take for a private owner. He is compelled to give up his property for the common weal. **But to give it up and wait in vain for the just compensation decreed by the courts is too much to bear. In cases like these, courts will not hesitate to step in to ensure that justice and fair play are served.** As we have already ruled:
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> . . . This Court will not condone petitioners' blatant refusal to settle its legal obligation arising from expropriation proceedings

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[92] *Heirs of Justice Reyes v. Court of Appeals*, 392 Phil. 827, 843 (2000).

[93] 509 Phil. 442 (2005).

> it had in fact initiated. It cannot be over-emphasized that within the context of the States inherent power of eminent domain,
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> . . . (j)ust compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. **Without prompt payment, compensation cannot be considered just for the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss** (Consculluela v. The Honorable Court of Appeals, G.R. No. 77765, August 15, 1988, 164 SCRA 393, 400. See also Provincial Government of Sorsogon v. Vda. De Villaroya, G.R. No. 64037, August 27, 1987, 153 SCRA 291).[94] (Emphasis Ours)

In this particular case, the Court would be remiss not to notice the circuitous manner by which the City of Manila delayed the payment of just compensation to the prejudice of Teresita, and collaterally, Isidro. **Hidden under the guise of bureaucratic processes, both parties in this case suffered from the delay in the payment of just compensation long due and demandable from the local government unit.** The expropriating agency or instrumentality, therefore, should make sure that the funds for the payment of just compensation are always readily available.

The government should bear in mind that due process considerations in the exercise of the State's inherent power of eminent domain is two-fold: (1) the determination of the correct amount of compensation for the taking of the property; and (2) the *prompt* payment of such amount within a reasonable time from its taking.[95] There should be compliance with both requirements; otherwise, the guarantee of due process would be an empty right.[96]

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[94] *Id*. at 467-468.

[95] *Republic v. Lim*, 500 Phil. 652, 659-660 (2005).

[96] See *Brgy. Sindalan, San Fernando, Pampanga, rep. by Brgy. Capt. Gutierrez v. CA*, 547 Phil. 542, 554-555 (2007).

WHEREFORE, premises considered, the present petition is hereby **GRANTED**. The Decision dated December 8, 2011 of the Court of Appeals in CA-G.R. CR No. 32900 is **REVERSED** and **SET ASIDE**. The Regional Trial Court of Manila, Branch 37 is directed to dismiss the petition for indirect contempt in SPL. Proc. No. 08-119278. No costs.

SO ORDERED.

Perlas-Bernabe, (*Acting Chairperson*), *Jardeleza*[*], and *Reyes, J. Jr.*[**] *JJ.*, concur.

Caguioa, J., on leave.

FIRST DIVISION

[G.R. No. 200258. October 3, 2018]

PHILIPPINE HAMMONIA SHIP AGENCY, NARCISSUS L. DURAN, DORCHESTER MARITIME LIMITED, *petitioners, vs.* **FERDINAND Z. ISRAEL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; SINCE THE COMPLAINT WAS FILED ON JUNE 7, 2007, PRIOR TO OCTOBER 6, 2008, THE 120-DAY RULE IN *CRYSTAL SHIPPING* APPLIES; WHERE THE COMPANY-DESIGNATED PHYSICIAN CERTIFIED THAT SEAFARER IS FIT TO WORK ONLY

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[*] Designated as Additional Member per Raffle dated February 28, 2018 *vice* Associate Justice Antonio T. Carpio.

[**] Designated as additional Member per Special Order No. 2587 dated August 28, 2018.

AFTER 142 DAYS AND DURING THAT PERIOD HE WAS INCAPACITATED TO PERFORM HIS WORK WHICH DEPRIVED HIM OF HIS LIVELIHOOD, SEAFARER IS DEEMED SUFFERING FROM PERMANENT TOTAL DISABILITY.— Respondent, in this case, filed his Complaint before the NLRC on June 7, 2007, prior to October 6, 2008; therefore, the 120-day rule in *Crystal Shipping v. Natividad* applies herein. The Court reiterates below the pertinent ruling in *Crystal Shipping*: **Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.** x x x **Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.** x x x **What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.** x x x It is undisputed that respondent suffered his injury during the term of his Contract of Employment and in the performance of his duties as bosun on board vessel *NASR* after he slipped and fell from a height of 2 to 2.5 meters while conducting an inspection of the crew's maintenance work on the vessel. x x x [D]espite the treatment that he received and improvement in his condition, respondent continued to suffer shoulder pain. By the time that Dr. Cruz-Balbon certified that respondent is already fit to work on January 31, 2006, 142 days had passed since respondent's repatriation on September 11, 2005. During that period, respondent was incapacitated to perform his work as a bosun, which consequently deprived him of his livelihood. Pursuant to *Crystal Shipping*, respondent is already deemed to be suffering from permanent total disability.

2. ID.; ID.; ID.; WHERE THE COMPANY-DESIGNATED PHYSICIAN FAILED TO MAKE A DETERMINATION OF THE SEAFARER'S DISABILITY WITHIN THE 120-DAY PERIOD AND DID NOT OFFER A PLAUSIBLE REASON FOR THEIR FAILURE TO COMPLY WITH THE

120-DAY RULE, SEAFARER'S DISABILITY BECAME PERMANENT AND TOTAL.— Even if the Court resolves the present Petition by its pronouncements in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the company-designated physician still failed to make a determination of respondent's disability within the period prescribed by law, *i.e.*, 120 days. Dr. Lim and Dr. Cruz-Balbon did not give a medical diagnosis within the 120-day period that could justify the extension of respondent's treatment to 240 days. As discussed above, Dr. Cruz-Balbon declared respondent "Fit to Resume Sea Duties" only on January 31, 2006, or after the lapse of 142 days. Dr. Lim and/or Dr. Cruz-Balbon did not offer any plausible reason for their failure to comply with the 120-day rule, hence, respondent's disability became permanent and total.

3. **ID.; ID.; ID.; SINCE SEAFARER WAS FORCED TO LITIGATE, HE IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES.—** [W]e find the award of attorney's fees in favor of respondent to be in order. Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Dela Cruz Entero & Associates for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

Assailed in this Petition for Review on *Certiorari* filed by petitioners Philippine Hammonia Ship Agency (PHSA), Narcissus L. Duran (Duran) and Dorchester Maritime Limited (DML) are: (1) the Decision[1] dated June 30, 2011of the Court of Appeals in CA-G.R. SP No. 111835, which affirmed the

[1] *Rollo*, pp. 57-67; penned by Associate Justice Stephen C. Cruz with Associate Justices Isaias P. Dicdican and Angelita A. Gacutan concurring.

Decision[2] dated April 27, 2009 and Resolution[3] dated October 6, 2009 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 04-000311-08; and (2) the Resolution[4] dated January 17, 2012 of the appellate court in the same case, which denied the Motion for Reconsideration of petitioners.

The factual antecedents of the case are as follows:

Petitioner PHSA, the local manning agent, on behalf of petitioner DML, the foreign principal, hired respondent Ferdinand Z. Israel as a Bosun on board the vessel *NASR*. Dr. Leticia C. Abesamis of ClinicoMed, Inc. conducted the pre-employment medical examination (PEME) of respondent, and declared him "FIT FOR SEA SERVICE" on June 7, 2005.[5] The next day, June 8, 2005, respondent and Capt. Vicente A. Dayo, as representative of petitioner PHSA, signed the Contract of Employment,[6] with the following terms and conditions:

Duration of Contract:	09 months
Position:	BOSUN
Basic Monthly Salary:	$670.00 per month
Hours of Work:	44 Hrs./Wk.
Overtime:	$373.00/MO. OT: 4.39/Hr. after 85 Hrs.
Vacation Leave w/ Pay	$201.00/MO.
Point of Hire:	MANILA, PHILIPPINES

The Philippine Overseas Employment Administration (POEA) verified and approved respondent's Contract of Employment on June 10, 2005. On June 13, 2005, respondent boarded vessel *NASR*.[7]

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[2] *Id*. at 108-117; Presiding Commissioner Benedicto R. Palacol with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-de Castro concurring.

[3] *Id*. at 104-106.

[4] *Id*. at 69-70.

[5] *Id*. at 161.

[6] *Id*. at 160.

[7] *Id*. at 109.

While performing his duties on board vessel *NASR*, respondent accidentally fell from a height of 2 to 2.5 meters while he was conducting an inspection of the crew's maintenance work. Respondent's right arm and shoulder hit the deck first, absorbing the impact of his fall. Because of the persistent pain on his right shoulder, respondent was brought to the Orthopedic Department of Cedars-Jebel Ali International Hospital in Dubai where respondent was examined by Dr. Bahaa Khair El-Din (El-Din). Dr. El-Din diagnosed respondent with "supraspinatus tendonitis right shoulder," and recommended his repatriation.[8]

On September 11, 2005, respondent was repatriated to the Philippines. Respondent reported to petitioner PHSA, which referred him to company doctors Dr. Robert Lim (Lim) and Dr. Mylene Cruz-Balbon (Cruz-Balbon) of Marine Medical Services at the Metropolitan Medical Center. Upon the company doctors' advice, respondent underwent an x-ray examination on September 13, 2005, and a Magnetic Resonance Imaging (MRI) on October 3, 2005 of his right shoulder.[9] The x-ray examination did not show any bone or joint abnormality, but the MRI revealed that respondent had "1. Severe osteoarthritis of the right AC joint x x x, and 2. Mild supraspinatus tendonitis/tendinopathy."[10]

Since respondent lives in Misamis Oriental, Dr. Lim referred him to Dr. Grace Cid (Cid) of Polymedic Medical Center in Cagayan de Oro City. After a clinical evaluation, Dr. Cid diagnosed respondent with "Rotator Cuff Tear with Adhesive Capsulitis" for which respondent underwent physical therapy sessions from September 27, 2005 to January 28, 2006. Despite a remarkable improvement in the movement of respondent's right shoulder, Dr. Cid remarked that respondent continued to feel pain on his right shoulder. Dr. Cid then referred respondent back to Dr. Lim for final disposition on January 28, 2006.[11]

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[8] *Id*. at 162-163.

[9] *Id*. at 170-171.

[10] *Id*. at 185.

[11] *Id*. at 187.

On January 31, 2006, Dr. Cruz-Balbon declared respondent "Fit to Resume Sea Duties."[12] However, petitioner PHSA refused to re-employ respondent because of his condition, or to pay him disability benefits.

On June 7, 2007, respondent filed a Complaint[13] against petitioners for disability compensation, moral and exemplary damages, and attorney's fees, which was docketed as NLRC NCR OFW No. 06-05669-07.

Respondent's Arguments

Respondent alleged that he continues to suffer pain on his right shoulder everytime he raises his right arm, making it difficult for him to perform simple tasks such as putting on or taking off his shirt. That despite the physical therapy sessions and improvement in his right shoulder, the pain on his right shoulder was not cured.[14]

Two physicians, whom respondent visited for a medical consultation and examination, confirmed that respondent is still suffering from an injury. Dr. Jose S. Pujalte, Jr. (Pujalte) of Cardinal Santos Medical Center, who wrote his findings on a medical prescription pad on July 3, 2007, stated that respondent has "impingement of the rotator cuff, [right] secondary to acromio-clavicular arthritis," which can be treated by an Acromioplasty and rotator cuff repair. Also, Dr. Renato B. Punas (Punas) issued a Medical Certificate dated September 7, 2007, declaring respondent "Unfit for Seaman duty" as he was suffering from "Severe Arthritis, Acromioclavicular joint, Right, Supraspinatus Tendinopathy, Shoulder Impingement secondary to Type I Acromion." Dr. Punas further commented that respondent's capacity to work is reduced by as much as 60%, which in effect prevents respondent from working as a seaman permanently.[15]

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[12] *Id*. at 164.

[13] *Id*. at 134-137.

[14] *Id*. at 175.

[15] *Id*. at 225-227.

Respondent asserted that his disability is total and permanent as no manning agency or vessel owner would consider him for overseas employment because of the condition of his right shoulder, which is the same reason why petitioners refused to re-engage respondent's services. Respondent claimed that he should be compensated with disability benefits in the amount of US$60,000.00 pursuant to the POEA standard employment contract (POEA-SEC).[16]

Respondent alleged that petitioners must be directed to pay him moral and exemplary damages. The award of moral damages is for the bad faith that petitioners exhibited in certifying that respondent is fit to work but refusing to re-employ him as a seafarer, for the physical suffering, mental anguish, and anxiety that respondent and his family suffered, and for the unjust refusal on the part of petitioners to satisfy respondent's reasonable demands. The award of exemplary damages is by way of example to deter other employers from committing the same inequitable acts against their employees. Respondent also averred that he was forced to litigate and that he incurred expenses to protect his rights, which entitles him to an award of attorney's fees.[17]

Petitioners' Arguments

Petitioners argued that, in case of conflicting medical findings between the company-designated physicians, on one hand, and the doctors of choice of the seafarer, on the other hand, the company-designated physicians' assessment should prevail because the POEA-SEC specifically designated the company-designated physician as the person who must determine the seafarer's fitness or degree of disability, and Dr. Lim and Dr. Cruz-Balbon, as company-designated physicians, were the ones who actually monitored and treated respondent's shoulder injury from his repatriation on September 11, 2005 until he was declared fit to work.

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

[17] *Id*. at 177-179.

Additionally, respondent executed a Certificate of Fitness to Work dated January 31, 2006 wherein he waived any benefits and released petitioners from any liability arising from the Contract of Employment. Thus, respondent is barred from claiming disability benefits from petitioners.[18]

Petitioner Duran alleged he cannot be held personally liable as he merely acted in his corporate capacity without malice or bad faith. Finally, petitioners contend that respondent's claim for disability benefits are unfounded, thus, there is no reason to award him with moral and exemplary damages, and attorney's fees.[19]

The Labor Arbiter's Ruling

After the exchange of position papers and other pleadings, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision[20] on February 28, 2008, upholding the medical analysis of Dr. Pujalte and Dr. Punas that respondent did not fully recover from his shoulder injury, inhibiting him to work as a seaman permanently. Additionally, respondent's disability has become permanent and total since he was not able to perform his usual work for more than 120 days from repatriation, entitling respondent to full disability benefits. The Labor Arbiter also found petitioners liable to pay respondent attorney's fees. The dispositive portion of the Labor Arbiter's Decision reads:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered declaring [respondent] entitled to his disability benefits amounting to USD60,000.00 payable in peso equivalent at the time of payment plus 2% thereof as attorney's fees.[21]

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[18] *Id*. at 151-155.

[19] *Id*. at 156-157.

[20] *Id*. at 120-132; penned by Labor Arbiter Melquiades Sol D. Del Rosario.

[21] *Id*. at 131.

The Ruling of the NLRC

Petitioners appealed to the NLRC, which rendered a Decision on April 27, 2009, dismissing the appeal of petitioners and affirming the Labor Arbiter's Decision. Petitioners filed a Motion for Reconsideration, which the NLRC denied in a Resolution dated October 6, 2009.

The Ruling of the Court of Appeals

Petitioners sought remedy from the Court of Appeals through a Petition for *Certiorari* With Urgent Prayer For The Issuance Of A Writ Of Preliminary Injunction And/Or Temporary Restraining Order. Petitioners assert that the NLRC acted with grave abuse of discretion in finding that respondent's disability is permanent and total for the following reasons, to wit: 1) the ruling of the NLRC is inconsistent with the company-designated physician's certification that respondent is fit to work, and the Certificate of Fitness To Work, which respondent executed; 2) the NLRC erred in applying the provisions of the Labor Code of the Philippines and not the provisions of the POEA-SEC; and 3) the NLRC disregarded the more recent pronouncement of the Court in *Vergara v. Hammonia Maritime Services, Inc.*[22] (*Vergara*), which modified the application of the 120-day ruling in *Crystal Shipping, Inc. v. Natividad*,[23] (*Crystal Shipping*). Petitioners further alleged that the award of attorney's fees in favor of respondent have no basis in fact and in law.

On June 30, 2011, the Court of Appeals rendered the assailed Decision, denying the Petition for *Certiorari*, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit. Accordingly, the assailed Decision and Resolution of public respondent National Labor Relations Commission (NLRC) dated April 27, 2009 and October 6, 2009, respectively, are AFFIRMED.[24]

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[22] 588 Phil. 895 (2008).

[23] 510 Phil. 332 (2005).

[24] *Rollo*, p. 66.

The Ruling of the Court

Hence, petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure, based on the following grounds:

> A. Respondent is not entitled to disability benefits because he was already declared fit to work by the company designated physician which he himself acknowledged by executing a "certificate of fitness for work."
>
> B. Respondent is not entitled to disability benefits on the ground that he has been unable to work for more than 120-days. Payment of disability compensation is a contractual obligation that arises only upon fulfillment of the requirements for it, to wit: a) disability of seafarer caused by a work-related illness or injury; and b) which work-related illness or injury was contracted or sustained during the term of his contract. In the instant case, no disability was sustained, as Respondent was declared Fit to Work. Hence, he is not entitled to disability compensation.
>
> C. The POEA-contract does not state at all that seafarer is entitled to maximum disability compensation in the event that he is unable to work for more than 120-days. The POEA-contract is clear that disability compensation is based only on the schedule of Disability provided under the said contract and not on the number of days seafarer has been unable to work.[25]

A careful examination of the present Petition reveals that it contains the same arguments raised by petitioners in their Petition for *Certiorari* filed before the Court of Appeals. Petitioners maintain that respondent is not suffering from any illness or injury since he was declared fit to work by the company-designated physician on January 31, 2006, which respondent acknowledged by executing a Certificate of Fitness to Work. Petitioners assert that, under the POEA-SEC, it is the company-designated physician who must determine the seafarer's disability rating or fitness to work. Likewise, the assessment of the company-designated physicians, Dr. Lim and Dr. Cruz-Balbon, who actually examined and monitored the progress of

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[25] *Id*. at 37.

respondent's treatment should be given more probative weight and credence than the findings of respondent's doctors of choice, Dr. Pujalte and Dr. Punas.

Petitioners reiterate that the Court of Appeals erred in declaring that respondent is entitled to full disability benefits since his medical treatment exceeded 120 days. Citing *Vergara*, petitioners assert that the 120 day medical treatment of a seafarer may now be extended to 240 days, and only upon the lapse of the 240 day period may a seafarer be considered totally and permanently unfit. Considering that the company-designated physician certified that respondent is fit to work within the 240-day treatment period, it cannot be said that respondent's disability is total and permanent.

Petitioners likewise restate that their refusal to pay respondent's claims for disability benefit was pursuant to the company-designated physician's certification that respondent is already fit to work. In the absence of malice or bad faith on their part, the award of attorney's fees in favor of respondent is improper.

The petition is not meritorious.

Article 198(c)(1) [formerly Article 192(c)(1)] of Presidential Decree No. 442 of 1974, otherwise known as the Labor Code of the Philippines, as Amended and Renumbered,[26] defines permanent and total disability as follows:

> Article 198. *Permanent Total Disability.* — x x x
>
> x x x x x x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

In conjunction with the above article, the Amended Rules on Employees' Compensation, which was adopted to implement the provisions of Title II, Book IV of the Labor Code, provides:

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[26] July 21, 2015.

RULE VII
Benefits

x x x x x x x x x

Section 2. *Disability* – x x x

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

x x x x x x x x x

RULE X
Temporary Total Disability

x x x x x x x x x

Section 2. *Period of Entitlement.* – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

The interpretation and application of the afore-quoted provisions by the Court have changed and developed through the years. In *Marlow Navigation Philippines, Inc. v. Osias*,[27] the Court summarized jurisprudence on the 120-day and 240-day rules as regards the permanent total disability of a seafarer, thus:

Laws and jurisprudence relating to the 120-day and 240-day rule

As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of*

[27] 773 Phil. 428 (2015).

the Phil. in this wise: "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."

The present controversy involves the permanent and total disability claim of a specific type of laborer – a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

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

x x x x x x x x x

The rule referred to is Rule X, Section 2 of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code (IRR), which states:

x x x x x x x x x

These provisions should be read in relation to the 2000 Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC)* whose Section 20 (B)(3) states:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician **but in no case shall this period exceed one hundred twenty (120) days**. x x x.

In *Crystal Shipping, Inc. v. Natividad*, (*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." Thereafter, litigant-seafarers started citing *Crystal Shipping* to demand permanent and total disability benefits simply because they were incapacitated to work for more than 120 days.

The Court in *Vergara v. Hammonia Maritime Services, Inc.* (*Vergara*), however, noted that the doctrine expressed in *Crystal Shipping* – that inability to perform customary work for more than 120 days constitutes permanent total disability – should not be applied in all situations. The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. It was provided therein that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made <u>because the seafarer requires further medical attention</u>, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. x x x.

In effect, by considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Moreover, in that case, the disability grading provided by the company-designated physician was given more weight compared to the mere incapacity of the seafarer therein for a period of more than 120 days.

The apparent conflict between the 120-day period under *Crystal Shipping* and the 240-day period under *Vergara* was observed in the case of *Kestrel Shipping Co., Inc. v. Munar* (*Kestrel*). In the said case, the Court recognized that *Vergara* presented a restraint against the indiscriminate reliance on *Crystal Shipping*. A seafarer's inability to work despite the lapse of 120 days would not automatically bring about a total and permanent disability, considering that the treatment of the company-designated physician may be extended up to a

maximum of 240 days. In Kestrel, however, as the complaint was filed two years before the Court promulgated *Vergara* on October 6, 2008, then the seafarer therein was not stripped of his cause of action.

To further clarify the conflict between *Crystal Shipping* and *Vergara*, the Court in *Montierro v. Rickmers Marine Agency Phils., Inc.* stated that "[i]f the maritime compensation complaint was filed prior to October 6, 2008, the 120-day rule applies; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies."

Then came *Carcedo v. Maine Marine Phils., Inc.* (*Carcedo*). Although the said case recognized the 240-day rule in *Vergara*, it was pronounced therein that "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, **subject to the periods prescribed by law**." *Carcedo* further emphasized that "[t]he company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled."

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

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

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

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient

justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

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

In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

> Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.
>
> On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.
>
> x x x x x x x x x
>
> Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such

assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.[28] (Citations omitted.)

Respondent, in this case, filed his Complaint before the NLRC on June 7, 2007, prior to October 6, 2008; therefore, the 120-day rule in *Crystal Shipping v. Natividad*[29] applies herein. The Court reiterates below the pertinent ruling in *Crystal Shipping*:

Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent.

Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather

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[28] *Id*. at 438-443.

[29] *Supra* note 23 at 340-341.

it is the incapacity to work resulting in the impairment of one's earning capacity.

Although the company-designated doctors and respondent's physician differ in their assessments of the degree of respondent's disability, both found that respondent was unfit for sea-duty due to respondent's need for regular medical check-ups and treatment which would not be available if he were at sea. There is no question in our mind that respondent's disability was total.

Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. **What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability.** An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work. (Emphases supplied, citations omitted.)

It is undisputed that respondent suffered his injury during the term of his Contract of Employment and in the performance of his duties as bosun on board vessel *NASR* after he slipped and fell from a height of 2 to 2.5 meters while conducting an inspection of the crew's maintenance work on the vessel. Respondent was medically repatriated on September 11, 2005, and records show that respondent immediately reported to the office of petitioner PHSAI, which referred him to company doctors, Dr. Lim and Dr. Cruz-Balbon at the Metropolitan Medical Center. Respondent underwent an MRI which yielded a finding that he is suffering from "1. Severe osteoarthritis of the right AC joint x x x, and 2. Mild supraspinatus tendonitis/ tendinopathy." Respondent was subsequently referred to Dr. Cid who diagnosed him with "Rotator Cuff Tear with Adhesive Capsulitis." From September 27, 2005 to January 28, 2006, respondent underwent a series of physical therapy sessions. However, despite the treatment that he received and improvement in his condition, respondent continued to suffer shoulder pain.

By the time that Dr. Cruz-Balbon certified that respondent is already fit to work on January 31, 2006, 142 days had passed since respondent's repatriation on September 11, 2005. During that period, respondent was incapacitated to perform his work as a bosun, which consequently deprived him of his livelihood. Pursuant to *Crystal Shipping*, respondent is already deemed to be suffering from permanent total disability.

Even if the Court resolves the present Petition by its pronouncements in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[30] the company-designated physician still failed to make a determination of respondent's disability within the period prescribed by law, *i.e.*, 120 days. Dr. Lim and Dr. Cruz-Balbon did not give a medical diagnosis within the 120-day period that could justify the extension of respondent's treatment to 240 days. As discussed above, Dr. Cruz-Balbon declared respondent "Fit to Resume Sea Duties" only on January 31, 2006, or after the lapse of 142 days. Dr. Lim and/or Dr. Cruz-Balbon did not offer any plausible reason for their failure to comply with the 120-day rule, hence, respondent's disability became permanent and total.

Lastly, we find the award of attorney's fees in favor of respondent to be in order. Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award.[31]

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated June 30, 2011 and Resolution dated January 17, 2012 of the Court of Appeals in CA-G.R. SP No. 111835 are **AFFIRMED**.

SO ORDERED.

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

Bersamin, J., on official business.

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[30] 765 Phil. 341 (2015).

[31] *United Phil. Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014).

THIRD DIVISION

[G.R. Nos. 201398-99. October 3, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AVON PRODUCTS MANUFACTURING, INC.,** *respondent.*

[G.R. Nos. 201418-19. October 3, 2018]

AVON PRODUCTS MANUFACTURING, INC., *petitioner, vs.* **THE COMMISSIONER OF THE INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; FUNDAMENTAL REQUIREMENTS OF DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS LAID DOWN IN *ANG TIBAY* CASE, REITERATED AND EXPLAINED.— In *Ang Tibay v. The Court of Industrial Relations,* this Court observed that although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character." It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings: (1) The party interested or affected must be able to present his or her own case and submit evidence in support of it. (2) **The administrative tribunal or body must consider the evidence presented**. (3) There must be evidence supporting the tribunal's decision. (4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected. (6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case. (7) **The administrative tribunal's decision**

is rendered in a manner that the parties may know the various issues involved and the reasons for the decision. *Mendoza v. Comelec* explained that the first requirement is the party's substantive right at the *hearing stage* of the proceedings, which, in essence, is the opportunity to explain one's side or to seek a reconsideration of the adverse action or ruling. It was emphasized, however, that the mere filing of a motion for reconsideration does not always result in curing the due process defect, "especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained." The second to the sixth requirements refer to the party's "inviolable rights *applicable at the* **deliberative stage**." The decision-maker must consider the totality of the evidence presented as he or she decides the case. The last requirement relating to the form and substance of the decision is the decision-maker's "*'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."

2. ID.; ID.; ID.; ID.; *ANG TIBAY* SAFEGUARDS SIMPLIFIED AND EXPOUNDED.— The *Ang Tibay* safeguards were subsequently "simplified into four basic rights," as follows: (a) [T]he right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; (c) *a tribunal so constituted as to give him reasonable assurance of honesty and impartiality*, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties. *Saunar v. Ermita* expounded on *Ang Tibay* by emphasizing that while administrative bodies enjoy a certain procedural leniency, they are nevertheless obligated to inform themselves of all facts material and relevant to the case, and to render a decision based on an accurate appreciation of facts. In this regard, this Court held that *Ang Tibay* did not necessarily do away with the conduct of hearing and a party may invoke its right to a hearing to thresh out substantial factual issues[.]

3. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (TAX CODE) IN RELATION TO REVENUE REGULATIONS NO. 12-99; PROCEDURE TO ENSURE THAT THE RIGHT OF THE TAXPAYER TO PROCEDURAL DUE PROCESS IS OBSERVED IN TAX ASSESSMENTS, EXPLAINED.— Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment. "The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory." This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment. On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued.

After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

4. ID.; ID.; ID.; AVON WAS DEPRIVED OF DUE PROCESS IN CASE AT BAR; COMMISSIONER'S INACTION AND OMISSION TO GIVE DUE CONSIDERATION TO THE ARGUMENTS AND EVIDENCE SUBMITTED BEFORE HER BY AVON ARE TRANSGRESSIONS OF ITS RIGHT TO DUE PROCESS.— The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings. First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. x x x Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments. Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply

and protest. The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations. Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. x x x Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. x x x This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99. It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record. Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES CANNOT STAND IN THE FACE OF POSITIVE EVIDENCE OF IRREGULARITY OR FAILURE TO PERFORM A DUTY.— [T]he Court of Tax Appeals erroneously applied the "presumption of regularity" in sustaining the Commissioner's assessments. The presumption that official duty has been regularly performed is a disputable presumption under Rule 131, Section 3(m) of the Rules of Court. x x x [C]ontrary to the ruling of the Court of Appeals, the presumption

of regularity in the performance of the Commissioner's official duties cannot stand in the face of positive evidence of irregularity or failure to perform a duty.

6. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (TAX CODE); COMMISSIONER'S TOTAL DISREGARD OF DUE PROCESS RENDERED THE DEFICIENCY TAX ASSESSMENTS NULL AND VOID.—** The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect. This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12–99. In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. x x x In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void.

7. **ID.; ID.; PERIOD OF LIMITATION TO ASSESS AND COLLECT TAXES; TAXPAYERS SHALL BE ASSESSED WITHIN THREE (3) YEARS FROM THE FILING OF THE RETURN UNLESS A WRITTEN AGREEMENT WAS EXECUTED BEFORE THE EXPIRATION OF THE SAID PERIOD; REQUIREMENT FOR A VALID WAIVER OF THE DEFENSE OF PRESCRIPTION.—** As a general rule, petitioner has three (3) years from the filing of the return to assess taxpayers. x x x An exception to the rule of prescription is found in Section 222, paragraphs (b) and (d) of the same Code[.] x x x Thus, the period to assess and collect taxes may be extended upon the Commissioner and the taxpayer's written agreement, executed before the expiration of the three (3)-year period. x x x [A] Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the Bureau of Internal Revenue to extend the period of assessment and collection to a certain date. "The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence

of the document but of the acceptance by the [Bureau of Internal Revenue] and the perfection of the agreement."

8. ID.; ID.; ID.; ID.; PAYMENT OF INSIGNIFICANT PORTION OF THE ASSESSMENT CANNOT BE DEEMED A WAIVER OF THE DEFENSE OF PRESCRIPTION.— Avon claimed that it did not receive any benefit from the waivers. On the contrary, there was even a drastic increase in the assessed deficiency taxes when the Commissioner increased the alleged sales discrepancy from ₱15,700,000.00 in the preliminary findings to ₱62,900,000.00 in the Preliminary Assessment Notice and Final Assessment Notices. Furthermore, Avon was compelled to pay a portion of the deficiency assessments "in compliance with the Revenue Officer's condition in the hope of cancelling the assessments on the non-existent sales discrepancy." Under these circumstances, Avon's payment of an insignificant portion of the assessment cannot be deemed an admission or recognition of the validity of the waivers.

9. ID.; ID.; PROTESTING OF ASSESSMENT; ONLY THE DECISION OR RULING OF THE COMMISSIONER ON A DISPUTED ASSESSMENT IS APPEALABLE TO THE COURT OF TAX APPEALS (CTA); THE TAXPAYER MAY IMMEDIATELY APPEAL TO THE CTA IN CASE OF INACTION OF THE COMMISSIONER WITHIN 30 DAYS FROM RECEIPT OF THE DECISION OR FROM THE LAPSE OF THE 180-DAY PERIOD; INACTION OF THE COMMISSIONER OR FAILURE TO DECIDE A DISPUTED ASSESSMENT WITHIN THE 180-DAY PERIOD IS "DEEMED A DENIAL" OF THE PROTEST.— Section 228 of the Tax Code amended Section 229 of the Old Tax Code by adding, among others, the 180-day rule. This new provision presumably avoids the situation in the past when a taxpayer would be held hostage by the Commissioner's inaction on his or her protest. Under the Old Tax Code, in conjunction with Section 11 of Republic Act No. 1125, only the decision or ruling of the Commissioner on a disputed assessment is appealable to the Court of Tax Appeals. Consequently, the taxpayer then had to wait for the Commissioner's action on his or her protest, which more often was long-delayed. With the amendment introduced by Republic Act No. 8424, the taxpayer may now immediately appeal to the Court of Tax Appeals in case of inaction of the Commissioner for 180 days

from submission of supporting documents. x x x Under Section 7(a)(2) above, it is expressly provided that the "inaction" of the Commissioner on his or her failure to decide a disputed assessment within 180 days is "deemed a denial" of the protest.

10. ID.; ID.; ID.; ID.; THE TWO OPTIONS OF THE TAXPAYER – TO FILE A PETITION FOR REVIEW BEFORE THE CTA WITHIN 30 DAYS FROM THE LAPSE OF THE 180-DAY PERIOD OR TO AWAIT THE FINAL DECISION OF THE COMMISSIONER AND APPEAL SUCH DECISION TO THE CTA WITHIN 30 DAYS FROM RECEIPT – ARE MUTUALLY EXCLUSIVE AND RESORT TO ONE BARS THE OTHER.— This Court, nonetheless, stressed that these two (2) options of the taxpayer, i.e., to (1) file a petition for review before the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) to await the final decision of the Commissioner on the disputed assessment and appeal this final decision to the Court of Tax Appeals within 30 days from receipt of it, "*are mutually exclusive and resort to one bars the application of the other*." Rule 4, Section 3(a)(2) of the 2005 Court of Tax Appeals Rules clarifies Section 7(a)(2) of Republic Act No. 9282 by stating that the "deemed a denial" rule is only for the "purposes of allowing the taxpayer to appeal" in case of inaction of the Commissioner and "does not necessarily constitute a formal decision of the Commissioner." Furthermore, the same provision clarifies that the taxpayer may choose to wait for the final decision of the Commissioner even beyond the 180-day period, and appeal from it. x x x Section 228 of the Tax Code and Section 7 of Republic Act No. 9282 should be read in conjunction with Rule 4, Section 3(a)(2) of the 2005 Court of Tax Appeals Rules. In other words, the taxpayer has the option to either elevate the case to the Court of Tax Appeals if the Commissioner does not act on his or her protest, or to wait for the Commissioner to decide on his or her protest before he or she elevates the case to the Court of Tax Appeals. This construction is reasonable considering that Section 228 states that the *decision* of the Commissioner not appealed by the taxpayer becomes final, executory, and demandable.

APPEARANCES OF COUNSEL

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D E C I S I O N

LEONEN, *J.*:

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

These consolidated cases assail the Court of Tax Appeals En Banc November 9, 2011 Decision[1] and April 10, 2012 Resolution[2]

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[1] *Rollo* (G.R. Nos. 201398-99), pp. 49-93. The Decision was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez (with Separate Conccuring Opinion), and Amelia R. Cotangco-Manalastas. Associate Justice Esperanza R. Fabon-Victorino was on wellness leave.

[2] *Id*. at 104-115. The Resolution was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C.

in CTA EB Case Nos. 661 and 663. The assailed Decision denied the respective Petitions for Review by the Commissioner of Internal Revenue (Commissioner)[3] and of Avon Products Manufacturing, Inc. (Avon),[4] and affirmed the Court of Tax Appeals Special First Division May 13, 2010 Decision.[5] The assailed Resolution denied the Commissioner's Motion for Reconsideration[6] and Avon's Motion for Partial Reconsideration.[7]

Avon filed its Value Added Tax (VAT) Returns and Monthly Remittance Returns of Income Tax Withheld for the taxable year 1999 on the following dates:

Return	**Date Filed**
3rd Quarter VAT Return	October 25, 1999
4th Quarter VAT Return	January 25, 2000

Monthly Remittance Return of Income Taxes Withheld	**Expanded**	**Compensation**
January	February 25, 1999	February 25, 1999
February	March 25, 1999	March 25, 1999
March	April 26, 1999	April 26, 1999
April	May 25, 1999	May 25, 1999
May	June 25, 1999	June 25, 1999
June	July 26, 1999	July 26, 1999

Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas. Presiding Justice Ernesto D. Acosta was on leave.

[3] *Id*. at 116-142.

[4] *Rollo* (G.R. Nos. 201418-19), pp. 529-560.

[5] *Rollo* (G.R. Nos. 201398-99), pp. 143-181. The Decision, docketed as CTA Case No. 7038, was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justice Lovell R. Bautista. Associate Justice Caesar A. Casanova was on leave.

[6] *Id*. at 193-215.

[7] *Rollo* (G.R. Nos. 201418-19), pp. 113-128.

July	August 25, 1999	August 25, 1999
August	September 27, 1999	September 27, 1999
September	October 25, 1999	October 25, 1999
October	November 25, 1999	November 25, 1999
November	December 27, 1999	December 27, 1999
December	January 25, 2000	January 25, 2000[8]

Avon signed two (2) Waivers of the Defense of Prescription dated October 14, 2002 and December 27, 2002,[9] which expired on January 14, 2003 and April 14, 2003, respectively.[10]

On July 14, 2004, Avon was served a Collection Letter[11] dated July 9, 2004. It was required to pay ₱80,246,459.15[12] broken down as follows:

KIND OF TAX	YEAR	BASIC TAX	INTEREST	COMPROMISE	TOTAL AMOUNT
Income Tax	1999	22,012,984.19	13,207,790.51	25,000.00	35,245,774.70
Excise Tax	1999	913,514.87	658,675.57	73,200.00	1,645,390.44
VAT	1999	20,286,033.82	13,254,677.47	50,000.00	33,590,711.29
Withholding Tax on Compensation	1999	4,702,116.38	3,040,229.28	45,000.00	7,787,345.66
Expanded Withholding Tax	1999	1,187,610.88	764,626.18	25,000.00	1,977,237.06
TOTAL		₱49,102,260.14	₱30,925,999.01	₱218,200.00	**₱80,246,459.15**[13]

These deficiency assessments were the same deficiency taxes covered by the Preliminary Assessment Notice[14] dated November 29, 2002, received by Avon on December 23, 2002.[15]

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[8] *Rollo* (G.R. Nos. 201398-99), p. 52.

[9] *Id.* at 52 and 71.

[10] *Id.* at 356.

[11] *Rollo* (G.R. Nos. 201418-19), p. 189.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 190-202.

[15] *Rollo* (G.R. Nos. 201398-99), p. 53.

On February 14, 2003, Avon filed a letter dated February 13, 2003 protesting against the Preliminary Assessment Notice.[16]

Without ruling on Avon's protest, the Commissioner prepared the Formal Letter of Demand[17] and Final Assessment Notices,[18] all dated February 28, 2003, received by Avon on April 11, 2003. Except for the amount of interest, the Final Assessment Notices were the same as the Preliminary Assessment Notice.[19]

In a letter[20] dated and filed on May 9, 2003, Avon protested the Final Assessment Notices. Avon resubmitted its protest to the Preliminary Assessment Notice and adopted the same as its protest to the Final Assessment Notices.[21]

A conference was allegedly held on June 26, 2003 where Avon informed the revenue officers that all the documents necessary to support its defenses had already been submitted. Another meeting was held on August 4, 2003, where it showed the original General Ledger Book as previously directed by the revenue officers. During these meetings, the revenue officers allegedly expressed that they would cancel the assessments resulting from the alleged discrepancy in sales if Avon would pay part of the assessments.[22]

Thus, on January 30, 2004, Avon paid the following portions of the Final Assessment Notices:

a) Disallowed taxes and licenses/Fringe Benefit Tax adjustment – ₱153,559.37; and

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[16] *Id*.

[17] *Rollo* (G.R. Nos. 201418-19), pp. 203-206.

[18] *Id*. at 207-211.

[19] *Rollo* (G.R. Nos. 201398-99), p. 53.

[20] *Rollo* (G.R. Nos. 201418-19), p. 212, with Protest Letter dated February 13, 2003 (pp. 214-221).

[21] *Rollo* (G.R. Nos. 201398-99), p. 59.

[22] *Rollo* (G.R. Nos. 201418-19), pp. 15-17.

b) Withholding Tax on Compensation – Late Remittance – ₱32,829.28[23]

However, in a Memorandum dated May 27, 2004, the Bureau of Internal Revenue's officers recommended the enforcement and collection of the assessments on the sole justification that Avon failed to submit supporting documents within the 60-day period as required under Section 228 of the Tax Code.[24]

The Large Taxpayers Collection and Enforcement Division thereafter served Avon with the Collection Letter dated July 9, 2004.[25] Avon asserted that even the items already paid on January 30, 2004 were still included in the deficiency tax assessments covered by this Collection Letter.[26]

In a letter[27] to the Deputy Commissioner for Large Taxpayers Service dated and filed on July 27, 2004, Avon requested the reconsideration and withdrawal of the Collection Letter. It argued that it was devoid of legal and factual basis, and was premature as the Commissioner of Internal Revenue had not yet acted on its protest against the Final Assessment Notices.[28]

The Commissioner did not act on Avon's request for reconsideration. Thus, Avon was constrained to treat the Collection Letter as denial of its protest.[29]

On August 13, 2004, Avon filed a Petition for Review before the Court of Tax Appeals.[30] On August 24, 2004, it filed an Urgent Motion for Suspension of Collection of Tax.[31]

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[23] *Rollo* (G.R. Nos. 201398-99), p. 59.

[24] *Id.*

[25] *Id*. at 60.

[26] *Rollo* (G.R. Nos. 201418-19), pp. 18-19.

[27] *Id*. at 340-343.

[28] *Rollo* (G.R. Nos. 201398-99), p. 60.

[29] *Id*.

[30] *Rollo* (G.R. Nos. 201418-19), pp. 344-368.

[31] *Id*. at 369-377.

On May 13, 2010, the Court of Tax Appeals Special First Division rendered its Decision,[32] partially granting Avon's Petition for Review insofar as it ordered the *cancellation of the Final Demand and Final Assessment Notices* for deficiency excise tax, VAT, withholding tax on compensation, and expanded withholding tax. However, it ordered Avon to *pay deficiency income tax in the amount of ₱357,345.88 including 20% deficiency interest* on the total amount due pursuant to Section 249, paragraphs (b) and (c)(3) of the Tax Code. The Court of Tax Appeals Special First Division also made the following pronouncements:[33]

a) There was no deprivation of due process in the issuance by the CIR of the assessment for deficiency income tax, deficiency excise tax, deficiency VAT, deficiency final withholding tax on compensation and deficiency expanded withholding tax against AVON for the latter was afforded an opportunity to explain and present its evidence;

b) The Waivers of the Statute of Limitations executed by AVON are invalid and ineffective as the CIR failed to provide [AVON] a copy of the accepted Waivers, as required under Revenue Memorandum Order No. 20-90. Hence, the assessment of AVON's deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation is considered to have prescribed;

c) AVON's failure to submit the relevant documents in support of its protest did not make the assessment final and executory;

d) As to assessment on AVON's deficiency Income Tax,

(1) there was no undeclared sales/income in the amount of ₱62,911,619.58 per ITR for the taxable year 1999;

(2) AVON's liability for disallowed taxes and licenses and December 1998 Fringe Benefit Tax payment adjustment in the amount of ₱152,632.10 and ₱927.27, respectively, or a total of ₱153,559.37 is extinguished in view of the payment made;

(3) The discrepancy between Ending Inventories reflected in Balance Sheet and Cost of Sales represents variance/

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[32] *Id*. at 150-188.

[33] *Id*. at 61.

adjustments on standard cost to actual cost allocated to ending inventories and not under-declaration as alleged by CIR;

(4) AVON's claimed tax credits in the amount of ₱203,645.89 was disallowed as the same was unsupported by withholding tax certificates as required under Section 2.58.3 (B) of Revenue Regulations No. 2-98. However, the amount of ₱140,505.28 was upheld as a proper deduction from its 1999 income tax due; and

e) As to assessment on AVON's deficiency excise tax, the same is deemed cancelled and withdrawn in view of its Application for Abatement over its deficiency excise tax assessment for the year 1999 and its corresponding payment.[34]

The dispositive portion of the Court of Tax Appeals Special First Division May 13, 2010 Decision read:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED TO CANCEL/ WITHDRAW the Final Demand and Final Assessment Notices: (1) Assessment No. LTAID-ET-99-00011 for deficiency Excise Tax, (2) Assessment No. LTAID-II-VAT-99-00017 for deficiency Value Added Tax, (3) Assessment No. LTAID-II-WTC-9900002 for deficiency Withholding Tax on Compensation – Under Withholding and Later Remittance, and (4) Assessment No. LTAID-EWT-99-00010 for deficiency Expanded Withholding Tax.

However, petitioner is ORDERED TO PAY respondent the deficiency Income Tax under Assessment No. LTAID-II-IT-99-00018 in the amount of ₱357,345.88 for taxable year 1999.

In addition, petitioner is liable to pay: i) a deficiency interest on the deficiency basic income tax due of ₱100,761.01 at the rate of 20% per annum from January 31, 2004 until fully paid pursuant to Section 249(B) of the 1997 NIRC and ii) a delinquency interest on the total amount due (inclusive of the deficiency interest) at the rate of 20% per annum from July 24, 2004 until fully paid pursuant to Section 249(C)(3) of the 1997 NIRC.

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[34] *Id*. at 61-63; *rollo* (G.R. Nos. 201398-99), pp. 62-64.

SO ORDERED.[35]

The parties' Motions for Partial Reconsideration were denied in the July 12, 2010 Resolution.[36] Both parties filed their respective Petitions for Review before the Court of Tax Appeals En Banc.[37]

In its assailed November 9, 2011 Decision,[38] the Court of Tax Appeals En Banc denied the respective Petitions of the Commissioner and Avon, and affirmed the Court of Tax Appeals Special First Division May 13, 2010 Decision. It held that the Waivers of the Defense of Prescription were defective, thereby rendering the assessment of Avon's deficiency VAT, expanded withholding tax, and withholding tax on compensation to have prescribed.[39] It further ruled that contrary to the Commissioner's argument, the requirement under Revenue Memorandum Order No. 20-90 to furnish the taxpayer with copies of the accepted waivers was not merely formal in nature, and non-compliance with it rendered the Waivers of the Defense of Prescription invalid and ineffective.[40]

On the issue of jurisdiction, the Court of Tax Appeals En Banc held that under Section 228 of the Tax Code, the taxpayer has two (2) options in case of inaction of the Commissioner on disputed assessments. The first option is to file a petition with the Court of Tax Appeals within 30 days from the lapse of the 180-day period for the Commissioner to decide. The second option is to await the final decision of the Commissioner and appeal this decision within 30 days from its receipt. Here, Avon

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[35] *Rollo* (G.R. Nos. 201418-19), p. 187.

[36] *Id*. at 521-528. The Resolution, docketed as CTA Case No. 7038, was signed by Presiding Justice Ernesto D. Acosta, and Associate Justices Lovell R. Bautista and Caesar A. Casanova.

[37] *Rollo* (G.R. Nos. 201398-99), p. 64.

[38] *Rollo* (G.R. Nos. 201418-19), pp. 48-92.

[39] *Id*. at 64; *rollo* (G.R. Nos. 201398-99), p. 65.

[40] *Rollo* (G.R. Nos. 201418-19), p. 68; *rollo* (G.R. Nos. 201398-99), p. 69.

opted for the second remedy by filing its petition on July 14, 2004, within 30 days from receipt of the July 9, 2004 Collection Letter, which also served as the final decision denying its protest. Hence, the Court of Tax Appeals En Banc ruled that it had jurisdiction over the case.[41]

The Court of Tax Appeals En Banc further affirmed the Court of Tax Appeals Special First Division's factual findings with regard to the cancellation of deficiency tax assessments[42] and disallowance of Avon's claimed tax credits.[43]

Finally, the Court of Tax Appeals En Banc rejected Avon's contention regarding denial of due process. It held that Avon was accorded by the Commissioner a reasonable opportunity to explain and present evidence.[44] Moreover, the Commissioner's failure to appreciate Avon's supporting documents and arguments did not *ipso facto* amount to denial of due process absent any proof of irregularity in the performance of duties.[45]

In its April 10, 2012 Resolution,[46] the Court of Tax Appeals En Banc denied the Commissioner's Motion for Reconsideration and Avon's Motion for Partial Reconsideration. It held that the "RCBC case,"[47] cited by the Commissioner, was not on all fours with, and therefore not applicable as *stare decisis* in this case. Instead, the ruling in *CIR v. Kudos Metal Corporation,*[48] precluding the Bureau of Internal Revenue from invoking the

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[41] *Rollo* (G.R. Nos. 201418-19), p. 77; *rollo* (G.R. Nos. 201398-99), p. 78.

[42] *Rollo* (G.R. Nos. 201418-19), pp. 78-85; *rollo* (G.R. Nos. 201398-99), pp. 79-86.

[43] *Rollo* (G.R. Nos. 201418-19), pp. 86-87; *rollo* (G.R. Nos. 201398-99), pp. 87-88.

[44] *Rollo* (G.R. Nos. 201418-19), p. 89; *rollo* (G.R. Nos. 201398-99), p. 90.

[45] *Rollo* (G.R. Nos. 201418-19), p. 90; *rollo* (G.R. Nos. 201398-99), p. 91.

[46] *Rollo* (G.R. Nos. 201418-19), pp. 101-112.

[47] *Rollo* (G.R. Nos. 201398-99), p. 110. Footnote 11 provided the citation *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* CTA EB No. 83, July 27, 2005 (CTA Case No. 6201).

[48] 634 Phil. 314 (2010) [Per *J.* Del Castillo, Second Division].

doctrine of estoppel to cover its failure to comply with the procedures in the execution of a waiver, would apply.[49]

Hence, the present Petitions via Rule 45 were filed before this Court.

In her Petition,[50] docketed as G.R. Nos. 201398-99, the Commissioner asserts that Avon is estopped from assailing the validity of the Waivers of the Defense of Prescription as it has paid the other assessments that these waivers covered. It also avers that Avon's right to appeal its protest before the Court of Tax Appeals has prescribed and that the assessments have attained finality. Finally, it states that Avon is liable for the deficiency assessments.[51]

Avon, in its separate Petition,[52] docketed as G.R. Nos. 201418-19, argues that the assessments are void *ab initio* due to the failure of the Commissioner to observe due process.[53] It maintains that from the start up to the end of the administrative process, the Commissioner ignored all of its protests and submissions.[54]

The Petitions were consolidated on July 4, 2012.[55] The Commissioner and Avon subsequently submitted their respective Memoranda[56] in compliance with this Court's June 5, 2013 Resolution.[57]

The issues for this Court's resolution are:

First, whether or not the Commissioner of Internal Revenue failed to observe administrative due process, and consequently, whether or not the assessments are void;

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[49] *Rollo* (G.R. Nos. 201418-19), pp. 109-110.

[50] *Rollo* (G.R. Nos. 201398-99), pp. 10-46.

[51] *Id*. at 21.

[52] *Rollo* (G.R. Nos. 201418-19), pp. 10-43.

[53] *Id*. at 23.

[54] *Id*. at 33.

[55] *Id*. at 813.

[56] *Rollo* (G.R. Nos. 201398-99), pp. 344-376 (CIR's Memorandum) and pp. 377-472 (Avon's Memorandum).

[57] *Id*. at 330-331.

Second, whether or not Avon Products Manufacturing, Inc., by paying the other tax assessments covered by the Waivers of the Defense of Prescription, is estopped from assailing their validity;

Third, whether or not Avon Products Manufacturing, Inc.'s right to appeal its protest before the Court of Tax Appeals has already prescribed; and whether or not the assessments against it for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax have already attained finality; and

Finally, whether or not Avon Products Manufacturing, Inc. is liable for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax for the taxable year 1999.

I.A

Avon asserts that the deficiency tax assessments are void because they were made without due process[58] and were not based on actual facts but on the erroneous presumptions of the Commissioner.[59]

It submits that a fundamental part of administrative due process is the administrative body's due consideration and evaluation of all the evidence submitted by the affected party. With regard to tax assessment and collection, Section 228 of the Tax Code and Revenue Regulations No. 12-99 prescribe compliance with due process requirements through all the four (4) stages of the assessment process, from the preliminary findings up to the Commissioner's decision on the disputed assessment.[60]

Avon claims that from the start up to the end of the administrative process, the Commissioner ignored all of its protests and submissions to contest the deficiency tax

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[58] *Id*. at 399.

[59] *Id*. at 430.

[60] *Id*. at 403.

assessments.[61] The Commissioner issued identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letters without considering Avon's submissions or its partial payment of the assessments. Avon asserts that it was not accorded a *real* opportunity to be heard, making all of the assessments null and void.[62]

Avon's arguments are well-taken.

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code.[63] To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts,[64] to issue a subpoena,[65] and to assess based on best evidence obtainable,[66] among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure."[67] The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules,[68] and with due regard to taxpayers' constitutional rights.

The Commissioner exercises administrative adjudicatory power or quasi-judicial function in adjudicating the rights and liabilities of persons under the Tax Code.

Quasi-judicial power has been described as:

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights

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[61] *Rollo* (G.R. Nos. 201418-19), p. 33.

[62] *Rollo* (G.R. Nos. 201398-99), p. 416.

[63] TAX CODE, Sec. 2.

[64] TAX CODE, Sec. 5(B).

[65] TAX CODE, Sec. 5(C).

[66] TAX CODE, Sec. 6(B).

[67] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* 738 Phil. 335, 353 (2014) [Per *J.* Peralta, Third Division].

[68] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* 652 Phil. 172, 184 (2010) [Per *J.* Mendoza, Second Division].

of persons before it. ***It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law***. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, ***where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it***.[69] (Emphasis supplied, citations omitted)

In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature."[70] Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.

This Court has stressed the importance of due process in administrative proceedings:

> The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standard must of necessity be the overriding concern of government agencies exercising quasi-judicial functions. Although a speedy administration of action implies a speedy trial, speed is not the chief objective of a trial. Respect for the rights of all parties and the requirements of procedural due process equally apply in proceedings before administrative agencies with quasi-judicial perspective in administrative decision making and for maintaining the vision which led to the creation of the administrative office.[71]

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[69] Concurring Opinion of *J*. Bellosillo in *Commissioner of Internal Revenue v. Court of Appeals,* 329 Phil. 987,1018 (1996) [Per *J*. Vitug, First Division].

[70] *Id*.

[71] *Mabuhay Textile Mills Corp. v. Ongpin,* 225 Phil. 383, 393 (1986) [Per *J*. Gutierrez, Jr., First Division], citing *Bacus v. Ople,* 217 Phil. 670 (1984) [Per *J*. Cuevas, Second Division].

In *Ang Tibay v. The Court of Industrial Relations,*[72] this Court observed that although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements [, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character."[73] It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) **The administrative tribunal or body must consider the evidence presented**.

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[74]

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.[75]

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[72] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

[73] *Id*. at 641.

[74] *Id*. at 642.

[75] See *Ang Tibay v. The Court of Industrial Relations,* 69 Phil. 635, 642-644 (1940) [Per *J.* Laurel, *En Banc*].

Mendoza v. Comelec[76] explained that the first requirement is the party's substantive right at the *hearing stage* of the proceedings, which, in essence, is the opportunity to explain one's side or to seek a reconsideration of the adverse action or ruling.

It was emphasized, however, that the mere filing of a motion for reconsideration does not always result in curing the due process defect,[77] "especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained."[78]

The second to the sixth requirements refer to the party's "inviolable rights *applicable at the* **deliberative stage**."[79] The decision-maker must consider the totality of the evidence presented as he or she decides the case.[80]

The last requirement relating to the form and substance of the decision is the decision-maker's "*'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."[81]

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[76] 618 Phil. 706 (2009) [Per *J.* Brion, *En Banc*].

[77] In *Vivo v. Philippine Amusement and Gaming Corp.,* 721 Phil. 34, 42-43 (2013) [Per *J.* Bersamin, *En Banc*], citing *Gonzales v. Civil Service Commission,* 524 Phil. 271 (2006) [Per *J.* Corona, *En Banc*] and *Autencio v. Mañara,* 489 Phil. 752 (2005) [Per *J.* Panganiban, Third Division], this Court held that "any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard."

[78] See *Fontanilla v. Commissioner Proper,* G.R. No. 209714, June 21, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/209714.pdf> 9 [Per *J.* Brion, *En Banc*]; *Office of the Ombudsman v. Reyes,* 674 Phil. 416 (2011) [Per *J.* Leonardo-De Castro, First Division].

[79] *Mendoza v. Commission on Elections,* 618 Phil. 706, 727 (2009) [Per *J.* Brion, *En Banc*].

[80] *Id.*

[81] *Id.*

The *Ang Tibay* safeguards were subsequently "simplified into four basic rights,"[82] as follows:

> (a) [T]he right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; (c) *a tribunal so constituted as to give him reasonable assurance of honesty and impartiality*, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.[83] (Emphasis supplied)

Saunar v. Ermita[84] expounded on *Ang Tibay* by emphasizing that while administrative bodies enjoy a certain procedural leniency, they are nevertheless obligated to inform themselves of all facts material and relevant to the case, and to render a decision based on an accurate appreciation of facts. In this regard, this Court held that *Ang Tibay* did not necessarily do away with the conduct of hearing and a party may invoke its right to a hearing to thresh out substantial factual issues, thus:

> A closer perusal of past jurisprudence shows that the Court did not intend to trivialize the conduct of a formal hearing but merely afforded latitude to administrative bodies especially in cases where a party fails to invoke the right to hearing or is given the opportunity but opts not to avail of it. In the landmark case of *Ang Tibay, the Court explained that administrative bodies are free from a strict application of technical rules of procedure and are given sufficient leeway. In the said case, however, nothing was said that the freedom included the setting aside of a hearing but merely to allow matters*

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[82] *Tolentino v. Commission on Elections,* 631 Phil. 568, 589 (2010) [Per *J.* Bersamin, *En Banc*].

[83] *Singson v. National Labor Relations Commission,* 340 Phil. 470, 475 (1997) [Per *J.* Puno, Second Division], citing *Air Manila, Inc. v. Balatbat*, 148 Phil. 502 (1971) [Per *J.* Reyes, *En Banc*].

[84] G.R. No. 186502, December 13, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/december2017/186502.pdf> [Per *J.* Martires, Third Division].

which would ordinarily be incompetent or inadmissible in the usual judicial proceedings.

In fact, the seminal words of *Ang Tibay manifest a desire for administrative bodies to exhaust all possible means to ensure that the decision rendered be based on the accurate appreciation of facts. The Court reminded that administrative bodies have the active* **duty to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy**. As such, it would be more in keeping with administrative due process that the conduct of a hearing be the general rule rather than the exception.

. . . . . .

To reiterate, due process is a malleable concept anchored on fairness and equity. The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heard. Nevertheless, such "reasonable opportunity" should not be confined to the mere submission of position papers and/or affidavits and the parties must be given the opportunity to examine the witnesses against them. The right to a hearing is a right which may be invoked by the parties to thresh out substantial factual issues. It becomes even more imperative when the rules itself of the administrative body provides for one. While the absence of a formal hearing does not necessarily result in the deprivation of due process, it should be acceptable only when the party does not invoke the said right or waives the same.[85] (Emphasis supplied)

In *Saunar,* this Court held that the petitioner in that case was denied due process when he was not notified of the clarificatory hearings conducted by the Presidential Anti-Graft Commission. Under the Presidential Anti-Graft Commission's Rules, in the event that a clarificatory hearing was determined to be necessary, the Presidential Anti-Graft Commission must notify the parties of the clarificatory hearings. Further, "the parties shall be afforded the opportunity to be present in the hearings without the right to examine witnesses. They, however, may ask questions and elicit answers from the opposing party

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[85] *Id*. at 11-14.

coursed through the [Presidential Anti-Graft Commission]."[86] This Court held that the petitioner in *Saunar* was not treated fairly in the proceedings before the Presidential Anti-Graft Commission because he was deprived of the opportunity to be present in the clarificatory hearings and was denied the chance to propound questions through the Presidential Anti-Graft Commission against the opposing parties.

"[A] fair and reasonable opportunity to explain one's side"[87] is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

Baguio Country Club Corp. v. National Labor Relations Commission[88] precisely involved the question of the denial of due process for failure of the labor tribunals to consider the evidence presented by the employer. The labor tribunals unanimously denied the employer's application for clearance to terminate the services of an employee on the ground of insufficient evidence to show a just cause for the employee's dismissal, and ordered the reinstatement of the employee with backwages.

This Court held that *"[t]he summary procedures used by the [labor tribunals] were too summary to satisfy the requirements of justice and fair play."*[89] It noted the irregular procedures adopted by the Labor Arbiter. First, "[he] allowed a last minute position paper of [the] respondent . . . to be filed and without requiring a copy to be served upon the Baguio Country Club and without affording the latter an opportunity to refute or rebut the contents of the paper, [and] forthwith decided the case."[90] Second, "the petitioner specifically stressed

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[86] *Id*. at 14.

[87] *Vivo v. Philippine Amusement and Gaming Corp.*, 721 Phil. 34, 43 (2013) [Per *J*. Bersamin, *En Banc*].

[88] 204 Phil. 194 (1982) [Per *J*. Gutierrez, Jr., First Division].

[89] *Id*. at 197.

[90] *Id*. at 198.

to the arbiter that it was 'adopting the investigations which were enclosed with the application to terminate, which are now parts of the record of the Ministry of Labor, as part and parcel of this position paper.'"[91] But the Labor Arbiter, instead of calling for the complete records of the conciliation proceedings, "denied the application for clearance on the ground that all that was before it was a position paper with mere quotations about an investigation conducted . . ."[92] This Court held that the affirmance by the Commission of the decision of the Labor Arbiter was a denial of the elementary principle of fair play.

> [I]t was a denial of elementary principles of fair play for the Commission not to have ordered the elevation of the entire records of the case with the affidavits earlier submitted as part of the position paper but completely ignored by the labor arbiter. Or at the very least, the case should have been remanded to the labor arbiter consonant with the requirements of administrative due process.
>
> The ever increasing scope of administrative jurisdiction and the statutory grant of expansive powers in the exercise of discretion by administrative agencies illustrate our nation's faith in the administrative process as an efficient and effective mode of public control over sensitive areas of private activity. Because of the specific constitutional mandates on social justice and protection to labor, and the fact that major labor-management controversies are highly intricate and complex, the legislature and executive have reposed uncommon reliance upon what they believe is the expertise, the rational and efficient modes of ascertaining facts, and the unbiased and discerning adjudicative techniques of the Ministry of Labor and Employment and its instrumentalities.
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> . . . . . .
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> The instant petition is a timely reminder to labor arbiters and all who wield quasi-judicial power to ever bear in mind that evidence is the means, sanctioned by rules, of ascertaining in a judicial or quasi-judicial proceeding, the *truth* respecting a matter of fact . . . The object of evidence is to establish the truth by the use of *perceptive*

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[91] *Id*. at 200.

[92] *Id*.

and reasoning faculties . . . The statutory grant of power to use summary procedures should heighten a concern for due process, for judicial perspectives in administrative decision making, and for maintaining the visions which led to the creation of the administrative office.[93]

In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*,[94] this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc., but proceeded with the registration, recertification, and distribution of the questioned contraceptive drugs and devices. It ruled that petitioner was not afforded the *genuine opportunity to be heard*.

Administrative due process is anchored on fairness and equity in procedure.[95] It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself.[96] Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions,[97] and that the party be sufficiently informed of the reasons for its conclusions.

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[93] *Id*. at 200-202.

[94] G.R. Nos. 217872 & 221866, August 24, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/217872.pdf> [Per *J*. Mendoza, Second Division] and G.R. Nos. 217872 & 221866, April 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/217872.pdf> [Per *J*. Mendoza, Special Second Division].

[95] *Saunar v. Ermita,* G.R. No. 186502, December 13, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/december2017/186502.pdf> [Per *J.* Martires, Third Division]; Concurring Opinion of *J.* Brion in *Perez v. Philippine Telegraph and Phone Company*, 602 Phil. 522, 545 (2009) [Per *J*. Corona, *En Banc*].

[96] *Gutierrez v. Commission on Audit,* 750 Phil. 413, 430 (2015) [Per *J.* Leonen, *En Banc*].

[97] *Id*. at 431.

I.B

Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99, provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

Section 228. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Section 3 of Revenue Regulations No. 12-99[98] prescribes the due process requirement for the four (4) stages of the assessment process:

Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing,** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford**

[98] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty (1999).

the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN).* — **If after review and evaluation** by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)** for the proposed assessment**, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** . . . **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default,** in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

. . . . . .

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void*** . . .

3.1.5 *Disputed Assessment.* — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. . . .**

. . . . . .

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

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3.1.6 *Administrative Decision on a Disputed Assessment*. — **The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise*, *the decision shall be void* . . . in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his *final decision*.** (Emphasis supplied)

The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

"The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory."[99] This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

Avon asserts feigned compliance by the Bureau of Internal Revenue officials and agents of their duties under the law and revenue regulation.[100] It adds that the administrative proceeding conducted by the Bureau of Internal Revenue was "a farce," an idle ritual tantamount to a denial of its right to be heard.[101]

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[99] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.,* 784 Phil. 874, 888 (2016) [Per *J.* Mendoza, Second Division].

[100] *Rollo* (G.R. Nos. 201398-99), p. 401.

[101] *Id*. at 413.

It specifies the Bureau of Internal Revenue's inaction throughout the proceedings as follows:

First, during the informal conference, Avon orally rebutted and submitted a written Reply[102] dated November 26, 2002, with attached supporting documents, to the summary of audit findings of the Bureau of Internal Revenue. Revenue Examiner Enrico Z. Gesmundo (Gesmundo), on cross-examination, admitted receiving its Reply with the appended documents and that this Reply should be the basis of the Preliminary Assessment Notice.[103]

However, the Commissioner issued the Preliminary Assessment Notice dated November 29, 2002, which simply reiterated the rebutted audit findings.[104] The alleged under-declared sales was increased by more than 300% based on the alleged sales discrepancy in the Third Quarter VAT Return *vis à vis* Financial Statement, without justifiable reason and despite clean opinion of Avon's external auditor on its financial statements.[105]

Second, in its protest letter to the Preliminary Assessment Notice, Avon explained the error in the presentation of export sales in the Third Quarter VAT Return. That is, instead of presenting the total sales for the third quarter alone, the presentation was a cumulative or year-to-date sales presentation. Avon appended copies of the Third Quarter VAT Return and the General Ledger Pages of Export Sales to its protest letter to prove the cumulative presentation of its sales. The Bureau of Internal Revenue Examiners accepted their explanation during their meeting.[106]

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[102] *Rollo* (G.R. Nos. 201418-19), pp. 720-724.

[103] *Rollo* (G.R. Nos. 201398-99), p. 405, *rollo* (G.R. Nos. 201418-19), pp. 293-294.

[104] *Rollo* (G.R. Nos. 201418-19), p. 197.

[105] *Rollo* (G.R. Nos. 201398-99), pp. 405-406.

[106] *Id*. at 407.

However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice.[107] The Bureau of Internal Revenue chose to ignore Avon's explanations and refused to cancel the assessments unless Avon would agree to pay the other deficiency assessments.[108]

Third, since the Final Assessment Notices merely reiterated the findings in the Preliminary Assessment Notice, Avon resubmitted its protest letter and supporting documents. During the conference with the revenue officers on August 4, 2003, Avon explained that it had already submitted all the reconciliation, schedules, and other supporting documents. It also submitted additional documents as directed by the revenue officers on June 26, 2003,[109] and presented the original General Ledger Book for 1999 for comparison by the Bureau of Internal Revenue's officers with the copies previously submitted. Again, Avon explained the alleged sales discrepancy to the revenue officers, who were convinced that there was no under-declaration of sales, and that the sales discrepancy between the Annual Income Tax Return and Quarterly VAT Return was merely due to erroneous presentation of sales in the Third Quarter VAT Return.[110]

By this time, hoping that the Commissioner would cancel the deficiency income and VAT assessments arising from the alleged sales discrepancy, Avon informed the Bureau of Internal Revenue examiners that it would make a partial payment of the assessments, which it did.[111]

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[107] *Id*. at 408.

[108] *Id*. at 409.

[109] *Id*. at 386.

[110] *Id*. at 409-410.

[111] *Id*. at 410.

Fourth, however, the Commissioner issued the Collection Letter[112] dated July 9, 2004 without deciding on the protest letter to the Final Assessment Notices. Once again, she failed to even comment on the arguments raised or address the documents submitted by Avon. Even the amounts supposedly paid by Avon were not deducted from the amount demanded in the Collection Letter. To justify its issuance, the Commissioner falsely alleged Avon of failing to submit its supporting documents.[113]

Fifth, Avon filed a request for withdrawal of the Collection Letter, but it was likewise ignored.[114]

Finally, the documents which reveal the events after the filing of the protest to the Final Assessment Notices on May 9, 2004 were missing from the Bureau of Internal Revenue Records.[115] These were (a) the handwritten Minutes of the Bureau of Internal Revenue/Taxpayer Conference on June 26, 2003; (b) Avon's letter[116] dated August 1, 2003, with supporting documents, received by Revenue Officer Gesmundo on August 4, 2003, showing Avon's submission of the documents required by the Revenue Officers during the June 26, 2003 meeting; and (c) the two (2) Bureau of Internal Revenue Tax Payment Confirmations dated January 30, 2004, and Payment Forms called Bureau of Internal Revenue Form No. 0605.[117]

Avon further submits that the presumption of correctness of the assessments cannot apply in the face of compelling proof that they were issued without due process. It adds that "[h]ad the administrative process been conducted with fairness and in accordance with the prescribed procedure, [it] need not have

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[112] *Rollo* (G.R. Nos. 201418-19), p. 189.

[113] *Rollo* (G.R. Nos. 201398-99), p. 411.

[114] *Id*. at 412.

[115] *Id*. at 414.

[116] *Rollo* (G.R. Nos. 201418-19), pp. 328-339.

[117] *Id*. at 803-809.

incurred [filing fees and other litigation expenses to defend against a bloated deficiency tax assessment]."[118]

Against these claims of Avon, the Commissioner did not submit any refutation either in her Comment[119] or Memorandum,[120] and even in her pleadings before the Court of Tax Appeals. Instead, she could only give out a perfunctory resistance that "tax assessments . . . are presumed correct and made in good faith."[121]

The Court of Tax Appeals ruled that the difference in the appreciation by the Commissioner of Avon's supporting documents, which led to the deficiency tax assessments, was not violative of due process. While the Commissioner has the duty to receive the taxpayer's clarifications and explanations, she does not have the duty to accept them on face value.[122]

This Court disagrees.

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy[123] attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.

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[118] *Rollo* (G.R. Nos. 201398-99), p. 416.

[119] *Rollo* (G.R. Nos. 201418-19), pp. 869-899.

[120] *Rollo* (G.R. Nos. 201398-99), pp. 344-376.

[121] *Id*. at 372.

[122] *Rollo* (G.R. Nos. 201418-19), p. 168.

[123] *Id*. at 194-202.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference,[124] the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00,[125] without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents,[126] and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process.[127] They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the

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[124] *Id*. at 767.

[125] *Id*. at 770.

[126] *Id*. at 775.

[127] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 186-187 (2010) [Per *J*. Mendoza, Second Division].

issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales.[128] Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice.[129] This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period."[130] This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals.[131] However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to

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[128] *Rollo* (G.R. Nos. 201418-19), pp. 30-31.

[129] *Rollo* (G.R. Nos. 201418-19), p. 189.

[130] *Id*. at 810.

[131] *Id*. at 168.

due process.[132] The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

In *Edwards v. McCoy*:[133]

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.[134]

In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the tribunal must consider the evidence presented***."[135]

Furthermore, in *Mendoza v. Commission on Elections*,[136] this Court explained:

> [T]he last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based. **As a component of the rule of fairness that underlies due process, this is the "duty to give reason" to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.**[137] (Emphasis supplied, citation omitted)

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[132] *Ginete v. Court of Appeals,* 357 Phil. 36, 56 (1998) [Per *J.* Romero, Third Division].

[133] 22 Phil. 598 (1912) [Per *J.* Moreland, First Division].

[134] *Id*. at 600-601.

[135] 69 Phil. 635, 642 (1940) [Per *J.* Laurel, *En Banc*].

[136] 618 Phil. 706 (2009) [Per *J.* Brion, *En Banc*].

[137] *Id*. at 727.

In *Villa v. Lazaro*,[138] this Court held that Anita Villa (Villa) was denied due process when the then Human Settlement Regulatory Commission ignored her submission, not once but thrice, of the official documents certifying to her compliance with the pertinent locational, zoning, and land use requirements, and plans for the construction of her funeral parlor. It imposed on Villa a fine of ₱10,000.00 and required her to cease operations on the spurious premise that she had failed to submit the required documents. This Court found the Commissioner's failure or refusal to even acknowledge the documents submitted by Villa indefensible. It further held that the defects in the administrative proceedings "translate to a denial of due process against which the defense of failure to take timely appeal will not avail."[139]

Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."[140]

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[138] *Villa v. Lazaro,* 267 Phil. 39 (1990) [Per *J.* Narvasa, First Division].

[139] *Id*. at 51.

[140] *Rollo* (G.R. Nos. 201398-99), p. 413.

Moreover, the Court of Tax Appeals erroneously applied the "presumption of regularity" in sustaining the Commissioner's assessments.

The presumption that official duty has been regularly performed is a disputable presumption under Rule 131, Section 3(m) of the Rules of Court. As a disputable presumption —

> [I]t may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence . . .

The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.[141] (Citation omitted)

In *Sevilla v. Cardenas,*[142] this Court refused to apply the "presumption of regularity" when it noted that there was documentary and testimonial evidence that the civil registrar did not exert *utmost efforts* before certifying that no marriage license was issued in favor of one of the parties.

This Court also refused to apply the presumption of regularity in *Bank of the Philippine Islands v. Evangelista,*[143] where the process server failed to show that he followed the required procedures:

> We cannot sustain petitioner's argument, which is anchored on the presumption of regularity in the process server's performance of duty. The Court already had occasion to rule that "[c]ertainly, it was never intended that the presumption of regularity in the performance of official duty will be applied even in cases where there is no showing of substantial compliance with the requirements of the rules of procedure." Such presumption does not apply where it is patent that the sheriff's or server's return is defective. Under this circumstance, respondents are not duty-bound to adduce further evidence to overcome the presumption, which no longer holds.[144] (Citations omitted)

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[141] *Sevilla v. Cardenas,* 529 Phil. 419, 433 (2006) [Per *J.* Chico-Nazario, First Division].

[142] 529 Phil. 419 (2006) [Per *J.* Chico-Nazario, First Division].

[143] 441 Phil. 445 (2002) [Per *J.* Panganiban, Third Division].

[144] *Id.* at 454.

Here, contrary to the ruling of the Court of Appeals, the presumption of regularity in the performance of the Commissioner's official duties cannot stand in the face of positive evidence of irregularity or failure to perform a duty.

I.C

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[145] this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.[146] (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes,*[147] this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law

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[145] 652 Phil. 172 (2010) [Per *J.* Mendoza, Second Division].

[146] *Id*. at 184.

[147] 516 Phil. 176 (2006) [Per *C.J.* Panganiban, First Division].

and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,*[148] this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[149]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> . . . . . .
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> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
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> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it**

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[148] 565 Phil. 613 (2007) [Per *J.* Velasco, Jr., Second Division].

[149] 241 Phil. 829 (1988) [Per *J.* Cruz, First Division].

be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate . . . that the law has not been observed.[150] (Emphasis supplied)

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void. This Court, nonetheless, proceeds to discuss the points raised by the Commissioner pertaining to estoppel and prescription.

II

As a general rule, petitioner has three (3) years from the filing of the return to assess taxpayers. Section 203 of the Tax Code provides:

> Section 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

An exception to the rule of prescription is found in Section 222, paragraphs (b) and (d) of the same Code, *viz*:

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
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> . . . . . .

[150] *Id*. at 830-836.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

. . . . . .

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

Thus, the period to assess and collect taxes may be extended upon the Commissioner and the taxpayer's written agreement, executed before the expiration of the three (3)-year period.

In this case, two (2) waivers were supposedly executed by the parties extending the prescriptive periods for assessment of income tax, VAT, and expanded and final withholding taxes to January 14, 2003, and then to April 14, 2003.[151]

The Court of Tax Appeals, both the Special First Division and En Banc, declared the two (2) Waivers of the Defense of Prescription defective and void, for the Commissioner's failure to furnish signed copies of the Waivers to Avon, in violation of the requirements provided in Revenue Memorandum Order No. 20-90.[152]

Indeed, a Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the Bureau of Internal Revenue to extend the period of assessment and collection to a certain date. "The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the

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[151] *Rollo* (G.R. Nos. 201398-99), p. 356.

[152] *Rollo* (G.R. Nos. 201418-19), p. 171.

document but of the acceptance by the [Bureau of Internal Revenue] and the perfection of the agreement."[153]

However, the Commissioner in this case contends that Avon is estopped from assailing the validity of the Waivers of the Defense of Prescription that it executed when it paid portions of the disputed assessments.[154] The Commissioner invokes the ruling in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[155] which allegedly must be applied as *stare decisis*.[156]

The Commissioner's contention is untenable.

Rizal Commercial Banking Corporation is not on all fours with this case. The estoppel upheld in that case arose from the benefit obtained by the taxpayer from its execution of the waiver, in the form of a drastic reduction of the deficiency taxes, and the taxpayer's payment of a portion of the reduced tax assessment. In that case, this Court explained that Rizal Commercial Banking Corporation's partial payment of the revised assessments effectively belied its insistence that the waivers were invalid and the assessments were issued beyond the prescriptive period. Thus:

> Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested

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[153] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* 488 Phil. 218, 235 (2004) [Per *J.* Ynares-Santiago, First Division].

[154] *Rollo* (G.R. Nos. 201398-99), pp. 358-360.

[155] 672 Phil. 514 (2011) [Per *J.* Mendoza, Third Division].

[156] *Rollo* (G.R. Nos. 201398-99), p. 361.

taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.[157] (Citation omitted)

Here, Avon claimed that it did not receive any benefit from the waivers.[158] On the contrary, there was even a drastic increase in the assessed deficiency taxes when the Commissioner increased the alleged sales discrepancy from ₱15,700,000.00 in the preliminary findings to ₱62,900,000.00 in the Preliminary Assessment Notice and Final Assessment Notices. Furthermore, Avon was compelled to pay a portion of the deficiency assessments "in compliance with the Revenue Officer's condition in the hope of cancelling the assessments on the non-existent sales discrepancy."[159] Under these circumstances, Avon's payment of an insignificant portion of the assessment cannot be deemed an admission or recognition of the validity of the waivers.

On the other hand, the Court of Tax Appeals' reliance on the general rule enunciated in *Commissioner of Internal Revenue v. Kudos Metal Corporation*[160] is proper. In that case, this Court ruled that the Bureau of Internal Revenue could not hide behind the doctrine of estoppel to cover its failure to comply with its own procedures. "[A] waiver of the statute of limitations [is] a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations [and thus, it] must be carefully and strictly construed."[161]

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[157] *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue,* 672 Phil. 514, 527 (2011) [Per *J.* Mendoza, Third Division].

[158] *Rollo* (G.R. Nos. 201398-99), p. 419.

[159] *Id*. at 422.

[160] 634 Phil. 314 (2010) [Per *J.* Del Castillo, Second Division].

[161] *Id*. at 329.

III

The Commissioner of Internal Revenue in this case asserts that since Avon filed its protest on May 9, 2003, it only had 30 days from November 5, 2003, i.e., the end of the 180 days, or until December 5, 2003 within which to appeal to the Court of Tax Appeals. As Avon only filed its appeal on August 13, 2004, its right to appeal has prescribed.[162]

Avon counters that it acted in good faith and in accordance with Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals and jurisprudence when it opted to wait for the decision of the Commissioner and appeal it within the 30-day period.[163] "The Collection Letter, albeit void, constitutes a constructive denial of Avon's protest and is the final decision of the [Commissioner] for purposes of counting the reglementary 30-day period to appeal[.]"[164] Since Avon received the Collection Letter on July 14, 2004, its Petition for Review was timely filed on August 13, 2004.[165] At any rate, Avon argues that the issue on the timeliness of its appeal was raised by the Commissioner only in its Motion for Reconsideration of the Court of Tax Appeals En Banc November 9, 2011 Decision, and a belated consideration of this matter would violate its right to due process and fair play.[166]

The issue on whether Avon's Petition for Review before the Court of Tax Appeals was time-barred requires the interpretation and application of Section 228 of the Tax Code, *viz:*

Section 228. *Protesting of Assessment*. —

. . . . . .

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[162] *Rollo* (G.R. Nos. 201398-99), p. 367.

[163] *Id*. at 428.

[164] *Id*. at 425.

[165] *Id*.

[166] *Id*. at 429.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, *or is not acted upon within one hundred eighty (180) days from submission of documents*, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals *within thirty (30) days* from receipt of the said decision, or *from the lapse of the one hundred eighty (180)-day period;* otherwise, the *decision* shall become final, executory and demandable. (Emphasis supplied)

Section 228 of the Tax Code amended Section 229[167] of the

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[167] *People v. Sandiganbayan*, 504 Phil. 407 (2005) [Per *J.* Panganiban, Third Division] contains a legislative history of this provision in its footnote no. 9 as follows:

"Sec. 229 was originally found in the NIRC of 1977, which was codified by and made an integral part of Presidential Decree (PD) No. 1158, otherwise known as 'A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines.'

When the NIRC of 1977 was amended by PD 1705 on August 1, 1980, Sec. 229 was restated as Sec. 16(d). On January 16, 1981, PD 1773 further amended Sec. 16 by eliminating paragraph (d) and inserting its contents between Secs. 319 and 320 as a new Sec. 319-A. PD 1994 then renumbered Sec. 319-A as Sec. 270 on January 1, 1986; and on January 1, 1988, Sec. 270 was again renumbered as Sec. 229 and rearranged to fall under Chapter 3 of Title VIII of the NIRC by Executive Order (EO) No. 273, otherwise known as 'Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for other purposes.'

At present, Sec. 229 has been amended as Sec. 228 by RA 8424, otherwise known as the 'Tax Reform Act of 1997.'"

Section 229 of the Old Tax Code provides:

Sec. 229. Protesting of assessment. — When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.

Old Tax Code[168] by adding, among others, the 180-day rule. This new provision presumably avoids the situation in the past when a taxpayer would be held hostage by the Commissioner's inaction on his or her protest. Under the Old Tax Code, in conjunction with Section 11 of Republic Act No. 1125, only the decision or ruling of the Commissioner on a disputed assessment is appealable to the Court of Tax Appeals. Consequently, the taxpayer then had to wait for the Commissioner's action on his or her protest, which more often was long-delayed.[169] With the

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Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

[168] Pres. Decree No. 1158 (1977), as amended by Executive Order No. 273.

[169] For instance, in *Commissioner of Internal Revenue v. Isabela Cultural Corporation (ICC),* 413 Phil. 376 (2001) [Per *J.* Panganiban, Third Division], Isabela Cultural Corporation received an assessment letter dated February 9, 1990 stating that it had deficiency income taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the Bureau of Internal Revenue additional documents on April 18, 1990. The next communication that Isabela Cultural Corporation received was already the Final Notice Before Seizure dated November 10, 1994, or more than four (4) years later. Isabela Cultural Corporation filed a petition for review with the Court of Tax Appeals alleging that the Final Notice of Seizure was the Commissioner's final decision. The Court of Tax Appeals dismissed the petition. On appeal, this Court ruled that a final demand from the Commissioner reiterating the immediate payment of a tax deficiency previously made is tantamount to a denial of the protest. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals.

In *Commissioner of Internal Revenue v. Union Shipping Corp.,* 264 Phil. 132 (1990) [Per *J.* Paras, Second Division], Union Shipping Corporation (Union Shipping) was assessed deficiency income taxes in a letter dated December 27, 1974. On January 10, 1975, Union Shipping protested the assessment. Without ruling on the protest, the Commissioner served a Warrant

amendment introduced by Republic Act No. 8424, the taxpayer may now immediately appeal to the Court of Tax Appeals in case of inaction of the Commissioner for 180 days from submission of supporting documents.

Republic Act No. 9282, or the new Court of Tax Appeals Law, which took effect on April 23, 2004, amended Republic Act No. 1125 and included a provision complementing Section 228 of the Tax Code, as follows:

Section 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

. . . . . .

(2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.] (Emphasis supplied)

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of Distraint and Levy on November 25, 1976. Union Shipping reiterated its request for reinvestigation of the assessment and for reconsideration of the Warrant. Without again acting on this request, the Commissioner filed a collection suit before the Court of First Instance of Manila. Summons was received by Union Shipping on December 28, 1978. On January 10, 1979, Union Shipping filed a petition for review with the Court of Tax Appeals. The Commissioner raised prescription, contending that the petition was filed beyond 30 days from receipt of the Warrant on November 25, 1976. Ruling in favor of Union Shipping, this Court observed that since the Commissioner did not rule on Union Shipping's motion for reconsideration, the latter was left in the dark as to which action of the Commissioner was the decision appealable to the Court of Tax Appeals. "Had [the Commissioner] categorically stated that he denies [Union Shipping's] motion for reconsideration and that his action constitutes his final determination on the disputed assessment, [it] without needless difficulty would have been able to determine when his right to appeal accrues and the resulting confusion would have been avoided."

Under Section 7(a)(2) above, it is expressly provided that the "inaction" of the Commissioner on his or her failure to decide a disputed assessment within 180 days is "deemed a denial" of the protest.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[170] this Court, by way of an *obiter*, ruled as follows:

> In case the Commissioner failed to act on the disputed assessment within the 180-day period from the date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.[171]

In *Rizal Commercial Banking Corporation*, the Commissioner failed to act on the disputed assessment within 180 days from date of submission of documents. Thus, Rizal Commercial Banking Corporation opted to file a Petition for Review before the Court of Tax Appeals. Unfortunately, it was filed more than 30 days following the lapse of the 180-day period. Consequently, it was dismissed by the Court of Tax Appeals for late filing. Rizal Commercial Banking Corporation did not file a Motion for Reconsideration or make an appeal; hence, the disputed assessment became final and executory.

Subsequently, Rizal Commercial Banking Corporation filed a petition for relief from judgment on the ground of excusable negligence, but this was denied by the Court of Tax Appeals for lack of merit. This Court affirmed the Court of Tax Appeals. It further held that even if the negligence of Rizal Commercial Banking Corporation's counsel was excusable and the petition

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[170] 550 Phil. 316 (2007) (Resolution) [Per *J.* Ynares-Santiago, Third Division].

[171] *Id*. at 324-325.

for relief from judgment would be granted, it would not fare any better because its action for cancellation of assessments had already prescribed since its Petition was filed beyond the 180+30-day period stated in Section 228.

Rizal Commercial Banking Corporation then filed a Motion for Reconsideration. Denying the motion, this Court held that it could not anymore "claim that the disputed assessment is not yet final as it remained unacted upon by the Commissioner; that it can still await the final decision of the Commissioner and thereafter appeal the same to the Court of Tax Appeals."[172] Since it had availed of the first option by filing a petition for review because of the Commissioner's inaction, although late, it could no longer resort to the second option.

Rizal Commercial Banking Corporation referred to Rule 4, Section 3(a)(2) of the 2005 Revised Rules of the Court of Tax Appeals, or the 2005 Court of Tax Appeals Rules, which provides:

> Section 3. *Cases Within the Jurisdiction of the Court in Divisions*. — The Court in Divisions shall exercise:
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> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> . . . . . .
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code or other applicable law provides a specific period for action**: *Provided*, that **in case of disputed assessments, the inaction of the Commissioner of Internal Revenue** within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code **shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court** and does

[172] *Id*. at 325.

> not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that **should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules**; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis supplied)

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*,[173] this Court reaffirmed *Rizal Commercial Banking Corporation*, *viz*:

> In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the NIRC to just one, that is — to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect.
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> . . . . . .
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> [W]hen the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.[174]

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[173] 683 Phil. 430 (2012) [Per *J.* Peralta, Third Division].

[174] *Id*. at 440-441.

This Court, nonetheless, stressed that these two (2) options of the taxpayer, i.e., to (1) file a petition for review before the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) to await the final decision of the Commissioner on the disputed assessment and appeal this final decision to the Court of Tax Appeals within 30 days from receipt of it, "*are mutually exclusive and resort to one bars the application of the other*."[175]

Rule 4, Section 3(a)(2) of the 2005 Court of Tax Appeals Rules clarifies Section 7(a)(2) of Republic Act No. 9282 by stating that the "deemed a denial" rule is only for the "purposes of allowing the taxpayer to appeal" in case of inaction of the Commissioner and "does not necessarily constitute a formal decision of the Commissioner." Furthermore, the same provision clarifies that the taxpayer may choose to wait for the final decision of the Commissioner even beyond the 180-day period, and appeal from it.

The 2005 Court of Tax Appeals Rules were approved by the Court En Banc on November 22, 2005, in A.M. No. 05-11-07-CTA, pursuant to its constitutional rule-making authority.[176] Under Article VIII, Section 5, paragraph 5 of the 1987 Constitution:

> Section 5. **The Supreme Court shall have the following powers:**
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> . . . .
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> **(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts**, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of**

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[175] *Id*. at 441.

[176] CONST., Art. VIII, Sec. 5(5).

> **procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.** (Emphases supplied)

In *Metro Construction, Inc. v. Chatham Properties, Inc.,*[177] this Court held:

> There is no controversy on the principle that the right to appeal is statutory. However, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified provided that vested rights are not impaired. The Supreme Court is bestowed by the Constitution with the power and prerogative, *inter alia*, to promulgate rules concerning pleadings, practice and procedure in all courts, as well as to review rules of procedure of special courts and quasi-judicial bodies, which, however, shall remain in force until disapproved by the Supreme Court. This power is constitutionally enshrined to enhance the independence of the Supreme Court.[178] (Citation omitted)

Carpio-Morales v. Court of Appeals[179] elucidated that while Congress has the authority to establish the lower courts, including the Court of Tax Appeals, and to define, prescribe, and apportion their jurisdiction, the authority to promulgate rules of procedure is exclusive to this Court:

> **A court's exercise of the jurisdiction it has acquired over a particular case conforms to the limits and parameters of the rules of procedure duly promulgated by this Court.** In other words, procedure is the framework within which judicial power is exercised. In *Manila Railroad Co. v. Attorney-General,* the Court elucidated that "[t]he power or authority of the court over the subject matter existed and was fixed before procedure in a given cause began. **Procedure does not alter or change that power or authority; it simply directs the manner in which it shall be fully and justly exercised.** To be sure, in certain cases, if that power is not exercised in conformity with the provisions of the procedural law, purely, the

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[177] 418 Phil. 176 (2001) [Per *C.J.* Davide, Jr., First Division].

[178] *Id*. at 205.

[179] 772 Phil. 672 (2015) [Per *J.* Perlas-Bernabe, *En Banc*].

court attempting to exercise it loses the power to exercise it legally. This does not mean that it loses jurisdiction of the subject matter."

While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, **the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court.** (Emphasis in the original, citations omitted)[180]

Section 228 of the Tax Code and Section 7 of Republic Act No. 9282 should be read in conjunction with Rule 4, Section 3(a)(2) of the 2005 Court of Tax Appeals Rules. In other words, the taxpayer has the option to either elevate the case to the Court of Tax Appeals if the Commissioner does not act on his or her protest, or to wait for the Commissioner to decide on his or her protest before he or she elevates the case to the Court of Tax Appeals. This construction is reasonable considering that Section 228 states that the *decision* of the Commissioner not appealed by the taxpayer becomes final, executory, and demandable.

IV

In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.

This Court holds that the Collection Letter dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals.[181] The Collection Letter

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[180] *Id*. at 732-733.

[181] See *Oceanic Wireless Network Inc. v. Commissioner of Internal Revenue,* 513 Phil. 317 (2005) [Per *J.* Azcuna, First Division] where this Court ruled that a demand letter may be considered the final decision on a disputed assessment, if the language used or the tenor of it shows a character of finality, which is tantamount to a rejection of the request for reconsideration.

Also in *Commissioner of Internal Revenue v. Isabela Cultural Corporation,* 413 Phil. 376 (2001) [Per *J.* Panganiban, Third Division], this Court considered the "Final Notice Before Seizure" as the Bureau of Internal Revenue's final decision on a disputed assessment, and thus, appealable to the Court of Tax Appeals.

dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice.[182] The Collection Letter was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon "failed to submit supporting documents within 60-day period."[183] This Collection Letter demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.

Avon received the Collection Letter on July 14, 2004. Hence, Avon's appeal to the Court of Tax Appeals filed on August 13, 2004 was not time-barred.

In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, the Collection Letter constitutes an act of the Commissioner on "other matters" arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. v. CIR*,[184] may be the subject of an appropriate appeal before the Court of Tax Appeals.

On a final note, the Commissioner is reminded of her duty enunciated in Section 3.1.6 of Revenue Regulations No. 12-99 to render a final decision on disputed assessment. Section 228 of the Tax Code requires taxpayers to exhaust administrative remedies by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Exhaustion of administrative remedies is required prior to resort to the Court of Tax Appeals precisely to give the Commissioner the

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[182] *Rollo* (G.R. Nos. 201418-19), p. 189.

[183] *Id*. at 810.

[184] 488 Phil. 218 (2004) [Per *J*. Ynares-Santiago, First Division].

opportunity to "re-examine its findings and conclusions"[185] and to decide the issues raised within her competence.[186]

Paat v. Court of Appeals[187] wrote:

> This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel* the case is susceptible of dismissal for lack of cause of action. **This doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.**[188] (Emphasis supplied, citations omitted)

Taxpayers cannot be left in quandary by the Commissioner's inaction on the protested assessment. It is imperative that the taxpayers are informed of the Commissioner's action for them to take proper recourse to the Court of Tax Appeals at the opportune time.[189] Furthermore, this Court had time and again

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[185] *Ruivivar v. Office of the Ombudsman,* 587 Phil. 100, 113 (2008) [Per *J.* Brion, Second Division].

[186] See *Aguinaldo Industries Corp. v. Commissioner of Internal Revenue,* 197 Phil. 822 (1982) [Per *J.* Plana, First Division].

[187] 334 Phil. 146 (1997) [Per *J.* Torres, Jr., Second Division].

[188] *Id*. at 152-153.

[189] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue,* 683 Phil. 430, 441-442 (2012) [Per *J.* Peralta, Third Division].

expressed the dictum that "the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his [or her] final determination of the disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action."[190]

While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and always in strict adherence to the requirements of the law and of the Bureau of Internal Revenue's own rules.

WHEREFORE, the Petition of the Commissioner of Internal Revenue in G.R. Nos. 201398-99 is **DENIED.** The Petition of Avon Products Manufacturing, Inc. in G.R. Nos. 201418-19 is **GRANTED.** The remaining deficiency Income Tax under Assessment No. LTAID-II-IT-99-00018 in the amount of ₱357,345.88 for taxable year 1999, including increments, is hereby declared **NULL and VOID** and is **CANCELLED.**

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

Gesmundo, J., on official business.

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[190] *Advertising Associates, Inc. v. Court of Appeals,* 218 Phil. 730, 730-736 (1984) [Per *J.* Aquino, Second Division] citing *Surigao Electric Co., Inc. vs. Court of Tax Appeals*, L-25289, 156 Phil. 517 (1974) [Per *J.* Castro, First Division].

THIRD DIVISION

[G.R. No. 207526. October 3, 2018]

THE INSULAR LIFE ASSURANCE CO., LTD., *petitioner, vs.* **THE HEIRS OF JOSE H. ALVAREZ,** *respondents.*

[G.R. No. 210156. October 3, 2018]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF JOSE H. ALVAREZ,** *respondents.*

SYLLABUS

1. MERCHANTILE LAW; INSURANCE CODE; CONCEALMENT; PROOF OF FRAUDULENT INTENT IS UNNECESSARY FOR THE RESCISSION OF AN INSURANCE CONTRACT ON ACCOUNT OF CONCEALMENT; GOOD FAITH IS NO DEFENSE IN CONCEALMENT.— Section 27 of the Insurance Code, x x x reads: x x x. A concealment *whether intentional or unintentional* entitles the injured party to rescind a contract of insurance. The statutory text is unequivocal. Insular Life correctly notes that proof of fraudulent intent is unnecessary for the rescission of an insurance contract on account of concealment. This is neither because intent to defraud is intrinsically irrelevant in concealment, nor because concealment has nothing to do with fraud. To the contrary, it is because in insurance contracts, concealing material facts is inherently fraudulent: "if a material fact is actually known to the [insured], its concealment must of itself necessarily be a fraud." When one knows a material fact and conceals it, "it is difficult to see how the inference of a fraudulent intent or intentional concealment can be avoided." Thus, a concealment, regardless of actual intent to defraud, "is equivalent to a false representation." x x x Following *Vda. de Canilang*, this Court was categorical in *Sunlife Assurance Co. of Canada v. Court of Appeals*: "'good faith' is no defense in concealment." x x x The statute's clear and unmistakable text must prevail. For purposes of rescission, Section 27 of the Insurance Code unequivocally negates any distinction between intentional and

unintentional concealments. Pronouncements in jurisprudence cannot undermine this explicit legislative intent.

2. ID.; ID.; CONCEALMENT, DEFINED; DISTINGUISHED FROM FALSE REPRESENTATION; MISDECLARATION OF AGE CONSTITUTES FALSE REPRESENTATION, NOT CONCEALMENT.— The Insurance Code distinguishes representations from concealments. x x x Section 26 defines concealment as "[a] *neglect to communicate* that which a party knows and ought to communicate." However, Alvarez did not withhold information on or neglect to state his age. He made an actual declaration and assertion about it. What this case involves, instead, is an allegedly false representation. Section 44 of the Insurance Code states, "A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations." If indeed Alvarez misdeclared his age such that his assertion fails to correspond with his factual age, he made a false representation, not a concealment. x x x Concealment applies only with respect to material facts. That is, those facts which by their nature would clearly, unequivocally, and logically be known by the insured as necessary for the insurer to calculate the proper risks. The absence of the requirement of intention definitely increases the onus on the insured. Between the insured and the insurer, it is true that the latter may have more resources to evaluate risks. Insurance companies are imbued with public trust in the sense that they have the obligation to ensure that they will be able to provide succor to those that enter into contracts with them by being both frugal and, at the same time, diligent in their assessment of the risk which they take with every insurance contract. However, even with their tremendous resources, a material fact concealed by the insured cannot simply be considered by the insurance company. The insurance company may have huge resources, but the law does not require it to be omniscient. On the other hand, when the insured makes a representation, it is incumbent on them to assure themselves that a representation on a material fact is not false; and if it is false, that it is not a fraudulent misrepresentation of a material fact. This returns the burden to insurance companies, which, in general, have more resources than the insured to check the veracity of the insured's beliefs as to a statement of fact. Consciousness in defraudation is imperative and it is for the insurer to show this. There may be a mistaken impression, on

the part of the insured, on the extent to which precision on one's age may alter the calculation of risks with definitiveness. Deliberation attendant to an apparently inaccurate declaration is vital to ascertaining fraud.

3. REMEDIAL LAW; EVIDENCE; FRAUDULENT INTENT CANNOT BE PROVED BY SINGLE PIECE OF EVIDENCE AS IT HARDLY QUALIFIES AS CLEAR AND CONVINCING; HAVING FAILED TO DISCHARGE ITS BURDEN, THE INSURANCE COMPANY IS LIABLE.— Consistent with the requirement of clear and convincing evidence, it was Insular Life's burden to establish the merits of its own case. Relative strength as against respondents' evidence does not suffice. A single piece of evidence hardly qualifies as clear and convincing. Its contents could just as easily have been an isolated mistake. x x x Pleading just one (1) additional document still fails to establish the consistent fraudulent design that was Insular Life's burden to prove by clear and convincing evidence. Insular Life had all the opportunity to demonstrate Alvarez's pattern of consistently indicating erroneous entries for his age. All it needed to do was to inventory the documents submitted by Alvarez and note the statements he made concerning his age. This was not a cumbersome task, yet it failed at it. Its failure to discharge its burden of proving must thwart its plea for relief from this Court.

4. ID.; FORECLOSURE OF MORTGAGE; WHERE THE MORTGAGEE BANK WAS IN A POSITION TO FACILITATE THE INQUIRY ON WHETHER OR NOT A FRAUDULENT DESIGN HAD BEEN EFFECTED SO AS TO VERIFY INSURER'S PROTESTATION OVER SUPPOSEDLY FALSE DECLARATIONS BUT STOOD IDLY, PASSIVE AND INDIFFERENT, IT CANNOT BE ALLOWED TO PROFIT; ITS FORECLOSURE OF THE INSURED'S PROPERTY MUST BE ANNULLED.— UnionBank was the indispensable nexus between Alvarez and Insular Life. Not only was it well in a position to address any erroneous information transmitted to Insular Life, it was also in its best interest to do so. After all, payments by the insurer relieve it of the otherwise burdensome ordeal of foreclosing a mortgage. This is not to say that UnionBank was the consummate guardian of the veracity and accuracy of Alvarez's representations. It is merely to say that given the circumstances,

considering Insular Life's protestation over supposedly false declarations, UnionBank was in a position to facilitate the inquiry on whether or not a fraudulent design had been effected. However, rather than actively engaging in an effort to verify, it appears that UnionBank stood idly by, hardly bothering to ascertain if other pieces of evidence in its custody would attest to or belie a fraudulent scheme. UnionBank approved Alvarez's loan and real estate mortgage, and endorsed the mortgage redemption insurance to Insular Life. Fully aware of considerations that could have disqualified Alvarez, it nevertheless acted as though nothing was irregular. It itself acted as if, and therefore represented that, Alvarez was qualified. Yet, when confronted with Insular Life's challenge, it readily abandoned the stance that it had earlier maintained and capitulated to Insular Life's assertion of fraud. UnionBank's headlong succumbing casts doubt on its own confidence in the information in its possession. This, in turn, raises questions on the soundness of the credit investigation and background checks it had conducted prior to approving Alvarez' loan. x x x The foreclosure here may well be a completed intervening occurrence, but *Great Pacific Life*'s leaning to an irremediable supervening event cannot avail. What is involved here is not the mortgagor's medical history, as in *Great Pacific Life*, which the mortgagee bank was otherwise incapable of perfectly ascertaining. Rather, it is merely the mortgagor's age. This information was easily available from and verifiable on several documents. UnionBank's passivity and indifference, even when it was in a prime position to enable a more conscientious consideration, were not just a cause of Insular Life's rescission bereft of clear and convincing proof of a design to defraud, but also, ultimately, of the unjust seizure of Alvarez's property. By this complicity, UnionBank cannot be allowed to profit. Its foreclosure must be annulled.

APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado & Cruz for Insular Life Assurance Co. Ltd.

Office of the General Counsel for Union Bank of the Philippines.

Manuel S. Fonacier, Jr. for respondent Heirs of J.H. Alvarez.

D E C I S I O N

LEONEN, *J.*:

The Insurance Code dispenses with proof of fraudulent intent in cases of rescission due to concealment, but not so in cases of rescission due to false representations. When an abundance of available documentary evidence can be referenced to demonstrate a design to defraud, presenting a singular document with an erroneous entry does not qualify as clear and convincing proof of fraudulent intent. Neither does belatedly invoking just one other document, which was not even authored by the alleged miscreant.

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. 207526,[1] was brought by The Insular Life Assurance Co., Ltd. (Insular Life). The second, docketed as G.R. No. 210156,[2] was brought by Union Bank of the Philippines (UnionBank). These consolidated petitions seek the reversal of the assailed Court of Appeals May 21, 2013 Decision[3] and November 6, 2013 Resolution[4] in CA-G.R. CV No. 91820.

The assailed Court of Appeals May 21, 2013 Decision denied Insular Life's and UnionBank's separate appeals and affirmed the January 29, 2007 Decision[5] of Branch 148, Regional Trial Court, Makati City. The Regional Trial Court ruled in favor

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[1] *Rollo* (G.R. No. 207526), pp. 31-69.

[2] *Rollo* (G.R. No. 210156), pp. 10-27.

[3] *Rollo* (G.R. No. 207526), pp. 70-83. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Amy C. Lazaro-Javier and Victoria Isabel A. Paredes of the Special Fourteenth Division, Court of Appeals, Manila.

[4] *Rollo* (G.R. No. 210156), pp. 42-43. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Amy C. Lazaro-Javier and Victoria Isabel A. Paredes of the Special Fourteenth Division, Court of Appeals, Manila.

[5] *Rollo* (G.R. No. 207526), pp. 694-698. The Decision, docketed as Civil Case No. 01-253, was penned by Judge Oscar B. Pimentel.

of Jose H. Alvarez's (Alvarez) heirs[6] (the Heirs of Alvarez) in their action for specific performance against Insular Life and UnionBank. It ordered compliance with the insurance undertaking on the Group Mortgage Redemption Insurance covering a loan obtained by Alvarez from UnionBank by applying its proceeds as payment for that loan. It also nullified the extrajudicial foreclosure ensuing from the non-payment of Alvarez's loan, and required UnionBank to reconvey title and ownership over the foreclosed property to Alvarez's estate. Lastly, it ordered Insular Life's and UnionBank's payment of attorney's fees and costs of suit.[7]

The assailed Court of Appeals November 6, 2013 Resolution denied UnionBank's Motion for Reconsideration.[8]

Alvarez and his wife, Adelina, owned a residential lot with improvements covered by Transfer Certificate of Title (TCT) No. C-315023 and registered in the Caloocan City Registry of Deeds.[9]

On June 18, 1997, Alvarez applied for and was granted a housing loan by UnionBank in the amount of ₱648,000.00. This loan was secured by a promissory note,[10] a real estate mortgage over the lot,[11] and a mortgage redemption insurance taken on the life of Alvarez with UnionBank as beneficiary. Alvarez was among the mortgagors included in the list of qualified debtors covered by the Group Mortgage Redemption Insurance that UnionBank had with Insular Life.[12]

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[6] The Heirs of Alvarez are Alma V. Alvarez, Gil V. Alvarez, Josefina V. Alvarez, Rufino V. Alvarez, Jim V. Alvarez, Dahlia V. Alvarez, Leni V. Alvarez, Lily V. Alvarez, Frank V. Alvarez, Joey V. Alvarez, Donato V. Alvarez, and Adelina V. Alvarez (see *rollo* [G.R. No. 207526], pp. 95 and 148).

[7] *Rollo* (G.R. No. 207526), p. 73.

[8] *Rollo* (G.R. No. 210156), pp. 44-54.

[9] *Rollo* (G.R. No. 207526), p. 71.

[10] *Id*. at 127.

[11] *Id*. at 759.

[12] *Id*. at 986.

Alvarez passed away on April 17, 1998.[13] In May 1998, UnionBank filed with Insular Life a death claim under Alvarez's name pursuant to the Group Mortgage Redemption Insurance. In line with Insular Life's standard procedures, UnionBank was required to submit documents to support the claim. These included: (1) Alvarez's birth, marriage, and death certificates; (2) the attending physician's statement; (3) the claimant's statement; and (4) Alvarez's statement of account.[14]

Insular Life denied the claim after determining that Alvarez was not eligible for coverage as he was supposedly more than 60 years old at the time of his loan's approval.[15]

With the claim's denial, the monthly amortizations of the loan stood unpaid. UnionBank sent the Heirs of Alvarez a demand letter,[16] giving them 10 days to vacate the lot. Subsequently, on October 4, 1999, the lot was foreclosed and sold at a public auction with UnionBank as the highest bidder.[17]

On February 14, 2001, the Heirs of Alvarez filed a Complaint[18] for Declaration of Nullity of Contract and Damages against UnionBank, a certain Alfonso P. Miranda (Miranda), who supposedly benefitted from the loan, and the insurer which was identified only as John Doe.[19] The Heirs of Alvarez denied knowledge of any loan obtained by Alvarez.[20]

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[13] *Id*. at 86.

[14] *Id*. at 986-987.

[15] *Id*. at 987.

[16] In the Court of Appeals May 21, 2013 Decision, it states that this demand letter is dated January 15, 2001. However, this date is later than the foreclosure date of October 4, 1999 (see *rollo* [G.R. 207526]).

[17] *Rollo* (G.R. No. 207526), p. 71.

[18] *Id*. at 85-95.

[19] *Id*. at 85. The Heirs of Alvarez had yet to identify Insular Life as the insurer at this point.

[20] *Id*. at 87-88.

The Heirs of Alvarez claimed that after Alvarez's death, they came upon a document captioned "Letter of Undertaking," which appeared to have been sent by UnionBank to Miranda. In this document, UnionBank bound itself to deliver to Miranda ₱466,000.00 of the approved ₱648,000.00 housing loan, provided that Miranda would deliver to it TCT No. C-315023, "free from any liens and/or encumbrances."[21]

The Complaint was later amended and converted into one for specific performance[22] to include a demand against Insular Life to fulfill its obligation as an insurer under the Group Mortgage Redemption Insurance.[23]

In its defense, UnionBank asserted that the Heirs of Alvarez could not feign ignorance over the existence of the loan and mortgage considering the Special Power of Attorney[24] executed by Adelina in favor of her late husband, which authorized him to apply for a housing loan with UnionBank.[25]

For its part, Insular Life maintained that based on the documents submitted by UnionBank, Alvarez was no longer eligible under the Group Mortgage Redemption Insurance since he was more than 60 years old when his loan was approved.[26]

In its January 29, 2007 Decision,[27] the Regional Trial Court ruled in favor of the Heirs of Alvarez. It found no indication that Alvarez had any fraudulent intent when he gave UnionBank information about his age and date of birth. It explained that UnionBank initiated and negotiated the Group Mortgage Redemption Insurance with Insular Life, and that "ordinary

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[21] *Id*. at 87.

[22] *Id*. at 138-148.

[23] *Id*. at 72.

[24] *Id*. at 128.

[25] *Id*. at 72.

[26] *Id*.

[27] *Id*. at 633-637.

customers will not know about [insurance policies such as this] unless it is brought to their knowledge by the bank."[28] It noted that if UnionBank's personnel were mindful of their duties and if Alvarez appeared to be disqualified for the insurance, they should have immediately informed him of his disqualification. It emphasized that in evaluating Alvarez's worthiness for the loan, UnionBank had been in possession of materials sufficient to inform itself of Alvarez's personal circumstances. It added that if Insular Life had any doubt on the information that UnionBank had provided, it should have inquired further instead of relying solely on the information readily available to it and immediately refusing to pay.[29]

The dispositive portion of the Regional Trial Court's January 29, 2007 Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants order (sic):
>
> 1. Defendants to comply with the insurance undertaking under Mortgage Redemption Insurance Policy No. G-098496 by paying its proceeds to be applied as payment of the outstanding loan obligation of deceased Jose H. Alvarez with defendant Union Bank;
>
> 2. The extrajudicial foreclosure of the real estate mortgage over Jose H. Alvarez's TCT No. C-315023 a nullity and without legal force and effect and to release the mortgage encumbrance thereon;
>
> 3. Defendant Union Bank to reconvey the title and ownership over TCT No. C-315023 to the Estate of the deceased Jose H. Alvarez for the benefit of his heirs and successors-in-interest;
>
> 4. Defendants jointly and severally to pay the plaintiffs the sum of ₱50,000.00 as and for attorney's fees;
>
> 5. Defendants jointly and severally to pay the costs of the suit.
>
> SO ORDERED.[30]

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[28] *Id*. at 635.

[29] *Id*. at 635-636.

[30] *Id*. at 637.

UnionBank[31] and Insular Life[32] filed separate appeals before the Court of Appeals.

In its assailed May 21, 2013 Decision,[33] the Court of Appeals affirmed the Regional Trial Court's ruling. It noted that the errors assigned by Insular Life and UnionBank to the Regional Trial Court boiled down to the issue of whether or not Alvarez was guilty of fraudulent misrepresentation as to warrant the rescission of the Group Mortgage Redemption Insurance obtained by UnionBank on Alvarez's life. It explained that fraud is never presumed and fraudulent misrepresentation as a defense of the insurer to avoid liability must be established by convincing evidence. Insular Life, in this case, failed to establish this defense. It only relied on Alvarez's Health Statement Form where he wrote "1942" as his birth year. However, this form alone was insufficient to prove that he fraudulently intended to misrepresent his age. It noted that aside from the Health Statement Form, Alvarez had to fill out an application for insurance. This application would have supported the conclusion that he consistently wrote "1942" in all the documents that he had submitted to UnionBank. However, the records made no reference to this document.[34]

The Court of Appeals added that assuming that fraudulent misrepresentation entitled Insular Life to rescind the contract, it should have first complied with certain conditions before it could exercise its right to rescind. The conditions were:

> (1) prior notice of cancellation to [the] insured; (2) notice must be based on the occurrence after effective date of the policy of one or more grounds mentioned; (3) must be in writing, mailed or delivered to the insured at the address shown in the policy; and (4) must state the grounds relied upon provided in Section 64 of the Insurance Code

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[31] *Rollo* (G.R. No. 210156), p. 15.

[32] *Rollo* (G.R. No. 207526), pp. 638-639.

[33] *Id*. at 70-83.

[34] *Id*. at 80.

and upon [the] request of [the] insured, to furnish facts on which cancellation is based.[35]

None of these conditions were fulfilled. Finally, the letter of denial dated April 8, 1999 was furnished only to UnionBank.[36]

Insular Life opted to directly appeal before this Court. Its appeal was docketed as G.R. No. 207526.[37] UnionBank, on the other hand, filed its Motion for Reconsideration (of the Decision dated May 21, 2013),[38] which the Court of Appeals denied in its November 6, 2013 Resolution.[39] UnionBank then filed before this Court its Petition, docketed as G.R. No. 210156.[40]

In its March 12, 2014 Resolution, this Court consolidated Insular Life's and UnionBank's Petitions.[41]

In response to the Court of Appeals' reasoning that intent to defraud must be established, Insular Life pinpoints concealment, rather than fraudulent misrepresentation, as the key to the validity of its rescission. It asserts that Alvarez's concealment of his age, whether intentional or unintentional, entitles it to rescind the insurance contract.[42] It claims that proof of fraudulent intent is not necessary for the insurer to rescind the contract on account of concealment.[43] It adds that it did not rely solely on Alvarez's Health Statement Form but also on his representations during the background check conducted by UnionBank where he said

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[35] *Id*. at 81.

[36] *Id*. at 82.

[37] *Id*. at 31.

[38] *Rollo* (G.R. No. 210156), pp. 44-54.

[39] *Id*. at 42-43.

[40] *Id*. at 10-27.

[41] *Rollo* (G.R. No. 207526), pp. 900-900-A.

[42] INS. CODE, Sec. 27 provides:

Section 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance.

[43] *Rollo* (G.R. No. 207526), pp. 41-42.

that he was only 55 years old at the time of application. As an insurance contract is a contract *uberrima fides*, it claims that it has every right to rely on Alvarez's good faith in its dealing with him.[44]

UnionBank claims that the real estate mortgage is not affected by the status of the Group Mortgage Redemption Insurance as they are two (2) different contracts. Thus, any concealment made by Alvarez should not result in the invalidation of the foreclosure.[45]

For this Court's resolution are the following issues:

First, whether or not petitioner The Insular Life Assurance Co., Ltd. is obliged to pay Union Bank of the Philippines the balance of Jose H. Alvarez's loan given the claim that he lied about his age at the time of the approval of his loan; and

Second, whether or not petitioner Union Bank of the Philippines was correct in proceeding with the foreclosure following Insular Life Assurance Co., Ltd.'s refusal to pay.

I.A

Fraud is not to be presumed, for "otherwise, courts would be indulging in speculations and surmises."[46] Moreover, it is not to be established lightly. Rather, "[i]t must be established by clear and convincing evidence . . . [; a] mere preponderance of evidence is not even adequate to prove fraud."[47] These precepts hold true when allegations of fraud are raised as grounds justifying the invalidation of contracts, as the fraud committed by a party tends to vitiate the other party's consent.[48]

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[44] *Id*. at 45.

[45] *Rollo* (G.R. No. 210156), pp. 17-18.

[46] *Maestrado v. Court of Appeals*, 384 Phil. 418, 435 (2000) [Per *J*. De Leon, Jr., Second Division], citing *Westmont Bank v. Shugo Noda and Co., Ltd*., 366 Phil. 849 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

[47] *Id*., citing *Palmares v. Court of Appeals*, 351 Phil. 664 (1998) [Per *J*. Regalado, Second Division].

[48] In *Maestrado v. Court of Appeals*, 384 Phil. 418, 435 (2000) [Per *J*. De Leon, Jr., Second Division]:

Citing Section 27 of the Insurance Code, however, Insular Life asserts that in cases of rescission due to concealment, i.e., when a party "neglect[s] to communicate that which [he or she] knows and ought to communicate,"[49] proof of fraudulent intent is not necessary.[50]

Section 27 reads:

> Section 27. A concealment *whether intentional or unintentional* entitles the injured party to rescind a contract of insurance. (Emphasis supplied)

The statutory text is unequivocal. Insular Life correctly notes that proof of fraudulent intent is unnecessary for the rescission of an insurance contract on account of concealment.

This is neither because intent to defraud is intrinsically irrelevant in concealment, nor because concealment has nothing to do with fraud. To the contrary, it is because in insurance contracts, concealing material facts[51] is inherently fraudulent:

Dolo causante or fraud which attends the execution of a contract is an essential cause that vitiates consent and hence, it is a ground for the annulment of a contract. Fraud is never presumed, otherwise, courts would be indulging in speculations and surmises. It must be established by clear and convincing evidence but it was not so in the case at bench. A mere preponderance of evidence is not even adequate to prove fraud. (Citations omitted)

[49] INS. CODE, Sec. 26:

> Section 26. A neglect to communicate that which a party knows and ought to communicate, is called a concealment.

[50] *Rollo* (G.R. No. 207526), pp. 41-42.

[51] While Section 27 negates the distinction between intentional and unintentional concealments, the consideration of materiality remains pivotal. On materiality *vis-à-vis* concealment, Sections 28 and 31 of the Insurance Code state:

> Section 28. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining.
>
> . . . . . .
>
> Section 31. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to

"if a material fact is actually known to the [insured], its concealment must of itself necessarily be a fraud."[52] When one knows a material fact and conceals it, "it is difficult to see how the inference of a fraudulent intent or intentional concealment can be avoided."[53] Thus, a concealment, regardless of actual intent to defraud, "is equivalent to a false representation."[54]

This Court has long settled this equivalence. *Argente v. West Coast Life Insurance*,[55] quoting heavily from Joyce's The Law of Insurance, explained how concealment of material facts in insurance contracts is tantamount to causal fraud,[56] deceptively inducing an insurer into "accepting the risk, or accepting it at the rate of premium agreed upon."[57] *Argente* explained:

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whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

[52] 3 JOYCE, *THE LAW ON INSURANCE Ch. LV* (2nd ed.), as quoted in *Argente v. West Coast Life Insurance Co*., 51 Phil. 725, 731 (1928) [Per *J*. Malcolm, *En Banc*].

[53] 3 JOYCE, *THE LAW ON INSURANCE Ch. LV* (2nd ed.), as quoted in *Argente v. West Coast Life Insurance Co*., 51 Phil. 725, 732 (1928) [Per *J*. Malcolm, *En Banc*].

[54] 3 JOYCE, *THE LAW ON INSURANCE Ch. LV* (2nd ed.), as quoted in *Argente v. West Coast Life Insurance Co*., 51 Phil. 725, 732 (1928) [Per *J*. Malcolm, *En Banc*].

[55] 51 Phil. 725 (1928) [Per *J*. Malcolm, *En Banc*].

[56] On causal fraud, *Tankeh v. Development Bank of the Philippines*, 720 Phil. 641 (2013) [Per *J*. Leonen, Third Division], as cited in *Poole-Blunden v. Union Bank of the Philippines*, G.R. No. 205838, November 29, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/205838.pdf> 8 [Per *J*. Leonen, Third Division], explained:

"There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable." The fraud required to annul or avoid a contract "must be so material that had it not been present, the defrauded party would not have entered into the contract." The fraud must be "the determining cause of the contract, or must have caused the consent to be given."

[57] *Argente v. West Coast Life Insurance Co*., 51 Phil. 725, 732 (1928) [Per *J*. Malcolm, *En Banc*]. See also *Musngi v. West Coast Life Insurance,* 61 Phil. 864, 868-870 (1935) [Per *J*. Imperial, *En Banc*].

One ground for the rescission of a contract of insurance under the Insurance Act is "a concealment," which in section 25 is defined as "A neglect to communicate that which a party knows and ought to communicate." Appellant argues that the alleged concealment was immaterial and insufficient to avoid the policy. We cannot agree. . . . If the policy was procured by fraudulent representations, the contract of insurance apparently set forth therein was never legally existent. It can fairly be assumed that had the true facts been disclosed by the assured, the insurance would never have been granted.

In Joyce, The Law of Insurance, second edition, volume 3, Chapter LV, is found the following:

> Concealment exists where the assured has knowledge of a fact material to the risk, and honesty, good faith, and fair dealing requires that he should communicate it to the assured, but he designedly and intentionally withholds the same.
>
> Another rule is that if the assured undertakes to state all the circumstances affecting the risk, a full and fair statement of all is required.
>
> It is also held that the concealment must, in the absence of inquiries, be not only material, but fraudulent, or the fact must have been intentionally withheld; so it is held under English law that if no inquiries are made and no fraud or design to conceal enters into the concealment the contract is not avoided. And it is determined that even though silence may constitute misrepresentation or concealment it is not of itself necessarily so as it is a question of fact. Nor is there a concealment justifying a forfeiture where the fact of insanity is not disclosed no questions being asked concerning the same. . . .
>
> *But it would seem that if a material fact is actually known to the assured, its concealment must of itself necessarily be a fraud*, and if the fact is one which the assured ought to know, or is presumed to know, the presumption of knowledge ought to place the assured in the same position as in the former case with relation to material facts; and if the jury in such cases find the fact material, and one tending to increase the risk, it is difficult to see how the inference of a fraudulent intent or intentional concealment can be avoided. And it is declared that if a material fact is concealed by assured it is equivalent to a false representation that it does not exist and that the

essentials are the truth of the representations whether they were intended to mislead and did insurer accept them as true and act upon them to his prejudice. So it is decided that under a stipulation voiding the policy for concealment or misrepresentation of any material fact or if his interest is not truly stated or is other than the sole and unconditional ownership the facts are unimportant that insured did not intend to deceive or withhold information as to encumbrances even though no questions were asked. And if insured while being examined for life insurance and knowing that she had heart disease, falsely stated that she was in good health, and though she could not read the application, it was explained to her and the questions asked through an interpreter, and the application like the policy contained a provision that no liability should be incurred unless the policy was delivered while the insured was in good health, the court properly directed a verdict for the insurer, though a witness who was present at the examination testified that the insured was not asked whether she had heart disease.

. . . . . .

The basis of the rule vitiating the contract in cases of concealment is that it misleads or deceives the insurer into accepting the risk, or accepting it at the rate of premium agreed upon; The insurer, relying upon the belief that the assured will disclose every material fact within his actual or presumed knowledge, is misled into a belief that the circumstance withheld does not exist, and he is thereby induced to estimate the risk upon a false basis that it does not exist. The principal question, therefore, must be, Was the assurer misled or deceived into entering a contract obligation or in fixing the premium of insurance by a withholding of material information or facts within the assured's knowledge or presumed knowledge?

It therefore follows that the assurer in assuming a risk is entitled to know every material fact of which the assured has exclusive or peculiar knowledge, as well as all material facts which directly tend to increase the hazard or risk which are known by the assured, or which ought to be or are presumed to be known by him. And a concealment of such facts vitiates the policy. *"It does not seem to be necessary . . . that the . . . suppression of the truth should have been willful." If it were but an inadvertent omission, yet if it were material to the*

> *risk and such as the plaintiff should have known to be so, it would render the policy void*. But it is held that if untrue or false answers are given in response to inquiries and they relate to material facts the policy is avoided without regard to the knowledge or fraud of assured, although under the statute statements are representations which must be fraudulent to avoid the policy. So under certain codes the important inquiries are whether the concealment was willful and related to a matter material to the risk.[58] (Emphasis supplied)

Echoing *Argente*, *Saturnino v. Philippine American Life Insurance Co*.[59] stated:

> In this jurisdiction, a concealment, whether intentional or unintentional, entitles the insurer to rescind the contract of insurance, concealment being defined as "negligence to communicate that which a party knows and ought to communicate" (Sections 25 & 26, Act No. 2427). In the case of *Argente vs. West Coast Life Insurance Co.*, 51 Phil. 725, 732, this Court said, quoting from Joyce, The Law of Insurance, 2nd ed. Vol. 3:
>
> > The basis of the rule vitiating the contract in cases of concealment is that it misleads or deceives the insurer into accepting the risk, or accepting it at the rate of premium agreed upon. The insurer, relying upon the belief that the assured will disclose every material fact within his actual or presumed knowledge, is misled into a belief that the circumstance withheld does not exist, and he is thereby induced to estimate the risk upon a false basis that it does not exist.[60]

In *Vda. de Canilang v. Court of Appeals*,[61] this Court considered an alternative version of Section 27, i.e., prior to the Insurance Code's amendment by Batas Pambansa Blg. 874, which omitted the qualifier "whether intentional or unintentional." *Vda. de Canilang* clarified that even without this qualifier, Section 27

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[58] *Id*. at 731-733.

[59] 117 Phil. 330 (1963) [Per *J*. Makalintal, *En Banc*].

[60] *Id*. at 334-335.

[61] 295 Phil. 501 (1993) [Per *J*. Feliciano, Third Division].

still covers "'*any* concealment' without regard to whether such concealment is intentional or unintentional,"[62] thus:

> The Insurance Commissioner had also ruled that the failure of Great Pacific to convey certain information to the insurer was not "intentional" in nature, for the reason that Jaime Canilang believed that he was suffering from minor ailment like a common cold. Section 27 of the Insurance Code of 1978 as it existed from 1974 up to 1985, that is, throughout the time range material for present purposes, provided that:
>
> Sec. 27. A concealment entitles the injured party to rescind a contract of insurance.
>
> The *preceding* statute, Act No. 2427, as it stood from 1914 up to 1974, had provided:
>
> Sec. 26. A concealment, *whether intentional or unintentional*, entitles the injured party to rescind a contract of insurance.
>
> Upon the other hand, in 1985, the Insurance Code of 1978 was amended by B.P. Blg. 874. This subsequent statute modified Section 27 of the Insurance Code of 1978 so as to read as follows:
>
> Sec. 27. A concealment *whether intentional or unintentional* entitles the injured party to rescind a contract of insurance.
>
> The unspoken theory of the Insurance Commissioner appears to have been that by deleting the phrase "intentional or unintentional," the Insurance Code of 1978 (prior to its amendment by B.P. Blg. 874) intended to limit the kinds of concealment which generate a right to rescind on the part of the injured party to "intentional concealments." This argument is not persuasive. As a simple matter of grammar, it may be noted that "intentional" and "unintentional" cancel each other out. The net result therefore of the phrase "whether intentional or unintentional" is precisely to leave unqualified the term "concealment." Thus, *Section 27 of the Insurance Code of 1978 is properly read as referring to "any concealment" without regard to whether such concealment is intentional or unintentional. The phrase "whether intentional or unintentional" was in fact superfluous. The deletion of the phrase "whether intentional or unintentional" could not have had the effect of imposing an affirmative requirement*

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[62] *Id*. at 510.

that a concealment must be intentional if it is to entitle the injured party to rescind a contract of insurance. The restoration in 1985 by B.P. Blg. 874 of the phrase "whether intentional or unintentional" merely underscored the fact that all throughout (from 1914 to 1985), the statute did not require proof that concealment must be "intentional" in order to authorize rescission by the injured party.[63] (Emphasis supplied)

Following *Vda. de Canilang*, this Court was categorical in *Sunlife Assurance Co. of Canada v. Court of Appeals*:[64] "'good faith' is no defense in concealment."[65]

I.B

It does not escape this Court's attention that there have been decisions that maintained that in cases of concealment, "fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract."[66] However, these decisions proceed from an inordinately segregated reading of *Argente* and have not been heedful of plain statutory text. While focusing on the equivalence between concealment and false representation, they fail to account for the manifest textual peculiarity whereby the negation of distinctions between intentional and unintentional acts is found only in Section 27, the provision concerning rescission due to concealment, but not in the counterpart provision concerning false representations.[67]

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[63] *Vda. de Canilang v. Court of Appeals,* 295 Phil. 501, 509-510 (1993) [Per *J.* Feliciano, Third Division].

[64] 315 Phil. 270 (1995) [Per *J.* Quiason, First Division].

[65] *Id*. at 276, citing *Vda. de Canilang v. Court of Appeals,* 295 Phil. 501, 509-510 (1993) [Per *J.* Feliciano, Third Division].

[66] See *Great Pacific Insurance v. Court of Appeals*, 375 Phil. 142 (1999) [Per *J.* Quisumbing, Second Division]; and *Ng Gan Zee v. Asian Crusader Life*, 207 Phil. 401 (1983) [Per *J.* Escolin, Second Division].

[67] The counterpart provision for false representations is Section 45 of the Insurance Code. It reads:

Section 45. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Ng Gan Zee v. Asian Crusader Life,[68] decided in 1983, stated:

Section 27 of the Insurance Law [Act 2427] provides:

> Sec. 27. Such party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

Thus, "concealment exists where the assured had knowledge of a fact material to the risk, and honesty, good faith, and fair dealing requires that he should communicate it to the assurer, but he designedly and intentionally withholds the same."

It has also been held "that the concealment must, in the absence of inquiries, be not only material, but fraudulent, or the fact must have been intentionally withheld."

Assuming that the aforesaid answer given by the insured is false, as claimed by the appellant. Sec. 27 of the Insurance Law, above-quoted, nevertheless requires that fraudulent intent on the part of the insured be established to entitle the insurer to rescind the contract. And as correctly observed by the lower court, "misrepresentation as a defense of the insurer to avoid liability is an 'affirmative' defense. The duty to establish such a defense by satisfactory and convincing evidence rests upon the defendant. The evidence before the Court does not clearly and satisfactorily establish that defense."[69] (Emphasis supplied)

Ng Gan Zee makes a fundamental error in interpretation.

Ng Gan Zee's fourth footnote purports that the phrase quoted in the italicized paragraph was from *Argente*.[70] While the phrase indeed appears in *Argente*, it is not *Argente* itself which stated the quoted phrase; rather, it was Joyce's The Law of Insurance.

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[68] 207 Phil. 401 (1983) [Per *J.* Escolin, Second Division].

[69] *Ng Gan Zee v. Asian Crusader Life Assurance Corp.,* 207 Phil. 401, 406 (1983) [Per *J.* Escolin, Second Division], *citing* Pres. Decree No. 612, Sec. 28 and *Argente v. West Coast Life Insurance Co*., 51 Phil. 725, 731-733 (1928) [Per *J.* Malcolm, *En Banc*].

[70] *Id*.

In any case, *Ng Gan Zee* limited itself to a brief quote from Joyce. It discarded much of the discussion that *Argente* lifted from Joyce. Most notably, it discarded the portion where Joyce explained that concealment is necessarily fraudulent when the matter that was concealed is "a material fact . . . actually known to the [insured]."[71] Thus, *Ng Gan Zee* omitted the discussion explaining and accounting for why proof of actual fraudulent intent may be dispensed with in cases of concealment, i.e., that concealment of material facts is fraudulent in and of itself. Contrast this with *Saturnino* which, though also quoting only briefly from *Argente* and Joyce, did not cursorily focus on the equivalence between concealment and false representations, but rather on the underlying reason for this equivalence. *Ng Gan Zee* focused on the result, i.e., equivalence, without accounting for the cause.

In like manner as *Ng Gan Zee*, *Great Pacific Life v. Court of Appeals*[72] stated:

> The second assigned error refers to an alleged concealment that the petitioner interposed as its defense to annul the insurance contract. Petitioner contends that Dr. Leuterio failed to disclose that he had hypertension, which might have caused his death. Concealment exists where the assured had knowledge of a fact material to the risk, and honesty, good faith, and fair dealing requires that he should communicate it to the assured, but he *designedly and intentionally withholds* the same.
>
> . . . . . .
>
> The fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract. Misrepresentation as a defense of the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the insurer. In the case at bar, the petitioner

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[71] 3 JOYCE, *THE LAW ON INSURANCE* Ch. LV (2nd ed.), as quoted in *Argente v. West Coast Life Insurance Co*., 51 Phil. 725, 731 (1928) [Per *J*. Malcolm, *En Banc*].

[72] 375 Phil. 142 (1999) [Per *J*. Quisumbing, Second Division].

failed to clearly and satisfactorily establish its defense, and is therefore liable to pay the proceeds of the insurance.[73] (Emphasis supplied)

So too, *Philamcare Health Systems, Inc. v. Court of Appeals*[74] stated:

> The fraudulent intent on the part of the insured must be established to warrant rescission of the insurance contract. *Concealment* as a defense for the health care provider or insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the provider or insurer.[75] (Emphasis supplied)

Great Pacific Life and *Philamcare* perpetuate *Ng Gan Zee*'s unfortunate error.

Of the two (2) paragraphs this Court quoted from *Great Pacific Life*, the first cites *Argente*.[76] Much like *Ng Gan Zee*, it quotes an isolated portion of Joyce but fails to account for that part of Joyce's discussion that explains how fraud inheres in concealment. The last sentence in this first quoted paragraph merely reproduces the first paragraph that *Argente* lifted from Joyce. The second quoted paragraph cites *Ng Gan Zee*[77] and confounds concealment with misrepresentation.

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[73] *Id*. at 150-152, citing *Argente v. West Coast Life Insurance Co*., 51 Phil. 725 (1928) [Per *J*. Malcolm, *En Banc*] and *Ng Gan Zee v. Asian Crusader Life Assurance Corp.,* 207 Phil. 401 (1983) [Per *J*. Escolin, Second Division].

[74] 429 Phil. 82 (2002) [Per *J*. Ynares-Santiago, First Division].

[75] *Id*. at 92, citing *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142 (1999) [Per *J*. Quisumbing, Second Division] and *Ng Gan Zee v. Asian Crusader Life Assurance Corp.,* 207 Phil. 401 (1983) [Per *J*. Escolin, Second Division].

[76] See footnote 15 of *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142, 150 (1999) [Per *J*. Quisumbing, Second Division].

[77] See footnotes 18 and 19 of *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142, 152 (1999) [Per *J*. Quisumbing, Second Division].

The first sentence of the quoted paragraph from *Philamcare* cites *Great Pacific Life* and *Ng Gan Zee*.[78] At this juncture, a contagion of *Ng Gan Zee*'s error can be observed.

More than misreading *Argente* and Joyce, *Ng Gan Zee*, *Great Pacific Life*, and *Philamcare* contradict Section 27's plain text. The statute's clear and unmistakable text must prevail. For purposes of rescission, Section 27 of the Insurance Code unequivocally negates any distinction between intentional and unintentional concealments. Pronouncements in jurisprudence cannot undermine this explicit legislative intent.

I.C

While Insular Life correctly reads Section 27 as making no distinction between intentional and unintentional concealment, it erroneously pleads Section 27 as the proper statutory anchor of this case.

The Insurance Code distinguishes representations from concealments. Chapter 1, Title 4 is on concealments. It spans Sections 26 to 35 of the Insurance Code;[79] it is where Section 27

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[78] See footnote 16 of *Philamcare Health Systems, Inc. v. Court of Appeals*, 429 Phil. 82, 92 (2002) [Per *J.* Ynares-Santiago, First Division].

[79] INS. CODE, Title 4, as amended by Rep. Act No. 10607, provides:

Title 4

Concealment

Section 26. A neglect to communicate that which a party knows and ought to communicate, is called a concealment.

Section 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance.

Section 28. Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining.

Section 29. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

Section 30. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

is found. Chapter 1, Title 5 is on representations. It spans Sections 36 to 48 of the Insurance Code.[80]

(a) Those which the other knows;

(b) Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;

(c) Those of which the other waives communication;

(d) Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and

(e) Those which relate to a risk excepted from the policy and which are not otherwise material.

Section 31. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

Section 32. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect the political or material perils contemplated; and all general usages of trade.

Section 33. The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiry as to such facts, where they are distinctly implied in other facts of which information is communicated.

Section 34. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by Section 51.

Section 35. Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

[80] INS. CODE, Title 5, as amended by Rep. Act No. 10607, provides:

TITLE 5

Representation

Section 36. A representation may be oral or written.

Section 37. A representation may be made at the time of, or before, issuance of the policy.

Section 38. The language of a representation is to be interpreted by the same rules as the language of contracts in general.

Section 39. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

Section 26 defines concealment as "[a] *neglect to communicate* that which a party knows and ought to communicate." However, Alvarez did not withhold information on or neglect to state his age. He made an actual declaration and assertion about it.

What this case involves, instead, is an allegedly false representation. Section 44 of the Insurance Code states, "A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations." If indeed Alvarez misdeclared

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Section 40. A representation cannot qualify an express provision in a contract of insurance, but it may qualify an implied warranty.

Section 41. A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Section 42. A representation must be presumed to refer to the date on which the contract goes into effect.

Section 43. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others; or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the information.

Section 44. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

Section 45. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Section 46. The materiality of a representation is determined by the same rules as the materiality of a concealment.

Section 47. The provisions of this chapter apply as well to a modification of a contract of insurance as to its original formation.

Section 48. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract.

After a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of two (2) years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void *ab initio* or is rescindable by reason of the fraudulent concealment or misrepresentation of the insured or his agent.

his age such that his assertion fails to correspond with his factual age, he made a false representation, not a concealment.

At no point does Chapter 1, Title 5 of the Insurance Code replicate Section 27's language negating the distinction between intentional and unintentional concealment. Section 45 is Chapter 1, Title 5's counterpart provision to Section 27, and concerns rescission due to false representations. It reads:

> Section 45. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Not being similarly qualified as rescission under Section 27, rescission under Section 45 remains subject to the basic precept of fraud having to be proven by clear and convincing evidence. In this respect, *Ng Gan Zee*'s and similar cases' pronouncements on the need for proof of fraudulent intent in cases of misrepresentation are logically sound, albeit the specific reference to *Argente* as ultimate authority is misplaced. Thus, while *Great Pacific Life* confounded concealment with misrepresentation by its citation of *Ng Gan Zee*, it nevertheless acceptably stated that:

> The fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract. Misrepresentation as a defense of the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the insurer.[81]

Conformably, subsequent fraud cases citing *Great Pacific Life* which do not exclusively concern concealment rightly maintain that "[f]raudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract."[82]

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[81] *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142, 150-152 (1999) [Per *J.* Quisumbing, Second Division], citing *Argente v. West Coast Life Insurance Co*., 51 Phil. 725 (1928) [Per *J.* Malcolm, *En Banc*]; and *Ng Gan Zee v. Asian Crusader Life Assurance Corp.,* 207 Phil. 401 (1983) [Per *J.* Escolin, Second Division].

[82] *Manila Bankers Life Insurance Corp. v. Aban*, 715 Phil. 404, 415 (2013) [Per *J.* Del Castillo, Second Division], citing *Great Pacific Life*

To illustrate, *Manila Bankers Life Insurance Corp. v. Aban*[83] was correct in explaining:

> With the above crucial finding of fact — that it was Sotero who obtained the insurance for herself — petitioner's case is severely weakened, if not totally disproved. Allegations of fraud, which are predicated on respondent's alleged posing as Sotero and forgery of her signature in the insurance application, are at once belied by the trial and appellate courts' finding that Sotero herself took out the insurance for herself. "Fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract." In the absence of proof of such fraudulent intent, no right to rescind arises.[84]

Concealment applies only with respect to material facts. That is, those facts which by their nature would clearly, unequivocally, and logically be known by the insured as necessary for the insurer to calculate the proper risks.

The absence of the requirement of intention definitely increases the onus on the insured. Between the insured and the insurer, it is true that the latter may have more resources to evaluate risks. Insurance companies are imbued with public trust in the sense that they have the obligation to ensure that they will be able to provide succor to those that enter into contracts with them by being both frugal and, at the same time, diligent in their assessment of the risk which they take with every insurance contract. However, even with their tremendous resources, a material fact concealed by the insured cannot simply be considered by the insurance company. The insurance company may have huge resources, but the law does not require it to be omniscient.

On the other hand, when the insured makes a representation, it is incumbent on them to assure themselves that a representation

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Assurance v. Court of Appeals, 375 Phil. 142, 150-152 (1999) [Per *J.* Quisumbing, Second Division].

[83] 715 Phil. 404 (2013) [Per *J.* Del Castillo, Second Division].

[84] *Id*. at 414-415, citing *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142, 150-152 (1999) [Per *J.* Quisumbing, Second Division].

on a material fact is not false; and if it is false, that it is not a fraudulent misrepresentation of a material fact. This returns the burden to insurance companies, which, in general, have more resources than the insured to check the veracity of the insured's beliefs as to a statement of fact. Consciousness in defraudation is imperative and it is for the insurer to show this.

There may be a mistaken impression, on the part of the insured, on the extent to which precision on one's age may alter the calculation of risks with definitiveness. Deliberation attendant to an apparently inaccurate declaration is vital to ascertaining fraud.

I.D

Spouses Manalo v. Roldan-Confesor[85] explained what qualifies as clear and convincing proof:

> Clear and convincing proof is ". . . more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases . . ." while substantial evidence ". . . consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance . . ." Consequently, in the hierarchy of evidentiary values, We find proof beyond reasonable doubt at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order.[86]

The assailed Court of Appeals May 21, 2013 Decision discussed the evidentiary deficiency in Insular Life's cause, i.e., how it relied on nothing but a single piece of evidence to prove fraudulent intent:

> At bar, Insular Life basically relied on the Health Statement form personally accomplished by Jose Alvarez wherein he wrote that his birth year was 1942. However, such form alone is not sufficient absent any other indications that he purposely wrote 1942 as his birth year. It should be pointed out that, apart from a health statement

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[85] 290 Phil. 311 (1992) [Per *J.* Bellosillo, First Division].

[86] *Id*. at 323, citing *Black's Law Dictionary*, 5th Ed., pp. 227 and 1281.

form, an application for insurance is required first and foremost to be answered and filled-up. However, the records are deficient of this application which would eventually depict to Us Jose Alvarez's fraudulent intent to misrepresent his age. For, if he continually written (sic) 1942 in all the documents he submitted with UBP and Insular Life then there is really a clear precursor of his fraudulent intent. Otherwise, a mere Health Statement form bearing a wrong birth year should not be relied at.

As aptly pointed out by the court *a quo*:

. . . . . .

> If the defendant Insular Life had any doubt about the information, particularly the data which are material to the risk, such as the age of the insured, which defendant Union Bank provided, it is not justified for the insurer to rely solely therefrom, but it is obligated under the circumstances to make further inquiry. . . .[87]

The Court of Appeals' observations are well-taken. Consistent with the requirement of clear and convincing evidence, it was Insular Life's burden to establish the merits of its own case. Relative strength as against respondents' evidence does not suffice.

A single piece of evidence hardly qualifies as clear and convincing. Its contents could just as easily have been an isolated mistake.

Alvarez must have accomplished and submitted many other documents when he applied for the housing loan and executed supporting instruments like the promissory note, real estate mortgage, and Group Mortgage Redemption Insurance. A design to defraud would have demanded his consistency. He needed to maintain appearances across all documents. Otherwise, he would doom his own ruse.

He needed to have been consistent, not only before Insular Life, but even before UnionBank. Even as it was only Insular

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[87] *Rollo* (G.R. No. 207526), pp. 80-81.

Life's approval that was at stake with the Group Mortgage Redemption Insurance, Alvarez must have realized that as it was an accessory agreement to his housing loan with UnionBank. Insular Life was well in a position to verify information, whether through simple cross referencing or through concerted queries with UnionBank.

Despite these circumstances, the best that Insular Life could come up with before the Regional Trial Court and the Court of Appeals was a single document. The Court of Appeals was straightforward, i.e., the most basic document that Alvarez accomplished in relation to Insular Life must have been an insurance application form. Strangely, Insular Life failed to adduce even this document—a piece of evidence that was not only commonsensical, but also one which has always been in its possession and disposal.

Even now, before this Court, Insular Life has been unable to address the importuning for it to account for Alvarez's insurance application form. Given the basic presumption under our rules on evidence "[t]hat evidence willfully suppressed would be adverse if produced,"[88] this raises doubts, perhaps not entirely on Insular Life's good faith, but, at the very least, on the certainty and confidence it has in its own evidence.

Rather than demonstrate Alvarez's consistent fraudulent design, Insular Life comes before this Court pleading nothing but just one other instance when Alvarez supposedly declared himself to have been 55 years old. It claims that it did not rely solely on Alvarez's Health Statement Form but also on his Background Checking Report.[89]

Reliance on this report is problematic. It was not prepared by Alvarez himself. Rather, it was accomplished by a UnionBank employee following the conduct of credit investigation. Insular Life notes a statement by UnionBank's Josefina Barte that all

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[88] RULES OF COURT, Rule 131, Sec. 3(e).

[89] *Rollo* (G.R. No. 207526), p. 999.

information in the Background Checking Report was supplied by Alvarez.[90] But this is a self-serving statement, wholly reliant on the assumption of that employee's flawless performance of her duty to record findings. Precisely, it is a claim that needed to be vetted. It had to be tested under the crucible of a court trial, that is, through the rigors of presentation and authentication of evidence, cross-examination, and personal perusal by a judge. Yet, Insular Life would now have this Court sustain its appreciation, solely on the strength of its own representations.

An erroneous statement's dual occurrence in the Health Statement Form and the Background Checking Report concededly reduces the likelihood of honest mistakes or overlooked inaccuracies. However, in the context of so many other documents being available to ascertain the error, a mere dual occurrence does not definitively establish a fraudulent scheme. This is especially so when the errors could not be directly and exclusively attributed to a single author.

Pleading just one (1) additional document still fails to establish the consistent fraudulent design that was Insular Life's burden to prove by clear and convincing evidence. Insular Life had all the opportunity to demonstrate Alvarez's pattern of consistently indicating erroneous entries for his age. All it needed to do was to inventory the documents submitted by Alvarez and note the statements he made concerning his age. This was not a cumbersome task, yet it failed at it. Its failure to discharge its burden of proving must thwart its plea for relief from this Court.

II

Having settled Insular Life's continuing liability under the Group Mortgage Redemption Insurance, this Court proceeds to the matter of the propriety of UnionBank's foreclosure.

UnionBank insists that the real estate mortgage is a contract separate and distinct from the Group Mortgage Redemption

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[90] *Id*.

Insurance; thus, it should not be affected by the validity or invalidity of Insular Life's rescission.[91] It also cites *Great Pacific Life*, which it claims involves a similar set of facts as this case, and underscores how this Court in that case did not nullify the foreclosure despite a finding that the rescission was improper, but instead considered the foreclosure as a supervening event.[92]

Great Pacific Life similarly involved an insurer's rescission of a mortgage redemption insurance on account of a supposed concealment. This Court sustained the lower courts' conclusions holding the rescission invalid and maintaining the insurer's liability to pay the mortgage. However, this Court considered the foreclosure, which in the interim had been completed, as a supervening event. Ruling on the basis of equity, this Court concluded that the insurance proceeds, which should have been paid to the mortgagee, were now due to the heirs of the insured:

> However, we noted that the Court of Appeals' decision was promulgated on May 17, 1993. In private respondent's memorandum, she states that DBP foreclosed in 1995 their residential lot, in satisfaction of mortgagor's outstanding loan. Considering this supervening event, the insurance proceeds shall inure to the benefit of the heirs of the deceased person or his beneficiaries. Equity dictates that DBP should not unjustly enrich itself at the expense of another (*Nemo cum alterius detrimenio protest*). Hence, it cannot collect the insurance proceeds, after it already foreclosed on the mortgage. The proceeds now rightly belong to Dr. Leuterio's heirs represented by his widow, herein private respondent Medarda Leuterio.[93]

Maglaque v. Planters Development Bank[94] sustained a mortgagor's right to foreclose in the event of a mortgagee's death:

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

[92] *Id*. at 1040.

[93] *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142, 153 (1999) [Per *J*. Quisumbing, Second Division].

[94] 366 Phil. 610 (1999) [Per *J*. Pardo, First Division].

[T]he rule is that a secured creditor holding a real estate mortgage has three (3) options in case of death of the debtor. These are:

(1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;

(2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and

(3) to rely on the mortgage exclusively, foreclosing the same at anytime before it is barred by prescription, without right to file a claim for any deficiency.[95]

This is in keeping with Rule 86, Section 7 of the Rules of Court, which states:

Section 7. *Mortgage debt due from estate*. — A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made.

While the mortgagee's right to proceed with foreclosure is settled, this Court finds the debacle at the heart of this case to

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[95] *Id*. at 616-617, citing RULES OF COURT, Rule 86, Sec. 7 and *Perez v. Philippine National Bank*, 124 Phil. 260 (1966) [Per *J*. J.B.L. Reyes, *En Banc*]. See also *Jacob v. Court of Appeals*, 123 Phil. 1271 (1966) [Per *J*. Regala, *En Banc*].

have been borne in large, if not equal measure, by UnionBank's oversight. UnionBank contributed to setting in motion a course of events that culminated in the unjust foreclosure of Alvarez's mortgaged lot. As such a contributor, its profiting from the wrongful foreclosure cannot be condoned.

The Regional Trial Court explained how UnionBank was remiss:

> If at the time of the application, Jose H. Alvarez appears disqualified, and the personnel of the bank is mindful of his duties, then the personnel of the bank will immediately tell the late Jose H. Alvarez [that] he is not qualified. As it would appear in this case, there is nothing to show nor indicate that the late Jose H. Alvarez exhibited any fraudulent intent when the bank was given certain data such as his age and date of birth. The bank is already in its possession sufficient materials to inform itself regarding the true and actual age, civil status and other personal circumstances of Jose Alvarez to merit approval of the loan applied for. It was the same informative materials from which the defendant Union Bank lifted the data it provided the defendant Insular Life for the consummation of the insurance contract, without which, the bank would not have favorably approved the loan.[96]

These observations are well-taken.

Great Pacific Life, in considering the insurable interest involved in a mortgage redemption insurance, discussed:

> To resolve the issue, we must consider the insurable interest in mortgaged properties and the parties to this type of contract. The rationale of a group insurance policy of mortgagors, otherwise known as the "mortgage redemption insurance," is a device for the protection of both the mortgagee and the mortgagor. *On the part of the mortgagee, it has to enter into such form of contract so that in the event of the unexpected demise of the mortgagor during the subsistence of the mortgage contract, the proceeds from such insurance will be applied to the payment of the mortgage debt, thereby relieving the heirs of the mortgagor from paying the obligation*. In a similar vein, ample protection is given to the mortgagor under such a concept so that in the event of death; the mortgage obligation will be extinguished by

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[96] *Rollo* (G.R. No. 210156), pp. 90-91.

the application of the insurance proceeds to the mortgage indebtedness.[97] (Emphasis supplied)

The Regional Trial Court was correct in emphasizing that Alvarez entered into the Group Mortgage Redemption Insurance entirely upon UnionBank's prodding. Bank clients are generally unaware of insurance policies such as a mortgage redemption insurance unless brought to their knowledge by a bank. The processing of a mortgage redemption insurance was within UnionBank's regular course of business. It knew the import of truthfully and carefully accomplished applications. To facilitate the principal contract of the loan and its accessory obligations such as the real estate mortgage and the mortgage redemption insurance, UnionBank completed credit appraisals and background checks. Thus, the Regional Trial Court was correct in noting that UnionBank had been in possession of materials sufficient to inform itself of Alvarez's personal circumstances.[98]

UnionBank was the indispensable nexus between Alvarez and Insular Life. Not only was it well in a position to address any erroneous information transmitted to Insular Life, it was also in its best interest to do so. After all, payments by the insurer relieve it of the otherwise burdensome ordeal of foreclosing a mortgage.

This is not to say that UnionBank was the consummate guardian of the veracity and accuracy of Alvarez's representations. It is merely to say that given the circumstances, considering Insular Life's protestation over supposedly false declarations, UnionBank was in a position to facilitate the inquiry on whether or not a fraudulent design had been effected. However, rather than actively engaging in an effort to verify, it appears that UnionBank stood idly by, hardly bothering to ascertain if other pieces of

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[97] *Great Pacific Life Assurance v. Court of Appeals*, 375 Phil. 142, 148 (1999) [Per *J.* Quisumbing, Second Division], citing *Serrano v. Court of Appeals*, 215 Phil. 292 (1984) [Per *J.* Makasiar, Second Division].

[98] *Rollo* (G.R. No. 207526), p. 635.

evidence in its custody would attest to or belie a fraudulent scheme.

UnionBank approved Alvarez's loan and real estate mortgage, and endorsed the mortgage redemption insurance to Insular Life. Fully aware of considerations that could have disqualified Alvarez, it nevertheless acted as though nothing was irregular. It itself acted as if, and therefore represented that, Alvarez was qualified. Yet, when confronted with Insular Life's challenge, it readily abandoned the stance that it had earlier maintained and capitulated to Insular Life's assertion of fraud.

UnionBank's headlong succumbing casts doubt on its own confidence in the information in its possession. This, in turn, raises questions on the soundness of the credit investigation and background checks it had conducted prior to approving Alvarez' loan.

In *Poole-Blunden v. Union Bank of the Philippines*,[99] this Court emphasized that the high degree of diligence required of banks "equally holds true in their dealing with mortgaged real properties, and subsequently acquired through foreclosure."[100] It specifically drew attention to this requisite high degree of diligence in relation to "[c]redit investigations [which] are standard practice for banks before approving loans."[101]

The foreclosure here may well be a completed intervening occurrence, but *Great Pacific Life*'s leaning to an irremediable supervening event cannot avail. What is involved here is not the mortgagor's medical history, as in *Great Pacific Life*, which the mortgagee bank was otherwise incapable of perfectly ascertaining. Rather, it is merely the mortgagor's age. This information was easily available from and verifiable on several documents. UnionBank's passivity and indifference, even when

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[99] G.R. No. 205838, November 29, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/205838.pdf> [Per *J.* Leonen, Third Division].

[100] *Id*. at 14.

[101] *Id*. at 15.

it was in a prime position to enable a more conscientious consideration, were not just a cause of Insular Life's rescission bereft of clear and convincing proof of a design to defraud, but also, ultimately, of the unjust seizure of Alvarez's property. By this complicity, UnionBank cannot be allowed to profit. Its foreclosure must be annulled.

WHEREFORE, the Petitions are **DENIED**. The assailed Court of Appeals May 21, 2013 Decision and November 6, 2013 Resolution in CA-G.R. CV No. 91820 are **AFFIRMED.**

Petitioners Union Bank of the Philippines and The Insular Life Assurance Co., Ltd. are ordered to comply with the insurance undertaking under Mortgage Redemption Insurance Policy No. G-098496 by applying its proceeds as payment of the outstanding loan obligation of deceased Jose H. Alvarez with respondent Union Bank of the Philippines;

The extrajudicial foreclosure of the real estate mortgage over Jose H. Alvarez's TCT No. C-315023 is declared null and without legal force and effect;

Petitioner Union Bank of the Philippines is ordered to reconvey the title and ownership over the lot covered by TCT No. C-315023 to the Estate of the deceased Jose H. Alvarez for the benefit of his heirs and successors-in-interest; and

Petitioners Union Bank of the Philippines and The Insular Life Assurance Co., Ltd. are ordered to jointly and severally pay respondents the Heirs of Jose H. Alvarez attorney's fees and the costs of suit.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

Gesmundo, J., on official business.

THIRD DIVISION

[G.R. No. 208114. October 3, 2018]

MELKY CONCHA and ROMEO MANAGUELOD, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; OUT-OF-COURT IDENTIFICATION; WAYS ON HOW THE POLICE MAY CONDUCT OUT-OF-COURT IDENTIFICATION AND TEST TO DETERMINE ITS ADMISSIBILITY, REITERATED; FACTORS TO CONSIDER IN DETERMINING WHETHER THERE IS COMPLIANCE WITH THE TOTALITY OF CIRCUMSTANCES TEST.— *People v. Teehankee, Jr*. enumerated the ways on how the police may conduct out-of-court identification and provided guidance on its admissibility, thus: Out-of-court identification is conducted by the police in various ways. *It is done thru show-ups where the suspect alone is brought face to face with the witness for identification*. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. *Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process*. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances* test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

2. ID.; ID.; ID.; ID.; WHAT WAS CONDUCTED BY THE POLICE IN CASE AT BAR WAS NOT A POLICE LINEUP

BUT A POLICE SHOW-UP; THE OUT-OF-COURT IDENTIFICATION OF THE PETITIONERS FAILED TO SATISFY THE TOTALITY OF CIRCUMSTANCES TEST; WHERE THE IDENTIFICATION WAS TAINTED WITH IMPROPER SUGGESTION, THERE CAN BE NO POSITIVE AND CREDIBLE IDENTIFICATION MADE BY THE WITNESS.— [T]his Court finds that the Court of Appeals erred in declaring that the out-of-court identification conducted by the police was a police lineup. What was conducted was a police show-up, since only four (4) persons were shown to the prosecution's witness for the purpose of identifying his four (4) assailants. This was stated by SPO4 Anapi in his testimony and admitted by respondent in its Comment. As to whether the out-of-court identification of petitioners satisfied the totality of circumstances test, this Court finds that it did not. Although there was no significant lapse of time from the day of the incident up to the day when Macutay identified his supposed assailants, his identification fell short on the remaining factors. First, Macutay failed to provide descriptions of his attackers when he reported the incident to the police. x x x Second, Macutay was admittedly scared and confused, which reduced his degree of attention. x x x Third, it was not shown how certain Macutay was in his identification of petitioners. Without any prior description, the basis of his identification is questionable. x x x Finally, the out-of-court identification was tainted with improper suggestion. x x x When Macutay, the sole witness, was invited by the police to identify his assailants, his mind was already conditioned that he would come face-to-face with the persons who robbed him. He knew that the group that attacked him consisted of four (4) persons. Consequently, when he was shown four (4) persons in the police show-up, it registered to him that they were the perpetrators. With no prior description of his assailants, it was highly likely that Macutay's identification was tainted with apparent suggestiveness. Therefore, there was no positive and credible identification made by the prosecution's witness.

3. **ID.; ID.; ID.; IN VIEW OF THE GROSS CORRUPTION OF THE OUT-OF-COURT IDENTIFICATION OF THE ACCUSED THROUGH THE IMPROPER SUGGESTION OF THE POLICE OFFICERS, ACCUSED ARE ACQUITTED FOR REASONABLE DOUBT.—** [G]iven the

peculiar circumstances of this case, this Court holds that the gross corruption of Macutay's out-of-court identification through the improper suggestion of police officers affected the admissibility of his in-court identification. x x x Petitioners Melky Concha and Romeo Managuelod are **ACQUITTED** for reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

An out-of-court identification such as a police show-up is inadmissible if it is tainted with improper suggestions by police officers.

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the January 31, 2013 Decision[2] and the July 5, 2013 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 33806 be reversed and set aside.[4] The Court of Appeals affirmed the November 10, 2010 Joint Decision[5] of the Regional Trial Court of Cabagan, Isabela, finding Melky Concha (Concha) and Romeo Managuelod

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[1] *Rollo*, pp. 2-20.

[2] *Id*. at 22-31. The Decision was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 33-34. The Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 15.

[5] *Id*. at 55-63. The Joint Decision, docketed as Crim. Case Nos. 22-2219 and 2220, was penned by Judge Felipe Jesus Torio II, Branch 22, Regional Trial Court, Cabagan, Isabela.

(Managuelod) guilty beyond reasonable doubt of the crime of carnapping.[6]

The Office of the Provincial Prosecutor of Isabela filed two (2) criminal Informations against Marlon Caliguiran (Caliguiran),[7] Alvin Tamang,[8] Concha, and Managuelod, charging them with two (2) counts of carnapping under Republic Act No. 6539 or the Anti-Carnapping Act of 1972.[9] Both Informations, docketed as Criminal Case Nos. 22-2219 and 22-2220, were stated exactly as follows:

> That on or about the 15th day of February, 2006, in the municipality of Tumauini, Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confeder[at]ing together and helping one another, armed with assorted firearms, and by means of force and intimidation, that is by pointing their firearms towards Michael Macutay who was the driver and in possession of a Honda Wave 100 cc motorcycle owned by one Eugenio Cacho, and at gunpoint, did then and there, willfully and feloniously, take, steal and bring away the said Honda Wave 100 cc motorcycle bearing Plate No. BI-8085 valued at PhP 44,000.00 against the will and consent to (sic) the said Mic[ha]el Macutay, to the damage and prejudice of the said owner, in the aforesaid amount of PhP 44,000.00.[10]

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[6] *Id*. at 63.

[7] In petitioners' Memorandum, Marlon Caliguiran was allegedly dropped from the complaint (see *rollo*, p. 160, footnote 2). However, in respondent's Comment, he allegedly died during the pendency of the case before the Regional Trial Court (see *rollo*, p. 116, footnote 11). Neither the Regional Trial Court November 10, 2010 Joint Decision nor the Court of Appeals January 31, 2013 Decision mentioned his status with respect to the case.

[8] Petitioners' Memorandum stated that Alvin Tamang died while the case was pending before the Regional Trial Court (see *rollo*, p. 160, footnote 3). Meanwhile, respondent stated in its Comment that a warrant of arrest was issued against him but it did not appear from the case records whether he was arrested. (see *rollo*, p. 116, footnote 12). Neither the Regional Trial Court November 10, 2010 Joint Decision nor the Court of Appeals January 31, 2013 Decision mentioned his status with respect to the case.

[9] *Rollo*, pp. 23 and 55.

[10] *Id*. at 55.

On January 21, 2009, Concha and Managuelod were arraigned and both pleaded not guilty. Thereafter, trial ensued.[11]

The prosecution presented Michael Macutay (Macutay), Eugenio Cacho (Cacho), and SPO4 Juan C. Anapi (SPO4 Anapi) as its witnesses, whose testimonies corroborated as follows:[12]

A Honda Wave motorcycle with plate number BI-8085 owned by Cacho was forcibly taken by the four (4) accused from his nephew, Macutay, who was then driving it. The prosecution narrated that on February 15, 2006, Macutay parked the passenger van owned by one Aileen Cacho at Cacho's house in Centro, Tumauini. Cacho thereafter lent the motorcycle with sidecar to Macutay to go home to Liwanag, Tumauini. Macutay drove the motorcycle, while his uncle, Junior, and his cousins, Jayson and Jake, were aboard the sidecar.[13]

At about 11:00 p.m., as Macutay's group was traversing the road between Lallauanan and Liwanag, the motorcycle had a flat tire. The group decided to push the motorcycle. While doing so, they chanced upon a parked white car on the highway. As they got near the car, four (4) armed persons emerged from it and one of them pointed a gun at Macutay and declared "holdup." The armed men then took his Seiko watch, t-shirt, and wallet, which contained ₱400.00 in cash and his license. They told Macutay to run. When Macutay was near the edge of the road, he jumped. Macutay and his group then hid as the armed men took his motorcycle and left the sidecar behind. One of the armed men drove the motorcycle while the others returned to the white car and left.[14]

Subsequently, around 1:00 a.m. or 2:00 a.m. of February 16, 2006, Macutay reported the incident to the Philippine National Police stationed at Tumauini. Macutay and the police went to

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[11] *Id*. at 56-59.

[12] *Id*. at 56-57.

[13] *Id*. at 24 and 56-57.

[14] *Id*. at 24 and 56.

the location of the incident. He showed them where the motorcycle was taken, their positions when it was taken, and the place where he jumped.[15]

On February 20, 2006, the Tumauini police received information from the police station at Cabagan, Isabela that they had recovered a white Mitsubishi Lancer with plate number PYT 415. Tumauini police SPO4 Anapi went to Cabagan to inspect and verify the white car since he had been previously informed that a white car was missing. Upon arrival, SPO4 Anapi asked permission from Chief of Police Juancho Alobba (Chief Alobba) of the Cabagan Police Station to open the white car. Chief Alobba gave his consent. When SPO4 Anapi opened the car's trunk, he and Chief Alobba discovered Plate No. BI-8085, the plate of Cacho's Honda Wave motorcycle. This discovery was also witnessed by a certain PO3 Bautista, a certain PO1 Albano, a certain Police Officer Paguirigan, and other police officers; and also by Macutay and a person named Arnold Balabbo (Balabbo).[16]

On February 21, 2006, the Tumauini police proceeded to Macutay's house in Liwanag and asked him to accompany them to Cabagan Police Station to identify the persons suspected to be responsible for the crime.[17] At the police station, the police presented to Macutay five (5) persons[18] that they had apprehended. Macutay pointed to Managuelod, Concha, and Caliguiran as the persons who robbed him. He claimed that Managuelod was the one who declared "holdup" and drove the motorcycle, while Concha wore the t-shirt they got from him.[19]

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

[16] *Id*. at 57.

[17] *Id*.

[18] *Id*. In its Joint Decision, the trial court summarized the prosecution's evidence. It stated that the police showed Macutay five (5) persons to be identified and that Macutay told the police that "they were the ones that robbed him."

[19] *Id*. at 25 and 57.

On the other hand, the defense presented Concha and Managuelod as its witnesses.[20]

Concha testified that on February 19, 2006, at around 10:00 a.m., he was walking alone on his way home from the field when police officers in a van stopped him near a bridge at the highway. They told him to board the van and invited him to Cabagan Police Station. On the way to Cabagan, they met some Tumauini police officers. When they reached Cabagan Police Station, they locked him inside a cell and intimidated him to sign a document. Despite not knowing what was written in the document, he signed it for fear that the police would pour hot water on him. After a few minutes, the police also detained Managuelod in the cell. From February 19, 2006 to February 22, 2006, Concha was detained at Cabagan Police Station. On February 22, 2006, Concha was transferred to the Provincial Jail. Concha claimed that he came to know Managuelod only when they were already detained at the Provincial Jail.[21]

Concha denied involvement in the carnapping. He asserted that Macutay could not have identified him as he could not recall that Macutay went to Cabagan Police Station on February 21, 2006. Although he was detained for several days at the police station, he did not see Macutay on February 21, 2006. He added that aside from him and Managuelod, Caliguiran and Balabbo were likewise detained at Cabagan Police Station.[22]

Meanwhile, Managuelod testified that on February 19, 2006, around 12:00 p.m., a certain Tumauini Police Officer Baquiran arrested him at his house in Balug, Tumauini, Isabela. At the time of his arrest, he was then helping his younger brother with farm work. He was invited by Police Officer Baquiran to go to Tumauini Police Station. However, he was brought to Cabagan Police Station instead, where he was detained from February

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[20] *Id*. at 58-59.

[21] *Id*. at 58.

[22] *Id*.

19, 2006 to February 21, 2006. He claimed that he did not know why he was locked up by the police. He alleged that SPO4 Anapi mauled him and boxed him each day of his incarceration. SPO4 Anapi allegedly hit him on the forehead with a vehicle plate when he was transferred to another cell. According to Managuelod, SPO4 Anapi asked him if he was the one who took the motorcycle.[23] He answered, "I do not know that."[24]

Managuelod also denied being involved in the crime. Like Concha, he averred that Macutay could not have identified him considering that "he did not see the person of Michael Macutay on February 21, 2006, when he was brought together with his companions to the Provincial Jail where they were detained."[25]

On rebuttal, SPO4 Anapi denied striking Concha with the vehicle plate and mauling him. He likewise denied assaulting, boxing, or mauling Managuelod during the police lineup. He contended that Concha and Managuelod's allegations could not have happened since he was not inside the police station then and the police were trained to conduct investigations, not maul persons.[26]

On November 10, 2010, the Regional Trial Court rendered a Joint Decision[27] finding both Concha and Managuelod guilty beyond reasonable doubt of carnapping.[28] Before going to the merits of the case, the Regional Trial Court noted that the two (2) criminal Informations were filed "against the same accused for the same alleged criminal act of taking away forcibl[y] the same subject matter property, a Honda Wave Motorcycle with Plate No. BI-8085."[29] Thus, in view of the accused's right

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[23] *Id*. at 58-59.

[24] *Id*. at 59.

[25] *Id*.

[26] *Id*.

[27] *Id*. at 55-63.

[28] *Id*. at 63.

[29] *Id*. at 59-60.

against double jeopardy, it dismissed Criminal Case No. 22-2220 and proceeded with Criminal Case No. 22-2219.[30]

The Regional Trial Court did not give weight to the prosecution's evidence, Plate No. BI-8085, to the extent that it was offered to establish that the accused took the motorcycle. It held that the prosecution failed to prove that any or all of the accused possessed Plate No. BI-8085 before it was discovered by the police in the trunk of the white Mitsubishi Lancer car. Since it was not established that the accused possessed the vehicle plate, the presumption that they took it or the vehicle to which the plate was appended did not arise.[31]

Nonetheless, the Regional Trial Court found Concha and Managuelod guilty of carnapping based on Macutay's testimony.[32] It held that Macutay "was able to identify the culprits who committed the robbery in the lineup at the Philippine National Police Station at Cabagan, Isabela."[33] It stated:

> Upon the testimony of the witness Michael Macutay, it is sufficiently proven that at about 11:00 o'clock in the evening of February 15, 2006, the accused Romeo Managuelod and Melky Concha, together with their companions Alvin Tamang and Romeo Caliguiran, held at gun point Michael Macutay and took away from the latter the Honda Wave Motorcycle of Eugenio Cacho which [was] valued at Forty[-]Five Thousand (PhP 45,000.00) Pesos. It is also shown that Romeo Managuelod pointed a gun at Michael Macutay into giving to Romeo Managuelod his Seiko 5 watch, T-shirt and wallet. The Court had carefully studied the testimony of Michael Macutay who himself witnessed the incident complained of and it is of the firm belief that the evidence [proffered] therein is credible evidence by reason of the natural, straightforward, spontaneous, consistent and frank manner in which the witness testified before the Court. In the view of [the] Court, Michael Macutay is a credible witness whose testimony is worthy of credence.[34]

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[30] *Id*. at 60.

[31] *Id*. at 60-61.

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

[33] *Id*.

[34] *Id*. at 62.

The Regional Trial Court also held that since the prosecution was able to prove that the value of the motorcycle was ₱ 44,000.00, Concha and Managuelod were liable to Eugenio for that amount.[35]

The dispositive portion of the Regional Trial Court November 10, 2010 Joint Decision provided:

> **WHEREFORE,** premises considered, the Court finds the accused Melky Concha and Romeo Managuelod **GUILTY** beyond reasonable doubt of the crime of Carnapping pursuant to Republic Act No. 6539 and accordingly sentences them to an indeterminate prison term of Eighteen (18) Years as minimum to Thirty (30) Years as maximum.
>
> Additionally, the accused Melky Concha and Romeo Managuelod are hereby ordered to pay to Eugenio Cacho the amount of Forty[-] Four Thousand (PhP 44,000.00) Pesos, jointly and severally, by way of actual damage.
>
> The case docketed as Criminal Case No. 22-2220 is hereby ordered dismissed on the ground of double jeopardy.
>
> SO DECIDED.[36] (Emphasis in the original)

On June 30, 2011, Concha and Managuelod filed an appeal[37] before the Court of Appeals and prayed for the reversal of the Regional Trial Court November 10, 2010 Joint Decision.[38] They argued that the out-of-court identification was not valid as it was conducted through a police show-up, not a lineup, since only the four (4) suspects were presented to Macutay for identification.[39]

On January 31, 2013, the Court of Appeals promulgated a Decision,[40] affirming the Regional Trial Court November 10,

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[35] *Id*.

[36] *Id*. at 63.

[37] *Id*. at 35-54.

[38] *Id*. at 52.

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

[40] *Id*. at 22-31.

2010 Joint Decision.[41] It held that, contrary to Concha and Managuelod's allegations, there was no impermissible suggestion when Macutay positively identified them in the police lineup. They were identified as the perpetrators since Macutay recognized them as part of the group that aimed a gun at him and coercively took the Honda Wave motorcycle.[42] It stated:

> Moreover, the Court has held that there is no law requiring a police line-up as essential to a proper identification. Even without a police line-up, there could still be a proper identification as long as the police did not suggest such identification to the witnesses. The records are bereft of any indication that the police suggested to Macutay to identify the accused-appellants as the carnappers.
>
> Furthermore, Macutay's identification in open court of the appellants as the carnappers dispels any doubt as to their proper identification. We are satisfied that Macutay's testimony, by itself, is sufficient identification of the accused-appellants.[43]

The Court of Appeals did not give merit to Concha's and Managuelod's defense of alibi considering that they did not present any testimonial or documentary evidence that could have corroborated their claims. Between their uncorroborated alibi and Macutay's positive identification, the Court of Appeals found the latter more credible.[44]

Since the prosecution was able to establish the existence of all the elements of carnapping through the testimonies of its witnesses,[45] the Court of Appeals ruled that the appeal before it should be dismissed. The dispositive portion of the Court of Appeals January 31, 2013 Decision provided:

> **WHEREFORE**, premises considered, the appeal is ***DISMISSED*** for lack of merit. The challenged *joint decision* of the trial court in Criminal Case No. 22-2219 is hereby **AFFIRMED.**

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[41] *Id*. at 31.

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

[43] *Id*. at 30.

[44] *Id*.

[45] *Id*. at 28.

Costs against the accused-appellants.

SO ORDERED.[46] (Emphasis in the original)

On March 5, 2013, Concha and Managuelod moved for reconsideration,[47] but it was denied by the Court of Appeals in its July 5, 2013 Resolution.[48]

On July 30, 2013, Concha and Managuelod filed a Petition for Review[49] before this Court, praying that the Court of Appeals January 31, 2013 Decision and the July 5, 2013 Resolution be reversed and set aside, and that a new one be rendered acquitting them of the crime charged.[50] Respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment[51] on February 20, 2014, while petitioners filed their Reply[52] on June 20, 2014.

On July 9, 2014, this Court issued a Resolution,[53] giving due course to the Petition and requiring the parties to submit their respective memoranda. Respondent filed a Manifestation[54] on September 22, 2014, praying that this Court consider its Comment as its Memorandum. Meanwhile, petitioners filed their Memorandum[55] on October 7, 2014.

Petitioners justify their filing of a Rule 45 Petition by stating that the Court of Appeals based its judgment on a misapprehension of facts and that it failed to consider relevant

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[46] *Id*. at 31.

[47] *Id*. at 81-89.

[48] *Id*. at 33-34.

[49] *Id*. at 2-20.

[50] *Id*. at 15.

[51] *Id*. at 114-128.

[52] *Id*. at 140-147.

[53] *Id*. at 148-149.

[54] *Id*. at 151-154.

[55] *Id*. at 160-174.

facts, which if taken into account, could sustain a different conclusion.[56]

Petitioners emphasize that SPO4 Anapi's testimony revealed that only the four (4) accused were presented to Macutay for identification.[57] By doing so, the police "grossly suggested to the witness that the persons shown to him were the perpetrators of the crime charged."[58] In effect, no police lineup was conducted.[59] Thus:

> [T]he procedure conducted by the police officers in identifying the perpetrators of the crime charged is seriously flawed and gravely violated the petitioners' right to due process, as it denied them their right to a fair trial to the extent that their in-court identification proceeded from and was influenced by impermissible suggestions.
>
> 22) Otherwise stated, the police officers were not fair to the petitioners as they have already convinced the mind of the witness that the petitioners were indeed the robbers. Effectively, this act is no different from coercing a witness in identifying a suspect, varying only with respect to the means used. Either way, the police officers are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.[60] (Citations omitted)

Moreover, Macutay supposedly failed the totality of circumstances test, which is used to determine if an out-of-court identification is admissible.[61] The prosecution allegedly "failed to establish that [Macutay] had the opportunity to view the faces of the perpetrators."[62] He was not even sure if the object used to intimidate him during the carnapping incident

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[56] *Id*. at 7-8.

[57] *Id*. at 166-167.

[58] *Id*. at 166.

[59] *Id*. at 167.

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

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

[62] *Id*. at 169.

was a gun. Also, his disposition during the ordeal—scared and confused—could have diminished his degree of attention.[63]

Petitioners add that there was no proof that Macutay described the perpetrators to the police when he reported the incident on February 16, 2006. He was only able to identify them during the out-of-court identification on February 21, 2006. The significant lapse of time from the day of the incident to the day of identification makes the authenticity and accuracy of the carnappers' description open to question.[64] Therefore, his identification of the supposed carnappers "could in no way be considered as positive and credible."[65]

Since Macutay's out-of-court identification was tainted with impermissible suggestion, it follows then that his in-court identification was tainted as well. For failing to prove the accused's guilt beyond reasonable doubt, petitioners should be acquitted.[66]

Respondent counters that there was no alleged misapprehension of facts. Contrary to petitioners' claims, there was a valid show-up and they were positively identified by Macutay as the culprits. The show-up was valid since it passed the totality of circumstances test.[67] Respondent posits that:

> Michael had ample opportunity to see, observe and recognize petitioners on the night in question and thereafter. At the time of the incident, the place was sufficiently illuminated by the full moon. Both petitioners approached Michael and his companions. Petitioner Managuelod announced the hold-up which prompted Michael to divest himself of his watch, shirt and wallet. Michael, after being directed to run, jumped by the road side and watched petitioner Managuelod ride his motorcycle. At the time of the show-up, petitioner Concha was wearing Michael's shirt.

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[63] *Id*. at 169-170.

[64] *Id*. at 170.

[65] *Id*.

[66] *Id*. at 170-171.

[67] *Id*. at 120-122.

Moreover, the out of court identification by Michael was done just a few days, or specifically six (6) days, after the incident. Hence, he could still vividly remember what happened.[68] (Citations omitted)

Respondent further argues that assuming that there was a defective out-of-court identification, the defect was cured when Macutay subsequently identified petitioners in court. In sum, there is no doubt that "[Macutay] was able to establish that petitioners are the perpetrators of the crime."[69]

Respondent adds that the evidence of the prosecution proved all the elements of the crime of carnapping. Aside from quoting the Court of Appeals' ruling, respondent also cites Macutay's testimony to demonstrate its point:[70]

Q: Single, your Honor. While pushing the single motorcycle which you claim that its tire was flat and you saw a white car parked on the right side of the highway, what happened next if any?
A: When we were near them, sir, there were persons who went near us, sir.

Q: Now, what happened next, Mr. Witness?
A: He pointed me something, sir. I think it was a gun and they said "holdup".

Q: All these four (4) persons poked a gun to (sic) you, Mr. Witness?
A: Yes, sir, one of them went near me and said "holdup".

Q: Now, what did you do if any, Mr. Witness?
A: Because I was confused and afraid, sir, I gave my t-shirt, I gave my gold watch, my wallet with my license.

. . . . . .

Q: What happened to the single motorcycle, Mr. Witness?
A: They got the single motorcycle, sir.

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[68] *Id*. at 122.

[69] *Id*. at 123.

[70] *Id*. at 124-126.

Q: How did they get the single motorcycle, Mr. Witness?
A: They rode on it, sir.

Q: SINAKYAN DA. You mean to say all of them, the four (4) persons rode on the single motorcycle?
A: Only one of them rode on the single motorcycle, sir, followed by the car.

Q: Now, Mr. Witness, at that time, what happened to your cousins?
A: All of us hid, sir.

Q: Now, at the time you were divested with your wearing apparel and accessories, what happened to the tricycle where your cousins rode, in the sidecar which your cousins rode, Mr. Witness?
A: The sidecar they tried to carry it but they could not.[71]

The two (2) issues for this Court's resolution are:

First, whether or not the out-of-court identification of Melky Concha and Romeo Managuelod is admissible; and

Second, whether or not petitioners Melky Concha and Romeo Managuelod are guilty beyond reasonable doubt of the crime of carnapping.

I

It is a settled doctrine that this Court will only entertain questions of law in a Petition for Review on Certiorari.[72] Under Rule 45, Section 1 of the Rules of Court:

Section 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme

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[71] *Id*. at 124-125, *citing* TSN, March 25, 2009, pp. 7-9.

[72] See *Benito v. People*, 753 Phil. 616, 625-626 (2015) [Per *J*. Leonen, Second Division], *Villamor, Jr. v. Umale*, 744 Phil. 31, 44 (2014) [Per *J*. Leonen, Second Division], and *DST Movers Corporation v. People's General Insurance Corporation*, 778 Phil. 235, 244-245 (2016) [Per *J*. Leonen, Second Division].

Court a verified petition for review on certiorari. The petition *shall raise only questions of law* which must be distinctly set forth. (Emphasis supplied)

Nonetheless, this Court admits certain exceptions to this rule, upon a showing of the existence of any of the following circumstances:

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; *(4) when the judgment of the Court of Appeals is based on a misapprehension of facts*; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; *(7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion*; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[73] (Emphasis supplied)

Admittedly, petitioners raise questions of fact in their Petition for Review on Certiorari.[74] They want this Court to examine the validity of the out-of-court identification conducted by the police—the main reason why they were found guilty of carnapping.

A careful scrutiny of the records shows that both the Regional Trial Court and the Court of Appeals misapprehended the facts of this case. This Court hereby takes cognizance of their Petition.

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[73] *Benito v. People*, 753 Phil. 616, 625–626 (2015) [Per *J.* Leonen, Second Division], citing *Pagsibigan v. People, et al.*, 606 Phil. 233, 241-242 (2009) [Per *J.* Carpio, First Division]. See also *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223 [Per *J.* Bidin, Third Division].

[74] *Rollo*, pp. 7-8. Petitioners pray that this Court give due course to their petition on the ground that the Court of Appeals based its judgment on a misapprehension of facts and that it failed to consider certain relevant facts.

II

Before the prosecution concerns itself with the existence of the elements of a crime, it must first discharge the burden of proving that an accused is correctly identified. In *People v. Arapok*,[75] this Court held:

> Once again we stress that the correct identification of the author of a crime should be the primal concern of criminal prosecution in any civilized legal system. Corollary to this is the actuality of the commission of the offense with the participation of the accused. All these must be proved by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. *Thus, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus on his identity and culpability.* The presumption of innocence dictates that it is for the people to demonstrate guilt and not for the accused to establish innocence.[76] (Emphasis supplied, citations omitted)

The out-of-court identification of petitioners could have been disregarded altogether since it was not shown that they were assisted by counsel.[77] However, this Court recognizes that the "probative weight of an in-court identification is largely dependent upon an out-of-court identification."[78] Thus, it is

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[75] 400 Phil. 1277 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[76] *Id.* at 1301.

[77] In *People v. Escordial* (424 Phil. 627, 653 (2002) [Per *J.* Mendoza, *En Banc*]), this Court held:

> During custodial investigation, these types of [out-of-court] identification [pertaining to show-up and line-up] have been recognized as "critical confrontations of the accused by the prosecution" which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings "might well settle the accused's fate and reduce the trial itself to a mere formality." We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him. (Citations omitted)

[78] *People v. Calica*, 471 Phil. 270, 285 (2004) [Per *J.* Callejo, Sr., Second Division].

necessary to determine if the conduct of the latter is above suspicion. *People v. Teehankee, Jr.*[79] enumerated the ways on how the police may conduct out-of-court identification and provided guidance on its admissibility, thus:

> Out-of-court identification is conducted by the police in various ways. *It is done thru show-ups where the suspect alone is brought face to face with the witness for identification.* It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose. *Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process.* In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[80] (Emphasis supplied, citation omitted)

At the outset, this Court finds that the Court of Appeals erred in declaring that the out-of-court identification conducted by the police was a police lineup. What was conducted was a police show-up, since only four (4) persons were shown to the prosecution's witness for the purpose of identifying his four (4) assailants. This was stated by SPO4 Anapi in his testimony[81] and admitted by respondent in its Comment.[82]

As to whether the out-of-court identification of petitioners satisfied the totality of circumstances test, this Court finds that

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[79] 319 Phil. 128 (1995) [Per *J.* Puno, Second Division].

[80] *Id.* at 180.

[81] *Rollo*, pp. 166-167.

[82] *Id.* at 122.

it did not. Although there was no significant lapse of time from the day of the incident up to the day when Macutay identified his supposed assailants, his identification fell short on the remaining factors.

First, Macutay failed to provide descriptions of his attackers when he reported the incident to the police. In *People v. Martinez*,[83] this Court held:

> Common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details. This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed. . . . All too often, the face of the assailant and his [or her] body movements create a lasting impression on the victim's mind and cannot thus be easily erased from his [or her] memory.[84]

Despite insisting that the place was illuminated at the time of the carnapping and claiming that he was able to observe his assailants when he hid after jumping from the edge of the road, Macutay did not describe them as to their height, skin color, clothes, or any distinguishing mark that could have made them stand out. Without any of these descriptions, any group of four (4) men is susceptible of being identified as the perpetrators.

Second, Macutay was admittedly scared and confused, which reduced his degree of attention. His disorientation was apparent when he gave his watch, wallet, and even his t-shirt to his assailants as soon as he heard "holdup." He did not even wait for them to tell him what they needed from him.

Third, it was not shown how certain Macutay was in his identification of petitioners. Without any prior description, the basis of his identification is questionable. It also remains uncertain whether the t-shirt that petitioner Concha wore during the police show-up was the same t-shirt that Macutay gave to

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[83] 469 Phil. 558 (2004) [*Per Curiam*, *En Banc*].

[84] *Id*. at 570-571.

his assailants, since he failed to describe that piece of clothing in his report before the police.

Finally, the out-of-court identification was tainted with improper suggestion. To reiterate, the police in Cabagan Police Station showed Macutay only four (4) persons to be identified. The testimony of SPO4 Anapi provided:

> "Court
>
> Q. That police lineup which was conducted on that February 21, 2006, transpired with the accused Melky Concha and Romeo Managuelod inside the room and you and the witnesses outside the room?
> A. Yes, sir, including the Chief of Police of Cabagan.
>
> Q. Can you tell us how many persons were lined up in that room in the conduct of your police lineup?
> A. Four (4), sir.
>
> Q. So aside from the two (2) accused Melky Concha and Romeo Managuelod, there were two (2) other persons who were lined up?
> A. Yes, sir, I remember one of which is Alvin Tamang who is already dead and the other one is certain Malko.
>
> *Q. All of these persons who were there in the lineup were the subject matter of the investigation that the police authorities were conducting at the time?*
> *A. Yes, sir.*
>
> *Q. So you said that only those who were suspected of having participated in the incident that you were investigating were in the lineup?*
> *A. Yes, sir.*
>
> *Q. There were no other persons who were not suspects who were these (sic) in your lineup?*
> *A. There were no other detained prisoners, sir.*
>
> *Q. So only the four (4) detainees in connection with the incident were there who were made to lineup for identification by the witnesses?*

A. Yes, sir."[85] (Emphasis supplied)

When Macutay, the sole witness, was invited by the police to identify his assailants, his mind was already conditioned that he would come face-to-face with the persons who robbed him. He knew that the group that attacked him consisted of four (4) persons. Consequently, when he was shown four (4) persons in the police show-up, it registered to him that they were the perpetrators. With no prior description of his assailants, it was highly likely that Macutay's identification was tainted with apparent suggestiveness. Therefore, there was no positive and credible identification made by the prosecution's witness.

In *People v. Gamer*,[86] this Court stressed:

> [I]t is not merely any identification which would suffice for conviction of the accused. It must be positive identification made by a credible witness or witnesses, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender.[87]

The importance of positive identification has been thoroughly, if not exhaustively, discussed in *People v. Nuñez*:[88]

> To convict an accused, it is not sufficient for the prosecution to present a positive identification by a witness during trial due to the frailty of human memory. It must also show that the identified person matches the original description made by that witness when initially reporting the crime. The unbiased character of the process of identification by witnesses must likewise be shown.
>
> Criminal prosecution may result in the severe consequences of deprivation of liberty, property, and, where capital punishment is imposed, life. Prosecution that relies solely on eyewitness identification

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[85] *Rollo*, pp. 166-167, citing TSN, August 10, 2010, pp. 8-9.

[86] 383 Phil. 557 (2000) [Per *J.* Quisumbing, Second Division].

[87] *Id.* at 570.

[88] G.R. No. 209342, October 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/209342.pdf> [Per *J.* Leonen, Third Division].

must be approached meticulously, cognizant of the inherent frailty of human memory. Eyewitnesses who have previously made admissions that they could not identify the perpetrators of a crime but, years later and after a highly suggestive process of presenting suspects, contradict themselves and claim that they can identify the perpetrator with certainty are grossly wanting in credibility. Prosecution that relies solely on these eyewitnesses' testimonies fails to discharge its burden of proving an accused's guilt beyond reasonable doubt.

. . . . . .

The frailty of human memory is a scientific fact. The danger of inordinate reliance on human memory in criminal proceedings, where conviction results in the possible deprivation of liberty, property, and even life, is equally established.

> Human memory does not record events like a video recorder. In the first place, human memory is more selective than a video camera. The sensory environment contains a vast amount of information, but the memory process perceives and accurately records only a very small percentage of that information. Second, because the act of remembering is reconstructive, akin to putting puzzle pieces together, human memory can change in dramatic and unexpected ways because of the passage of time or subsequent events, such as exposure to "postevent" information like conversations with other witnesses or media reports. Third, memory can also be altered through the reconstruction process. Questioning a witness about what he or she perceived and requiring the witness to reconstruct the experience can cause the witness' memory to change by unconsciously blending the actual fragments of memory of the event with information provided during the memory retrieval process.

Eyewitness identification, or what our jurisprudence commendably refers to as "positive identification," is the bedrock of many pronouncements of guilt. However, eyewitness identification is but a product of flawed human memory. In an expansive examination of 250 cases of wrongful convictions where convicts were subsequently exonerated by DNA testing, Professor Brandon Garett (Professor Garett) noted that as much as 190 or 76% of these wrongful convictions were occasioned by flawed eyewitness identifications. Another observer has more starkly characterized eyewitness identifications as "the leading cause of wrongful convictions."

Yet, even Professor Garrett's findings are not novel. The fallibility of eyewitness identification has been recognized and has been the subject of concerted scientific study for more than a century:

> This seemingly staggering rate of involvement of eyewitness errors in wrongful convictions is, unfortunately, no surprise. Previous studies have likewise found eyewitness errors to be implicated in the majority of cases of wrongful conviction. But Garrett's analysis went farther than these previous studies. He not only documented that eyewitness errors occurred in his cases. He also tried to determine why they occurred — an issue eyewitness science has investigated for over 100 years.

The dangers of the misplaced primacy of eyewitness identification are two (2)-pronged: on one level, eyewitness identifications are inherently prone to error; on another level, the appreciation by observers, such as jurors, judges, and law enforcement officers of how an eyewitness identifies supposed culprits is just as prone to error:

> The problem of eyewitness reliability could not be more clearly documented. The painstaking work of the Innocence Project, Brandon Garrett, and others who have documented wrongful convictions, participated in the exonerations of the victims, and documented the role of flawed evidence of all sorts has clearly and repeatedly revealed the two-pronged problem of unreliability for eyewitness evidence: (1) eyewitness identifications are subject to substantial error, and (2) observer judgments of witness accuracy are likewise subject to substantial error.

The bifurcated difficulty of misplaced reliance on eyewitness identification is borne not only by the intrinsic limitations of human memory as the basic apparatus on which the entire exercise of identification operates. It is as much the result of and is exacerbated by extrinsic factors such as environmental factors, flawed procedures, or the mere passage of time:

> More than 100 years of eyewitness science has supported other conclusions as well. First, the ability to match faces to photographs (even when the target is present while the witness inspects the lineup or comparison photo) is poor and peaks at levels far below what might be considered reasonable doubt. Second, eyewitness accuracy is further degraded by pervasive

> environmental characteristics typical of many criminal cases such as: suboptimal lighting; distance; angle of view; disguise; witness distress; and many other encoding conditions. Third, memory is subject to distortion due to a variety of influences not under the control of law enforcement that occur between the criminal event and identification procedures and during such procedures. Fourth, the ability of those who must assess the accuracy of eyewitness testimony is poor for a variety of reasons. Witnesses' ability to report on many issues affecting or reflecting accuracy is flawed and subject to distortion (e.g., reports of duration of observation, distance, attention, confidence, and others), thereby providing a flawed basis for others' judgments of accuracy.

Likewise, decision-makers such as jurists and judges, who are experts in law, procedure, and logic, may simply not know better than what their backgrounds and acquired inclinations permit:

> Additionally, the limits and determinants of performance for facial recognition are beyond the knowledge of attorneys, judges, and jurors. The traditional safeguards such as cross-examination are not effective and cannot be effective in the absence of accurate knowledge of the limits and determinants of witness performance among both the cross-examiners and the jurors who must judge the witness. Likewise, cross-examination cannot be effective if the witness reports elicited by cross-examination are flawed: for example, with respect to factors such as original witnessing conditions (e.g., duration of exposure), post-event influences (e.g., conversations with co-witnesses), or police suggestion (e.g., reports of police comments or behaviors during identification procedures).[89] (Citations omitted)

III

This Court does not discount the pronouncement it made in *People v. Rivera*:[90]

We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We

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[89] *Id.* at 1-9.

[90] 458 Phil. 856 (2003) [Per *J.* Puno, *En Banc*].

also held that even assuming arguendo that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the "inadmissibility of a police line-up identification . . . should not necessarily foreclose the admissibility of an independent in-court identification."[91] (Citation omitted)

Even so, given the peculiar circumstances of this case, this Court holds that the gross corruption of Macutay's out-of-court identification through the improper suggestion of police officers affected the admissibility of his in-court identification. In *Arapok*, this Court rendered a similar ruling:

> We find that the out-of-court identification of accused-appellant, which is a *show-up*, falls short of "totality of circumstances" test. Specifically, *there was no prior description given by the witness to the police at any time after the incident*; and we cannot discount the possibility that the police may have influenced the identification under the circumstances by which accused-appellant was presented to him. This Court has held in *People vs. Salguero* that this kind of identification, where the attention of the witness is directed to a lone suspect, is suggestive. Also, in *People vs. Niño*, this Court described this type of out-of-court identification as being "pointedly suggestive, generated confidence where there was none, activated visual imagination, and, all told, subverted their reliability as eye-witnesses."[92] (Emphasis supplied, citations omitted)

On a final note, this Court reminds the members of the bar and bench that:

> Conviction in criminal cases demands proof beyond reasonable doubt. While this does not require absolute certainty, it calls for moral certainty. It is the degree of proof that appeals to a magistrate's conscience:
>
> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable

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[91] *Id*. at 876-877.

[92] *People v. Arapok*, 400 Phil. 1277, 1300 (2000) [Per *J*. Gonzaga-Reyes, Third Division].

> doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[93]
> (Citation omitted)

WHEREFORE, premises considered, the Court of Appeals January 31, 2013 Decision and July 5, 2013 Resolution in CA-G.R. CR No. 33806 are **REVERSED** and **SET ASIDE**. Petitioners Melky Concha and Romeo Managuelod are **ACQUITTED** for reasonable doubt. They are ordered immediately **RELEASED** from detention, unless confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

Let entry of judgment be issued immediately.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

Gesmundo, J., on official business.

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[93] *People v. Nuñez*, G.R. No. 209342, October 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/209342.pdf> 29 [Per *J.* Leonen, Third Division].

FIRST DIVISION

[G.R. No. 208590. October 3, 2018]

SULPICIO LINES, INC. (now known as Philippine Span Asia Carrier Corporation), *petitioner, vs.* **MAJOR VICTORIO KARAAN, SPOUSES NAPOLEON LABRAGUE and HERMINIA LABRAGUE, and ELY LIVA,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; WHERE A PARTY UNDOUBTEDLY SUFFERED LOSS BUT CANNOT PRESENT SUFFICIENT EVIDENCE TO PROVE THE AMOUNT THEREOF, TEMPERATE DAMAGES MAY BE AWARDED.— [T]he law sanctions the award of temperate damages in case of insufficiency of evidence of actual loss suffered. x x x In this case, we find that no egregious error on the part of the CA in imposing temperate damages. The records of the case, which remain uncontroverted, undoubtedly establishes that respondents suffered loss during the unfortunate sinking of M/V Princess of the Orient. However, no independent proof, other than respondents' bare claims, were presented to provide a numerical value to their loss. Absent a contrary proof which would justify decreasing or otherwise modifying the amount pegged by the CA, this Court is constrained to affirm the amounts it imposed as temperate damages.

2. ID.; ID.; ID.; WHERE A COMMON CARRIER FAILED TO PROVE THAT IT HAD EXERCISED THE DEGREE OF EXTRAORDINARY DILIGENCE REQUIRED OF COMMON CARRIERS, AWARD OF TEMPERATE DAMAGES WAS PROPER.— [W]e see no error in the award of exemplary damages considering the lower courts' consistent finding that respondents are entitled to moral and temperate damages for the sinking of M/V Princess of the Orient. Moreover, the CA is correct when it stated that since petitioner failed to prove that it had exercised the degree of extraordinary diligence required of common carriers, it should be presumed to have acted in a reckless manner. x x x It also bears to emphasize

that the records of the case support the conclusion that petitioner was extremely remiss before and during the time of the vessel's sinking. Petitioner did not endeavor to dispute the CA's finding that the vessel's Captain erroneously navigated the ship, and failed to reduce its speed considering the ship's size and the weather conditions. The crew members were also negligent when they did not make any stability calculations, and prepare a detailed report of the vessel's cargo stowage plan. The radio officer failed to send an SOS message in the internationally accepted communication network but instead used the Single Side Band informing the company about the emergency situation. "Exemplary damages are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior." Verily, the above-mentioned conduct, from the Captain and Crew of a common carrier should be corrected. They carry not only cargo, but are in charge of the lives of its passengers. In this case, their recklessness cost the loss of 150 lives. Considering the foregoing, this Court finds that the CA properly imposed exemplary damages.

3. **ID.; ID.; MONETARY AWARD OF DAMAGES IS SUBJECT TO 6% PER ANNUM INTEREST RECKONED FROM THE PROMULGATION OF THE DECISION UNTIL FULLY PAID.—** This Court modifies the applicable interest rate on the monetary award. We impose an interest rate of six percent (6%) *per annum* on the total amount of monetary award pursuant to the guidelines enunciated in *Eastern Shipping Lines, Inc. v. CA*, as modified by *Nacar v. Gallery Frames, et al.* The interest rate shall commence to run from the promulgation of this decision, the date when the amount of damages has been determined with certainty.

APPEARANCES OF COUNSEL

The Law Office of Ma. Victoria P. Lim-Florido & K.P. Lim II for petitioner.

Wilfredo M. Sentillas for respondents.

D E C I S I O N

TIJAM, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated October 25, 2012 and the Resolution[3] dated July 16, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 03059, which modified the amounts of the damages awarded by the Regional Trial Court (RTC) of Cebu City, Branch 19 in its Order dated June 5, 2008 in Civil Case No. CEB-24140.

Antecedent Facts

Respondents Major Victorio Karaan (Major Karaan), Napoleon Labrague (Napoleon) and Herminia Labrague (Herminia) (Spouses Labrague), and Ely Liva (Liva) were passengers of M/V Princess of the Orient owned by petitioner Sulpicio Lines, Inc. (now known as Philippine Span Asia Carrier Corporation) when it sank on September 18, 1998 somewhere between Cavite and Batangas, near Fortune Island.[4]

On June 30, 1999, respondents lodged a Complaint[5] based on breach of contract of carriage against petitioner praying for various amounts of damages as passengers/survivors of the sinking of petitioner's vessel, as follows:

a) Actual damages in favor of [Major Karaan] in the sum of ₱200,000.00. Moral damage[s] the sum ₱600,000.00; Exemplary damages of ₱300,000.00 and Nominal damages of ₱300,000.00;

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

[2] Penned by Associate Justice Carmelita Salandanan-Manahan, concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy; *id*. at 29-54.

[3] *Id*. at 56-61.

[4] *Id*. at 31.

[5] *Id*. at 62-68.

b) Actual damages in favor of [Spouses Labrague] in the sum of ₱300,000.00. Moral Damages in the sum of ₱1,500,000.00; Exemplary damages of ₱500,000.00 and Nominal damages of ₱400,000.00;

c) Actual damages in favor of [Liva] the sum of ₱50,000.00. Moral damages also in the sum of ₱100,000.00. Exemplary damages of ₱30,000.00 and Nominal damages of ₱30,000.00; [and]

d) And attorney's fee of 5% of the total awards under the above paragraph.[6]

During trial, the respondents was presented as witnesses. Their testimonies were summarized by the CA as follows:

[**Major Karaan]**, a retired soldier, deposed that at about 8:00 p.m. on September 18, 1998, he boarded M/V Princess of the Orient bound for Cebu City from Manila. He was at Cabin No. 601 along with another passenger. The travel commenced smoothly although there was a typhoon at that time. However, about two (2) hours after, while he was lying in his cabin, he heard a loud sound which lasted for about 30 minutes. It sounded like something heavy fell somewhere below the cabin. Then, the ship started to tilt, the lights went out and the engine shut down. He went out of his cabin and saw the passengers already panicking. He saw no SLI crew assisting them. He went to the upper level where he grabbed a life jacket. He stayed there until the ship eventually sank. He went with the ship underwater but was able to swim therefrom and hold on to a life raft. He could not see much at that time as it was very dark and the rain poured heavily. He was rescued by a chopper at about 2:30 or 3:00 in the afternoon of the next day after being in the water for about 15 hours. He was brought to the station and to the hospital where he was discharged the next day.

Apart from losing ₱5,000.00 cash, shoes, documents and his uniform, [Major Karaan] also lost his Seiko watch and his brother's land title allegedly worth ₱3,000.00 and about ₱15,000.00 respectively. Apart from the hospital bill, SLI paid him ₱2,000.00.

[Major Karaan] attested he saw life rafts secured to the vessel when he boarded the same.

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[6] *Id*. at 68.

[**Napoleon**], likewise a retired soldier and passenger of the ill-fated M/V Princess of the Orient, testified that about 10:45 p.m., he heard a loud sound coming from below the deck. It sounded like a container van falling and thereafter, the vessel lifted to its side. He woke his wife Herminia, their eight (8) year old daughter, Karen Hope, and their helper [Liva] and got them life jackets before moving out to the stairway. They held on to the gangplank near the stairway while water was rushing inside the ship. During those times, no vessel crew could be seen. Oil was dripping from the ship's hull and when the ship was about to sink, they jumped into the sea. He was then holding his daughter but waves struck them apart. He was able to grab a life raft loaded with three (3) other passengers. He heard his wife calling for help and lifted her to the raft but he lost touch of their daughter. They were rescued the next day at about 12:30 noon. They were then brought to the Municipal Hall where they were fed and then to the SLI office at the port area where they were given clothes. Their daughter's lifeless body was recovered in Tanza, Cavite. Consequently, he felt very sad consdering that she was their only child. He also lost ₱26,000.00 cash and a video camera.

[**Herminia**] affirmed Napoleon's recount of events. She recalled that while sleeping, she heard a loud sound and the things inside their cabin started to fall. That was when her husband woke them up. They wore their life jackets and tried to contact the ships's crew through the intercom but to no avail. Since the ship continued to capsize, they decided to go out to the upper deck but could not make it because of the oil spilling all over them. They instead went down and seeing that the water was already inside the ship, they dived into the sea. They were separated from each other when a big wave hit them. Nobody was there to help them nor was there any order to abandon the ship. She was able to take hold of the raft but they could not use its broken paddle. The raft had medicines but they chose not to use them as they could not read the directions. They were rescued at noon the following day.

On her cross-examination, she maintained that when they went out of their cabin, she only saw passengers but not a single crew from SLI. The spouses are claiming moral damages of ₱750,000.00 each.

[**Liva**] corroborated her bosses' story. She further added that when she was awakened by her boss, she saw bottles and mirrors falling

on the floor and blocking the cabin door which delayed their exit therefrom.[7]

For its defense, petitioner adapted the testimonies of its witnesses in a related case in RTC Branch 12, docketed as Civil Case No. CEB 24783 involving a different plaintiff. The appellate court summarized their testimonies as follows:

Nelson Sato was employed by [petitioner] since 1995. He was assigned as the second mate of M/V Princess of the Orient in charge of the navigation, the preparation before and after the trip ensuring the condition of the equipments and the charts to be used during the voyage. His duty used to start from 12:00 to 4:00 p.m. and then 12:00 midnight to 4:00 a.m. He maintained that the vessel had the required number of fire extinguishers and hose and per inspection, the equipments were all functional. However, he was not able to examine the passengers' manifest or the list of the passengers who boarded thereon When the trip commenced, he was at the stern of the vessel maneuvering it together with five (5) other crew members. He recounted that it was raining and windy that the vessel even sideswiped the pier but he averred that the ship did not sustain any damage as the fender was made of rubber. They were cleared for departure after the PCG inspected the vessel. After securing the ropes, he returned to his cabin at level 7 to sleep. He did not notice that the ship was constantly being battered by big waves nor did he notice it listing until about 10:15 p.m. [W]hen he awoke and felt the ship li[f]ted to one side at about 20 degrees. He went out to the navigation bridge where he handed life vests to more or less 20 passengers and led them to the exit. The rest of the crew released the life rafts. Before the ship sank, he heard seven (7) short blasts and one long blast, the signal to abandon the ship. He also heard the general alarm which indicated that there was an emergency. When the water rushed into the vessel, he merely floated away from the ship. He stayed in the waters for about 18 hours and was rescued by a fishing boat at around 6[:00] p.m. the following day. He was brought to the hospital and after he was discharged, he immediately filed a Marine Protest.

He attested that there were about 40 stewards in charge of the passengers' safety. His fellow crew members who survived the incident told him that there was an announcement by the captain to abandon

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[7] *Id*. at 33-35.

ship but he failed to hear it due to the strong wind. He ensured that the Captain did his best to recover the vessel.

Atty. Geraldine Jorda, the defendant's Personnel Officer, was presented to negate any derogatory records on Captain Esrum Mahilum who led M/V Princess of the Orient. Her records show that the Captain was never subjected to any disciplinary actions. She further confirmed that Captain Mahilum was one of their best masters, thus assigned to handle the company's best vessel. Captain Mahilum resigned as a Master from the company in December 23, 1992[,] but was rehired in 1993 as an Auxiliary Master.

Engr. Perry Chan is a Third Engineer assigned at M/V Princess of the Orient with office duties at 8:00 a.m. to 12:00 noon and from 8:00 p.m. to 12:00 midnight. He was in charge of the generator maintenance, cleans its filter and assists the Chief Engineer. Upon his inspection of the ill-fated vessel, he found its engine in good condition. However, after about two hours from their departure, the vessel capsized. All the time[,] he was at the engine room monitoring the pressure and the temperature together with the Fourth Engineer Auxiliary, the Oiler and two (2) Apprentice Engineers, who were roving and checking up. Chan received orders to reduce the revolution per minute from 400 to 390 then 360 reducing the vessel's speed. When the vessel was about to sink, they were ordered to move up as the engine room was located on the lowest portion of the vessel. From the inclinometer, Chan knew the ship was already listing 22 degrees. When he went up, he saw the passengers in their life jackets, crying and panicking. He pacified them. He jumped into the water immediately before the vessel sank. He was able to hold on to a bamboo scaffolding and stayed in the waters for 12 hours until he was rescued by a fishing boat.

Edgar Samson was the Radio Operator in charge of receiving weather report and its updates and monitoring the international frequency and the vessel's back up power supply in case of emergency. On that fateful evening, he was at M/V Princess of the Orient's Radio Room. Earlier, at about 4:12 p.m., he received a weather report regarding a tropical depression which he submitted to Captain Maghilum. The Capatin made plots based on the said report and concluded the storm was still far. He was then told to follow up the weather updates every six (6) hours. By the time the vessel left, it was not that windy nor the waves that big until they reached Fortune

Island at about 10:20 p.m. when the waves were too big for the ship. The Captain called for the Chief Mate and the Chief Steward and thereafter announced through the pager for the abandonment. The crew was assisting the passengers to abandon the ship. Samson was ordered to make a district call for assistance which he heeded but he could hardly hear the response due to weak signal. He called up SLI Cebu and Manila offices but their response was addressed directly to the Captain. The Captain advised him to go down and bring the portable radio and contact all stations within the vicinity. Samson heard the blast, the emergency alarm to abandon ship. Samson recalled that among the ships that left the port on September 18, 1998, their vessel was the biggest yet the only one that sank.

Captain Anito Alfajardo from the Philippine Coastguard was in charge of clearing the vessels and ensuring that it possessed the required government documentation and that it is seas worthy. Per inspection of the subject vessel, the vessel's plimsol mark was still visible entailing that it was not overloaded. Further, it was in good trim which means that it was not leaning on either side or it was on its upright position. His team then boarded the vessel and inspected the crew's licenses, the required government documents, the navigational equipments, the number of passengers and the cargoes. The results were all satisfactory. The cargoes were well-lashed and secured, the life-saving equipments were all working and the number of passengers is still within its limit. The crew was in the condition to navigate the ship. The Master's Oath of Safety Departure was cleared affirming that the vessel was sea worthy and could proceed to the point of destination. Despite the typhoon, the clearance was issues as the vessel weighed about 13,000 tons and it proceeded to an area away from the path of the typhoon.

Salvacion Buaron, the Vice-President for passenger service of SLI, was presented to prove that SLI rendered financial assistance to the victims. They conducted the search and rescue operations and provided them with the necessary assistance like hospitalization and burial, among others. She deposed that when they learned of the incident, they created an emergency response team as early as 6:00 a.m. the following day sending people to assist the coast guard and the passengers coordinating with DSWD and the presidential assistance group. They provided the passengers with food and clothing including their fare if they opted to go back to Cebu. Per records of SLI, they

were able to shell out about ₱3,100,000.00 for funeral and burial expenses and ₱50,000.00 as indemnity for death.[8]

Ruling of the RTC

On June 5, 2008, the RTC issued an Order modifying its Decision[9] dated May 15, 2008, the dispositive portion of the Order reads as follows:

WHEREFORE, judgment is hereby rendered by ordering [petitioner] to pay:

a. [Major Karaan] the sum of Php 100,000.00 actual damages. Moral damages [in] the sum of Php 300,000.00; Exemplary damages of Php 100,000.00 and Nominal damages of Php 50,000.00.

b. On the part of [Spouses Labrague] the sum of Php 200,000.00 actual damages, Moral damages in the sum of Php 500,000.00 and the death of minor Karen Hoe; Exemplary damages of Php 200,000.00 and Nominal damages of Php 100,000.00

c. To [Liva] the sum of Php 50,000.00 actual damages. Moral damages also in the sum of Php 100,000.00; Exemplary damages of Php 30,000.00 and Nominal damages of Php 20,000.00.

d. And to pay Attorney's fees the amount of 5% of the total amount awarded by the court to all the [respondents] with cost against the [petitioner].

SO ORDERED.[10]

Ruling of the CA

As aforesaid, when the case reached the CA, the latter modified the damages awarded to respondents in a Decision[11] dated October 25, 2012, the dispositive portion of the Decision reads as follows:

WHEREFORE, the May 15, 2008 Decision of the [RTC], Branch 19, Cebu City in Civil Case No. CEB-24140 and its June 5, 2008 Order are **MODIFIED**. Petitioner is **ORDERED** to pay:

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[8] *Id*. at 37-40.

[9] *Id*. at 75-85.

[10] *Id*. at 30-31.

[11] *Id*. at 29-54.

1) [Major Karaan]

A.) **moral damages— ₱200,000.00**;

B.) **temperate damages** in lieu of actual damages— **₱200,000.00**;

C.) exemplary damages— ₱100,000.00;

2) Napoleon Labrague

A.) **moral damages— ₱200,000.00**;

B.) **temperate damages** in lieu of actual damages— **₱200,000.00**;

C.) exemplary damages— ₱100,000.00;

3) Herminia Labrague

A.) **moral damages— ₱200,000.00**;

B.) **temperate damages** in lieu of actual damages— **₱200,000.00**;

C.) exemplary damages— ₱100,000.00;

D.) for the death of Karen Hope, **an indemnity of ₱50,000.00, moral damages of ₱100,000.00 and exemplary damages of ₱100,000.00**;

4) Ely Liva

A.) moral damages— ₱100,000.00;

B.) **temperate damages** in lieu of actual damages— **₱50,000.00**; and

C.) **exemplary damages— ₱100,000.00**.

5) Attorney's fees of 5% of the total amount awarded herein.

Nominal damages are **DELETED**.

The total amount adjudged against [petitioner] shall earn interest at the rate of **12% *per annum*** computed from the finality of this decision until full payment.

SO ORDERED.[12]

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[12] *Id*. at 52-53.

Issues

Hence, the instant petition where petitioner submits the following issues:

1. May temperate damages be awarded when the claim for actual damages was proven?
2. May exemplary damages be awarded when the conditionality for awarding it under Article 2232 of the Civil Code is absent?[13]

Petitioner contests the CA's award of temperate damages in lieu of actual damages, which was purportedly testified to and duly proven by the respondents.

Citing Article 2232, Petitioner also objects to the CA's award of exemplary damages, claiming that the Court did not find any specific acts of negligent or "wanton, fraudulent, reckless, oppressive or malevolent conduct."

Ruling of the Court

The petition lacks merit.

The award of temperate damages was proper

At the outset, petitioner's argument that the CA erroneously deleted the award of actual damages, despite the amounts having been duly proven, and imposing temperate damages in its stead, is inaccurate and misleading.

Our reading of the CA Decision reveals that the CA imposed temperate damages because it deemed the amounts put forth by the respondents' insufficiently proven. Verily, the CA stated, "[t]he respondents, except for their own testimonies, were not able to proffer any other evidence of their loss. Sans the receipts and the documents supporting their claims of actual damages, the same cannot be awarded."[14]

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[13] *Id*. at 16.

[14] *Id*. at 50.

Undoubtedly, the law sanctions the award of temperate damages in case of insufficiency of evidence of actual loss suffered. Article 2224 of the Civil Code states:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

In this case, we find that no egregious error on the part of the CA in imposing temperate damages. The records of the case, which remain uncontroverted, undoubtedly establishes that respondents suffered loss during the unfortunate sinking of M/V Princess of the Orient. However, no independent proof, other than respondents' bare claims, were presented to provide a numerical value to their loss. Absent a contrary proof which would justify decreasing or otherwise modifying the amount pegged by the CA, this Court is constrained to affirm the amounts it imposed as temperate damages.

The award of exemplary damages was proper

The Civil Code provides for the rules concerning the award of exemplary damages, as follows:

Article. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Article. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Article. 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.

Article. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be

recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

In this case, we see no error in the award of exemplary damages considering the lower courts' consistent finding that respondents are entitled to moral and temperate damages for the sinking of M/V Princess of the Orient.

Moreover, the CA is correct when it stated that since petitioner failed to prove that it had exercised the degree of extraordinary diligence required of common carriers, it should be presumed to have acted in a reckless manner. We see no reason to depart from this Court's ruling in *Sulpicio Lines, Inc. v. Sesante, et al.*[15] involving similar claims against petitioner for the sinking of M/V Princess of the Orient, *viz.*:

> Should the petitioner be further held liable for exemplary damages?
>
> In contracts and quasi-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Indeed, exemplary damages cannot be recovered as a matter of right, and it is left to the court to decide whether or not to award them. In consideration of these legal premises for the exercise of the judicial discretion to grant or deny exemplary damages in contracts and quasi-contracts against a defendant who acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, the Court hereby awards exemplary damages to Sesante.
>
> First of all, exemplary damages did not have to be specifically pleaded or proved, because the courts had the discretion to award them for as long as the evidence so warranted. In *Marchan v. Mendoza*, the Court has relevantly discoursed:
>
> > x x x. It is argued that this Court is without jurisdiction to adjudicate this exemplary damages since there was no allegation nor prayer, nor proof, nor counterclaim of error for the same

[15] 791 Phil. 409 (2016).

by the appellees. It is to be observed however, that in the complaint, plaintiffs "prayed for such other and further relief as this Court may deem just and equitable." Now, since the body of the complaint sought to recover damages against the defendant-carrier wherein plaintiffs prayed for indemnification for the damages they suffered as a result of the negligence of said Silverio Marchan who is appellant's employee; and since exemplary damages is intimately connected with general damages, plaintiffs may not be expected to single out by express term the kind of damages they arc trying to recover against the defendant's carrier. Suffice it to state that when plaintiffs prayed in their complaint for such other relief and remedies that may be availed of under the premises, in effect, therefore, the court is called upon to exercise and use its discretion whether the imposition of punitive or exemplary damages even though not expressly prayed or pleaded in the plaintiffs' complaint."

x x x It further appears that the amount of exemplary damages need not be proved, because its determination depends upon the amount of compensatory damages that may be awarded to the claimant. If the amount of exemplary damages need not be proved, it need not also be alleged, and the reason is obvious because it is merely incidental or dependent upon what the court may award as compensatory damages. Unless and until this premise is determined and established, what may be claimed as exemplary damages would amount to a mere surmise or speculation. It follows as a necessary consequence that the amount of exemplary damages need not be pleaded in the complaint because the same cannot be predetermined. One can merely ask that it be determined by the court if in the use of its discretion the same is warranted by the evidence, and this is just what appellee has done.

x x x x x x x x x

The BMI found that the "erroneous maneuvers" during the ill-fated voyage by the captain of the petitioner's vessel had caused the sinking. After the vessel had cleared Limbones Point while navigating towards the direction of Fortune Island, the captain already noticed the listing of the vessel by three degrees to the portside of the vessel, but, according to the BMI, **he did not exercise prudence as required by the situation in which his vessel was suffering the battering on the starboard side** by big waves of seven to eight meters high

and strong southwesterly winds of 25 knots. The BMI pointed out that **he should have considerably reduced the speed of the vessel based on his experience about the vessel —** a close-type ship of seven decks, and of a wide and high superstructure — being vulnerable if exposed to strong winds and high waves. He ought to have also known that maintaining a high speed under such circumstances would have shifted the solid and liquid cargo of the vessel to port, worsening the tilted position of the vessel. It was only after a few minutes thereafter that he finally ordered the speed to go down to 14 knots, and to put ballast water to the starboard-heeling tank to arrest the continuous listing at portside. By then, his moves became an exercise in futility because, according to the BMI, the vessel was already listing to her portside between 15 to 20 degrees, which was almost the maximum angle of the vessel's loll. It then became inevitable for the vessel to lose her stability.

The BMI concluded that the captain had executed several starboard maneuvers despite the critical situation of the vessel, and that the maneuvers had greatly added to the tilting of the vessel. It observed:

> x x x In the open seas, with a fast speed of 14 knots, advance maneuvers such as this would tend to bring the body of the ship in the opposite side. In navigational terms, this movement is described as the centripetal force. This force is produced by the water acting on the side of the ship away from the center of the turn. The force is considered to act at the center of lateral resistance which, in this case, is the centroid of the underwater area of the ship's side away from the center of the turn. **In the case of the *Princess*, when the Captain maneuvered her to starboard, her body shifted its weight to port. Being already inclined to an angle of 15 degrees, coupled with the instantaneous movement of the ship, the cargoes below deck could have completely shifted its position and weight towards portside. By this time, the ship being ravaged simultaneously by ravaging waves and howling winds on her starboard side, finally lost her grip.**

Clearly, th**e petitioner and its agents on the scene acted wantonly and recklessly. *Wanton* and *reckless* are virtually synonymous in meaning as respects liability for conduct towards others**. ***Wanton*** **means characterized by extreme recklessness and utter disregard for the rights of others; or marked by or manifesting arrogant recklessness of justice or of rights or feelings of others. Conduct**

is *reckless* when it is an extreme departure from ordinary care, in a situation in which a high degree of danger is apparent. It must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.[16] (Citations omitted, emphasis and italics in the original, and emphasis ours)

It also bears to emphasize that the records of the case support the conclusion that petitioner was extremely remiss before and during the time of the vessel's sinking. Petitioner did not endeavor to dispute the CA's finding that the vessel's Captain erroneously navigated the ship, and failed to reduce its speed considering the ship's size and the weather conditions. The crew members were also negligent when they did not make any stability calculations, and prepare a detailed report of the vessel's cargo stowage plan. The radio officer failed to send an SOS message in the internationally accepted communication network but instead used the Single Side Band informing the company about the emergency situation.

"Exemplary damages are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior."[17] Verily, the above-mentioned conduct, from the Captain and Crew of a common carriers should be corrected. They carry not only cargo, but are in charge of the lives of its passengers. In this case, their recklessness cost the loss of 150 lives. Considering the foregoing, this Court finds that the CA properly imposed exemplary damages.

The award of damages is subject to 6% per annum reckoned from the promulgation of the decision until fully paid

This Court modifies the applicable interest rate on the monetary award. We impose an interest rate of six percent (6%) *per*

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[16] *Id.* at 432-436.

[17] *New World Developers and Management, Inc. v. AMA Computer Learning Center, Inc.*, 754 Phil. 463, 475 (2015).

annum on the total amount of monetary award pursuant to the guidelines enunciated in *Eastern Shipping Lines, Inc. v. CA*,[18] as modified by *Nacar v. Gallery Frames, et al.*[19] The interest rate shall commence to run from the promulgation of this decision, the date when the amount of damages has been determined with certainty.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated October 25, 2012 and the Resolution dated July 16, 2013 of the Court of Appeals in CA-G.R. CV No. 03059 are **AFFIRMED** with **MODIFICATION** as to the interest rate. Petitioner Sulpicio Lines, Inc. (now known as Philippine Span Asia Carrier Corporation) is **ORDERED** to pay respondents Major Victorio Karaan, Spouses Napoleon Labrague and Herminia Labrague, and Ely Liva, as follows:

1) Major Karaan

   a) Moral damages — Php 200,000.00;

   b) Temperate damages in lieu of actual damages— Php 200,000.00; and

   c) Exemplary damages — Php 100,000.00.

2) Napoleon Labrague

   a) moral damages— Php 200,000.00;

   b) Temperate damages in lieu of actual damages— Php 200,000.00; and

   c) Exemplary damages— Php 100,000.00.

3) Herminia Labrague

   a) Moral damages — Php 200,000.00;

   b) Temperate damages in lieu of actual damages— Php 200,000.00;

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[18] 304 Phil. 236 (1994).

[19] 716 Phil. 267 (2013).

c) Exemplary damages — Php 100,000.00; and

d) for the death of Karen Hope, an indemnity of Php 50,000.00, moral damages of Php 100,000.00 and exemplary damages of Php 100,000.00;

4) Ely Liva

a) Moral damages — Php 100,000.00;

b) Temperate damages in lieu of actual damages-Php 50,000.00; and

c) Exemplary damages — Php 100,000.00.

5) Attorney's fees of 5% of the total amount awarded herein.

The total amount adjudged against petitioner shall earn interest at the rate of six percent (6%) *per annum* computed from the finality of this Decision until full payment.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, and *Jardeleza, JJ.,* concur.

Bersamin, J., on official leave.

FIRST DIVISION

[G.R. No. 209119. October 3, 2018]

PHILIPPINE INTERNATIONAL TRADING CORPORATION, *petitioner, vs.* **THRESHOLD PACIFIC CORPORATION and EDGAR REY A. CUALES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; THE CONTRACT IS THE LAW BETWEEN THE PARTIES; WHEN THE LANGUAGE OF THE AGREEMENT IS CLEAR AND UNEQUIVOCAL, COURTS ARE BOUND TO UPHOLD THE STIPULATIONS THEREOF.—** The settled rule is that the contracting parties have the autonomy to establish such terms and conditions as they deem fit, provided these are not contrary to law, morals, good customs, public order, or public policy. Once there is a meeting of the minds between the parties, the contract constitutes the law between them. Thus, in resolving disputes involving contractual obligations, the Court's utmost duty is to interpret the contract and uphold the parties' intention. x x x The primary rule in interpreting contracts is that when an agreement is clear and unequivocal on its face, the courts are bound to respect and uphold its tenor based on the stipulations' express language. This is supported by the Rules of Evidence, where only the instrument may be presented to prove the terms and conditions of a written agreement. Extraneous evidence is generally inadmissible.

2. **ID.; ID.; CONTRACT OF AGENCY; THERE MUST BE A CLEAR MANDATE FROM THE PRINCIPAL SPECIFICALLY AUTHORIZING THE PERFORMANCE OF AN ACT, NOT MERELY OVERT ACTS FROM WHICH AN AGENCY MAY BE INFERRED.—** [A]n agency may be express or implied. However, an agent must possess a **special power of attorney** if he intends to borrow money in his principal's behalf, to bind him as a guarantor or surety, or to create or convey real rights over immovable property, including real estate mortgages. While the special power of attorney may be either oral or written, the authority given must be **express**. In other words, there must be "a clear mandate from the principal specifically authorizing the performance of the act," **not merely overt acts from which an agency may be inferred**. Consequently, the agent's "authority must be duly established by **competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given**."

3. **ID.; ID.; THE SUBJECT LOAN AGREEMENT DOES NOT EXPRESSLY STIPULATE AN AGENCY BETWEEN THE**

PARTIES; RESPONDENTS FAILED TO PRESENT PAROLE EVIDENCE TO PROVE THAT THE AGREEMENTS DO NOT EXPRESS THE TRUE INTENTION OF THE PARTIES.— [I]t is clear that there is no express stipulation constituting TPC as ASPAI's agent. x x x A party shall nonetheless be allowed to prove an agreement's terms and conditions through evidence other than the written contract itself when he specifically avers in his pleading that such written instrument does not express the true intent and agreement of the parties. x x x Respondents offer no proof to justify denial of liability other than his own account and recollection of the transaction. In Our mind, respondents' disavowal of liability is "negative and self-serving evidence that has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters. Furthermore, while respondents TPC and Cuales raised the subject agreement's ambiguity as an issue, they did not assail the loan instruments' genuineness and due execution. x x x [T]he totality of respondents TPC and Cuales' evidence is not preponderant to sufficiently dispute the legal presumptions of fairness, regularity, and observance of the ordinary course of business accorded to loan transactions. All the more, their evidence is not clear and convincing to successfully overcome the *prima facie* presumptions of authenticity, genuineness, and regular execution of notarized documents. **These supposed acts contemporaneous and subsequent to the loan do not outweigh the loan instruments' express language: that respondent Cuales, as its representative, executed the loan and bound respondent TPC as the debtor-borrower. Thus, respondent TPC shall be liable to pay petitioner PITC, the creditor, the principal loan plus interests and other charges when these become due.** Respondents TPC and Cuales cannot now abandon an obligation they voluntarily undertook, which is clearly evidenced by respondent Cuales' signature on the loan documents.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Azura Quiroz & Campos Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated November 23, 2012 and Resolution[2] dated August 30, 2013 of the Court of Appeals in CA-G.R. CV No. 97458.

This case stemmed from a Complaint[3] for Sum of Money filed by petitioner Philippine International Trading Corporation (PITC) against respondents Threshold Pacific Corporation (TPC) and Edgar Rey A. Cuales (Cuales) docketed as Civil Case No. 94-2266 before the Regional Trial Court (RTC), Branch 139, Makati City.

Petitioner PITC is a government-owned and controlled corporation created under Presidential Decree No. 252,[4] as amended later on by Presidential Decree No. 1071,[5] to engage in or handle foreign procurement, marketing, and distribution for Philippine and third country enterprises. More particularly, Section 5 of Presidential Decree No. 1071 provides:

Sec. 5. *Purposes of the Corporation*. — The Corporation is hereby authorized:

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[1] *Rollo*, pp. 30-49; penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez concurring.

[2] *Id*. at 65-66.

[3] *Id*. at 99-108.

[4] "AUTHORIZING THE CREATION OF A PHILIPPINE INTERNATIONAL TRADING CORPORATION, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "The Philippine International Trading Corporation Law," signed into law on July 21, 1973.

[5] "REVISING THE CHARTER OF THE PHILIPPINE INTERNATIONAL TRADING CORPORATION," otherwise known as "The Revised Charter of the Philippine International Trading Corporation," signed into law on January 25, 1977.

(a) To engage in or handle for Philippine and third country enterprises through methods, systems, devices and facilities intended to achieve economies of scale and better terms of trade for Philippine business, both foreign procurement as well as foreign marketing and distribution;

(b) To arrange for or established comprehensive facilities for handling all phases of warehousing and to develop and operate physical facilities for the collection, processing and distribution of cargoes and other commodities;

(c) To obtain or arrange more comprehensive protection for activities undertaken or commodities dealt with by monitoring or coordinating risk insurance services for existing institutions or supplementing the same;

(d) To employ, utilize, monitor trade promotion services, facilities and activities being undertaken by government or private agencies;

(e) To promote or organize, whenever warranted, production enterprises and industrial establishment and to collaborate or associate in joint venture with any person, association, company, or entity, whether domestic or foreign, in the fields of production, marketing, procurement, and such other related business;

(f) To provide technical, advisory investigatory, consultancy and management services with respect to any or all of the functions, activities and operations of the corporation; and,

(g) In general, to undertake such activities as would be appropriate to an institution created for the purposes of international trading.

On the other hand, respondent TPC is a domestic corporation, and respondent Cuales is its Managing Director.

Factual Antecedents

The present controversy involves three key instruments executed between PITC and TPC, *viz.*: (a) the **Import Financing Agreement** (IFA)[6] dated July 5, 1993; (b) the **1st Addendum to the IFA**[7] (1st Addendum) dated July 6, 1993; and the **2nd**

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[6] *Rollo*, pp. 68-74.

[7] *Id*. at 80-83.

Addendum to the IFA[8] (2nd Addendum) dated November 4, 1993 (hereinafter collectively referred to as the Loan).

A. **IFA dated July 5, 1993**

The parties, PITC, represented by its President, Jose Luis U. Yulo, Jr. (Yulo), and TPC, represented by its Managing Director, respondent Cuales, executed the IFA whereby PITC agreed to assist TPC financially in the amount of ₱50,000,000.00 for the latter's importation of urea fertilizers. The salient portions of the agreement are reproduced below:

> WHEREAS, the BORROWER has applied for a financial accommodation/assistance from PITC for the purpose of financing its importation of urea fertilizer (the "fertilizer") for resale on credit terms to the Allied Sugarcane Planters Association, Inc. (ASPAI), an association of sugarcane planters with postal address located at BMMC Compound, Bacolod City;
>
> WHEREAS, PITC is able and willing to provide such financial accommodation to the BORROWER subject to the terms and conditions hereinbelow set forth;
>
> NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinbelow contained, the parties agree as follows:
>
> I. THE LOAN:
>
> PITC consents and agrees to provide financial assistance (the "loan") to the BORROWER in the amount of PESOS: FIFTY MILLION (₱50,000,000.00), Philippine currency, for the sole purpose of financing the BORROWER's importation of urea fertilizer less PITC's commission of US$3 per metric ton and bank's opening and other charges.
>
> II. DISBURSEMENT
>
> PITC shall open the necessary letter of credit in favor of the BORROWER's fertilizer supplier upon receipt by the PITC of the following:

[8] *Id*. at 90-93.

i) A true copy of the Sales Contract between the BORROWER and ASPAI covering the sale of the urea fertilizer, subject of this import financing agreement and the Deed of Assignment of ASPAI's sugar/molasses quedans for CY 1993-1994 issued by the milling company, Noah's Ark Holding Company (hereinafter referred to as "Noah's Ark"), duly endorsed in favor of the BORROWER;

ii) Originals of Original and/or Transfer Certificates of Title, the appraised value of which shall not be less than ₱60,000,000.00, duly endorsed to PITC as collateral to secure the post-dated checks in the event these checks become unencashable.

iii) Post-dated checks issued by ASPAI in favor of PITC as per the following:

Date	Amount
October 1, 1993	₱14,000,000.00
November 1, 1993	13,062,500.00
December 1, 1993	12,875,000.00
January 1, 1994	12,687,500.00
TOTAL	₱52,625,000.00

iv) Secretary's Certificate of Threshold Pacific Corporation's Board Resolution authorizing the BORROWER to: (a) enter into this Agreement which shall include the names of the authorized signatory/ies to all papers, notes and documents which shall be necessary to effect the provisions of this Agreement and (b) endorse in favor of PITC the sugar/molasses quedans for the CY 1993-1994 assigned by ASPAI in favor of the BORROWER.

v) Secretary's Certificate of ASPAI's Board Resolution authorizing ASPAI: (a) to enter into a Sales Contract with BORROWER for the purchase of fertilizer (subject of this agreement) on credit terms which shall include the names of the authorized signatory/ies to all paper, notes and documents necessary for this purpose; (b) to issue post-dated checks in favor of PITC to cover/ secure the obligations of the BORROWER hereunder

and (c) to execute a Deed of Assignment of their sugar/ molasses quedans for CY 1993-1994 in favor of BORROWER or their nominee up to a value of ₱50,000,000.00.

III. INTEREST

The BORROWER shall pay interest on the principal of the loan at the rate of one and one-half (1.5%) percent a month computed from the date the fertilizer is received by ASPAI. If for any reason ASPAI fails to take hold of the fertilizers within the period agreed upon in the Sales Contract, interests shall be computed 15 days after date when written demand is made by PITC for the payment of the principal loan.

Any and all amounts due and unpaid as per the repayment schedule herein provided shall cause the imposition of an additional penalty interest of 2% a month computed from date the same is due until full payment is made.

x x x x x x x x x

IV. REPAYMENT

The principal loan including interests and other charges shall be due and demandable without need of demand in accordance with the following schedule:

INSTALLMENT	DATE	AMOUNT DUE (incl. Of interests)
First	October 1, 1993	₱14,000,000.00
Second	November 1, 1993	13,062,500.00
Third	December 1, 1993	12,875,000.00
Fourth	January 1, 1994	12,687,500.00
	TOTAL	₱52,625,000.00

It is expressly agreed that the BORROWER shall have no right to delay, suspend or forego any payments due hereunder for any reason whatsoever including but not limited to those relating to the quality/quantity or specifications of the fertilizers imported and financed through this Agreement.

The BORROWER's liability for payment shall subsist until full payment is received by PITC, regardless of the securities/collaterals herein offered.

V. LOAN SECURITY/COLLATERALS

To secure the payment of the principal on the loan including all interest and charges thereon, the BORROWER agrees and binds itself to provide the following securities/collaterals in favor of PITC:

x x x x x x x x x

b) Post-dated checks issued by ASPA (sic) in favor of PITC in the amounts and in accordance with the schedules provided for in Paragraph IV hereof.

c) Originals of Original and/or Transfer Certificates of Title, with appraised value of not less ₱60,000,000.00, duly endorsed to PITC as collateral to secure the post-dated checks in the event these checks become unencashable.

d) BORROWER's written assignment/endorsement of the sugar/molasses quedans for CY 1993-1994 issued by Noah's Ark duly assigned by ASPAI in favor of BORROWER. Such assignment/endorsement in favor of PITC must have the written conformity of Noah's Ark.

x x x x x x x x x

VIII. EVENTS OF DEFAULT

The following events shall constitute the BORROWER in default and shall render the entire loan obligation or any part hereof including interests and charges and all other amounts payable immediately due and demandable without need of demand or notice of any kind, all of which are hereby waived by the BORROWER:

a) BORROWER fails to comply with any of the terms of the Trust Receipt issued in favor of PITC;

b) Any one or all of the post-dated checks issued by ASPA (sic) in favor of PITC should bounce/or returned for any reason whatsoever;

x x x x x x x x x

f) BORROWER fails to perform any of the terms and conditions of this Agreement and/or fails to repay the loan and accruing interests as per the agreed schedules;

x x x x x x x x x

IX. ATTORNEY'S FEES

Should PITC be constrained to resort to court litigation to enforce or safeguard its rights and interest under this Agreement, the BORROWER shall be liable to PITC for attorney's fees in an amount equal to 25% of the total sum claimed in the Complaint, exclusive of other damages and expenses of litigation and the costs which shall in no case be less than ₱25,000.00.[9] (Emphasis Supplied)

B. 1st Addendum dated July 6, 1993

Due to exigent circumstances, *i.e.*, as a result of ASPAI members' urgent fertilizer requirements *vis-à-vis* the delay in the importation of fertilizers, PITC and TPC amended the IFA through a document denominated as the "1st Addendum."

In said 1st Addendum, PITC agreed to disburse the first tranche of the subject loan, in the amount of ₱5,876,498.63, to enable TPC to purchase the fertilizers from the domestic market for resale to ASPAI members. Specifically, the parties stipulated as follows:

WHEREAS, the importation of the said fertilizer has been delayed;

WHEREAS, it is necessary that an initial delivery of urea fertilizer be sourced locally due to the urgent need therefore of the sugar planters of ASPAI which requirement must be met before the end of June, 1993 (sic);

x x x x x x x x x

I. PARTIAL DISBURSEMENT OF LOAN

PITC consents and agrees to disburse the first PESOS: SIX MILLION (PESOS 6,000,000.00), PHILIPPINE CURRENCY, of the LOAN, subject of the AGREEMENT, to the BORROWER for the sole purpose of financing the BORROWER'S domestic purchase of urea fertilizer, said amount to be part of the total loan granted to the BORROWER under the aforesaid AGREEMENT less of PITC's commission of US$3 per metric ton and bank's opening and other charges.

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[9] *Id*. at 68-72.

x x x x x x x x x

II. CONDITION PRECEDENT

PITC shall open the necessary letter of credit in favor of the BORROWER'S fertilizer supplier, up to the amount herein agreed, upon receipt by PITC of the following:

1. Real Estate Mortgage together with original titles to the real properties agreed to as collaterals for the loan (as per Par. V of the AGREEMENT);

2. Certification from Registry of Deeds where the real properties are registered to the effect that there are no existing liens or encumbrances on the said properties.

III. INTEGRATED DOCUMENT

All other terms and conditions of the AGREEMENT, except insofar as the same are amended/modified hereby, shall remain binding and subsisting.[10]

Thus, on July 9, 1993, PITC opened a Land Bank of the Philippines (LandBank) Letter of Credit[11] in favor of La Filipina Uy Gongco Corp., a local fertilizer supplier. The letter of credit amounted to ₱5,273,325.00, net of the following: (1) LandBank bank charges amounting to ₱31,640.03 and (2) storage and delivery charges incurred by PITC amounting to ₱571,533.60. As a result, TPC was able to purchase the required fertilizers and sell these to ASPAI on credit.[12]

Meanwhile, on August 6, 1993, respondent TPC, as the **assignor**, executed a Deed of Assignment in favor of petitioner PITC pursuant to the IFA, *viz.*:

WHEREAS, the ASSIGNOR is the ASSIGNEE of the sugar and molasses quedans of the Allied Sugar Planters Association, Inc. (ASPAI) for the crop year 1993-1994 up to the amount of PESOS: FIFTY-SEVEN MILLION (₱57,000,000.00), hereinafter referred to as the "quedans";

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[10] *Id.* at 80-81.

[11] *Id.* at 85.

[12] *Id.* at 33.

WHEREAS, as a condition precedent to the grant of financial assistance to the ASSIGNOR for the importation of urea fertilizer for ASPAI, **subject of an Import Financing Agreement executed by the parties hereto on 9 July 1993 (the "Agreement"), PITC has required and ASSIGNOR has irrevocably agreed to** further assign to PITC all its rights, interests, claims and benefits over the aforesaid Quedans;

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

1. ASSIGNOR hereby unconditionally and irrevocably assigns, transfers, and conveys, as it does hereby assign, transfer and convey to PITC all its rights, claims and interests over the sugar and molasses quedans of ASPAI for the crop year, to commence October 1993 and to end June 1994 on planters share, to be issued by the sugar miller, NOAH'S ARK SUGAR HOLDINGS up to the aggregate value of PESOS: FIFTY-SEVEN MILLION (₱57,000,000.00), (the "Quedans") in consideration for the urea fertilizer import financing extended/ granted by PITC under the Agreement.[13] (Emphasis supplied.)

C. 2nd Addendum dated November 4, 1993

As a result of further delay in the shipment of the imported fertilizers, the parties further amended the IFA in order to meet ASPAI's urgent request for additional fertilizer. This subsequent amendment to the IFA was denominated as the 2nd Addendum, which provided as follows:

WHEREAS, on July 6, 1993, the parties hereto executed a 1st Addendum to the Import Financing Agreement (the "1st Addendum") by virtue of which PITC agreed to a first partial disbursement of the Loan in the amount of ₱6,000,000.00 to enable the BORROWER to purchase approx. 20,000 bags of urea fertilizer, badly needed by the sugar planters association (ASPAI) availing of the said fertilizers to meet planting schedules, from domestic sources due to delays in the shipment of imported urea fertilizer;

WHEREAS, ASPAI has once again requested for the immediate delivery by BORROWER of additional 800 metric tons of fertilizer

[13] *Id*. at 76-77.

(minimum) to meet their demands for the planting season valued at approx. ₱5,000,000.00;

WHEREAS, in view of the urgent need for the fertilizers by ASPAI and the concomitant delay in the shipment/delivery of the imported fertilizers, it is necessary for BORROWER to supply (sic) said fertilizers from domestic sources and request PITC for a 2nd partial release of the loan in the amount of ₱5,000,000.00 to cover the costs of the same and PITC has agreed to the said request on condition that this will be the last time for BORROWER to source said fertilizers from domestic suppliers utilizing the Loan herein granted by PITC;

x x x x x x x x x

I. 2ND PARTIAL DISBURSEMENT OF THE LOAN:

PITC consents and agrees to disburse the second PESOS: FIVE MILLION (₱5,000,000.00), PHILIPPINE CURRENCY, of the Loan, subject of the AGREEMENT, to the BORROWER for the sole purpose of financing the BORROWER'S domestic purchase of fertilizer, said amount to form part of the total Loan granted to BORROWER under the AGREEMENT, less PITC's commission of US$3.00 per metric ton and bank charges or fees that may be incurred with respect to the second partial disbursement of the Loan.

x x x x x x x x x

III. CONDITIONS PRECEDENT

PITC shall disburse the amounts herein agreed only upon receipt by PITC of the following:

x x x x x x x x x

2. Duly signed and registered Real Estate Mortgages in favor of PITC over the said real properties/collaterals agreed to as security for the repayment of the 1st and 2nd partial disbursements of the Loan;

x x x x x x x x x

4. Owner's Original Transfer Certificate of Title to the real properties mortgaged in favor of the PITC hereunder[.][14]

[14] *Id*. at 90-92.

On this occasion, instead of opening another letter of credit, PITC issued a check[15] in the amount of ₱5,000,000.00 directly payable to TPC for the aforementioned amount. Upon receipt of the proceeds, TPC issued a promissory note[16] undertaking "to pay solidarily to the order of [PITC]" the principal amount on April 15, 1994.

On July 7, 1994, claiming that TPC failed to pay the outstanding loan obligation, PITC filed a Complaint[17] for Sum of Money before the RTC, alleging as follows:

> 10. When deposited by PITC, all the post-dated checks issued by ASPAI returned for various reasons such as "Drawn Against Insufficient Funds" (DAIF) or "Account Closed". In addition, a partial replacement check issued by ASPAI in the amount of ₱1,000,000.00 dated May 27, 1994 (for the November 30, 1993 check which previously returned (sic) for reasons: DAIF) likewise returned for reasons: "Account Closed." Despite all the demand letters and notices sent by PITC to ASPAI for the full cash settlement of these returned checks, as well as demand letters to TPC for the payment of all its obligations to PITC under the FINANCING AGREEMENT, the 1st ADDENDUM and the 2nd ADDENDUM, including the amounts covered by these returned checks, ASPAI failed and refused and continues to fail and refuse to make good the face value of these checks while TPC failed and refused and continues to fail and refuse to make full payment of all its obligations to PITC.
>
> x x x x x x x x x
>
> 11. Furthermore, TPC to date has failed to submit to PITC the conforme of NOAH's ARK to the DEED OF ASSIGNMENT (Annex "B") to enable PITC to acquire/obtain the sugar and molasses quedans 1993-1994 of ASPAI, as per the express provisions of terms of the FINANCING AGREEMENT, resulting in PITC's inability to realize any sums thereunder

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[15] *Id*. at 95.

[16] *Id*. at 97-98. Dated November 25, 1993.

[17] *Id*. at 99-114.

either through sale or assignment, and consequently, any partial or full settlement of the Loan disbursed to TPC.

12. TPC is liable to PITC for the sum of PESOS: THIRTEEN MILLION ONE HUNDRED NINETY-FOUR THOUSAND FIVE HUNDRED FIFTEEN AND 43/100 (₱13,194,515.43) under the express provisions of Section (b), Article VIII (Events of Default) of the Financing Agreement x x x.[18]

In its Answer with Counterclaim,[19] TPC and Cuales denied liability in the subject transactions and raised the following defenses:

1. Plaintiff has no cause of action against defendants.

2. There is an instrinsic ambiguity, mistake and/or imperfection in the IFA, and its First and Second Addendum.

3. The IFA, and its First and Second Adendum (sic), fail to express the true intent and agreement of the parties thereto.

4. The real intent and agreement of the parties (Plaintiff, defendants and ASPAI) is that the urea fertilizer is to be purchased by plaintiff for distribution and sale to ASPAI. Defendant's participation is merely to ensure that the urea fertilizer be delivered to ASPAI.

5. Thus, defendants are in effect merely an agent of plaintiff, with regards to the sale of urea fertilizers to ASPAI x x x.[20]

In support of their defenses, respondents enumerated acts tending to show that the parties executed the loan agreement with the view that TPC shall act merely as ASPAI's agent. The RTC summarized said acts as follows:

In support of their allegations, defendant TPC alleged in their Memorandum dated 19 October 2009 that the contemporaneous and subsequent acts of plaintiff and ASPAI will readily show that ASPAI

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

[19] *Id*. at 116-125.

[20] *Id*. at 120-121.

is the real client of plaintiff and that defendant TPC is only an agent of plaintiff, to wit: (1) plaintiff required ASPAI to issue postdated checks for the purchase of fertilizers; (2) ASPAI was also required by plaintiff to execute Real Estate Mortgages in favor of plaintiff with a total appraised value of ₱11,290,000.00; (3) the expenses relative to the deliveries of the subject urea fertilizer to ASPAI for the first tranche such as handling, warehousing, arrastre, trucking and supervision were paid/reimbursed by plaintiff to defendant TPC; (4) the Land Bank of the Philippines Advice of Letter of Credit Amendment No. 93030-D dated 09 July 1993 was opened by plaintiff PITC for the first tranche of the loan of ASPAI directly in favor of the supplier La Filipina Uy Gongco Corporation and consigned to ASPAI without the participation whatsoever of defendants; (5) ASPAI acknowledged receipt from defendant TPC the sum of ₱4,900,000.00 representing the second tranche of the fertilizer credit availment while the balance was returned by defendant TPC to plaintiff; (6) liquidation and receipts pertaining to purchase of urea fertilizer were regularly made and submitted by ASPAI to plaintiff; (7) plaintiff sent demand letters to ASPAI demanding the making good of the postdated checks it issued in favour of plaintiff; (8) plaintiff filed criminal complaints for estafa and violation of B.P. 22 against ASPAI officers, Santiago Ruiz and Cris Bretaña for the collection of the face values of the postdated checks which ASPAI issued in favor of plaintiff; (9) plaintiff released the loans despite the non-submission by defendant TPC of the assignment/endorsement of the sugar/molasses quedans for CY 1993-1994 and (10) no importation was ever made and all the purchases of urea fertilizer were sourced locally by ASPAI.[21]

Regional Trial Court Decision

In its Decision dated April 18, 2011, the RTC found TPC and Cuales liable to PITC, *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> (a) ORDERING defendant Threshold Pacific Corporation to pay plaintiff Philippine International Trading Corporation the amount of ₱5,876,498.63 for the first tranche of the loan with interest thereon at the rate of 1.5% per month and penalty charge of 2% per month to be reckoned from 27 June 1994;

[21] *Id*. at 59-60.

(b) ORDERING defendants Threshold Pacific Corporation and Edgar Rey Cuales to SOLIDARILY pay plaintiff Philippine International Trading Corporation PhP4,900,000.00 the second tranche of the loan with interest at the rate of 18% per annum and 2% penalty charge per month to be reckoned from 27 June 1994;

(c) ORDERING defendants Threshold Pacific Corporation and Edgar Rey Cuales to SOLIDARILY pay plaintiff Philippine International Trading Corporation the amount of ₱200,000.00 as and by way of attorney's fees; and

(d) Costs of the suit.[22]

In ruling against TPC and Cuales, the RTC found that: *First*, an accommodation party assumes the obligation in favor of a third party and precisely binds himself to pay the obligation when it becomes due. TPC and Cuales became directly liable for the obligation to pay the loan regardless of their actual personal interest in the obligation or receipt of any benefit therefrom. *Second*, as TPC's Managing Director, certainly, Cuales had the educational background and commercial knowledge to fully comprehend the effects of entering the loan agreement in behalf of TPC. *Third*, TPC and Cuales did not present sufficient evidence to show that they were mere agents of ASPAI. Verily, ASPAI executed real estate mortgages and issued post-dated checks to secure the payment of the IFA loan. However, ASPAI's provision of security and collaterals for the IFA does not automatically make TPC and Cuales its mere agents.[23]

Aggrieved, TPC and Cuales elevated the case to the Court of Appeals.

The Court of Appeals Decision

In its assailed Decision, the Court of Appeals reversed the RTC Decision and ruled in favor of TPC and Cuales, *viz*:

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[22] *Id*. at 62-63.

[23] *Id*. at 60, citing *Co v. Admiral United Savings Bank,* 574 Phil. 609, 614 (2008).

WHEREFORE, the appeal is GRANTED. The Decision dated 18 April 2011 of the Regional Trial Court of Makati City, Branch 139, in Civil Case No. 94-2266, is REVERSED and SET ASIDE and a new one is entered dismissing for lack of merit PITC's complaint against defendants-appellants TPC and Cuales.[24]

The Court of Appeals held that TPC and Cuales sufficiently proved that the IFA and its addendums were simulated and did not reflect the true intention of the parties. It considered PITC and ASPAI's acts *contemporaneous and subsequent* to the aforementioned loan documents: (*i*) PITC required ASPAI, not TPC, to issue the required post-dated checks and execute real estate mortgages to secure the loan; (*ii*) PITC reimbursed TPC for storage and delivery expenses incurred in relation to the fertilizers' handling, warehousing, arrastre, trucking and supervision; (*iii*) pursuant to the 1st Addendum, PITC opened a LandBank Letter of Credit amounting to ₱5,723,325.00 directly in favor of La Filipina Uy Gongco Corp, with ASPAI as its consignee. TPC was not a party to this transaction; (*iv*) as to the 2nd Addendum's partial disbursement amounting to ₱5,000,000.00, ASPAI acknowledged the receipt of ₱4,900,000.00 of the loan proceeds, while TPC returned the balance of ₱100,000.00 to PITC; (*v*) ASPAI liquidated costs in relation fertilizer purchases and submitted receipts thereon to PITC; (*vi*) upon dishonor of its post-dated checks, PITC sent demand letters to ASPAI, not to TPC; (*vii*) due to the checks' dishonor, PITC filed criminal complaints for estafa and violation of Batas Pambansa Blg. 22 against ASPAI's officers; (*viii*) the IFA conditioned the release of loan proceeds upon, among others, TPC's submission of Noah's Ark Sugar Holdings (Noah's Ark)'s written conforme endorsing the assignment of ASPAI's quedans to PITC. However, PITC proceeded to make partial disbursements of the loan despite TPC's failure to submit Noah's Ark's endorsement; and (*ix*) the parties executed the IFA to facilitate the *importation* of urea fertilizer. However, pursuant to the two addendums, instead of importing fertilizers, ASPAI purchased them directly from local suppliers.[25]

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[24] *Id*. at 48.

[25] *Id*. at 43-45.

From these circumstances, the Court of Appeals concluded that TPC and Cuales were mere agents of ASPAI and should not be held liable for their principal's default in the loan payments.[26]

PITC subsequent motion for reconsideration was denied; hence, the present petition.

The Issues

Petitioner PITC comes before the Court raising the following issues:

A.

WHETHER OR NOT THE TRANSACTION WAS INDEED BETWEEN PITC AND TPC.

B.

WHETHER OR NOT THE IMPORT FINANCING AGREEMENT THE PARTIES EXECUTED ON 5 JULY 1993 AND ITS ADDENDA ARE SIMULATED.

C.

WHETHER OR NOT PITC IS ENTITLED TO ATTORNEY'S FEES.[27]

Petitioner PITC mainly argues that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the parties, the literal meaning of its stipulations shall control." The IFA and its addendums are clear and leave no room for further interpretation.[28]

In addition, petitioner PITC insists that the IFA and its addendums are not simulated. TPC, as represented by Cuales,

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[26] *Id*. at 45.

[27] *Id*. at 8.

[28] *Id*. at 12-15, citing *Adriatico Consortium, Inc. v. Land Bank of the Philippines*, 623 Phil. 1027, 1040 (2009) and *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 388 (2009).

knew its liability under the loan. They never sought for the instruments' reformation. Thus, by signing the instruments, Cuales is legally presumed to have exercised vigilance over TPC's affairs and voluntarily and intelligently agreed to be bound by them.[29]

Finally, petitioner PITC avers that it is entitled to attorney's fees. Paragraph X of the IFA clearly provided that TPC, as borrower, shall be liable for attorney's equal to 25% of the total sum claimed in case petitioner PITC is constrained to enforce its contractual rights under the IFA via court litigation.

The Court's Ruling

The petition is meritorious.

It is undisputed that TPC and Cuales entered into and executed the IFA and its addendums with PITC. What is at issue then is the true nature of TPC's liability under the loan agreement, as embodied in the IFA and its addendums.

The settled rule is that the contracting parties have the autonomy to establish such terms and conditions as they deem fit, provided these are not contrary to law, morals, good customs, public order, or public policy.[30] Once there is a meeting of the minds between the parties,[31] the contract constitutes the law between them.[32] Thus, in resolving disputes involving contractual obligations, the Court's utmost duty is to interpret the contract and uphold the parties' intention.[33]

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[29] *Rollo*, pp. 14-17.

[30] CIVIL CODE, Article 1306.

[31] *Id*., Article 1305.

[32] *Id*., Article 1159 provides, "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Also see *Catungal v. Rodriguez*, 661 Phil. 484 (2011).

[33] See *Clemente v. Court of Appeals*, 771 Phil. 113 (2015).

Loan agreement does not expressly stipulate an agency between petitioner PITC and respondent TPC

A plain reading of the loan's stipulations reveals the following:

(*i*) TPC, as the borrower, applied for financial accommodation from PITC to fund for its importation of urea fertilizers;

(*ii*) Upon importation, TPC will sell these fertilizers to ASPAI;

(*iii*) The principal amount of ₱50 million shall be payable in four instalments, plus interests and penalties, if applicable;

(*iv*) To secure the payment of the principal, TPC agreed to provide PITC, among others:

> (a) post-dated checks *issued by ASPAI* and payable to PITC, which checks shall be further secured by certificates of title of properties with the total appraised value of not less than ₱60 million; and
>
> (b) sugar quedans *issued by Noah's Ark*, *assigned by ASPAI to TPC*, and, with Noah's Ark written conformity, *endorsed by TPC* in favor of PITC.

(*v*) In case any one of the post-dated checks issued as security fails to clear for whatever reason, entire obligation is immediately due and demandable; and

(*vi*) Attorney's fees shall be 25% of the total sum claimed in the Complaint, exclusive of other damages, expenses, and costs of litigation.

The primary rule in interpreting contracts is that when an agreement is clear and unequivocal on its face, the courts are bound to respect and uphold its tenor based on the stipulations' express language.[34] This is supported by the Rules of Evidence,

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[34] CIVIL CODE, Article 1370 provides, "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

where only the instrument may be presented to prove the terms and conditions of a written agreement. Extraneous evidence is generally inadmissible.[35]

From the above-enumerated loan provisions, therefore, it is clear that there is no express stipulation constituting TPC as ASPAI's agent.

Respondents TPC and Cuales failed to present parole evidence to prove that the agreements do not express the true intentions of the parties

A party shall nonetheless be allowed to prove an agreement's terms and conditions through evidence other than the written contract itself when he specifically avers in his pleading that such written instrument does not express the true intent and agreement of the parties.[36]

Here, respondents TPC and Cuales mainly argue that the above-enumerated stipulations contained in the loan documents do not express the parties' real intention: that ASPAI is petitioner PITC's actual client and respondent TPC is merely ASPAI's agent. This allegation places the present case within the exception of the parole evidence rule.

Thus, the Court may look beyond the four corners of the loan and consider even the parties' contemporaneous and subsequent acts to determine their true intention.[37] When the party successfully establishes a disparity between the words

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[35] RULES OF COURT, Rule 130, Section 9 provides, "When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading: x x x; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto[.]"

[36] *Id*.

[37] CIVIL CODE, Article 1371.

on the face of an agreement deviate and the parties' actual intention, the courts shall uphold the latter.[38]

As discussed above, evidence *aliunde* is admissible in the present case. However, respondents TPC and Cuales still bear the burden of proving their claim by the amount of evidence as required by the Rules.[39]

Loan transactions such as in the present controversy are presumed *fair, regular,*[40] *and done observing the ordinary course of business*.[41] A party may only overcome these presumptions by a **preponderance of evidence**. Furthermore, loans embodied in *notarized documents*, such as the IFA and its Addendums, enjoy the presumptions of *authenticity, genuineness, and regular execution*, which may only be overcome by **clear and convincing evidence**.[42]

To prove their claim, respondent Cuales testified that the parties' real intention is for PITC to purchase urea fertilizer and subsequently sell the same to ASPAI; that TPC was involved as ASPAI's agent merely to ensure the delivery of fertilizers to the latter; that ASPAI, not TPC, provided PITC with the required collaterals, as shown in post-dated checks and real estate mortgage documents executed by ASPAI; that TPC was not a party to the LandBank Letter of Credit dated July 9, 1993 issued by PITC directly in favor of ASPAI's local fertilizer supplier; that TPC merely paid for storage and delivery expenses incurred in relation to the fertilizers' handling, warehousing, arrastre, trucking and supervision, which PITC subsequently reimbursed; that ASPAI acknowledged receipt of proceeds amounting to ₱4,900,000.00 as stated in the 2nd Addendum,

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[38] *Id*., Article 1370 further provides, "If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former."

[39] RULES OF COURT, Rule 131, Section 1.

[40] *Id*., Rule 131, Section 3(p).

[41] *Id*., Rule 131, Section 3(q).

[42] *Quintos v. Development Bank of the Philippines*, 766 Phil. 601, 643 (2015) *cf.* RULES OF COURT, Rule 132, Section 30.

TPC received only the balance of ₱100,000.00; and that PITC directly went after ASPAI for the payment of the loan obligation, as evidenced by its demand letter and criminal complaint filed against ASPAI.

In ruling that the loan was simulated and not reflective of the parties' actual intention, the appellate court considered respondent Cuales' testimony as sufficient evidence of contemporaneous and subsequent acts showing that TPC was merely ASPAI's agent.

We disagree.

In general, an agency may be express or implied.[43] However, an agent must possess a **special power of attorney** if he intends to borrow money[44] in his principal's behalf, to bind him as a guarantor or surety,[45] or to create or convey real rights over immovable property,[46] including real estate mortgages. While the special power of attorney may be either oral or written, the authority given must be **express**.[47] In other words, there must be "a clear mandate from the principal specifically authorizing the performance of the act,"[48] **not merely overt acts from which an agency may be inferred**. Consequently, the agent's "authority must be duly established by **competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given**."[49]

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[43] CIVIL CODE, Article 1869 provides, "Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority."

[44] *Id*., Article 1878(7).

[45] *Id*., Article 1878(11).

[46] *Id*., Article 1878(12).

[47] *Lim Pin v. Liao Tan*, 200 Phil. 685, 693 (1982), citing *Strong v. Repide*, 6 Phil. 680 (1906).

[48] *Lim Pin v. Liao Tan*, *id*.

[49] *Patrimonio v. Gutierrez*, 735 Phil. 146, 155 (2014).

In the present case, respondents TPC and Cuales' allegations substantially rely on the latter's own testimony. Certainly, as signatory in and TPC's representative to the loan transaction, Cuales shall endeavor to exonerate himself and TPC from the liabilities thereunder. We cannot give much weight to his bare allegations and testimony inasmuch as these obviously serve respondents' own interests.[50] Respondents offer no proof to justify denial of liability other than his own account and recollection of the transaction. In Our mind, respondents' disavowal of liability is "negative and self-serving evidence that has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[51]

Furthermore, while respondents TPC and Cuales raised the subject agreement's ambiguity as an issue, they did not assail the loan instruments' genuineness and due execution. In fact, in their Answer, they admitted that respondent Cuales entered into the IFA and its addendums in his official capacity as respondent TPC's Managing Director. Thus, these loan instruments best represent the parties' actual intent and agreement. Respondent Cuales's oral testimony, as it is purely composed of his personal recollections, is not as reliable as written or documentary evidence.[52]

Verily, respondents TPC and Cuales also presented documentary evidence *i.e.*, ASPAI's postdated checks and real estate mortgages executed to secure the loan, reimbursements made by PITC to TPC for storage and delivery expenses incurred by the latter, LandBank Letter of Credit issued directly in the name of ASPAI's supplier, ASPAI's certification acknowledging its receipt of the loan proceeds, receipts of fertilizer purchases submitted by ASPAI to PITC, PITC demand letters directly sent to ASPAI, criminal complaint for the violation of Batas

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[50] *Quintos v. Development Bank of the Philippines*, *supra* note 42.

[51] *Reyes v. Century Canning Corporation*, 626 Phil. 470, 482 (2010).

[52] *Peñalosa v. Santos*, 416 Phil. 12, 28 (2001).

Pambansa Blg. 22 filed by PITC against ASPAI to show that ASPAI is the real client and TPC is merely its agent. However, **none of these demonstrate an express and direct order from ASPAI authorizing respondents TPC and Cuales to enter into the loan**. For the purpose of borrowing money, the agent's authority must be direct, categorical, and cannot be lightly implied.

After careful examination, the totality of respondents TPC and Cuales' evidence is not preponderant to sufficiently dispute the legal presumptions of fairness, regularity, and observance of the ordinary course of business accorded to loan transactions. All the more, their evidence is not clear and convincing to successfully overcome the *prima facie* presumptions of authenticity, genuineness, and regular execution of notarized documents.[53]

These supposed acts contemporaneous and subsequent to the loan do not outweigh the loan instruments' express language: that respondent Cuales, as its representative, executed the loan and bound respondent TPC as the debtor-borrower. Thus, respondent TPC shall be liable to pay petitioner PITC, the creditor,[54] **the principal loan plus interests and other charges**[55] **when these become due.**

Respondents TPC and Cuales cannot now abandon an obligation they voluntarily undertook, which is clearly evidenced by respondent Cuales' signature on the loan documents.

PITC is entitled to attorney's fees

We agree with petitioner PITC that it is entitled to the payment of attorney's fees based on Paragraph IX of the IFA.

Parties are free to stipulate in their agreement the recovery and payment of attorney's fees. Contractual attorney's fees are

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[53] *Quintos v. Development Bank of the Philippines*, *supra* note 42.

[54] CIVIL CODE, Article 1953.

[55] Paragraph IV, IFA.

in the nature of liquidated damages.[56] However, courts, in the exercise of discretion, may temper the amount of attorney's fees if found unreasonable.

The trial court in this case found that the attorney's fees provided in the IFA were unreasonable and immoderate. Thus, it limited the amount from 25% of the total sum claimed by PITC to a fixed amount of ₱200,000.00. We shall not disturb the RTC's ruling inasmuch as PITC no longer contests the reduced amount.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated November 23, 2012 and Resolution dated August 30, 2013 of the Court of Appeals in CA-G.R. CV No. 97458 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

Bersamin, J., on official business.

THIRD DIVISION

[G.R. No. 209661. October 3, 2018]

AURELIO PADILLO, *petitioner, vs.* **ROLLY VILLANUEVA and JOSEPH DIOPENES,** *respondents.*

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[56] See *Lim v. Security Bank Corporation*, 729 Phil. 345, 354 (2014); *Asian Construction and Development Corporation v. Cathay Pacific Steel Corporation*, 636 Phil. 127 (2010); *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, 546 Phil. 12, 20-21 (2007)); *Barons Marketing Corporation v. Court of Appeals*, 349 Phil. 769, 780 (1998).

SYLLABUS

1. **CIVIL LAW; LAND TITLES AND DEEDS; TORRENS SYSTEM; EMANCIPATION PATENTS OR CERTIFICATES OF LAND OWNERSHIP AWARD UNDER REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAWS) ARE ENTITLED TO BE INDEFEASIBLE AS CERTIFICATES OF TITLE ISSUED IN REGISTRATION PROCEEDINGS.—** A certificate of land ownership award is evidence of the award of a public land by the Department of Agrarian Reform to the beneficiary under Republic Act No. 6657. Upon its registration, the subject land is placed under the operation of the Torrens system. Well-settled is the rule that certificates of title emanating from the grant of public land in an administrative proceeding enjoy the same protection as those issued in registration proceedings. This Court affirms the Court of Appeals in ruling that "a certificate of land ownership award becomes indefeasible and incontrovertible upon the expiration of one year from the date of registration with the Office of the Registry of Deeds." x x x This was reiterated in *Estribillo v. Department of Agrarian Reform*, where this Court declared that the emancipation patents or certificates of land ownership award under Republic Act No. 6657 are "in themselves, entitled to be as indefeasible as certificates of title issued in registration proceedings."

2. **ID.; ID.; ID.; SIMILAR TO A CERTIFICATE OF TITLE ISSUED IN REGISTRATION PROCEEDINGS, THE REGISTRATION OF A CERTIFICATE OF LAND OWNERSHIP AWARD PLACES THE SUBJECT LAND UNDER THE OPERATION OF THE TORRENS SYSTEM, THUS, IT CAN ONLY BE ATTACKED THROUGH A DIRECT PROCEEDING BEFORE THE COURT; CASE AT BAR.—** Similar to a certificate of title issued in registration proceedings, the registration of a certificate of land ownership award places the subject land under the operation of the Torrens system. Once under the Torrens system, a certificate of land ownership award or certificate of title issued may only be attacked through a direct proceeding before the court. x x x An attack is collateral when "it incidentally questions the validity of the transfer certificate of title in an action seeking a different relief." A direct attack is an action that annuls the title itself. x x x In

this case, the lots were already covered by Certificates of Land Ownership Award registered with the Registry of Deeds, with Transfer Certificates of Title issued four (4) years before petitioner filed his Petition for Inclusion as farmer-beneficiary. This Petition was a collateral attack on respondents' title. It incidentally questioned the validity of the Transfer Certificates of Title issued in respondents' favor in an action seeking a different relief—purportedly for petitioner to be included as farmer-beneficiary in the subject lots.

APPEARANCES OF COUNSEL

Manuel M. Casumpang for petititoner.
Jagna-an Belloga Agot & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

This Petition for Review on Certiorari[1] assails the Court of Appeals September 30, 2013 Decision[2] in CA-G.R. SP No. 05797, which reversed the June 23, 2010 Decision[3] and February 10, 2011 Resolution[4] of the Department of Agrarian Reform Adjudication Board, and reinstated the March 15, 2007 Decision[5] of the Provincial Agrarian Reform Adjudicator denying the

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[1] *Rollo*, pp. 8-21.

[2] *Id*. at 22-33. The Decision was penned by Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap of the Eighteenth Division of the Court of Appeals, Visayas Station, Cebu City.

[3] *Id*. at 67-75. The Decision was penned by Member Ambrosio B. De Luna and was concurred in by Chair Nasser C. Pangandaman and Members Ma. Patricia P. Rualo-Bello, Gerundio C. Madueño, Jim G. Coleto, Arnold C. Arrieta, and Isabel E. Florin of the Department of Agrarian Reform Adjudication Board.

[4] *Id*. at 23. No copy of this Resolution in DARAB Case No. 15114 is attached to the *rollo*.

[5] *Id*. at 28. No copy of this Decision is attached to the *rollo*.

cancellation of the Certificates of Land Ownership Award over the subject lots.

Perfecto Vales (Vales) owned a parcel of land in Barangay Dela Paz, Banate, Iloilo, which was placed under the Comprehensive Agrarian Reform Program. Portions of the land were awarded to three (3) people:(1) Rodrigo Boso, Lot No. 579-D;(2) Joseph Diopenes (Diopenes), Lot No. 577-B; and (3) Rolly Villanueva (Villanueva), Lot No. 7. On September 28, 1998, Transfer Certificates of Title or Certificates of Land OwnershipAward were issued to Diopenes (TCT No. CT-7914/CLOA No. 00033986) and Villanueva (TCT No. CT-7915/CLOA No. 33987).[6]

Four (4) years after, Aurelio Padillo (Padillo) filed before the Agrarian Reform Regional Office No. 6 a Petition for Inclusion as Farmer-Beneficiary[7] over Lot Nos. 579-D, 577-B, and 7.[8] He stated that in 1985, Vales allowed him to occupy a portion of his land with an area of 23,000 square meters.[9] He applied as farmer-beneficiary when Vales' property was placed under the Comprehensive Agrarian Reform Program, and was awarded an area of 1,003 square meters, allegedly less than the portion he actually occupied.[10] Moreover, some portions he occupied were erroneously awarded to Diopenes and Villanueva.[11]

Diopenes and Villanueva opposed the Petition.[12]

In his September 30, 2003 Order,[13] Regional Director Alexis M. Arsenal (Regional Director Arsenal) of the Agrarian Reform

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[6] *Id*. at 23.

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

[8] *Id*. at 23.

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

[10] *Id*. at 26-27.

[11] *Id*. at 23.

[12] *Id*.

[13] *Id*. at 36-40. The Order in ADM CASE NO. A-0604-0811-02 was penned by Regional Director Alexis M. Arsenal of the Agrarian Reform Regional Office No. 6 of the Department of Agrarian Reform.

Regional Office No. 6 declared Padillo a qualified beneficiary of Villanueva's portion.[14] The dispositive portion of this Order reads:

> WHEREFORE, premises considered, ORDER is hereby issued:
>
> 1. Declaring Aurelio Padillo as qualified beneficiary over Lot No. 7, specifically Lot 7–A with an area of 263 sq.m. and Lot 7–B with an area of 388 sq.m. or a total of 651 square meters, (reflected in the Sketch) located at Brgy. De la Paz, Banate, Iloilo.
>
>   Consequently, Certificate of Land Ownership Award (CLOA) shall be generated in his favor;
>
> 2. Denying the petition for inclusion as beneficiary over Lot 577-B and Lot 579-D for lack of merit; and
>
> 3. Directing the Provincial Agrarian Reform Officer (PARO) and the Municipal Agrarian Reform Officer (MARO) concerned to strictly implement this Order.
>
> SO ORDERED.[15]

On Padillo's Petition for Reconsideration,[16] Regional Director Arsenal in hisFebruary 24, 2004 Order[17]declared that Padillo was also a qualified beneficiary of Diopenes's portion.He ordered the Iloilo Provincial Agrarian Reform Officer and the Banate, Iloilo Municipal Agrarian Reform Officer to facilitate the cancellation or amendment of the concerned Certificates of Land Ownership Award to effect the inclusion of Padillo.[18]The dispositive portion of this Order read:

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[14] *Id*. at 38.

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

[16] *Id*. at 41-42.

[17] *Id*. at 43-46. The Order in ADM CASE NO. A-0604-0811-02 was issued by Regional Director Alexis M. Arsenal of the Agrarian Reform Regional Office No. 6 of the Department of Agrarian Reform.

[18] *Id*. at 45.

WHEREFORE, premises considered, ORDER is hereby issued: AMENDING/MODIFYING the assailed Order dated September 30, 2003, as follows:

1. GRANTING the inclusion of the herein petitioner (Aurelio P. Padillo) as beneficiary of Lots 577-B (also known as Lot 578) and 579 with an aggregate area of 2.3000 hectares, [m]ore or less, located at Brgy. De La Paz, Banate, Iloilo;

2. DIRECTING and ENJOINING the Provincial Agrarian Reform Officer (PARO), DARPO–Iloilo[,] and the Municipal Agrarian Reform Officer (MARO) DARMO Banate, Iloilo to facilitate the cancellation/ amendment or administrative correction of CLOA Nos. 00033994, 00033988, and/or 00033989, respectively, before the DAR Adjudication Board [(]DARAB) based in Iloilo City, and to effect the inclusion of the petitioner herein;

3. DIRECTING the Chief Legal Assistance Division, DARPO–Iloilo to assist the PARO, DARPO–Iloilo in the filing of an appropriate action before the DARAB, to effect the implementation of this Order;

4. DIRECTING FURTHER the MARO, DARMO, Banate, Iloilo, to transfer farmer-beneficiary Rolly Villanueva to another area or portion of the subject landholding with comparable or similar features;

5. Any provision of the previous Order inconsistent herewith is hereby amended, modified, or rectified accordingly.

SO ORDERED.[19]

Aggrieved, Diopenes and Villanueva on March 15, 2004 filed a Notice of Appeal,[20] to which Padillo filed a Motion[21] to dismiss it, arguing that the February 24, 2004 Order was final and executory.[22]

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

[20] *Id*. at 25.

[21] *Id*. at 47-48.

[22] *Id*.

In his December 10, 2004 Resolution,[23] Regional Director Arsenal denied Diopenes and Villanueva's Appeal, and declared the February 24, 2004 Order final and executory.[24] A Writ of Execution[25] was issued on March 10, 2005.

On Padillo's Motion for Correction, Regional Director Arsenal issued a Supplemental Order[26] on May 31, 2005 to correct the February 24, 2004 Order's dispositive portion:

WHEREFORE, premises considered, Order is hereby issued:

1. GRANTING the inclusion of the herein petitioner (Aurelio P. Padillo) as beneficiary of Lot No. 577-B (CLOA No. 00033986,TCT No. CT-7914) with an area of 2,849 square meters, in the name of Joseph T. Diopenes; Lot No. 7 (CLOA No. 00033987, TCT No. CT-7915[)], in the name of Rolly Villanueva,with an area of 9,615 square meters, more or less; Lot No. 579 (CLOA No. 00033988, TCT No. CT-7916, in the name of Rodrigo T. Boso, [et]al., with an area of 16,947 square meters, more or less, or 2.9410 hectares, all in all, located at Barangay De La Paz, Banate, Iloilo;

2. DIRECTING and ENJOINING the Provincial Agrarian Reform Officer (PARO), DLR-PO, Iloilo and the Municipal Agrarian Reform Officer (DLR-MO),to cause and facilitate the cancellation/amendment or administrative correction of the aforesaid TCT, CLOAs before the DAR (now DLR) Adjudication Board (DARAB) based in Iloilo City, and to effect the inclusion of the petitioner, as farmer–beneficiary under the Comprehensive Agrarian Reform Program pursuant to R.A. 6657 of 1988;

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[23] *Id*. at 49-52. The Resolution in ADM CASE NO. A-0604-0811-02 was issued by Regional Director Alexis M. Arsenal of the Agrarian Reform Regional Office No. 6 of the Department of Agrarian Reform.

[24] *Id*. at 51.

[25] *Id*. at 57-59.

[26] *Id*. at 53-56. The Supplemental Order in ADM CASE NO. A-0604-0811-02 was issued by Regional Director Alexis M. Arsenal of the Agrarian Reform Regional Office No. 6 of the Department of Agrarian Reform.

3. DIRECTING the Chief, Legal Assistance Division, DLR-PO, Iloilo or the counsel of herein petitioner-appellee in the filing of an appropriate action before the DARAB based in La Paz, Iloilo City, to effect the implementation of this Order;

4. DIRECTING FURTHER the MARO, DLR-MO, Banate, Iloilo, to transfer farmer–beneficiary Rolly Villanueva to another area or portion of the subject landholding with comparable or similar features, if warranted;

5. Any provision of the previous Order inconsistent herewith [is] hereby amended, modified, or rectified accordingly.

SO ORDERED.[27]

On May 8, 2006, Padillo filed before the Provincial Agrarian Reform Adjudicator of Iloilo a Petition for Cancellation of Certificate of Land Ownership Award[28]against Diopenes and Villanueva.

In their Answer, Diopenes and Villanueva claimed that Padillo was not a qualified beneficiary. They alleged, among others, that he was a mere intruder as Vales never allowed him to plant on his land.[29]

On March 15, 2007, the Provincial Agrarian Reform Adjudicator dismissed the Petition for Cancellation of Certificate Award of Land Ownership for lack of merit.[30]

On Appeal, the Department of Agrarian Reform Adjudication Board ordered the cancellation of theTransfer Certificates of Title and Certificates of Land Ownership Award issued to Diopenes and Villanueva. It ruled that Regional Director Arsenal had jurisdiction to order Padillo's inclusion as farmer-beneficiary.[31]

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

[28] *Id*. at 60-64. The Petition for Cancellation of Certificate of Land Ownership Award is docketed as DARAB CASE NO. V1-3603-IL-06.

[29] *Id*. at 27.

[30] *Id*. at 28.

[31] *Id*.

Diopenes and Villanueva moved for reconsideration, but their motion was denied in theFebruary 10, 2011 Resolution[32] of the Department of Agrarian Reform Adjudication Board. Thus, they filed a Petition for Review before the Court of Appeals.

In its September 30, 2013 Decision,[33] the Court of Appeals reversed and set aside the June 23, 2010 Decision and February 10, 2011 Resolution of the Department of Agrarian Reform Adjudication Board, and reinstated the March 15, 2007 Decision of the Provincial Agrarian Reform Adjudicator.It ruled that the cancellation of theTransfer Certificates of Title or Certificates of Land Ownership Award was not proper.[34] When Padillo filed the Petition for Inclusion, four(4) years had lapsed since the Transfer Certificates of Title or Certificates of Land Ownership Award were issued to Diopenes and Villanueva,[35] which meant that their titles were indefeasible and incontrovertible.[36]

Thus, Padillo filed before this Court a Petition for Review on Certiorari.[37] He argues that a certificate of land ownership award,a creation of Republic Act No. 6657, or the Comprehensive Agrarian Reform Law of 1988, may be a corrected administratively.[38] Canceling it "will not [deprive] respondents[']rights as farmer-beneficiaries"[39] since the law mandates the "more equitable distribution and ownership of land."[40]

In their Comment,[41] respondents Villanueva and Diopenes argue that the Transfer Certificates of Title issued in their names enjoy

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[32] *Id.*

[33] *Id.* at 22-33.

[34] *Id.* at 32.

[35] *Id.* at 30.

[36] *Id.* at 32.

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

[38] *Id.* at 19.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 82-84.

the same protection given to other transfer certificates of title.[42] Invoking the rulings in *Lonoy v. City of Iloilo*[43] and in *Estribillo v. Department of Agrarian Reform*,[44] they state that "the certificate of title becomes indefeasible and incontrovertible upon the expiration of one (1)year from the date of the issuance of the order for issuance of the patent."[45] They further argue that Regional Director Arsenal grossly erred in entertaining the Petition for Inclusion,which was filed four (4) years after the Certificates of Title were issued in respondents' names, and that his Orders regarding the Petition for Inclusion are void.[46]

In his Reply,[47] petitioner notes that the Department of Agrarian Reform Adjudication Board has granted the cancellation of the Certificates of Land Ownership Award issued in favor of respondents.It found that Regional Director Arsenal's Order to include petitioner as farmer-beneficiary in the disputed land had already attained finality.Thus, if his Petition for Cancellation is denied,the judgment, which had attained finality,would be rendered nugatory.[48]

Moreover, petitioner argues that the cancellation, amendment, or administrative correction of the Certificates of Land Ownership Award to include petitioner as farmer-beneficiary is not an "impairment of the indefeasibility of the [Certificates of Land Ownership Award] issued to the respondents."[49]

The issue for this Court's resolution is whether or not the Department of Agrarian Reform may cancel the registered

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[42] *Id*. at 82.

[43] *Id*. at 83, citing *Lonoy v. Iloilo*, 592 Phil. 557 (2008) [Per *J*. Chico-Nazario, Third Division].

[44] *Id*. at 82, citing *Estribillo, et al. v. DARAB, et al.,* 526 Phil. 700 (2006) [Per *J*. Chico-Nazario, First Division].

[45] *Id*. at 82.

[46] *Id*. at 82-83.

[47] *Id*. at 93-96.

[48] *Id*. at 93.

[49] *Id*.

Certificates of Land Ownership Award or Transfer Certificates of Title four (4)years after their issuance.

The Petition is denied.

A certificate of land ownership award is evidence of the award of a public land by the Department of Agrarian Reform to the beneficiary under Republic Act No. 6657.[50] Upon its registration, the subject land is placed under the operation of the Torrens system.[51]

Well-settled is the rule that certificates of title emanating from the grant of public land in an administrative proceeding enjoy the same protection as those issued in registration proceedings.This Court affirms the Court of Appeals in ruling that "a certificate of land ownership award becomes indefeasible and incontrovertible upon the expiration of one year from the date of registration with the Office of the Registry of Deeds."[52]

In *Lahora, et al. v. Dayanghirang, Jr., et al.,*[53] this Court held:

> The rule in this jurisdiction, regarding public land patents and the character of the certificate of title that may be issued by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act, the title issued to the grantee becoming entitled to all the safeguards provided in Section 38 of the said Act. In other words,upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding.[54]

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[50] *Lebrudo, et al. v. Loyola,* 660 Phil. 456 (2011) [Per *J.* Carpio, Second Division].

[51] *Estribillo v. Department of Agrarian Reform,* 526 Phil. 700, 719 (2006) [Per *J.* Chico-Nazario, First Division].

[52] *Rollo,* p. 32.

[53] 147 Phil. 301 (1971) [Per *J.* J.B.L. Reyes, *En Banc*].

[54] *Id.* at 304.

This was reiterated in *Estribillo v. Department of Agrarian Reform*,[55] where this Court declared that the emancipation patents or certificates of land ownership award under Republic Act No. 6657 are "in themselves, entitled to be as indefeasible as certificates of title issued in registration proceedings."[56]

However, the Court of Appeals erred in its Decision to reinstate the March 15, 2007 Decision of the Provincial Agrarian Reform Adjudicator. Regional Director Arsenal acted without jurisdiction in rendering his September 30, 2003 Order. Thus, all subsequent proceedings are void for lack of jurisdiction.

Similar to a certificate of title issued in registration proceedings, the registration of a certificate of land ownership award places the subject land under the operation of the Torrens system.[57] Once under the Torrens system, a certificate of land ownership award or certificate of title issued may only be attacked through a direct proceeding before the court.

Under Section 48 of Presidential Decree No. 1529, or the Property Registration Decree:

> SECTION 48. *Certificate Not Subject to Collateral Attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

An attack is collateral when "it incidentally questions the validity of the transfer certificate of title in an action seeking a different relief."[58] A direct attack is an action that annuls the title itself.[59]

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[55] 526 Phil. 700 (2006) [Per *J.* Chico-Nazario, First Division].

[56] *Id*. at 719.

[57] *Id*. at 719.

[58] *Presidential Decree No. 1271 Committee v. De Guzman*, G.R. Nos. 187291 & 187334, December 5, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/187291.pdf> 28 [Per *J.* Leonen, Second Division].

[59] *Id*.

In *De Pedro v. Romasan Development Corporation,*[60] this Court explained:

> An action for annulment of certificate of title is a direct attack on the title because it challenges the judgment decree of title.
>
> In *Goco v. Court of Appeals*, this court said that "[a]n action for annulment of certificates of title to property [goes] into the issue of ownership of the land covered by a Torrens title and the relief generally prayed for by the plaintiff is to be declared as the land's true owner."[61] (Citations omitted)

Thus, under Section 48 of Presidential Decree No. 1529, a registered certificate of land ownership award may be altered, modified, or canceled only through an action for annulment of the certificate itself.

Under Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, an action for annulment of a registered certificate of land ownership award, like the annulment of a certificate of title,involves title to or possession of real property or any interest therein. This falls under the exclusive original jurisdiction of either the Regional Trial Court[62] or the Municipal Trial Court,[63] depending on the assessed value.

In this case, the lots were already covered by Certificates of Land Ownership Award registered with the Registry of Deeds, with Transfer Certificates of Title issued four (4) years before petitioner filed his Petition for Inclusion as farmer-beneficiary.This Petition was a collateral attack on respondents' title. It incidentally questioned the validity of the Transfer Certificates of Title issued in respondents' favor in an action seeking a different relief—purportedly for petitioner to be included as farmer-beneficiary in the subject lots.

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[60] 748 Phil. 706 (2014) [Per *J.* Leonen, Second Division].

[61] *Id.* at 738.

[62] Batas Pambansa Blg. 129 (1981), Sec. 19(2).

[63] Republic Act No. 7691 (1994), Sec. 3, amending Batas Pambansa Blg. 129 (1981), Sec. 33.

Regional Director Arsenal's inclusion of petitioner as farmer-beneficiary over the lots needed the modification of the Transfer Certificates of Title and Certificates of Land Ownership Award registered in respondents' names.In his February 24, 2004 Order, Regional Director Arsenal directed the filing of the appropriate action before the Department of Agrarian Reform Adjudication Board "to effect the implementation"[64] of his Order.[65] This led to petitioner filing a Petition for Cancellation of respondents' Certificates of Land Ownership Award before the Provincial Adjudicator. He is now before this Court after the Court of Appeals annulled the Decision of the Department of Agrarian Reform Adjudication Board granting the cancellation of respondents' Certificates of Title, albeit on the ground of indefeasibility of title. Petitioner himself stated that the final decision in his favor shall be insignificant without the cancellation of respondents' title.

Clearly, the Petition for Inclusion as farmer-beneficiary was a collateral attack on respondents' title to the property.This is prohibited by law.

Moreover, Regional Director Arsenal has no jurisdiction in a Petition for Inclusion as farmer-beneficiary over lots covered by the Certificates of Title or registered Certificates of Land Ownership Award. Thus, all subsequent proceedings are void for lack of jurisdiction.

Section 9 of Republic Act No. 9700, which amends Section 24 of Republic Act No. 6657, states that "the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the [Department of Agrarian Reform]."[66] This covers only certificates under the Department of Agrarian Reform's

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[64] *Rollo,* p. 46.

[65] *Rollo*, pp. 43-46.

[66] Republic Act No. 9700 (2009), Sec. 9.

jurisdiction. The cancellation of a registered certificate of land ownership award or a certificate of title does not fall under it.

Finally, petitioner must be reminded that certificates of title do not vest ownership, but merely evidence title or ownership of the property.[67] "Courts may, therefore, cancel or declare a certificate of title null and void when it finds that it was issued irregularly."[68] Petitioner provided evidence of being an actual tiller of the lots before the Department of Agrarian Reform. He may file the action to annul respondents' title before the competent court, taking into consideration the principle of indefeasibility of title to property.

WHEREFORE, the Petition for Review on Certiorari is **DENIED.** The Court of AppealsSeptember 30, 2013 Decision in CA-G.R. SP No. 05797, the June 23, 2010 Decision and February 10, 2011 Resolution of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 15114, the March 15, 2007 Decision of the Provincial Agrarian Reform Adjudicator, and the September 30, 2003, February 24, 2004, and May 31, 2005 Orders of Regional Director Alexis M. Arsenal in Adm. Case No. A-0604-0811-02 are all **SET ASIDE.** The Petition for Cancellation of Certificate of Land Ownership Award in DARAB Case No. VI-3603-IL-06 is hereby **DISMISSED** without prejudice to the filing by Aurelio P. Padillo of an action before the proper court.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

Gesmundo, J., on official business.

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[67] *De Pedro v. Romasan Development Corporation*, 748 Phil. 706 (2014) [Per *J.* Leonen, Second Division].

[68] *Id.* at 741.

THIRD DIVISION

[G.R. No. 219708. October 3, 2018]

TOURISM INFRASTRUCTURE AND ENTERPRISE ZONE AUTHORITY, *petitioner, vs.* **GLOBAL-V BUILDERS CO.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); REQUIREMENTS BEFORE THE CIAC MAY ACQUIRE JURISDICTION OVER A CONSTRUCTION CONTROVERSY PURSUANT TO EXECUTIVE ORDER NO. 1008 IN RELATION TO REPUBLIC ACT NO. 9184 AND THE CIAC RULES.—** [I]t is evident that for CIAC to acquire jurisdiction over a construction controversy, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration, and that an arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC's jurisdiction.

2. **ID.; ID.; ID.; ID.; CIAC ACQUIRES JURISDICTION AS LONG AS THE PARTIES AGREED TO SUBMIT THEIR CONSTRUCTION DISPUTE TO ARBITRATION REGARDLESS OF THE FACT THAT THE PROCESS OF ARBITRATION WAS NOT INCORPORATED IN THEIR CONTRACT; THE PROCESS OF ARBITRATION COULD ONLY REFER TO THE PROCESS OF ARBITRATION AS PROVIDED IN THE CIAC RULES.—** Clause 20.2 of the General Conditions of Contract is an arbitration clause that clearly provides that all disputes arising from the implementation of the contract *covered by R.A. No. 9184* shall be submitted to arbitration in the Philippines. In accordance with Section 4.1 of the CIAC Rules, the existence of the arbitration clause in the General Conditions of Contract that formed part of the said MOAs shall be deemed an agreement of the parties to submit

existing or future controversies to CIAC's jurisdiction. Since CIAC's jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract. Hence, the fact that the process of arbitration was not incorporated in the contract by the parties is of no moment. Moreover, the contracts in this case are expressly covered by R.A. No. 9184 (The Government Procurement Reform Act), which provides under Section 59 thereof that all disputes arising from the implementation of a contract covered by it shall be submitted to arbitration in the Philippines, and disputes that are within the competence of CIAC to resolve shall be referred thereto. As CIAC's jurisdiction over the disputes arising from the said MOAs is conferred by E.O. No. 1008 and R.A. No. 9184, the process of arbitration questioned to not have been incorporated in the contracts could then only refer to the process of arbitration by CIAC, as provided in the CIAC Rules. Therefore, there is no vagueness in the process of arbitration to follow even if it was not incorporated as a provision in the contracts.

3. ID.; ID.; ID.; ID.; CIAC IS VESTED WITH JURISDICTION OVER THE DISPUTE WHEN THE AGREEMENTS EXPRESSLY STATE THAT THEY ARE COVERED BY R.A. 9184, WHICH FORMED PART OF THE SUBJECT AGREEMENTS IN THIS CASE.— [T]he MOAs dated February 2, 2007 (Construction of Stamped Concrete Sidewalk and Installation of Streetlights [Main Road] Project) and December 7, 2007 (Additional Sidewalk, Streetlighting and Drainage System [Main Road] Project) specifically stated that the projects covered thereby were additional works to the original contracts covered by bidding (with General Conditions of Contract containing an arbitration clause) and, together with the MOA dated September 19, 2008 (Widening of Boracay Road along Willy's Place Project), *were negotiated procurements made pursuant to Sections 53 (d) and 53 (b), respectively, of the IRR-A of R.A. No. 9184*. The jurisdiction of CIAC over the construction controversy involving the said MOAs is questioned because the MOAs do not contain an arbitration clause. However, the said MOAs expressly state that they are covered by R.A. No. 9184. By virtue of R.A. No. 9184, which is the law that

authorized the negotiated procurement of the construction contracts entered into by the parties, CIAC is vested with jurisdiction over the dispute. Applicable laws form part of, and are read into contracts; hence, the provision on settlement of disputes by arbitration under Section 59 of R.A. No. 9184 formed part of the MOAs in this case.

4. **ID.; ID.; ID.; CIAC HAS JURISDICTION OVER MONEY CLAIMS ARISING FROM OR CONNECTED WITH CONSTRUCTION CONTRACTS; IN VIEW OF THE AMOUNT OF CLAIM, THE PERIOD OF FIVE YEARS OF NONPAYMENT CAN BE CONSIDERED AS UNREASONABLE DELAY WHICH WOULD EXEMPT A PARTY FROM THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—** The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law. Section 4 of E.O. No. 1008 provides that the CIAC shall have *original* and *exclusive* jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration. In *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, the Court held that the text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. What is only excluded from the coverage of E.O. No. 1008 are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines. x x x The Arbitral Tribunal x x x correctly ruled that considering the amount of claim involved in this case, the period of almost five years of nonpayment can already be considered as unreasonable delay, which would exempt Global-V from the rule on exhaustion of administrative remedies.

5. **ID.; ID.; GOVERNMENT PROCUREMENT REFORM ACT (R.A. 9184); THE SUBJECT MEMORANDUM OF AGREEMENTS (MOAs) ARE VALID AS THEY COMPLIED WITH THE REQUIREMENTS OF NEGOTIATED PROCUREMENT UNDER THE LAW; THE ADDITIONAL PROJECTS COVERED BY THE MOAs COULD BE NEGOTIATED SINCE THEY ARE**

NECESSARY TO COMPLETE THE ORIGINAL PROJECT.— The Court holds that the aforecited MOAs are valid as they complied with the requirements of negotiated procurement under Section 53, paragraphs (b) and (d) of R.A. No. 9184. The Widening of Boracay Road along Willy's Place Project was justified under Section 53 (b) of R.A. No. 9184 and its IRR-A, to wit: "other causes where immediate action is necessary to prevent damage to or loss of life or property." As Boracay is famous for its white-sand beaches and is a tourist attraction and destination in the Philippines, the PTA found it "of utmost urgency with the onset of the tourist peak season" to undertake the project to ensure the safety of the people and tourists of Boracay. Moreover, the Court finds that the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project complied with the requirements of Section 53 (d) of R.A. No. 9184. The MOA covering this additional project stated that the project was found very necessary in the completion of the original project (the BEIP-Extension of Drainage Component System [Main Road and Access Road] Project). This additional project should be considered as similar or related to the scope of work as in the original project, since it also involves the construction of a drainage system and included the construction of additional sidewalk, as well as street lighting, to complete the original project. The Court notes that Section 48 of R.A. No. 9184 provides that the Procuring Entity, in this case, PTA/TIEZA, may, *in order to promote economy and efficiency*, resort to alternative methods of procurement, including negotiated procurement. Hence, the PTA must have considered the construction of the additional sidewalk and street lighting economical and related to the original contract to fund them together with the construction of the drainage system of the main road. As Global-V aptly commented, "[w]hy will [p]etitioner hire another company to lay the sidewalks while [it] was constructing the concrete drainage canals on top of which the sidewalks would be built?" As found by the Arbitral Tribunal, Section 53 (d) of R.A. No. 9184 was invoked by TIEZA's Technical Evaluation Committee and Bids and Awards Committee in justifying the award of the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project, and there appears to be no substantial reason to disturb the original

findings of TIEZA's officials that the projects could be negotiated, notwithstanding the reversal in the stand of TIEZA.

6. CIVIL LAW; INTEREST AND DAMAGES; THE COURT UPHOLDS THE IMPOSITION OF 6% LEGAL INTEREST AND THE AWARD OF ATTORNEY'S FEES AND COST OF ARBITRATION SINCE PETITIONER ACTED IN GROSS AND EVIDENT BAD FAITH IN REFUSING TO PAY A VALID CLAIM.— The Court of Appeals correctly sustained the imposition of 6% legal interest on the monetary award pursuant to *Nacar v. Gallery Frames,* et al., which held that "[w]hen the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit." The Court upholds the award of attorney's fees and cost of arbitration against TIEZA. The Arbitral Tribunal stated that Global-V's witness presented a letter of agreement wherein Global-V agreed to pay its counsel attorney's fees in the amount of ₱350,000.00. The Arbitral Tribunal awarded attorney's fees to Global-V on the ground that TIEZA acted in gross and evident bad faith in its refusal to pay the valid, just and demandable claims of Global-V under Article 2208, paragraph 5 of the Civil Code. For the same reason justifying the award of attorney's fees, the cost of arbitration was also charged against TIEZA. The said award was affirmed by the Court of Appeals, and the Court sustains the same.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Jose Angelito B. Bulao for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on certiorari, under Rule 45 of the Rules of Court, of the Amended Decision[1] of the Court of Appeals in CA-G.R. SP No. 131024, dated April 6, 2015, and its Resolution,[2] dated July 22, 2015, affirming the Final Award[3] dated July 16, 2013 of the Arbitral Tribunal that was constituted by the Construction Industry Arbitration Commission (CIAC).

The facts are as follows:

In 2007 and 2008, the Philippine Tourism Authority (PTA) entered into five Memoranda of Agreement (MOA) with respondent Global-V Builders Co. (Global-V). The Memoranda of Agreement are as follows:

1) Memorandum of Agreement (MOA) dated February 2, 2007 for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) located at Boracay, Aklan;[4]

2) MOA dated September 6, 2007 for the Boracay Environmental Infrastructure Project (BEIP)-Extension of Drainage Component System (Main Road and Access Road) located at Barangay Balabag, Boracay, Aklan;[5]

3) MOA dated December 7, 2007 for the Additional Sidewalk, Streetlighting and Drainage System (Main Road), located at Boracay, Aklan;[6]

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[1] Penned by Justice Baltazar-Padilla, Former Special Seventh Division, with Justice Gonzales-Sison (Acting Chairperson) and Justice Reyes-Carpio as members; *rollo*, pp. 62-92.

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

[3] *Id.* at 166-181.

[4] *Id.* at 229-236.

[5] *Id.* at 300-301.

[6] *Id.* at 252-258.

4) MOA dated September 19, 2008 for the Widening of Boracay Road along Willy's Place at Barangay Balabag, Boracay, Aklan;[7] and

5) MOA dated February 29, 2008 for the Perimeter Fence at Banaue Hotel in Banaue, Ifugao.[8]

The BEIP-Extension of Drainage Component System (Main Road and Access Road) Project and the Perimeter Fence at Banaue Hotel Project were procured through competitive bidding, while the rest of the projects aforementioned were obtained through negotiated procurement pursuant to Section 53, paragraphs (b) and (d) of Republic Act (R.A.) No. 9184 (The Government Procurement Reform Act).

On July 31, 2012, Global-V filed a Request for Arbitration[9] and a Complaint[10] before the CIAC, seeking payment from the Tourism Infrastructure and Enterprise Zone Authority (TIEZA), the office that took over the functions of PTA, of unpaid bills in connection with the five projects, as well as payment of interest, moral and exemplary damages, and attorney's fees. The claims of Global-V amounted to ₱16,663,736.34, broken down as follows:

Widening of Boracay Road along Willy's Place	₱ 2,305,738.07
Construction of Stamped Concrete Sidewalk and Installation of Streetlights	5,222,948.37
Additional Sidewalk Streetlight and Drainage System (Main Road)	5,279,380.10
BEIP Extension of Drainage Component System (Main Road & Access Road)	332,815.76
Perimeter Fence at Banaue Hotel	249,873.54
Interest (6% as of 31 July 2012)	2,722,980.50

[7] *Id.* at 263-269.

[8] *Id.* at 274-275.

[9] CA *rollo*, p. 298.

[10] *Id.* at 287-296.

Moral damages	100,000.00
Exemplary damages	100,000.00
Attorney's fees	350,000.00[11]

On August 30, 2012, TIEZA filed a Refusal of Arbitration (Motion to Dismiss for Lack of Jurisdiction),[12] instead of filing an Answer. TIEZA argued that CIAC has no jurisdiction over the case filed by Global-V because the Complaint does not allege an agreement to arbitrate and the contracts do not contain an arbitration agreement in accordance with Sections 2.3 and 2.3.1[13] of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules).

In its Comment/Opposition to Respondent's Refusal of Arbitration,[14] Global-V countered that R.A. No. 9184 vests on CIAC jurisdiction over disputes involving government infrastructure projects like the projects in this case. Section 59 of R.A. No. 9184 provides that "*[a]ny and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto*."

Global-V asserted that the pertinent provisions of R.A. No. 9184 governing the subject infrastructure projects are deemed part of the contracts entered into by the parties. It cited *Guadines*

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[11] *Rollo*, p. 175.

[12] CA *rollo*, pp. 301-304.

[13] SECTION 2.3 *Condition for Exercise of Jurisdiction*. — For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.

2.3.1 Such arbitration agreement or subsequent submission must be alleged in the Complaint.

[14] CA *rollo*, pp. 305-309.

v. Sandiganbayan,[15] which held that "[b]asic is the rule that provisions of existing laws and regulations are read into and form an integral part of contracts, [more so] in the case of government contracts." Global-V contended that considering that the arbitration process is an integral part of the contracts between the parties by operation of law, the requirement under Section 2.3 of the CIAC Rules has been met.

TIEZA filed its Rebuttal to Comment/Opposition,[16] arguing that an arbitration clause is a condition *sine qua non* before CIAC can acquire jurisdiction over the subject matter, as provided for in the CIAC Rules.

CIAC constituted an Arbitral Tribunal to handle the case, with its first task of ruling on the motion to dismiss filed by TIEZA.[17]

On November 16, 2012, the Arbitral Tribunal directed the parties to submit their respective memorandum on TIEZA's motion to dismiss, and the parties complied.[18]

In an Order dated December 18, 2012, the Arbitral Tribunal dismissed TIEZA's motion to dismiss for lack of merit, to wit:

Respondent [TIEZA] filed its Motion to Dismiss on the ground that the CIAC has no jurisdiction over the instant case in the absence of an arbitration clause in the MOA between the parties. Respondent also expresses the view that the arbitration cannot proceed because Claimant [Global-V] failed to exhaust administrative remedies.

On the first ground, Respondent has cited Section 2.3 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules), which states "For the CIAC to acquire jurisdiction, the parties to the dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration."

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[15] 665 Phil. 563, 582 (2011).

[16] CA *rollo*, pp. 316-324.

[17] *Rollo*, Final Award, p. 167.

[18] CA *rollo*, pp. 329, 346-357.

On the second ground, Respondent draws the attention of this Tribunal to the absence of allegation in the Complaint filed by Claimant that it exhausted administrative remedies. Respondent alleges that Claimant did not exhaust administrative remedies by failing to file a money claim before the Commission on Audit (COA). It cited the case of National Irrigation Authority vs. Enciso (G.R. No. 142571, 5 May 2006), which states: "Only after COA has ruled on the claim, may the injured party invoke judicial intervention by bringing the matter to this court on petition for certiorari."

On the other hand, Claimant asserts that the absence of an arbitration clause in the MOA does not deprive the CIAC of jurisdiction in view of a provision in R.A. 9184 which states:

> Section 59. Arbitration.— Any and all disputes arising from. the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act, Provided[,] That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

It is Claimant's position that the provisions cited above, being provisions of law, are deemed part of the MOA between the parties and therefore the requirement under Section 2.3 of CIAC Rules has been effectively met. Claimant alleges that, in fact, there is an arbitration clause in the MOA inasmuch as the General Conditions of Contract, which are integral parts of the MOA, have the above-cited provisions in Par. 21.3 of Clause 21 thereof.

On the issue of Failure to Exhaust Administrative remedies raised by the Respondent, particularly in Claimant not first filing its money claims with the COA, Claimant contends that a later case on this issue effectively counters the claim of Respondent. In Vigilar vs. Aquino (G.R. No. 180388, 18 January 2011), the Supreme Court disregarded the defense on not first filing the claim before the COA on the ground that application of the rule would cause unreasonable delay or official inaction to the prejudice of the contractor.

We rule in favor of the Claimant. The absence of an arbitration clause in the main body of the MOA is not fatal to the case of the Claimant. Claimant has correctly pointed out that the above-cited provisions in R.A. 9184 are deemed incorporated in the MOA. To rule otherwise would frustrate the intention of the law. In any case, the applicable provisions of R.A. 9184 are found in "The General Conditions of Contract".

On the issue of exhaustion of administrative remedies, Claimant has complied with this condition, correctly citing the Vigilar vs. Aquino case. In addition, under Section 3.2 of the CIAC Rules, Claimant has satisfied precondition no. 2, viz "there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made." In the instance case, more than three years have elapsed since the date Claimant made its Final Demand for payment before the head of TIEZA himself.

WHEREFORE, Respondent's Motion to Dismiss for lack of jurisdiction is hereby dismissed for lack of merit.[19]

TIEZA filed a motion for reconsideration of the Arbitral Tribunal's Order dated December 18, 2012. The Arbitral Tribunal denied the motion for reconsideration in its Order dated January 29, 2013, thus:

Respondent [TIEZA] contends that this Tribunal erred in ruling that: (1) it has jurisdiction over the complaint; and (2) Claimant [Global-V] has complied with the requirement of exhaustion of administrative remedies. On the first issue, Respondent has reiterated its position [that] the contract between the parties does not have an arbitration clause. On the second issue, Respondent argues that the cited Vigilar vs. Aquino case involves a claim which remained unpaid for two decades while the Claim of Claimant involves a lesser period.

This Tribunal stands by its previous ruling that the provisions of Section 59 of R.A. No. 9184 are deemed incorporated in the contract between the parties. There are several alternative modes of dispute resolution; arbitration is one of them. This Tribunal['s] reading of the cited provisions of R.A. No. 9184 is that the parties reduce their

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[19] *Rollo*, Final Award, pp. 168-169.

agreement in writing should they choose to resort to alternative modes of dispute resolution, other than arbitration.

On the issue of exhaustion of administrative remedies, this Tribunal holds the view that the period of unreasonable delay cited in the Vigilar vs Aquino case should not be interpreted literally. In the instant case, considering the amount of claim involved, the period of almost five years of nonpayment can already be considered as unreasonable delay, which would exempt Claimant from the "Exhaustion of Administrative Remedies" rule.

In view of the foregoing, Respondent's MR is hereby denied with finality for lack of Merit. Moreover, Respondent is directed to submit its Answer to Claimant's Complaint within ten (10) days from receipt of this Order.[20]

On February 11, 2013, TIEZA filed its Answer *Ex Abundanti Ad Cautelam*[21] in compliance with the directive of the Arbitral Tribunal.

On March 7, 2013, the parties and their respective counsels attended the preliminary conference. TIEZA manifested that its participation in the preparation of the Terms of Reference (TOR) was being done to safeguard its rights in the proceedings, without waiving its challenge on the jurisdiction of CIAC. TIEZA also informed the Arbitral Tribunal that it was intending to amend its Answer *Ex Abundanti Ad Cautelam* in view of two supervening events: its Request for Special Audit (on all MOAs entered into by the parties) dated January 29, 2013 and the Commission on Audit's (COA's) Notice of Disallowance[22] dated January 3, 2013, which was received by TIEZA on March 5, 2013.[23] The said Notice disallowed the payment of the amount of ₱12,161,423.11 for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project,

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[20] *Id.* at 169-170.

[21] CA *rollo*, pp. 370-383.

[22] *Id.* at 386-387.

[23] *Rollo*, Final Award, p. 170.

as COA found the concrete stamping logo to be unnecessary in the promotion of trade and business of TIEZA in Boracay and in the tourism infrastructure development as a whole, and the cost of the project was extravagant.

The TOR drafted during the preliminary conference was signed by Global-V and its counsel, as well as the members of the Arbitral Tribunal. TIEZA and its counsel, however, did not affix their signatures on the TOR, as it was to be submitted for review and approval of the supervising Assistant Solicitor General and the Solicitor General.

After the preliminary conference, the Arbitral Tribunal received the following pleadings from the parties: TIEZA's Answer *Ex Abundanti Ad Cautelam*[24] dated February 11, 2013; Global-V's Reply to Amended Answer[25] dated March 27, 2013; TIEZA's Rejoinder *Ad Cautelam*[26] dated April 5, 2013; TIEZA's Extremely Urgent Manifestation and Motion *Ad Cautelam*[27] dated April 10, 2013; and Global-V's Manifestation[28] dated April 11, 2013.

On April 18, 2013, the Arbitral Tribunal resolved the issues raised in the aforementioned pleadings submitted by the parties. The Arbitral Tribunal affirmed with finality its ruling in the Order dated January 29, 2013 that CIAC has jurisdiction over this case. The Arbitral Tribunal said that it only allowed the jurisdictional issue to be reopened on the manifestation of TIEZA that a supervening event occurred, which was the special audit being conducted by COA on all MOAs and projects entered into between TIEZA and Global-V. The Arbitral Tribunal noted, however, that TIEZA made its request to COA to conduct the

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[24] CA *rollo*, p. 370.

[25] *Id.* at 411-417.

[26] *Id.* at 418-430.

[27] *Id.* at 433-437.

[28] *Id.* at 438-443.

said special audit on the day that the Arbitral Tribunal issued the Order dated January 29, 2013, denying TIEZA's motion for reconsideration and affirming its ruling in the Order dated December 18, 2012 that CIAC has jurisdiction over this case. The Arbitral Tribunal stood by its previous ruling that CIAC has jurisdiction over this case. It stated that to rule otherwise would open a ground for CIAC to lose its jurisdiction merely by COA's act of conducting a special audit; there is no established jurisprudence to support the proposition that CIAC could lose jurisdiction in this manner.[29]

On April 26, 2013, a second preliminary conference was conducted for the purpose of amending the TOR. The amended TOR was signed by Global-V and its counsel, and by the members of the Arbitral Tribunal. TIEZA, through its representative, also signed the amended TOR with reservation, in view of the non-inclusion of the jurisdictional issue in the amended TOR. The date for the filing of judicial affidavits was agreed to be on May 17, 2013.[30]

Global-V submitted the judicial affidavit of its sole witness, Lawrence C. Lim, while TIEZA filed a Manifestation *Ad Cautelam* stating that since CIAC has no jurisdiction over the case, it would no longer participate in the proceedings, except to submit a draft decision.

The issues for resolution before the Arbitral Tribunal were as follows:

1. Is Claimant entitled to its claims involving the construction of Perimeter Fence at Banaue Hotel in Banaue, Ifugao and BEIP Extension of Drainage Component System (Main and Access Road)?
   1.1 If so, how much per project?
2. For being negotiated contracts, are the contracts for the widening of Boracay Road along Willy's Place; Construction

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[29] *Rollo*, Final Award, pp. 170-171.

[30] *Id.* at 171.

of Stamped Concrete Sidewalk and Installation of Streetlights, Additional Street Lighting and Drainage System (Main Road) valid?
2.1 If these contracts are valid, is Claimant entitled to its claims?
2.2 If so, how much?

3. Is Claimant entitled to its claim for payment of the construction of Stamped Concrete Sidewalk and Installation of Streetlights?
3.1 Has Claimant the authority from its joint venture partner to claim for payment of the above?

4. Is Claimant entitled to payment of interest at 6% as of 31 July 2012 in the total sum of ₱2,722,980.50 including accrued amounts from 31 July 2012 until the principal obligations shall have been paid?

5. Is Claimant entitled to payment of moral damages, exemplary damages and attorney's fees in the amount of ₱550,000.00?

6. Who should bear the cost of arbitration?[31]

On July 16, 2013, the Arbitral Tribunal promulgated its Final Award[32] in favor of Global-V, to wit:

8. SUMMARY OF RULINGS

The rulings of this Arbitral Tribunal may be summarized as follows:

(1) Claimant [Global-V] is entitled to the release of retention fees for the BEIP Extension of Drainage Component System (Main Road and Access Road) Project and the Perimeter Fence at Banaue Hotel Project.

(2) The contracts for the widening of Boracay Road along Willy's Place; Construction of Stamped Concrete Sidewalk and Installation of Streetlights, Additional Street Lighting and Drainage System (main Road) are valid.

(3) Claimant is entitled to the payment of the cost of undertaking the Boracay Road along Willy's Place Project.

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[31] *Id.* at 174-175.

[32] *Id.* at 166.

(4) Claimant is entitled to its claim in connection with the Additional Street Lighting and Drainage System (Main Road) Project.

(5) Claimant's claim in connection with the Construction of Stamped Concrete Sidewalk and Installation of Streetlights Project is denied for lack of authority from its partner to file this Arbitration.

(6) Claimant is not entitled to its claims for moral and exemplary damages.

(7) Claimant is entitled to recovery of attorney's fees.

(8) Respondent [TIEZA] shall bear the cost of arbitration.

9. AWARD

WHEREFORE, award is hereby rendered in favor of Claimant in the amount of ₱10,178,440.17[.] The Respondent shall also bear the cost of arbitration in the amount of ₱322,897.58.

The Award shall earn interest at 6% per annum computed from the time of (sic) this Award becomes final until full payment shall have been made.

SO ORDERED.[33]

TIEZA filed with the Court of Appeals a petition for review with prayer for restraining order and writ of preliminary injunction. It raised the following issues:

I

THE CIAC HAS NO JURISDICTION OVER THE CLAIM OF THE RESPONDENT.

a. The respondent did not comply with the CIAC Rules.

b. The respondent's claims are money claims within the primary jurisdiction of the COA, not the CIAC.

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[33] *Id.* at 180.

c. There was no agreement to arbitrate between the petitioner and the respondent.

d. Sec. 59 of R.A. No. 9184 does not *ipso facto* vest the CIAC with jurisdiction over disputes arising from the construction contracts with the government, as it contains a condition that the parties 'incorporate the process of arbitration in the contract.'

II

THE RESPONDENT IS NOT ENTITLED TO PAYMENT FOR THE SUBJECT CONTRACTS.

a. The MOAs for the Widening of the Boracay Road along Willy's Place, Construction of the Stamped Concrete Sidewalk and Installation of Streetlights Project, and Additional Sidewalk, Street Lighting, and Drainage System (Main Road) Projects are void.

b. The respondent is not entitled to the retention money in the BEIP Extension of Drainage Component System (Main Road & Access Road) and the Perimeter Fence at Banaue Hotel Projects.

III

THE RESPONDENT IS NOT ENTITLED TO INTEREST, DAMAGES, AND COST OF ARBITRATION.[34]

In a Decision[35] dated June 19, 2014, the Court of Appeals granted the petition, nullified the Final Award of the Arbitral Tribunal dated July 16, 2013, and dismissed Global-V's complaint on the ground that CIAC has no jurisdiction over the case under Section 4 of Executive Order (E.O.) No. 1008, because the parties did not agree to submit to arbitration any and all of their disputes arising from the construction contracts.

Global-V filed a motion for reconsideration, maintaining that CIAC has jurisdiction over the case.

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[34] *Id.* at 68-69.

[35] *Id.* at 95-112.

In an Amended Decision[36] dated April 6, 2015, the Court of Appeals reversed and set aside its Decision dated June 19, 2014 and upheld the Final Award of the Arbitral Tribunal dated July 16, 2013.

After a second look and further examination of the applicable law, jurisprudence and evidence on record, the Court of Appeals found that CIAC has jurisdiction over this case under Section 4[37] of E.O. No. 1008, as the parties agreed to submit their disputes arising from the construction contracts to voluntary arbitration. The Court of Appeals explained:

> WE revisited the memoranda of agreement entered into by TIEZA and Global-V together with the attachments thereto, such as the Special Conditions of the Contract (SCC) and General Conditions of the Contract (GCC), and found that they indeed agreed to submit to arbitration any and all of their disputes arising from the construction contracts.
>
> Clause 20 of the General Conditions of Contract (GCC) which accompanied the memoranda of agreement reads —
>
> 20. Resolution of Dispute
>
> x x x x x x x x x
>
> 20.2 **Any and all disputes arising from the implementation of this Contract** covered by R.A. 9184 and its IRR-A **shall be submitted to arbitration** in the Philippines according to the provisions of [R]epublic Act 9285, otherwise known as the "Alternative Dispute Resolution Act 2004"; *Provided, however*, [t]hat process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR-A; *Provided, further*, [t]hat, by mutual

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[36] *Id.* at 62.

[37] SECTION 4. *Jurisdiction*.— The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

> agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. Additional instructions on resolution of disputes, if any, shall be indicated in the SCC.
> x x x

The agreement of the parties to submit their disputes arising from the implementation of the memoranda of agreement to arbitration under RA 9285 is apparent from the aforementioned stipulation. Also evident is the fact that such stipulation is restricted by a condition that the process of arbitration shall be incorporated in the contract.

In OUR questioned Decision, it is the failure of the parties to incorporate in their contract the procedure for the conduct of arbitration that led US to conclude that the CIAC lacks jurisdiction over the controversy. However, after a more careful scrutiny and study of the instant case and the prevailing laws and judicial antecedents, WE are directed to a different conclusion such that non-compliance with a stipulated condition in the contract will not divest the CIAC of its jurisdiction over the construction controversy. The mere presence of an arbitration clause in their contract is sufficient to clothe CIAC [with] the authority to hear and decide the construction suit. On this score, WE cannot subscribe to TIEZA's claim that Section 59 of RA 9184 does not *ipso facto* vest the CIAC with jurisdiction over disputes arising from construction contracts with the government, as they contain a condition that the parties incorporate the process of arbitration in the contract. Neither would the provision under the SCC where the name and address of the Arbiter were not indicated, as what was written therein was "N. A.", strip the CIAC of its power over the extant construction contract dispute.

This was the ruling of the Supreme Court in *Hutama-Rsea Joint Operations, Inc. v. Citra Metro Manila Tollways Corp.* [G.R. No. 180640, April 24, 2009] —

x x x x x x x x x

> It bears to emphasize that the mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, **without any qualification or condition precedent. To affirm a condition precedent in the construction contract, which would effectively suspend the jurisdiction of the CIAC until compliance therewith,**

would be in conflict with the recognized intention of the law and rules to automatically vest CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.[38]

Moreover, the Court of Appeals ruled that it is the stipulation of the parties to submit their construction dispute to arbitration that determines whether CIAC could exercise jurisdiction over the case; such that, the failure of the complainant to allege in the Complaint or Request for Arbitration such agreement will not deny CIAC of such power conferred on it by law. Besides, the MOAs, to which the Special Conditions of the Contract and the General Conditions of Contract were attached, were submitted to the Arbitral Tribunal for its study.

The Court of Appeals also held that TIEZA's argument that the omission to aver in the Request for Arbitration and Complaint that administrative remedies have been exhausted warrants the dismissal of the complaint was unfounded. As provided under Section 3.2.2 of the CIAC Rules, non-compliance with the precondition set forth under the CIAC Rules will only suspend the arbitration proceedings, but it will not cause the dismissal of the complaint, more so affect the jurisdiction of CIAC to conduct the proceedings.

The Court of Appeals found unmeritorious the assertion of TIEZA that the money claim of Global-V falls within the jurisdiction of COA, and not CIAC. It pointed out that TIEZA itself cited Section 3.2 of the CIAC Rules, which provision relates to construction contracts entered into with the government. This is further supported by Section 4 of E.O. No. 1008, which provides that disputes within the jurisdiction of CIAC involve government and private contracts. If it is the COA which has jurisdiction over disputes arising from these contracts, the law should have expressly mentioned such intent, but it did not. What is excluded from the coverage of E.O. No. 1008 are only disputes arising from employer-employee relationships.

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[38] *Rollo*, pp. 77-79; emphases supplied.

Further, the Court of Appeals upheld the ruling of the Arbitral Tribunal that the MOAs entered into through negotiated procurement are valid and, thus, granted Global-V's claims, except the claim pertaining to the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project.

The Court of Appeals held that the agreements between PTA and Global-V have a binding effect against TIEZA, especially that the latter stepped into the shoes of PTA only after the completion of the projects. The change in the organizational structure and officers of PTA cannot defeat the validity of the contracts. To rule otherwise would cause great injustice to Global-V, which completed its undertakings under the contracts. Further, the public is now enjoying and benefiting from the said projects; hence, it is only proper that Global-V be compensated therefor.

The Court of Appeals upheld the Arbitral Tribunal's award of 6% interest on the monetary award, attorney's fees, and cost of arbitration.

TIEZA's motion for reconsideration was denied by the Court of Appeals in its Resolution[39] dated July 22, 2015.

Hence, TIEZA filed this petition, raising the following issues:

I. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE CIAC HAD JURISDJCTION OVER THE DISPUTE DESPITE THE PARTIES' STIPULATION IN THE CONTRACT THAT THERE WILL BE NO ARBITRATION;

II. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE CIAC HAD JURISDICTION OVER THE DISPUTE NOTWITHSTANDING THE PRIMARY JURISDICTION OF THE COA OVER THE MONEY CLAIM OF GLOBAL-V;

III. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE NEGOTIATED PROCUREMENT

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

OF THE CONTRACTS BETWEEN TIEZA AND GLOBAL-V IS VALID UNDER R.A. NO. 9184;

IV. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AWARDING INTEREST, ATTORNEY'S FEES, AND COSTS OF ARBITRATION.[40]

I. Whether or not the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute.

TIEZA contends that the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute. It maintains that the five MOAs between the parties do not contain an arbitration agreement as required by E.O. No. 1008, R.A. No. 9184, and the CIAC Rules.

Although the Court of Appeals found that there was an agreement to arbitrate in Clause 20 of the General Conditions of Contract, TIEZA contends that a suspensive condition for its effectivity is provided: *that the process of arbitration be incorporated in the MOAs*. Hence, for the agreement to arbitrate to arise, the suspensive condition — its incorporation in the MOA — must first be complied with. TIEZA asserts that contrary to the Court of Appeals' finding, the suspensive condition is imposed not on the exercise of CIAC's jurisdiction, but on the effectivity of the arbitration clause itself. Since the suspensive condition was not complied with, there is no effective arbitration clause present in this case. Hence, the dispute cannot be considered to be within the jurisdiction of CIAC, and the arbitration should have not proceeded pursuant to Section 4.3[41] of the CIAC Rules.

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[40] *Id.* at 39.

[41] SECTION 4.3. *When Arbitration Cannot Proceed*.— Where the contract between the parties does not provide for arbitration and the parties cannot agree to submit the dispute(s) to arbitration, the arbitration cannot proceed and the Claimant/s shall be informed of that fact.

TIEZA's contention is unmeritorious.

E.O. No. 1008[42] created the CIAC as an arbitral machinery to settle disputes in the construction industry expeditiously in order to maintain and promote a healthy partnership between the government and the private sector in the furtherance of national development goals. It was therein declared to be the policy of the State to encourage the early and expeditious settlement of disputes in the Philippine construction industry. CIAC's jurisdiction over disputes arising from construction contracts is contained in Section 4 of E.O. No. 1008, to wit:

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

The CIAC, pursuant to its rule-making power granted by E.O. No. 1008, promulgated the first Rules of Procedure Governing Construction in August 1988, and it has amended the rules through the years to address the problems encountered in the administration of construction arbitration.

In this case, the pertinent provisions of the CIAC Rules are as follows:

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[42] Entitled, "CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES."

SECTION 2.1 *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over construction disputes, which arose from, or is connected with contracts entered into by parties involved in construction in the Philippines whether the dispute arose before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts.

2.1.1 The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

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SECTION 2.3 *Condition for exercise of jurisdiction*. — For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.

2.3.1 Such arbitration agreement or subsequent submission must be alleged in the Complaint. Such submission may be an exchange of communication between the parties or some other form showing that the parties have agreed to submit their dispute to arbitration. Copies of such communication or other form shall be attached to the Complaint.

x x x x x x x x x

SECTION 4.1 *Submission to CIAC Jurisdiction*.— **An arbitration clause in a construction contract** or a submission to arbitration of a construction dispute **shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction**, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. (Emphasis supplied.)

From the foregoing, it is evident that for CIAC to acquire jurisdiction over a construction controversy, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration, and that an arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC's jurisdiction.

In this case, the Court of Appeals found that there was an agreement to arbitrate in the General Conditions of Contract, particularly in Clause 20.2 thereof, which formed part of the MOAs dated September 6, 2007 (BEIP- Extension of Drainage Component System [Main Road and Access Road] Project) and February 29, 2008 (Perimeter Fence at Banaue Hotel Project), which contracts were procured through competitive bidding. To reiterate, Clause 20.2 of the General Conditions of Contract states:

> 20. Resolution of Dispute
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> x x x x x x x x x
>
> 20.2. **Any and all disputes arising from the implementation of this Contract covered by x x x R.A. 9184 and its IRR-A shall be submitted to arbitration in the Philippines according to the provisions of [R]epublic Act 9285, otherwise known as the "Alternative Dispute Resolution Act 2004"**; *Provided, however*, That process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR-A; *Provided, further*, That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. Additional instructions on resolution of disputes, if any, shall be indicated in the SCC.[43]

Undoubtedly, Clause 20.2 of the General Conditions of Contract is an arbitration clause that clearly provides that all disputes arising from the implementation of the contract *covered by R.A. No. 9184* shall be submitted to arbitration in the Philippines. In accordance with Section 4.1 of the CIAC Rules, the existence of the arbitration clause in the General Conditions of Contract that formed part of the said MOAs shall be deemed an agreement of the parties to submit existing or future controversies to CIAC's jurisdiction. Since CIAC's jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is

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[43] *Rollo*, p. 291; emphasis ours.

an arbitration clause in the construction contract.[44] Hence, the fact that the process of arbitration was not incorporated in the contract by the parties is of no moment. Moreover, the contracts in this case are expressly covered by R.A. No. 9184 (The Government Procurement Reform Act), which provides under Section 59[45] thereof that all disputes arising from the implementation of a contract covered by it shall be submitted to arbitration in the Philippines, and disputes that are within the competence of CIAC to resolve shall be referred thereto.

As CIAC's jurisdiction over the disputes arising from the said MOAs is conferred by E.O. No. 1008 and R.A. No. 9184, the process of arbitration questioned to not have been incorporated in the contracts could then only refer to the process of arbitration by CIAC, as provided in the CIAC Rules. Therefore, there is no vagueness in the process of arbitration to follow even if it was not incorporated as a provision in the contracts.

Further, the MOAs dated February 2, 2007 (Construction of Stamped Concrete Sidewalk and Installation of Streetlights [Main Road] Project) and December 7, 2007 (Additional Sidewalk, Streetlighting and Drainage System [Main Road] Project) specifically stated that the projects covered thereby were additional works to the original contracts covered by bidding (with General Conditions of Contract containing an arbitration clause) and, together with the MOA dated September 19, 2008 (Widening of Boracay Road along Willy's Place Project), *were*

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[44] *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*, 604 Phil. 631, 644 (2009).

[45] SECTION 59. *Arbitration*.— **Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines** according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": **Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto**. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. (Emphasis ours.)

negotiated procurements made pursuant to Sections 53 (d) and 53 (b), respectively, of the IRR-A of R.A. No. 9184. The jurisdiction of CIAC over the construction controversy involving the said MOAs is questioned because the MOAs do not contain an arbitration clause. However, the said MOAs expressly state that they are covered by R.A. No. 9184. By virtue of R.A. No. 9184, which is the law that authorized the negotiated procurement of the construction contracts entered into by the parties, CIAC is vested with jurisdiction over the dispute. Applicable laws form part of, and are read into contracts;[46] hence, the provision on settlement of disputes by arbitration under Section 59 of R.A. No. 9184 formed part of the MOAs in this case.

Based on the foregoing, the Court of Appeals correctly ruled that CIAC had jurisdiction over this case.

II. Whether or not the Court of Appeals erred in ruling that COA had no primary jurisdiction over the money claim of Global-V.

TIEZA contends that the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute notwithstanding the primary jurisdiction of COA over the money claim of Global-V. Global-V's demand for payment should have first been brought as a money claim before COA, which has primary jurisdiction over the matter. The matter of allowing or disallowing the requests for payment is within the primary power of COA to decide. If there is a refusal on the part of a government official to grant a money claim, the proper remedy is with COA.

The contention is unmeritorious.

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law.[47] Section 4 of E.O.

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[46] *Power Sector Assets and Liabilities Management Corp. v. Pozzolanic Phils., Inc.*, 671 Phil. 731, 763-764 (2011).

[47] *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, 662 Phil. 441, 460 (2011).

No. 1008 provides that the CIAC shall have *original* and *exclusive* jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration. In *LICOMCEN, Inc. v. Foundation Specialists, Inc.*,[48] the Court held that the text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. What is only excluded from the coverage of E.O. No. 1008 are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines.

Further, the Arbitral Tribunal found that Global-V has complied with the condition of exhaustion of administrative remedies, correctly citing *Vigilar, et al. v. Aquino*.[49] In addition, under Section 3.2 of the CIAC Rules, Global-V has satisfied precondition No. 2, viz. "there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made[.]" The Arbitral Tribunal stated that the period of unreasonable delay cited in *Vigilar, et al. v. Aquino*[50] should not be interpreted literally. It correctly ruled that considering the amount of claim involved in this case, the period of almost five years of nonpayment can already be considered as unreasonable delay, which would exempt Global-V from the rule on exhaustion of administrative remedies.

III. Whether or not the Court of Appeals erred in ruling that the negotiated procurement of the contracts between TIEZA and Global-V is valid under R.A. No. 9184.

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[48] *Id*.

[49] 654 Phil. 755 (2011).

[50] *Id.*

TIEZA contends that the Court of Appeals erred on a question of law in finding that the negotiated procurement of the Widening of Boracay Road along Willy's Place Project; the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project; and the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project complied with the requirements of negotiated procurement under Section 53 of R.A. No. 9184.

At this juncture, it must be pointed out that Global-V's claim in connection with the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project was denied by the Arbitral Tribunal for lack of authority from Global-V's partner to file the Request for Arbitration/Complaint, and the denial was affirmed by the Court of Appeals. It appears that Global-V did not appeal from the decision of the Court of Appeals. As the claim for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project has been denied, the issue raised by TIEZA regarding the validity of the said project need not be discussed herein.

TIEZA argues that in regard to the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project, the second requisite in R.A. No. 9184, Section 53 (d), that is, that the subject contract to be negotiated has similar or related scopes of work as the original contract, was not complied with. While the original contract (BEIP-Extension of Drainage Component System [Main Road and Access Road] Project) was only for the construction of a drainage collection system in Barangay Balabag, Boracay, the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project already included the construction or installation of electrical works, lamp posts, sidewalks, pedestals, etc., which were no longer related to the scope of the BEIP-Extension of Drainage Component System (Main Road and Access Road) Project.

The contention is unmeritorious.

The Arbitral Tribunal held that the aforecited MOAs were valid and it granted Global-V's claims, except the claim pertaining to the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project, on these bases:

> During his testimony, Claimant's witness presented documents showing that it was Claimant (sic) who amply justified the award of the three projects to Claimant based on negotiated procurement (Exhibit Nos. C-02, C-14, C-15, C-28, C-29 and C-30).
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> x x x x x x x x x
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> In the documents presented by Claimant, Respondent justified the negotiated procurement under Section 53(b) of R.A. No. 9184 for the Boracay Road along Willy's Place Project, and under Section 53(d) for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights Project and the Additional Street Lighting and Drainage System (Main Road) Project.
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> Section 53(b) of R.A. 9184 states:
>
> > "b. In case of imminent danger to life or property during a state [of] calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities"
>
> In his Memorandum to Respondent's General Manager dated 19 September 2008 (Exhibit C-02), the Deputy General Manager invoked the above-quoted provision to justify the award of the Boracay Road along Willy's Place Project. He stated in the memorandum that "the immediate completion of the project is necessary because of the continuing and consistent influx of tourists to Boracay particularly this (sic) coming holidays and peak season."
>
> Section 53 (d) of RA. 9184 states:
>
> > "Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR; Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of

> the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the on-going project; and the contractor has no negative slippage; Provided further, That negotiations for procurement are commenced before the expiry of the original contract. Wherever applicable, the principle shall also govern consultancy contract, where the consultants have unique experience and expertise to deliver the required service"

This provision was invoked by Respondent's Technical Evaluation Committee and Bids and Awards Committee in justifying the award of the Construction of Stamped Concrete Sidewalk and Installation of Streetlights Project and the Additional Street Lighting and Drainage System (Main Road) Project.

Notwithstanding the reversal in the stand of the Respondent on the validity of the award of the aforementioned projects under negotiated procurement, there appear to be no substantial reasons to disturb the original findings of Respondent's officials that the projects could be negotiated. Therefore, this Tribunal hereby upholds the validity of the contracts.[51]

The Court of Appeals was likewise not convinced by the same arguments raised before this Court by TIEZA, as it held:

> It is to be noted that the subject MOAs were entered into by the then PTA, the precursor of TIEZA. The PTA officers ruled that the projects could be negotiated, and therefore, need not go through public bidding because of the urgent need to accomplish them in view of the continuing influx of tourists in Boracay. Worthy of emphasis is the fact that tourism is the primary source of livelihood in Boracay. With the great flow of tourists in the island, especially during peak season, it is the duty of the tourism department to take steps to secure the safety of the people therein. In this regard, the three projects were offered to Global-V via negotiated procurements. Global-V is the same company that was previously contracted, through competitive bidding, for the construction of the BEIP- Drainage Component System. In March, 2009 after the completion of the projects, Global-V billed PTA for the same. The demand continued until PTA was replaced

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[51] *Rollo*, pp. 176-177.

by TIEZA. Despite the demands for payment, however, TIEZA failed and refused to pay the costs of the project as it is now questioning the validity of the contracts entered into by its predecessor because the projects did not go through the process of public bidding.

TIEZA's contention fails to convince. The agreements between PTA and Global-V have a binding effect against TIEZA, especially that the latter came into the picture only after the completion of the projects. To OUR minds, the change in the organizational structure and officers of PTA cannot defeat the validity of the contracts. If WE are to rule otherwise, great injustice would be inflicted upon Global-V who did its part of the contract and after it had completed its undertakings, it is only to be rebuffed by TIEZA by assailing the enforceability of the contracts.

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What further convinces US to allow the contracts is the fact that the public is now enjoying and benefiting from the said projects. Hence, it is only proper that Global-V be compensated therefor.[52]

The Court holds that the aforecited MOAs are valid as they complied with the requirements of negotiated procurement under Section 53, paragraphs (b) and (d) of R.A. No. 9184.

The Widening of Boracay Road along Willy's Place Project was justified under Section 53 (b)[53] of R.A. No. 9184 and its IRR-A, to wit: "other causes where immediate action is necessary to prevent damage to or loss of life or property." As Boracay is famous for its white-sand beaches and is a tourist attraction

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

[53] SECTION 53. *Negotiated Procurement*.— Negotiated Procurement shall be allowed only in the following instances:

x x x x x x x x x

b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

and destination in the Philippines, the PTA found it "of utmost urgency with the onset of the tourist peak season" to undertake the project to ensure the safety of the people and tourists of Boracay.

Moreover, the Court finds that the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project complied with the requirements of Section 53 (d)[54] of R.A. No. 9184. The MOA[55] covering this additional project stated that the project was found very necessary in the completion of the original project (the BEIP-Extension of Drainage Component System [Main Road and Access Road] Project). This additional project should be considered as similar or related to the scope of work as in the original project, since it also involves the construction of a drainage system and included the construction of additional sidewalk, as well as street lighting, to complete the original project. The Court notes that Section 48[56] of R.A.

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[54] SECTION 53. *Negotiated Procurement*. — Negotiated Procurement shall be allowed only in the following instances:

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d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service[.]

[55] *Rollo*, p. 252.

[56] SECTION 48. *Alternative Methods*.— Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

No. 9184 provides that the Procuring Entity,[57] in this case, PTA/TIEZA, may, *in order to promote economy and efficiency*, resort to alternative methods of procurement, including negotiated procurement. Hence, the PTA must have considered the construction of the additional sidewalk and street lighting economical and related to the original contract to fund them together with the construction of the drainage system of the main road. As Global-V aptly commented, "[w]hy will [p]etitioner hire another company to lay the sidewalks while [it] was constructing the concrete drainage canals on top of which the sidewalks would be built?"[58] As found by the Arbitral Tribunal, Section 53 (d) of R.A. No. 9184 was invoked by TIEZA's Technical Evaluation Committee and Bids and Awards Committee in justifying the award of the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project, and there appears to be no substantial reason to disturb the original findings of TIEZA's officials that the projects could be negotiated, notwithstanding the reversal in the stand of TIEZA.

IV. Whether the Court of Appeals erred in imposing 6% legal interest, attorney's fees, and cost of arbitration against TIEZA.

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x x x x x x x x x

(e) Negotiated Procurement — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

[57] *Procuring Entity* — refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects (Section 5 (o), R.A. No. 9184).

[58] *Rollo*, p. 668.

TIEZA contends that the Court of Appeals erred in imposing 6% legal interest, attorney's fees and cost of arbitration against it despite the lack of basis for such award. It questions the award of attorney's fees and cost of arbitration as it did not act in gross and evident bad faith.

The contention is without merit.

The Court of Appeals correctly sustained the imposition of 6% legal interest on the monetary award pursuant to *Nacar v. Gallery Frames, et al.*,[59] which held that "[w]hen the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit."

The Court upholds the award of attorney's fees and cost of arbitration against TIEZA. The Arbitral Tribunal stated that Global-V's witness presented a letter of agreement wherein Global-V agreed to pay its counsel attorney's fees in the amount of ₱350,000.00. The Arbitral Tribunal awarded attorney's fees to Global-V on the ground that TIEZA acted in gross and evident bad faith in its refusal to pay the valid, just and demandable claims of Global-V under Article 2208,[60] paragraph 5 of the Civil Code. For the same reason justifying the award of attorney's fees, the cost of arbitration was also charged against TIEZA.

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[59] 716 Phil. 267, 283 (2013).

[60] ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim[.]

The said award was affirmed by the Court of Appeals, and the Court sustains the same.[61]

WHEREFORE, the Amended Decision of the Court of Appeals dated April 6, 2015 and its Resolution dated July 22, 2015 in CA-G.R. SP No. 131024, upholding the Final Award of the Arbitral Tribunal dated July 16, 2013 in CIAC Case 28-2012, are **AFFIRMED**. It is hereby clarified that the imposition of legal interest at the rate of six percent (6%) on the total monetary award of ₱10,178,440.17 shall be reckoned from the finality of this Decision until full payment.

SO ORDERED.

Leonen, Reyes, A. Jr., and *Reyes, J. Jr., JJ.*, concur.

Gesmundo, J., on official business.

FIRST DIVISION

[G.R. No. 219927. October 3, 2018]

BOARD OF INVESTMENTS, *petitioner, vs.* **SR METALS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; THE OFFICER-IN-CHARGE (OIC) OF THE BOARD OF INVESTMENT (BOI) HAS THE AUTHORITY TO SIGN

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[61] See *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, 572 Phil. 494, 510 (2008).

THE VERIFICATION AND CERTIFICATION.— Although it appears that the verification and certification of non-forum shopping was not among the list of official documents mentioned in Department Order No. 14-39, series of 2014, the Court is still inclined to uphold the authority of OIC Halili-Dichosa to sign the same. In Memorandum Order No. 2015-080, Supervising Director Halili-Dichosa was designated OIC of petitioner **in the interest of service** as the Undersecretary/Managing Head was on an official trip. Considering the rationale of the said Memorandum, the Court finds that any doubt as to the authority of OIC Halili-Dichosa to file the instant case and to sign the verification and certification of non-forum shopping should be resolved in favor of the government. Obviously, OIC Halili-Dichosa caused the filing of the instant Petition in the performance of her duties and in order to protect the interests of the government. Thus, it is more prudent for the Court to decide the instant Petition on the merits rather than to dismiss it on a mere technicality.

2. **ID.; APPEALS; RULE 45 PETITION; PETITIONER ATTACHED THE MATERIAL PORTIONS OF THE RECORDS AS WOULD SUPPORT THE PETITION.—** The determination of what pleadings are material to the Petition is up to the Court. In this case, the Court finds that the pleadings filed before the CA were not material considering that most of the attachments to these pleadings were already attached to the instant Petition. What is important is that the assailed Decision and Resolution, the letters and issuances of petitioner as well as the documents submitted by respondent to petitioner were all attached to the Petition. Besides, such failure has been cured as the CA records have been elevated before the Court.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS, DEFINED; RESPONDENT WAS AFFORDED DUE PROCESS IN CASE AT BAR.—** Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of." Because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure. In this case, although there may have been infirmities or lapses in initiating the cancellation process, the Court,

nonetheless, finds that essentially respondent was afforded due process since it was informed of the allegations against it and was given ample opportunity to refute the same. Records show that respondent received the letter dated April 11, 2011 informing it of the allegations made by the *Sangguniang Bayan* and of the *Sangguniang Bayan's* request for the cancellation of respondent's BOI registration; that the said letter required respondent to file a reply within 15 days from receipt of the same; that respondent was allowed to submit evidence to refute the allegations against it; and that respondent sought reconsideration of the withdrawal of its ITH incentive. These clearly show that the essence of due process was complied with.

4. ID.; ADMINISTRATIVE LAW; OMNIBUS INVESTMENT CODE; AS RESPONDENT NEVER MADE ANY REPRESENTATION THAT IT WOULD BE BUILDING A BENEFICIATION PLANT IN ITS APPLICATION, IT IS ENTITLED TO AN INCOME TAX HOLIDAY (ITH) INCENTIVE.— x x x [T]he Court agrees with the findings of the CA that the withdrawal of respondent's ITH incentive was not supported by the law and the evidence. In its Application for Registration, respondent asked that it "be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreement] and newly adopted beneficiation process." Clearly, respondent never made any representation that it would be building a beneficiation plant. Moreover, there was nothing in the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP to indicate that a construction of a new plant was required for respondent to be registered as a "new project." x x x Since there was no such requirement under the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP, petitioner cannot use this as ground to withdraw respondent's ITH incentive.

5. ID.; ID.; ID.; ID.; A COMMITMENT TO BUILD A BENEFICIATION PLANT DOES NOT NECESSARILY REQUIRE THE CONSTRUCTION OF AN INDUSTRIAL BUILDING OR STRUCTURE SINCE A BENEFICIATION PLANT COULD ALSO BE AN ASSEMBLAGE OF EQUIPMENT AND MACHINERIES WHERE THE

BENEFICIATION PROCESS COULD BE DONE.— x x x [E]ven if respondent did commit to build a beneficiation plant, the Court agrees with respondent that a commitment to build a beneficiation plant does not necessarily require the construction of an industrial building or structure, as a beneficiation plant could also be an assemblage of equipment and machineries where the beneficiation process could be done. In this case, respondent was able to prove that it has a beneficiation plant, consisting of x x x equipment and machineries[.] x x x

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; OMNIBUS INVESTMENT CODE (E.O. 226); RESPONDENT'S REPEATED REFERRAL TO A BENEFICIATION PLANT IN ITS PROJECT FEASIBILITY REPORT BELIES ITS ASSERTION THAT IT NEVER REPRESENTED THAT IT WOULD INSTALL A BENEFICIATION PLANT; IT WAS THE CONSTRUCTION OF THE BENEFICIATED PLANT AND THE PURCHASE OF THE NEW EQUIPMENT THAT CHARACTERIZED RESPONDENT AS A NEW PRODUCER.— SR Metals' repeated referral to a beneficiation plant in its Project Feasibility Report belies its assertion that it never represented that it would install a beneficiation plant which would be valued at ₱43,650,000.00. More importantly though, it was the construction of a beneficiated plant and the purchase of new pieces of equipment that characterized SR Metals as a new producer because without those two (2) substantial capital investments, it would have been considered to have merely expanded its existing mining operations and would not have qualified for the fiscal incentive of a full income tax holiday. This is evident with how the Board of Investments initially rejected SR Metals' application as a "new producer" and suggested that it file an application for an "expanding" producer instead since it was already engaged in small-scale mining. It was only upon SR Metals' request for a reconsideration and upon its commitment that it would build a beneficiation plant that the Board of Investments reconsidered its earlier decision and approved SR Metals' application as "new producer."

2. ID.; ID.; ID.; ONLY NEW REGISTERED FIRMS OR NEW PROJECTS, AND EXPANDING FIRMS ARE QUALIFIED FOR AN INCOME TAX HOLIDAY.— An income tax holiday is one of the incentives for registered enterprises provided for in Executive Order No. 226[.] x x x Article 39(a)(1) clearly provides that only new registered firms or new projects may qualify for either a four (4)-year or six (6)-year income tax holiday. Article 39(a)(2) likewise provides a similar incentive to expanding firms, but only for a period of three (3) years and only in proportion to their expansion. Thus, it is understandable why SR Metals would insist on being considered as a new producer because the fiscal incentives given to an expanding producer simply pales in comparison to those available to a new producer.

3. ID.; ID.; ID.; THE BOARD OF INVESTMENT (BOI) HAS THE POWER TO PROCESS, APPROVE AND/OR IMPOSE TERMS AND CONDITIONS FOR APPLICATIONS FOR REGISTRATION, SUSPEND OR CANCEL REGISTRATION AND DETERMINE IF A REGISTERED ENTERPRISE IS QUALIFIED FOR FISCAL INCENTIVES.— [T]he decision on whether or not SR Metals should be classified as a new producer ultimately belongs with the Board of Investments pursuant to its duty to process and approve applications for registration, and to its power to impose the terms and conditions for applications for registration. The Board of Investments likewise has the principal authority to determine if a registered enterprise falls under the specific activities that may qualify for fiscal incentives under the annual Investment Priorities Plan. Consequently, it has the power to either cancel or suspend a registration or an incentive, for the registered enterprise's failure to maintain the required qualifications or its violation of the terms of registration. In the case at bar, the 2007 Investment Priorities Plan provided three (3) different types of new projects: (1) a newly formed or incorporated enterprise; (2) an existing enterprise with a proposed project that is entirely different from its existing business operation; and (3) an existing enterprise which will put up another line or new facility, i.e., physical structure and equipment, and will infuse new investment into its existing business operation. A registered enterprise will have to fall under any of the three (3) classifications for new projects to quality for an income tax holiday; and the Board of

Investments, with its mandate of implementing Executive Order No. 226, is the government body empowered to determine if a registered enterprise satisfies the established requirements.

4. ID.; ID.; ID.; ID.; THE BOI DETERMINATION THAT IN VIEW OF RESPONDENT'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF ITS REGISTRATION THERE IS A NEED TO REVOKE ITS PREVIOUS ENTITLEMENT TO AN INCOME TAX HOLIDAY MUST BE RESPECTED.— The Board of Investments found that SR Metals failed to comply with the terms and conditions of its registration; thus, there is a need to revoke its previous entitlement to an income tax holiday[.] x x x This Court has consistently deferred to the factual findings of administrative agencies as they are the recognized experts in their fields and they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or courts of justice." Thus, this Court has accorded respect and even finality to the factual findings of administrative bodies as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions. x x x An income tax holiday is bestowed on a new project to encourage investors to set up businesses and to contribute to the country's economic growth. The fiscal incentive is also meant to help registered enterprises recoup their substantial initial investments by giving them a reprieve from paying income tax for a few years. However, like any privilege, the income tax holiday comes with conditions and requirements which must be fulfilled for its continued enjoyment. With its failure to put up a physical structure, i.e., the beneficiation plant, *and* pieces of equipment, SR Metals cannot be classified as a new project under the 2007 Investment Priorities Plan. Hence, it is not entitled to an income tax holiday and the Board of Investments did not err in revoking its entitlement to it.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Follosco Morallos & Herce for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"The cardinal rule is that any decision or ruling promulgated by an administrative body must have something to support itself."[1]

Before the Court is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the December 4, 2014 Decision[3] and the August 11, 2015 Resolution[4] of the Court of Appeals (CA), in CA-G.R. SP No. 131511.

Factual Antecedents

Petitioner Board of Investments (BOI) is a government agency created under Republic Act (RA) No. 5186.[5] It is an attached agency of the Department of Trade and Industry (DTI) and is the lead government agency responsible for the promotion of investments in the Philippines.[6] Respondent SR Metals, Inc., on the other hand, is a corporation engaged in the business of mining in Tubay, Agusan Del Norte.[7]

On April 3, 2008, respondent filed with petitioner an Application for Registration[8] as a new producer of beneficiated nickel ore on a non-pioneer status in relation to its proposed Nickel Project.[9]

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[1] *Alimario v. Commission on Audit*, 295 Phil. 760, 766 (1993).

[2] *Rollo*, Volume I, pp. 13-47.

[3] *Id*. at 54-71; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting.

[4] *Id*. at 72-73.

[5] *Rollo*, Volume II, p. 1243.

[6] *Rollo*, Volume I, p. 14.

[7] *Id.* at 15.

[8] *Id*. at 97-145 and 146-147.

[9] *Id*. at 15.

On June 4, 2008, petitioner approved the application and issued Certificate of Registration No. 2008-113[10] in favor of respondent as a new producer of beneficiated nickel silicate ore/ lateritic nickel ore on a non-pioneer status. Accordingly, respondent was granted an Income Tax Holiday (ITH) incentive under the Omnibus Investment Code for the period 2008 to 2012.[11]

On August 31, 2010, the *Sangguniang Bayan* of the Municipality of Tubay issued Resolution No. 2010-090,[12] requesting the cancellation of respondent's BOI registration on the following grounds:

(1) [that respondent was] not a manufacturer or product processor or a beneficiation plant;

(2) [that respondent] was engaged in the direct shipping of unprocessed ore which employed the method of open-cut mining contrary to what [was] stated in its [Certificate of] Registration as a new producer of beneficiated nickel silicate ore/lateritic nickel ore; and

(3) [that respondent] applied for tax exemption x x x without informing or consulting the [M]unicipality of Tubay and the immediate stakeholders.[13]

To prove its claims, the *Sangguniang Bayan* submitted to petitioner Certifications[14] from the Municipal Engineer's Office, the Municipal Assessor's Office, and the Municipal Planning and Development Office attesting that respondent had no industrial building or processing plant declared under its name.[15]

On April 11, 2011, petitioner issued a letter[16] to respondent informing it of the *Sangguniang Bayan's* Resolution requesting

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[10] *Id*. at 173.

[11] *Id*. at 151.

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

[13] *Id*. at 55.

[14] *Id*. at 157-159.

[15] *Id*. at 56.

[16] *Id.* at 160-161.

for the cancellation of respondent's BOI registration. In the same letter, petitioner directed respondent to submit a reply within 15 days from receipt of the said letter.

In its Reply,[17] respondent explained that it was a producer of beneficiated nickel/lateritic nickel ore; that it was registered as a new producer of beneficiated nickel silicate ore/lateritic nickel ore, and not as a beneficiation plant; and that consultation with the concerned local government was not required under the 2007 Investment Properties Plan (IPP).

Ruling of the Board of Investments

On May 24, 2012, petitioner issued a letter[18] informing respondent that, during the February 12, 2012 Board Meeting, the Board resolved to withdraw respondent's ITH incentive for failure to comply with:

(1) the requirements on new projects under the 2007 IPP, specifically the establishment of another line (beneficiation plant) and the infusion of new investment in fixed assets; and

(2) the Specific Terms and Conditions attached to respondent's Project Approval Sheet and Certificate of Registration, requiring respondent to submit a progress report on the implementation of the registered project and to adhere to a project timetable on the acquisition of machinery/equipment.

Respondent sought reconsideration, submitting a summary of the major equipment composing the beneficiation plant as well as a summary of machineries and equipment and the individual proofs of ownership of the machineries and equipment it had acquired.[19]

On August 12, 2013, petitioner issued a letter[20] informing respondent that the Board, during its July 30, 2013 Meeting,

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[17] *Id*. at 168-172.

[18] *Id*. at 188.

[19] *Id*. at 190-194.

[20] *Id*. at 196-197.

resolved to deny respondent's motion for reconsideration for the following reasons:

(1) late filing;

(2) failure to raise new grounds or information that would warrant a reversal of the Board's Resolution withdrawing respondent's ITH incentive; and

(3) absence of another line and new investment in fixed assets.

Unfazed, respondent elevated the matter before the CA *via* a Petition under Rule 43 of the Rules of Court.

Ruling of the Court of Appeals

On December 4, 2014, the CA rendered the assailed Decision finding respondent entitled to the ITH incentive under the Omnibus Investment Code. The CA ruled that there was nothing in the 2007 IPP requiring respondent to construct a beneficiation plant in order to avail of the ITH incentive.[21] The CA also found that, contrary to the findings of petitioner, respondent infused new investments in fixed assets, submitted progress reports, and complied with the project timetable.[22] Thus, there was no reason for petitioner to withdraw the ITH incentive in favor of respondent. The CA further said that respondent was denied due process when petitioner (1) failed to inform respondent that a formal administrative investigation had already been initiated against it; (2) withdrew respondent's ITH incentive on grounds other than those raised in the Resolution issued by the *Sangguniang Bayan*; and (3) denied respondent's motion for reconsideration for late filing.[23] The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is Granted. The assailed resolutions of the [BOI] embodied in its letters dated May 24, 2012 and August 12, 2013 withdrawing the

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[21] *Id*. at 62.

[22] *Id*. at 68-69.

[23] *Id*. at 70.

ITH entitlement of [respondent] are hereby ANNULLED and SET ASIDE.

SO ORDERED.[24]

Petitioner moved for reconsideration but the CA denied the same in its August 11, 2015 Resolution.[25]

Hence, petitioner filed the instant Petition, interposing the following issues:

I.

WHETHER X X X THE TERMS AND CONDITIONS OF RESPONDENT'S X X X PROJECT APPROVAL SHEET AND BOI [CERTIFICATE OF REGISTRATION] INCLUDE THE COMMITMENT TO ESTABLISH A BENEFICIATION PLANT.

II.

WHETHER X X X THE GRANT OF [ITH] INCENTIVE IS A MATTER OF RIGHT UPON APPROVAL OF RESPONDENT'S X X X [APPLICATION FOR] REGISTRATION AND DESPITE ITS FAILURE TO ABIDE BY THE TERMS AND CONDITIONS OF ITS [CERTIFICATE OF] REGISTRATION.

III.

WHETHER X X X PETITIONER OBSERVED DUE PROCESS IN WITHDRAWING RESPONDENT'S X X X [ITH] INCENTIVE.[26]

Petitioner's Arguments

Petitioner contends that the grant of ITH incentive is not a right but a privilege and that it is premised on the enterprise's compliance with the requirements of the 2007 IPP.[27] In this case, petitioner claims that, upon evaluation of respondent's compliance with the terms and condition of its ITH incentive

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[24] *Id*. at 70-71.

[25] *Id*. at 72-73.

[26] *Rollo*, Volume II, p. 1205.

[27] *Id*. at 1217-1222.

entitlement, it found that respondent was not entitled to an ITH incentive as it failed to fulfill its commitment to infuse huge capital investments and construct a beneficiation plant.[28] Petitioner likewise points out that the ore processing activity of respondent was different from what was described in its application for registration as a new producer.[29] Thus, petitioner maintains that it did not err in cancelling respondent's entitlement to an ITH incentive.

As to the issue of due process, petitioner avers that respondent was accorded due process as it was informed of its violations and was given ample opportunity to explain its side and present evidence.[30]

Respondent's Arguments

Respondent, on the other hand, puts in issue the lack of authority of the Officer-in-Charge (OIC), BOI Managing Head, Ma. Corazon Halili-Dichosa (OIC Halili-Dichosa), to sign the verification and certification of non-forum shopping[31] as well as the failure of petitioner to attach material portions of the records of the case.[32] Respondent argues that there was nothing in Memorandum Order No. 2015-080, series of 2015, dated October 9, 2015 to indicate that the OIC is authorized to sign the verification and certification of non-forum shopping as it is not among the list of official documents mentioned in Department Order No. 14-39, series of 2014.[33]

As to the merits of the case, respondent insists that the CA correctly ruled that the withdrawal of respondent's ITH incentive was without any basis since respondent was able to comply

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[28] *Id*. at 1206-1213.

[29] *Id*. at 1214-1216.

[30] *Id*. at 1223-1227.

[31] *Id*. at 1261-1268.

[32] *Id*. at 1268-1276.

[33] *Id*. at 1261-1263.

with the requirements under the 2007 IPP by making substantial investments in fixed assets and by submitting progress reports on the implementation of its new project.[34] Respondent also echoes the view of the CA that there was nothing in the 2007 IPP to suggest that an actual physical structure or building must be erected to be registered as a new project as the same could refer to an equipment such as a conveyor belt.[35] In fact, respondent was registered as a new project because of its newly adopted beneficiation process, not because of any alleged representation to construct a beneficiation plant.[36] In any case, respondent claims that it has an assemblage of equipment and machineries which comprise its beneficiation plant.[37] Finally, respondent likewise asserts that the withdrawal of its ITH incentive was without due process as petitioner failed to comply with the procedure laid down in the 2004 Revised Rules of Procedure on the Cancellation of Registration under Republic Act No. 5135, Presidential Decree No. 1789, *Batas Pambansa Blg.* 391 and Executive Order No. 226 (2004 BOI Revised Rules).[38]

The Court's Ruling

The Petition must be denied.

The Officer-in-Charge is authorized to sign the verification and certification of non-forum shopping.

Respondent questions the authority of OIC Halili-Dichosa to sign the verification and certification of non-forum shopping. Respondent claims that Memorandum Order No. 2015-080 only authorized OIC Halili-Dichosa to sign and approve vouchers, contracts, orders, and other official documents included in Department Order No. 14-39. And since the verification and

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[34] *Id*. at 1296-2303 (should be 1303).

[35] *Id*. at 1285-1287 and 1292-1296.

[36] *Id*. at 1277-1291.

[37] *Id*. at 1291-1292.

[38] *Id*. at 2303-2310 (should be 1303-1310).

certification of non-forum shopping of the instant Petition is not included in the list of official documents, OIC Halili-Dichosa had no authority to file the instant Petition and sign the verification and certification of non-forum shopping of the same.

Although it appears that the verification and certification of non-forum shopping was not among the list of official documents mentioned in Department Order No. 14-39, series of 2014, the Court is still inclined to uphold the authority of OIC Halili-Dichosa to sign the same. In Memorandum Order No. 2015-080, Supervising Director Halili-Dichosa was designated OIC of petitioner **in the interest of service** as the Undersecretary/ Managing Head was on an official trip. Considering the rationale of the said Memorandum, the Court finds that any doubt as to the authority of OIC Halili-Dichosa to file the instant case and to sign the verification and certification of non-forum shopping should be resolved in favor of the government. Obviously, OIC Halili-Dichosa caused the filing of the instant Petition in the performance of her duties and in order to protect the interests of the government. Thus, it is more prudent for the Court to decide the instant Petition on the merits rather than to dismiss it on a mere technicality.

Besides, in recent cases, the Court has allowed certain officials and employees to sign the verification and certification of non-forum shopping on behalf of the company without need of a board resolution. These are the chairperson of the board of directors, the president of a corporation, the general manager or acting general manager, the personnel officer, the employment specialist in a labor case, and other officials and employees who are "in a position to verify the truthfulness and correctness of the allegations in the petition."[39] In this case, the Court considers OIC Halili-Dichosa to be in a position to verify the truthfulness and correctness of the allegations stated in the instant Petition.[40]

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[39] *Swedish Match Phils., Inc. v. The Treasurer of the City of Manila*, 713 Phil. 240, 248-249 (2013) citing *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, 568 Phil. 572, 580-585 (2008).

[40] See *Philippine Health Insurance Corporation v. Our Lady of Lourdes Hospital*, 773 Phil. 28, 36 (2015).

Petitioner attached the material portions of the records as would support the Petition.

Respondent contends that the failure of petitioner to attach copies of the pleadings filed before the CA, namely: (1) respondent's Petition for Review; (2) petitioner's Comment; (3) respondent's Reply to Comment; (4) the Memoranda of the parties; (5) petitioner's Motion for Reconsideration; and (6) respondent's Comment/Opposition, is a ground for the dismissal of the instant case under Sections 4(d)[41] and 5,[42] of Rule 45 of the Rules of Court.

The Court does not agree.

The determination of what pleadings are material to the Petition is up to the Court.[43] In this case, the Court finds that the pleadings filed before the CA were not material considering that most of the attachments to these pleadings were already attached to the instant Petition. What is important is that the assailed Decision and Resolution, the letters and issuances of petitioner as well as the documents submitted by respondent to petitioner were

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[41] SECTION 4. *Contents of petition*. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall xxx (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[42] SECTION 5. *Dismissal or denial of petition*. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

[43] *Esguerra v. Trinidad*, 547 Phil. 99, 106 (2007).

all attached to the Petition. Besides, such failure has been cured as the CA records have been elevated before the Court.

In *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*,[44] the Court explained that:

> Rule 45, Section 4 of the Rules of Court indeed requires the attachment to the petition for review on *certiorari* 'such material portions of the record as would support the petition.' However, such a requirement was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, 'the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate.' More importantly, Section 8 of Rule 45 declares that '[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.' Given that the TSN of the proceedings before the RTC forms part of the records of the instant case, the failure of FAT KEE to attach the relevant portions of the TSN was already cured by the subsequent elevation of the case records to this Court. This pronouncement is likewise in keeping with the doctrine that procedural rules should be liberally construed in order to promote their objective and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.[45]

Having disposed of the procedural matters, the Court shall proceed to the substantive issues.

Respondent was afforded due process.

Petitioner imputes error on the CA in finding that respondent was not afforded due process. Petitioner insists that respondent was informed in the letter dated April 11, 2011 of its violation and was given several opportunities to refute the same.

Respondent, however, highlights the failure of petitioner to follow the procedure for the Cancellation of Registration provided

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[44] 656 Phil. 403 (2011).

[45] *Id*. at 420-421.

in Sections 1 to 4, Rule II of the 2004 BOI Revised Rules, which reads:

RULE II
Cancellation of Registration

SECTION 1. Initiate Cancellation Proceedings. — The 'Department' concerned shall initiate cancellation procedures against BOI-registered enterprises. It shall prepare a Memorandum for the cancellation of the BOI registration based on any of the ground/s so enumerated in Rule I, Section 2, par. (a) to (k). The same shall be supported by substantial evidence on record.

At the instance of any interested party and upon finding of reasonable basis to prove that the registered enterprise has committed any of the grounds for the cancellation of registration under Section 2 of these rules, the Department concerned shall prepare a 'show-cause letter of cancellation of registration' addressed to the subject BOI registered enterprise requiring it to explain in writing why its registration should not be cancelled.

SECTION 2. Memorandum; Contents. — The Memorandum for the cancellation of registration shall contain the following:

a.) The status of registration of the enterprise;

b.) The grounds for the cancellation of registration, a statement of the acts or omissions constituting the same, a statement of facts to establish compliance by the Board with the due notice requirement mandated under Article 7 of E.O. 226, the law and evidence in support of its findings and a recommendation for the cancellation of registration including:

(i) The imposition of fines and penalties, including the payment of interest, with basis therefor;

(ii) A recommendation for an order of refund, if warranted by the facts/evidence at hand;

SECTION 3. Complaint by an Interested Party; Contents. — Any interested party may file a verified complaint for the cancellation of the registration of any BOI -registered enterprise. It shall contain the following:

a.) Name and address of the Complainant and his legal capacity to file the complaint;

b.) Name and address of the registered enterprise complained of;

c.) Ground/s for the cancellation of registration and the acts or omissions complained of as constituting the same; and

SECTION 4. Show-Cause Letter of Cancellation; Contents. — The 'show-cause letter' shall be addressed to the registered enterprise concerned and shall contain the following:

a) Ground/s for the cancellation of the registration;

b) Acts and/or omissions constituting the same;

c) Imposition of fines and/or penalties, whenever applicable;

d) Order of refund of incentives, whenever applicable;

e) Order for the registered enterprise to file its 'Reply' within fifteen (15) days from receipt of the 'show-cause' letter with a proviso that failure or inability to reply within such period will constrain the Office to immediately recommend the cancellation of the registration of the subject enterprise by way of a Memorandum.

Respondent claims that the Resolution of the *Sangguniang Bayan* of the Municipality of Tubay cannot be considered as a verified complaint nor can the letter dated April 11, 2011 be deemed as a show-cause letter. Petitioner likewise cannot claim that it initiated *motu proprio* proceedings against respondent considering that it failed to prepare a memorandum as required under Section 1 of the BOI Revised Rules.

Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of."[46] Because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure.[47]

In this case, although there may have been infirmities or lapses in initiating the cancellation process, the Court, nonetheless, finds that essentially respondent was afforded due

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[46] *Padilla v. Hon. Sto. Tomas*, 312 Phil. 1095, 1103 (1995).

[47] *Saunar v. Ermita*, G.R. No. 186502, December 13, 2017.

process since it was informed of the allegations against it and was given ample opportunity to refute the same. Records show that respondent received the letter dated April 11, 2011 informing it of the allegations made by the *Sangguniang Bayan* and of the *Sangguniang Bayan's* request for the cancellation of respondent's BOI registration; that the said letter required respondent to file a reply within 15 days from receipt of the same; that respondent was allowed to submit evidence to refute the allegations against it; and that respondent sought reconsideration of the withdrawal of its ITH incentive. These clearly show that the essence of due process was complied with.

It must be stressed though that in finding that respondent was afforded due process, the Court is not implying that rules of procedures may be brushed aside or trivialized. What the Court is saying is that the rigid application of the rules of procedure should be avoided if it would result in delay or frustrate rather than promote substantial justice.[48]

However, while respondent was not deprived of due process, the Court, nevertheless, finds that, as aptly found by the CA, the withdrawal of the ITH incentive was without any basis.

Respondent is entitled to an ITH incentive.

Petitioner claims that the CA erred in reversing and setting aside its resolutions withdrawing respondent's ITH incentives. Petitioner maintains that respondent failed to comply with the terms and conditions attached to its Certificate of Registration; specifically, respondent failed to:

1) establish another line (beneficiation plant) contrary to its representations;
2) infuse new investment in fixed assets;
3) submit progress reports; and
4) adhere to its project timetable.

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[48] *Ben Line Agencies Philippines, Inc. v. Madson*, G.R. No. 195887, January 10, 2018.

However, after a careful review of the records, the Court agrees with the findings of the CA that the withdrawal of respondent's ITH incentive was not supported by the law and the evidence.

In its Application for Registration,[49] respondent asked that it "be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreement] and newly adopted beneficiation process."[50] Clearly, respondent never made any representation that it would be building a beneficiation plant. Moreover, there was nothing in the terms and conditions of both the Project Approval Sheet[51] and respondent's Certificate of Registration[52] as well as in the 2007 IPP to indicate that a construction of a new plant was required for respondent to be registered as a "new project." The pertinent provision of the General Guidelines of the 2007 IPP reads:

X. PROJECT TYPE AND STATUS

1. New Projects

Other than the normal definition of a new project, i.e., one to be undertaken by a newly formed/incorporated enterprise, the following are deemed new projects:

a Project to be establish by an existing enterprise with existing business operation(s) entirely distinct and different from the proposed project in terms of either final product or service, production process, equipment or raw material.

b. Project to be established by an existing enterprise along the same line of business as any of its existing operations provided it meets the following:

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[49] Letter dated April 30, 2008 (Re: Reconsideration of [respondent's] BOI Application as New Producer of Beneficiated Nickel Silicate Ore; *rollo*, Volume I, pp. 146-147.

[50] *Id*. at 147.

[51] *Id*. at 149-154.

[52] *Id*. at 173.

i. the new project will involve the establishment of another line that may be put up in a site either outside or contiguous to its existing premises or compound.

'Another Line' refers to new facilities used in the production of the registered product/service. This line may use a facility common to an existing line such as warehouse, finishing, quality control or laboratory.

'New Facility' refer to the space or area, physical structure and equipment provided for a particular purpose or segment of the production process/service activity.

ii. There is new investment in fixed assets and working capital.

x x x x x x x x x

Since there was no such requirement under the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP, petitioner cannot use this as ground to withdraw respondent's ITH incentive.

In any case, even if respondent did commit to build a beneficiation plant, the Court agrees with respondent that a commitment to build a beneficiation plant does not necessarily require the construction of an industrial building or structure, as a beneficiation plant could also be an assemblage of equipment and machineries where the beneficiation process could be done. In this case, respondent was able to prove that it has a beneficiation plant, consisting of the following equipment and machineries:

1) Kleeman Mobile Process Screen;
2) Commander Power Screen;
3) Commander Trommel Washer;
4) Terex Mobile Crusher;
5) CAT 950 Front Loader;
6) CAT 320 Backhoe; and
7) HM 350 Komatsu Articulated Trucks.[53]

[53] *Id*. at 192.

As to petitioner's allegations that respondent failed (1) to infuse new investments in fixed assets; (2) to submit progress reports; and (3) to adhere to its project timetable, these are belied by the evidence. In fact, records show that respondent has invested a total of ₱1,151,666,643.01 for equipment and machineries, which are being used to produce beneficiated nickel silicate ore,[54] and has submitted progress reports to petitioner.[55] Quoted below are the findings of the CA on these matters, which the Court adopts as its own:

> As for [respondent's] alleged failure to infuse new investments in fixed assets and acquisition of machinery/equipment, We find that, based on the evidence submitted by [respondent], which [petitioner] has not refuted or disputed, [respondent] has:
>
> (a) already invested a total amount of One Billion One Hundred Fifty-One Million Six Hundred Sixty-Six Thousand Six Hundred Forty-Three Pesos and 1/100 (Php1,151,666,643.01);
>
> (b) acquired, developed and/or constructed new facilities such as mine structures (i.e. ore stockyards and pier yards, dumpsites, haul roads, drainage canals, setting ponds) and support facilities (i.e. office building, motor pool/ME shop, bunkhouses and recreational facility, beaching areas or causeway); and
>
> (c) acquired major equipment components of the beneficiation plant (i.e. 1 unit of Kleeman Mobiscreen, 1 unit of Caterpillar Model 320 DL HE, 2 units of Komatsu HM350-2, 1 unit of Commander Power Screen, 1 unit of Caterpillar 950H Wheel Loader, 2 units of Komatsu HM 350-1, 1 unit of Terex Mobile Crusher and 1 unit of Caterpillar Model 320 DL HE).
>
> We cannot agree with [petitioner's] contention that [respondent] failed to comply with the project time table incorporated in its BOI [Certificate of Registration] because allegedly [respondent] purchased major equipment only in 2012. We find that [respondent] has sufficiently explained and proved that the pieces of equipment acquired in 2012 were merely a re-fleeting of old equipment and the acquisition of Kleeman Mobiscreen (used in screening crushed material from

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[54] *Id.* at 193.

[55] *Id.*

sized material) by [respondent] in 2012 is not evidence that before that, [respondent] has no existent and fully functional beneficiation process, albeit sizing, prior to the acquisition of Kleeman Mobiscreen in 2012, was done manually. We note [petitioner's] unsupported contention is highlighted by [respondent's] unrebutted claim that [petitioner] has not made any site inspection to be able to say that [respondent] has no beneficiation plant or has not infused new investment in terms of fixed assets, equipment and machineries.

We cannot likewise uphold [petitioner's] finding that [respondent] failed to submit progress reports as required under its BOI [Certificate of Registration]. Documentary evidence submitted by [respondent] includes such reports as filed negating BOI's finding. WE also note that [respondent] has, in fact [been] issued a Certificate of Good Standing by the Director of the Supervision and Monitoring Department of BOI.[56]

All told, the Court finds that the withdrawal of respondent's ITH incentive was without any basis, and thus, affirms the ruling of the CA reversing and setting aside the resolutions embodied in petitioner's letters dated May 24, 2012 and August 12, 2013. As a general rule, factual findings of administrative agencies are not interfered with; an exception, however, is when said findings are not supported by substantial evidence, such as in the instant case.[57]

WHEREFORE, the Petition is hereby **DENIED**. The assailed December 4, 2014 Decision and the August 11, 2015 Resolution of the Court of Appeals, in CA-G.R SP No. 131511 are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, C.J. and *Tijam, J.*, concur.

Leonen,[*] *J.*, dissents, see dissenting opinion.

Bersamin, J., on official leave.

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[56] *Id.* at 68-69.

[57] *Gala v. Ellice Agro-Industrial Corporation*, 463 Phil. 846, 859 (2003).

[*] Per raffle dated September 12, 2018 vice *J.* Jardeleza who recused due to prior action as Solicitor General.

DISSENTING OPINION

LEONEN, *J.*:

Administrative agencies are the recognized experts in their fields and can resolve problems in their respective fields with competence and precision. This Court has, thus, accorded respect and even finality to the factual findings of administrative bodies, as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions.

The Board of Investments was created[1] pursuant to Republic Act No. 5186 or the Investment Incentives Act. It is tasked to carry out the state policy of encouraging Filipino and foreign investments in the fields of agriculture, mining, and manufacturing to increase national income and exports, and to promote greater economic stability.[2] It is also the government body with the primary responsibility of implementing the provisions of Executive Order No. 226 or the Omnibus Investments Code of 1987.

The *ponencia* reversed the Board of Investments' withdrawal of SR Metals, Inc.'s (SR Metals) Income Tax Holiday incentive, as the withdrawal was purportedly not supported by substantial evidence since SR Metals complied with the requirements for the fiscal incentive.

Respectfully, I disagree.

On April 3, 2008, SR Metals filed an application as "new producer" of beneficiated nickel ore on a non-pioneer status before the Board of Investments.[3] It submitted the following documents in support of its application:

a) Application Letter dated March 28, 2008; . . .

b) Duly Accomplished BOI Form No. 501 (Application for Registration); . . .

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[1] Rep. Act No. 5186, Sec. 13.

[2] Rep. Act No. 5186, Sec. 2.

[3] *Rollo,* p. 1197.

c) SR Metals' Project Feasibility Report . . . ; and

d) SR Metals' letter dated April 30, 2008. . . .[4]

On May 22, 2008, the Board of Investments approved SR Metals' application as a new producer pursuant to the 2007 Investments Priorities Plan, which required an existing establishment in the same line of business to set up a new facility composed of a physical structure and equipment to be considered as a new project:

X. Project Type and Status

1. New Projects

Other than the normal definition of a new project, i.e., one to be undertaken by a newly formed/incorporated enterprise, the following are deemed new projects:

a. Project to be established by an existing enterprise with existing business operation(s) entirely distinct and different from the proposed project in terms of either final product or service, production process, equipment or raw materials;

b. Project to be established by an *existing enterprise along the same line of business as any of its existing operations*, provided it meets the following:

i) The new project will involve the establishment of another line that may be put up in a site either outside or contiguous to its existing premises or compound.

"Another Line" refers to new facilities used in the production of the registered product/service. This line may use a facility common to an existing line such as warehouse, finishing, quality control, or laboratory.

"New Facility" refers to the space or area, physical structure and equipment provided for a particular purpose or segment of the production process/service activity.

ii) There is new investment in fixed assets and working capital.[5] (Emphasis supplied)

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[4] *Id*. at 1207.

[5] Board of Investment's 2007 Investments Priorities Plan.

In approving SR Metals' application as new producer, the Board of Investments fully expected it to construct a beneficiated plant as it repeatedly committed to do so in its application and supporting documents:

26. A perusal of these documents would show that [SR Metals] repeatedly described that it would utilize a beneficiation process/ plant for its new enterprise subject of its application for registration. The relevant portions of the above documents are herein quoted:

a. In its letter dated April 30, 2008, reiterating its request for the [Board of Investments] to resolve that it is qualified as a "new producer" of beneficiated nickel silicate ore, and not merely an "expansion", viz.:

> "First, [SR Metals] is new in the production of beneficiated nickel silicate ore. **In its previous mining operations, [SR Metals] had not been engaged in the process of "beneficiation"** of minerals in its mining project in Tubay[,] Agusan Del Norte. As previously discussed in our application, the process of beneficiation is described as "the most efficient way in which the nickel ore mostly saprolite ores with soft and hard ores could be segregated by **using a beneficiation/ processing plant."**
>
> "Now therefore, [SR Metals] can be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreements] and newly adopted beneficiation process."

b. [SR Metals'] Project Feasibility Report described the mining method it would undertake for its project:

> "3.8 Description of Mining Method
>
> Mining and processing sequence are as follows:
>
> - Clearing
> - Stripping
> - Mining
> - Beneficiation
> - Concentrating

- Hauling or beneficiated and concentrated products to pier stockyards
- Shipping of the ore

3.8.4 Beneficiation

This is the most efficient way in which the ore mostly saprolite ores with soft and hard ores could be segregated by using a beneficiation/processing plant."

c. SR Metals' Project Feasibility Report further stated the use of a beneficiation plant to implement its mining method/ processes:

"[T]he estimated initial volume of investment to implement the Project is Php364,594,150.00 or US$8,102,092.00. The Project Management will undertake mining operation and **a beneficiation plant will be constructed/installed** for the efficient segregation of soft and hard [o]res. The Company will be buying its own heavy equipment.

d. In its Feasibility Project Report, SR Metals indicated that it will make a fixed investment of ₱43,650,000.00 for the beneficiation plant.[6] (Emphasis in the original)

SR Metals' repeated referral to a beneficiation plant in its Project Feasibility Report belies its assertion that it never represented that it would install a beneficiation plant which would be valued at ₱43,650,000.00.[7]

More importantly though, it was the construction of a beneficiated plant and the purchase of new pieces of equipment that characterized SR Metals as a new producer because without those two (2) substantial capital investments, it would have been considered to have merely expanded its existing mining operations and would not have qualified for the fiscal incentive of a full income tax holiday.

This is evident with how the Board of Investments initially rejected SR Metals' application as a "new producer" and

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[6] *Rollo,* pp. 1207-1209.

[7] *Id*. at 1278.

suggested that it file an application for an "expanding" producer instead since it was already engaged in small-scale mining. It was only upon SR Metals' request for a reconsideration and upon its commitment that it would build a beneficiation plant that the Board of Investments reconsidered its earlier decision and approved SR Metals' application as "new producer."[8]

An income tax holiday is one of the incentives for registered enterprises provided for in Executive Order No. 226:

> Article 39. Incentives to Registered Enterprises. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) Income Tax Holiday. —
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, *new registered firms* shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:
>
> i. the project meets the prescribed ratio of capital equipment to number of workers set by the Board;
>
> ii. utilization of indigenous raw materials at rates set by the Board;
>
> iii. the net foreign exchange savings or earnings amount to at least US$500,000.00 annually during the first three (3) years of operation.
>
> The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.
>
> (2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board may determine; Provided, however, That during the period within

[8] *Id*. at 1197-1198.

which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

(3) The provision of Article 7 (14) notwithstanding, registered firms shall not be entitled to any extension of this incentive. (Emphasis supplied)

Article 39(a)(1) clearly provides that only new registered firms or new projects may qualify for either a four (4)-year or six (6)-year income tax holiday. Article 39(a)(2) likewise provides a similar incentive to expanding firms, but only for a period of three (3) years and only in proportion to their expansion. Thus, it is understandable why SR Metals would insist on being considered as a new producer because the fiscal incentives given to an expanding producer simply pales in comparison to those available to a new producer.

Nonetheless, the decision on whether or not SR Metals should be classified as a new producer ultimately belongs with the Board of Investments pursuant to its duty to process and approve applications for registration, and to its power to impose the terms and conditions for applications for registration.[9] The Board of Investments likewise has the principal authority to determine if a registered enterprise falls under the specific activities that may qualify for fiscal incentives under the annual Investment Priorities Plan.[10] Consequently, it has the power to either cancel or suspend a registration or an incentive, for the registered enterprise's failure to maintain the required qualifications or its violation of the terms of registration.[11]

In the case at bar, the 2007 Investment Priorities Plan provided three (3) different types of new projects: (1) a newly formed or incorporated enterprise; (2) an existing enterprise with a proposed project that is entirely different from its existing business operation; and (3) an existing enterprise which will put up another line or new facility, i.e., physical structure and equipment, and will infuse new investment into its existing business operation.

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[9] Exec. Order No. 226, Article 7(3).

[10] Exec. Order No. 226, Article 7(1).

[11] Exec. Order No. 226, Article 7(8).

A registered enterprise will have to fall under any of the three (3) classifications for new projects to qualify for an income tax holiday; and the Board of Investments, with its mandate of implementing Executive Order No. 226, is the government body empowered to determine if a registered enterprise satisfies the established requirements.

The Board of Investments found that SR Metals failed to comply with the terms and conditions of its registration; thus, there is a need to revoke its previous entitlement to an income tax holiday:

> In petitioner's evaluation, it found [SR Metals] wanting in its compliance with the terms and conditions of its registration, to wit: 1) establishment of another line (beneficiation plant); 2) infusion of new investments in fixed assets; 3) submission of a progress report; and 4) adherence to project timetable specifically on the acquisition of machinery. As a result of [SR Metals'] failure to comply with the conditions attached to its registration and the grant of [income tax holiday] incentive, [SR Metals'] entitlement to such incentive did not accrue. It follows then that petitioner can revoke/cancel [SR Metals'] [income tax holiday] entitlement. To repeat, facts warrant the complete revocation of [SR Metals'] registration, but petitioner only merited the withdrawal of [income tax holiday] incentive to [SR Metals].[12]

This Court has consistently deferred to the factual findings of administrative agencies as they are the recognized experts in their fields and they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or courts of justice."[13] Thus, this Court has accorded respect and even finality to the factual findings of administrative bodies as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions.[14]

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[12] *Rollo,* p. 1219.

[13] *Solid Homes v. Payawal,* 257 Phil. 914, 921 (1989) [Per *J.* Cruz, First Division].

[14] *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002) [Per *J.* Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per *J.* Quisumbing, Second Division];

Similar to the respect accorded to their factual findings, the interpretation by administrative agencies of their own rules and regulations is likewise given great respect by this Court, as evident in *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation:*[15]

> The NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[16] (Citations omitted)

An income tax holiday is bestowed on a new project to encourage investors to set up businesses and to contribute to the country's economic growth. The fiscal incentive is also meant to help registered enterprises recoup their substantial initial investments by giving them a reprieve from paying income tax for a few years. However, like any privilege, the income tax holiday comes with conditions and requirements which must be fulfilled for its continued enjoyment.

With its failure to put up a physical structure, i.e., the beneficiation plant, *and* pieces of equipment, SR Metals cannot be classified as a new project under the 2007 Investment Priorities Plan. Hence, it is not entitled to an income tax holiday and the Board of Investments did not err in revoking its entitlement to it.

ACCORDINGLY, I vote to **GRANT** the petition and **REVERSE** and **SET ASIDE** the Court of Appeals December 4, 2014 Decision and August 11, 2015 Resolution in CA-G.R. SP No. 131511.

Alvarez v. PICOP Resources, Inc., 538 Phil. 348, 397 (2006) [Per *J*. Chico-Nazario, First Division].

[15] 516 Phil. 518 (2006) [Per *J*. Austria-Martinez, Special Second Division].

[16] *Id*. at 521.

SECOND DIVISION

[G.R. No. 221548. October 3, 2018]

RENERIO M. VILLAS, *petitioner, vs.* **C.F. SHARP CREW MANAGEMENT, INC.,** *respondent.*

[G.R. No. 221561. October 3, 2018]

C.F. SHARP CREW MANAGEMENT, INC., *petitioner, vs.* **RENERIO M. VILLAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); 2010 POEA-STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; WHEN THERE ARE TWO CONFLICTING VIEWS ON THE EXTENT OF DISABILITY AND THE PARTIES FAILED TO SEEK THE OPINION OF A THIRD DOCTOR, THE LABOR TRIBUNAL AND THE COURTS SHALL EVALUATE THE RESPECTIVE MERITS OF THE CONFLICTING MEDICAL ASSESSMENTS.— There are conflicting views on the extent of disability of Villas in this case. x x x [S]ince there were two conflicting findings by two different physicians, the parties should have moved to seek the opinion of a third doctor. They failed to do so. The Court has ruled that in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting medical assessments of the company-designated doctor on one hand, and the seafarer's chosen physician, on the other. That is the procedure followed by the PVA in this case. The PVA observed that, contrary to the findings by the company-designated physician that Villas was already fit to work, he still had difficulty in gripping objects. The PVA also examined the medical reports and noted that Dr. Flordelis recommended the continuance of Villas' physical therapy but instead, Villas was cleared from Rehabilitation Medicine standpoint and was eventually declared fit to work. The foregoing

facts show that there was no basis for the issuance of the fit to work certificate to Villas.

2. ID.; ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; THE SEAFARER'S DISABILITY SHOULD NOT BE DETERMINED BY THE NUMBER OF DAYS THAT HE COULD NOT WORK, SUCH THAT THE COMPANY-DESIGNATED PHYSICIAN MUST STILL MAKE AN ASSESSMENT WITHIN 120 DAYS FROM THE DATE OF MEDICAL REPATRIATION AND HE IS ALLOWED TO EXTEND THE MEDICAL TREATMENT TO 240 DAYS WHEN THERE IS SUFFICIENT JUSTIFICATION FOR IT.— In *Aldaba v. Career Philippines Shipmanagement, Inc.*, the Court clarified the seeming conflict in jurisprudence on the 120-day and 240-day rules. Citing *Elburg Shipmanagement Phils., Inc. v. Quiogue*, the Court affirmed that a seafarer's disability should not be determined by the number of days that he could not work. However, the Court further affirmed that the company-designated physician must still make an assessment within 120 days from the date of medical repatriation, and he is only allowed to extend the medical treatment to 240 days when there is sufficient justification for it. x x x In this case, Villas was injured in an accident on 10 February 2013. He was repatriated on 11 February 2013. He reported to C.F. Sharp and was referred to the company-designated physician on 12 February 2013. There were actually two medical certificates issued to Villas. The first one, dated 6 June 2013, was issued by Dr. Marzan. It was issued within 115 days from Villas' repatriation. On 2 July 2013, Dr. Ong-Salvador issued Villas a Final Medical Report stating the following: "After extensive examination, our specialist declared patient fit to resume sea duties" and "despite being medically fit for work, the patient refused to sign the medical certification of fitness to work issued by our clinic." Again, the first fit to work certificate was issued by Dr. Marzan 115 days from the time of Villas' repatriation. However, x x x there was no basis for the issuance of the fit to work certificate to Villas at that time. The Final Medical Report was issued by Dr. Ong-Salvador 141 days from the time of repatriation. Following the guidelines in *Elburg*, Villas' disability had become total and permanent. The company-designated physician failed to give the final medical assessment within 120 days and failed to justify that Villas still needed

further medical treatment to extend the medical assessment to 240 days. In fact, Dr. Marzan issued a fit to work order within 115 days, and it appears that it was made just to comply with the 120-day period but records would show that treatment had to be extended beyond that period. It was further established that Villas immediately sought the assistance of C.F. Sharp after he was issued the fit to work certificate on 6 June 2013 but his letter was unheeded, forcing him to seek further consultation. The records further show that Villas continued to have physical therapy until 5 September 2013, even beyond the issuance of the Final Medical Report. Hence, the Court of Appeals correctly ruled that Villas' disability was total and permanent.

3. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; BEST EVIDENCE RULE; SECONDARY EVIDENCE; MAY BE PRESENTED IF AFTER NOTICE AND AFTER SATISFACTORY PROOF OF THE EXISTENCE OF THE DOCUMENT, THE PARTY IN CUSTODY FAILS TO PRODUCE IT.— Villas pointed out that he has no access to the original or authenticated copy of the CBA because the copies are with C.F. Sharp and its foreign principal, General Ore. Villas requested a copy of the CBA from ITF which sent him one *via* email through one Wilhelm Zechner. Villas alleged that C.F. Sharp suppressed the document, which is in its possession, because it would be adverse for it to produce the document. Section 3(b), Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice. Section 6, Rule 130 also provides that after notice and after satisfactory proof of the existence of the document, the party in custody fails to produce it, secondary evidence may be presented as in the case of a loss. In the cases before us, there was nothing that would show that C.F. Sharp was required to produce the CBA. It is unfortunate that neither Villas nor the PVA itself required C.F. Sharp to produce the original CBA for comparison with the copy sent by ITF by email. In any event, even when the CBA may be applied to these cases, Villas and C.F. Sharp still failed to comply with

its provision requiring that "any Seafarer assessed at less than 50% disability under the attached Annex 3 but certified as permanently unfit for further sea service in any capacity by a doctor appointed mutually by the Company and the ITF, shall also be entitled to 100% compensation."

APPEARANCES OF COUNSEL

Reyes Reyes & Rivera-Lumibao Law Offices for CF Sharp Crew Management, Inc.

VALMORES & VALMORES LAW OFFICE for Renerio Villas.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court are two petitions: G.R. No. 221548 filed by Renerio M. Villas (Villas) against C.F. Sharp Crew Management, Inc. (C.F. Sharp) and G.R. No. 221561 filed by C.F. Sharp against Villas. Both petitions assail the 16 June 2015 Decision[1] and the 29 October 2015 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 137840. The Court of Appeals affirmed the 19 August 2014 Decision and 15 October 2014 Resolution of the Office of the Panel of Voluntary Arbitrators (PVA) with the modification of the award to Villas for compensation for his total permanent disability being reduced to US$60,000 or its equivalent in Philippine peso at the time of actual payment.

The Antecedent Facts

Villas was engaged by C.F. Sharp for Blue Ocean Ship Management and for and in behalf of General Ore Carrier

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[1] *Rollo* (G.R. No. 221548), pp. 343-362. Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan concurring.

[2] *Id*. at 416-417.

Corporation XIX, Ltd. (General Ore). Villas was hired as a Second Engineer for six months on board the vessel *Rebekka N* for 44 hours a week, with basic monthly salary of US$1,741, sub-allowance of US$152 a month, and overtime rate of US$1,045 a month. Under the contract, Villas was entitled to eight days of vacation leave with pay per month. Villas' employment was covered by a Collective Bargaining Agreement (CBA) between the International Transport Worker's Federation Fleet Agreement and General Ore (ITF TCC Fleet Agreement). It was Villas' eighth contract in a series of successive contracts since 2005.

Villas underwent a Pre-Employment Medical Examination and was declared fit for sea duty by the company-designated physician. On 25 September 2012, he left the Philippines to join *Rebekka N*.

On 10 February 2013, while Villas was on sea duty doing a routine inspection at the main engine cylinder lubricator no. 6, his right hand was crushed. Villas sustained severe injuries on his 3rd and 4th digits. He was given first-aid treatment and then rushed to a hospital in Singapore. Villas was subjected to an immediate surgery which resulted to the amputation of his right middle finger with debridement and suturing of his 4th digit. He was diagnosed with "right middle finger volar unfavorable tip amputation, right finger bursta laceration." Villas was declared unfit to work and was repatriated on 11 February 2013.

On 12 February 2013, after reporting to the office of C.F. Sharp, Villas was referred to the company-designated physician, Dr. Susannah Ong-Salvador, at the Sachly International Health Partners Diagnostic and Medical Clinic (SIHP) where he was treated. Sachly then referred Villas to another company-designated physician at UST Hospital where his wound was dressed and subjected to physiotherapy. Villas then underwent rehabilitation, with the consent of C.F. Sharp and the company-designated physician, for the next three months in his hometown in Cebu City at Perpetual Succour Hospital under the care of Dr. Mary Jeanne Oporto-Flordelis (Dr. Flordelis). Despite his treatment, Villas remained incapacitated and experienced

limitation of motion on the 2nd, 3rd, 4th, and 5th digits of his right hand. Villas also had severe weakness of grip in his right hand.

During his check-up on 6 June 2013, one Dr. Marzan, another company-designated physician, wrote to Dr. Robert Chan (Dr. Chan) to ask if Villas can be declared fit to work. Hence, despite the recommendation of Dr. Flordelis that Villas should continue his rehabilitation, and despite the fact that he was still prescribed medications, Dr. Chan declared that Villas was already fit to work. Since he was still unable to grip objects, and the strength on all the digits on his right hand was still weaker, Villas wrote C.F. Sharp on 7 June 2013 requesting for further examination and treatment. Villas wrote another letter on 24 June 2013 reiterating his request and informing C.F. Sharp that he decided to consult with an independent physician. According to Villas, despite surgery and physiotherapy, he continued to complain about the limitation of flexion and difficulty in grasping objects, as well as pain in his right hand. Villas then consulted with Dr. Manuel Fidel M. Magtira (Dr. Magtira) who arrived at a conclusion that Villas had become partially and permanently disabled with Grade 9 impediment which the Philippine Overseas Employment Administration (POEA) Contract classified as "Loss of opposition between the thumb and tips of the fingers of one hand."

Villas sought payment of disability benefits, which C.F. Sharp denied. According to C.F. Sharp, Villas sustained an amputated right middle finger injury in February 2013 when he inserted the tip of his finger to the lubricator and it was cut by the cam shaft. C.F. Sharp alleged that Villas was immediately given first aid medications and was prescribed antibiotics. When the vessel was diverted to Singapore, Villas sought medical management for his immediate treatment. He was repatriated to the Philippines and was referred to SIHP whose initial medical report showed that Villas had an amputated medical finger with healed laceration of the right ring finger. The Orthosurgeon who examined Villas noted that his wound was already dry. He was advised to continue taking antiobiotics, analgesic, and

vitamin C, and to undergo removal of the sutures after two weeks.

C.F. Sharp alleged that on 26 February 2013, Villas had a follow-up examination. The examining doctor noted that he had no subjective complaints. The examining physician also noted a good healing process without signs of swelling and numbness. C.F. Sharp alleged that Villas returned for check-up on 16 April 2013. The physician noted that there were no signs of infection on the nail bed of the right index finger. The physician advised Villas to do a range of motion exercises.

On 27 May 2013, the company-designated physician evaluated Villas who complained of tolerable pain on the amputated area, aggravated with moving and associated with minimal swelling. There were no signs of infection on the nail bed. The company-designated physician issued Villas a disability rating of 1/3 of Grade 12 or total loss of his middle finger. On 30 May 2013, Villas was again examined by the company-designated physician. The company-designated physician noted that Villas had a dry stump on his middle right finger associated with contracture. Villas complained of occasional tolerable pain and minimal swelling on the tip of his ring finger, but it was not associated with any signs of infections. The company-designated physician noted that Villas had improved grip ability in his right hand. The company-designated physician cleared Villas from Rehabilitation Medicine standpoint. On 6 June 2013, the company-designated physician had the same observations and cleared Villas from Orthopedics standpoint. On 2 July 2013, the company-designated physician assessed Villas and declared him fit to resume sea duties as his amputated finger had healed well and the range of motion was within full range.

C.F. Sharp alleged that despite being medically fit to work, Villas refused to sign the medical certification of fitness to work issued by the company-designated physician. Instead, Villas filed a claim for disability benefits, sickness allowances, damages, and attorney's fees.

The Decision of the Panel of Voluntary Arbitrators

In a Decision[3] dated 19 August 2014, the PVA ruled in favor of Villas.

During the clarificatory hearing held on 18 June 2014, the PVA considered the conflicting opinions of the two Orthosurgeons, Dr. Robert Chan and Dr. Fidel Magtira, on Villas' fitness to return to work. The PVA and the Orthosurgeons observed and confirmed that Villas still had difficulty in gripping objects. The PVA required C.F. Sharp to submit Villas' medical abstract. Dr. Bee Giok Tan-Sales (Dr. Tan-Sales) submitted a Medical Abstract dated 20 June 2014 where she stated that based on the report dated 28 May 2013 of Dr. Flordelis, "the patient was noted to have achieved full flexion of the MCP joints of the right hand. Average grip strength of the right hand was 29.17 kg./force and 40.33 kg./force for the left hand (27.67% difference). Pinch strength of the right hand was 10.67 kg./ force and 10.33 kg./force for the left hand."

The PVA then reviewed the 28 May 2013 report of Dr. Flordelis and noted her observation that Villas' grip strength "although better is still insufficient for full time work. Likewise his pinch strength on the intact fingers is still poor. His right upper limb proximal muscles (deltoids, biceps and forearm muscles) are also weaker and deconditioned." The PVA further noted that Dr. Flordelis recommended the continuance of Villas' physical therapy but C.F. Sharp did not follow the recommendation. Instead, the company-designated physician cleared Villas from Rehabilitation Medicine standpoint, contrary to the recommendation of Dr. Flordelis. Villas had to continue his physical therapy in Bogo, Cebu as an out-patient, following the recommendation of Dr. Flordelis, and received a total of 28 sessions from 5 July 2013 to 5 September 2013.

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[3] *Id*. at 210-234. Signed by Fr. Herminigildo C. Javen, Chairman, with Atty. Allan S. Montaño, member, concurring, and Capt. Leonardo B. Saulog, member, dissenting.

The PVA ruled that Villas is entitled to disability benefits pursuant to the Loss of Profession Clause and Permanent Medical Unfitness Clause of the CBA and awarded him full compensation of US$250,000.

The PVA denied Villas' claims for illness allowance since C.F. Sharp was able to prove payment thereof, and for damages due to Villas' failure to substantiate the same.

The dispositive portion of the PVA's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ORDERING the respondents, C.F. SHARP CREW MANAGEMENT, INC. AND/OR GENERAL ORE CARRIER CORPORATION XIX LTD., to jointly and severally pay complainant, RENERIO [M.] VILLAS, the amount of TWO HUNDRED FIFTY THOUSAND U.S. DOLLARS (US$250,000.00) as disability benefits, plus 10% thereof as attorney's fees.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[4]

C.F. Sharp and General Ore filed a motion for reconsideration. In its 15 October 2014 Resolution,[5] the PVA denied the motion for lack of merit.

The Decision of the Court of Appeals

C.F. Sharp filed a petition for review before the Court of Appeals, docketed as CA-G.R. SP No. 137840.

In its 16 June 2015 Decision, the Court of Appeals denied the petition and affirmed the assailed PVA Decision with modification as to the amount of compensation.

The Court of Appeals ruled that to be compensable, disability under Section 20(A) of the 2010 POEA Standard Employment Contract (POEA SEC) must be the result of a work-related injury

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[4] *Id*. at 234.

[5] *Id*. at 258-259. Signed by Fr. Herminigildo C. Javen, Chairman, with Atty. Allan S. Montaño, member, concurring. Capt. Leonardo B. Saulog, member, maintained his dissenting opinion and clarificatory addendum.

or illness. The Court of Appeals ruled that the POEA SEC defines work-related injury as an "injury arising out of and in the course of employment" while work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." The Court of Appeals ruled that in order to be compensable, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled, but it must also be established that there is a causal connection between his illness or injury and the work for which he had been contracted.

The Court of Appeals further ruled that total disability does not require that the employee has to be absolutely disabled or totally paralyzed. According to the Court of Appeals, it is only necessary that the injury must be such that the employee cannot pursue his usual work and earn therefrom. The Court of Appeals ruled that a total disability can be considered permanent if it lasts continuously for more than 120 days. The Court of Appeals ruled that in the case of Villas, a reasonable connection between his injuries and the nature of his job has been established. The Court of Appeals ruled that Villas' own physician as well as the PVA itself were able to controvert clearly the findings of the company-designated physician on Villas' fitness to return to work. The Court of Appeals further ruled that Villas' disability is permanent because the severity of his ailment rendered him incapable of performing his work as a seafarer.

However, the Court of Appeals did not agree with the PVA that Villas is entitled to full compensation amounting to US$250,000. The Court of Appeals ruled that the ITF TCC Fleet Agreement presented as evidence was not an original and authenticated copy. Instead, the Court of Appeals applied the schedule of compensation under Section 32 of the 2010 POEA SEC. The Court of Appeals ruled that since Villas suffered from permanent total disability, he is entitled to receive compensation amounting to US$60,000.

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the present Petition is hereby DENIED. The assailed Office Of The Panel Of Voluntary Arbitrators, National Conciliation and Mediation Board's August 19, 2014 Decision and October 15, 2014 Resolution in Case No. AC-809-NCMB-NCR-93-06-10-13 are AFFIRMED with the only MODIFICATION that the award in favor of Renerio [Villas] as compensation for his total permanent disability is reduced to US$60,000.00 or its equivalent in Philippine Peso at the time of actual payment. We, however, affirm in all other aspects.

SO ORDERED.[6]

Villas filed a Motion for Partial Reconsideration assailing the Court of Appeals' failure to apply the ITF TCC Fleet Agreement. C.F. Sharp also filed a Motion for Partial Reconsideration questioning the Court of Appeals' findings that the assessment of the company-designated physician was not credible and that Villas' injury amounted to total permanent disability, and its award of attorney's fees.

In its 29 October 2015 Resolution, the Court of Appeals denied the two Motions for Partial Reconsideration for lack of merit.

Villas filed a Petition for Review before this Court, docketed as G.R. No. 221548. Villas alleged that:

> I. The Honorable Court of Appeals committed a serious error of law in not applying the rule on suppression of evidence against the respondent.
>
> II. The Honorable Court of Appeals committed a serious error of law in not applying the provisions of the parties' CBA as basis for the petitioner's disability award.[7]

C.F. Sharp filed its own Petition for Review, docketed as G.R. No. 221561. C.F. Sharp alleged that:

> 1. The Court of Appeals patently erred in not nullifying the award for permanent total disability claims given that there was no categorical pronouncement that respondent's disability has amounted to Grade 1 medical impediment.

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[6] *Id.* at 361.

[7] *Id.* at 18-19. Capitalization in the original.

2. The Court of Appeals seriously erred in not giving credence to the fit to work assessment of the company physician.

3. The Court of Appeals seriously erred in not considering that the parties' respective physicians have maintained their differing opinion on the condition of the respondent.

4. The dissenting opinion of AVA Leonardo Saulog is in line with the provisions of the POEA SEC and decisions of the Supreme Court.

5. The Court seriously erred in awarding attorney's fees in this case.[8]

The two petitions were consolidated in the Court's Resolution dated 13 January 2016.[9]

The Issues

The issues in these cases may be summed up as follows:

1. Whether Villas' injury amounted to permanent total disability;

2. Whether Villas is entitled to compensation under the CBA; and

3. Whether the Court of Appeals correctly awarded attorney's fees.

The Ruling of this Court

We deny the petitions.

There is no question that Villas sustained his injury on 10 February 2013 while on board *Rebekka N* and while he was performing his assigned duty. We only need to determine the extent of the injury and the amount of compensation Villas is entitled to.

There are conflicting views on the extent of disability of Villas in this case. The Court notes that before Villas initially

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[8] *Rollo* (G.R. No. 221561), p. 46.

[9] *Rollo* (G.R. No. 221548), pp. 8-9.

consulted and underwent rehabilitation with Dr. Flordelis, he sought for, and was granted, approval from C.F. Sharp and the company-designated physician.

According to the PVA, Dr. Marzan[10] issued a certification that Villas was fit to work despite the recommendation of Dr. Flordelis that he should continue his rehabilitation and physical therapy. The medical report of Dr. Flordelis was dated 28 May 2013. The company-designated physician cleared Villas from Rehabilitation Medicine standpoint on 30 May 2013. Villas wrote C.F. Sharp on 7 June 2013 requesting for further examination and treatment because he was still unable to grip objects and all the digits on his right hand were still weak. Indeed, during the clarification hearing conducted by the PVA on 18 June 2014, the PVA observed that Villas still had difficulty in gripping objects.

We agree with the Court of Appeals that since there were two conflicting findings by two different physicians, the parties should have moved to seek the opinion of a third doctor. They failed to do so. The Court has ruled that in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting medical assessments of the company-designated doctor on one hand, and the seafarer's chosen physician, on the other.[11] That is the procedure followed by the PVA in this case. The PVA observed that, contrary to the findings by the company-designated physician that Villas was already fit to work, he still had difficulty in gripping objects. The PVA also examined the medical reports and noted that Dr. Flordelis recommended the continuance of Villas' physical therapy but instead, Villas was cleared from Rehabilitation Medicine standpoint and was eventually declared

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[10] It was Dr. Chan who issued the certification, upon the query made on the same date by Dr. Marzan.

[11] *Balatero v. Senator Crewing (Manila), Inc.*, G.R. No. 224532, 21 June 2017, citing *Dalusong v. Eagle Clarc Shipping Phils., Inc.*, 742 Phil. 377 (2014).

fit to work. The foregoing facts show that there was no basis for the issuance of the fit to work certificate to Villas.

Villas is entitled to total permanent disability benefits

The Court of Appeals ruled that Villas is entitled to total permanent disability benefits.

We agree.

The records showed that when Dr. Chan declared that Villas was already fit to work on 6 June 2013, Villas immediately requested C.F. Sharp, in a letter dated 7 June 2013, to allow him to avail of further treatment and therapy. When C.F. Sharp failed to respond to his request, Villas wrote another letter dated 24 June 2013 informing C.F. Sharp that he decided to seek second opinion from another doctor. Villas then consulted with Dr. Magtira who, in a medical report[12] dated 6 July 2013, declared him to be incapacitated and not capable of working at his previous employment. Dr. Magtira declared Villas to be suffering from Grade 9 impediment (26.12%) due to loss of opposition between the thumb and tips of the finger of one hand.[13] Villas relied on Dr. Magtira's medical finding in claiming for disability benefits except that he asked for higher benefits in accordance with the ITF TCC Fleet Agreement, which the PVA granted.

The PVA ruled that between the findings of the company-designated physician and Villas' physician of choice, Dr. Magtira, the latter's findings are more in line with the findings of Dr. Flordelis. The PVA ruled that Dr. Magtira's assessment that Villas suffered from Grade 9 impediment (26.12%) was based on his physical examination as well as his medical history.[14] Dr. Magtira explained that Villas continued to have limitation of flexion, difficulty in grasping objects, and pain in his right hand.[15]

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[12] *Rollo* (G.R. No. 221548), p. 73.

[13] *Id.*

[14] *Id.* at 229.

[15] *Id.*

Dr. Magtira further explained that since Villas is a right-handed person, the injury in his dominant hand is a big burden and addition to his disability, and that Villas had lost his pre-injury capacity and is not capable of working in his previous occupation.[16]

On the other hand, the Court of Appeals' ruling that Villas' disability was total and permanent was based on its findings that the severity of Villas' ailment rendered him incapable to perform work as a seafarer. According to the Court of Appeals, total disability does not require that an employee has to be absolutely disabled or totally paralyzed for as long as his injury is such that he cannot pursue his usual work and earn therefrom. The Court of Appeals ruled that a total disability is considered permanent if it lasts continuously for more than 120 days. C.F. Sharp countered that the 120-day rule may be extended to 240 days.

In *Aldaba v. Career Philippines Shipmanagement, Inc.*,[17] the Court clarified the seeming conflict in jurisprudence on the 120-day and 240-day rules. Citing *Elburg Shipmanagement Phils., Inc. v. Quiogue*,[18] the Court affirmed that a seafarer's disability should not be determined by the number of days that he could not work. However, the Court further affirmed that the company-designated physician must still make an assessment within 120 days from the date of medical repatriation, and he is only allowed to extend the medical treatment to 240 days when there is sufficient justification for it.[19] According to the Court:

> In essence, the Court in *Elburg* no longer agreed that the 240-day period provided by *Vergara*, which was sourced from the IRR, should be an absolute rule. The company-designated physician would still be obligated to assess the seafarer within the original 120-day period

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[16] *Id*.

[17] G.R. No. 218242, 21 June 2017.

[18] 765 Phil. 341 (2015).

[19] *Id*.

from the date of medical repatriation and only with sufficient justification may the company-designated physician be allowed to extend the period of medical treatment to 240 days. The Court reasoned that:

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise; under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.

On the contrary, if we completely ignore the general 120-day period under the Labor Code and POEA-Contract and apply the exceptional 240-day period under the IRR unconditionally, then the IRR becomes absolute and it will render the law forever inoperable. Such interpretation is contrary to the tenets of statutory construction.

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Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took into consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.

Hence, as it stands, the current rule provides: **(1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.**

For as long as the 120-day period under the Labor Code and the POEA-SEC and the 240-day period under the IRR co-exist, the Court must bend over backwards to harmoniously interpret and give life to both of the stated periods. Ultimately, the intent of our labor laws and regulations is to strive for social justice over the diverging interests of the employer and the employee.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, this Court set forth the following guidelines, to wit:

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

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

3. **If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient 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.[20]

In this case, Villas was injured in an accident on 10 February 2013. He was repatriated on 11 February 2013. He reported to C.F. Sharp and was referred to the company-designated physician on 12 February 2013.

There were actually two medical certificates issued to Villas. The first one, dated 6 June 2013, was issued by Dr. Marzan.[21] It was issued within 115 days from Villas' repatriation. On 2

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[20] *Aldaba v. Career Philippines Shipmanagement, Inc.*, *supra* note 17. Emphasis in the original.

[21] *Rollo* (G.R. No. 221548), p. 70.

July 2013, Dr. Ong-Salvador issued Villas a Final Medical Report stating the following: "After extensive examination, our specialist declared patient fit to resume sea duties" and "despite being medically fit for work, the patient refused to sign the medical certification of fitness to work issued by our clinic."[22]

Again, the first fit to work certificate was issued by Dr. Marzan 115 days from the time of Villas' repatriation. However, as we stated earlier, there was no basis for the issuance of the fit to work certificate to Villas at that time. The Final Medical Report was issued by Dr. Ong-Salvador 141 days from the time of repatriation. Following the guidelines in *Elburg*, Villas' disability had become total and permanent. The company-designated physician failed to give the final medical assessment within 120 days and failed to justify that Villas still needed further medical treatment to extend the medical assessment to 240 days. In fact, Dr. Marzan issued a fit to work order within 115 days, and it appears that it was made just to comply with the 120-day period but records would show that treatment had to be extended beyond that period. It was further established that Villas immediately sought the assistance of C.F. Sharp after he was issued the fit to work certificate on 6 June 2013 but his letter was unheeded, forcing him to seek further consultation. The records further show that Villas continued to have physical therapy until 5 September 2013, even beyond the issuance of the Final Medical Report. Hence, the Court of Appeals correctly ruled that Villas' disability was total and permanent.

The Applicability of the ITF TCC Fleet Agreement

The Court of Appeals reversed the PVA's application of the ITF TCC Fleet Agreement. The Court of Appeals ruled that Villas failed to present the original and authenticated copy of the CBA. As such, the Court of Appeals ruled that Villas is only entitled to disability benefits under Section 32 of the 2010 POEA SEC.

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[22] *Id*. at 218.

Villas pointed out that he has no access to the original or authenticated copy of the CBA because the copies are with C.F. Sharp and its foreign principal, General Ore. Villas requested a copy of the CBA from ITF which sent him one *via* email through one Wilhelm Zechner. Villas alleged that C.F. Sharp suppressed the document, which is in its possession, because it would be adverse for it to produce the document.

Section 3(b), Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice.[23] Section 6, Rule 130 also provides that after notice and after satisfactory proof of the existence of the document, the party in custody fails to produce it, secondary evidence may be presented as in the case of a loss.[24]

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[23] Section 3. *Original document must be produced; exceptions.*— When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[24] Section 6. *When original document is in adverse party's custody or control*. — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss.

In the cases before us, there was nothing that would show that C.F. Sharp was required to produce the CBA. It is unfortunate that neither Villas nor the PVA itself required C.F. Sharp to produce the original CBA for comparison with the copy sent by ITF by email. In any event, even when the CBA may be applied to these cases, Villas and C.F. Sharp still failed to comply with its provision requiring that "any Seafarer assessed at less than 50% disability under the attached Annex 3 but certified as permanently unfit for further sea service in any capacity by a doctor appointed mutually by the Company and the ITF, shall also be entitled to 100% compensation."[25]

As regards the payment of attorney's fees, Villas was compelled to litigate due to C.F. Sharp's denial of his claims.[26] Hence, the Court of Appeals correctly awarded attorney's fees.

WHEREFORE, we **DENY** the petitions. We **AFFIRM** the 16 June 2015 Decision and the 29 October 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 137840.

SO ORDERED.

Perlas-Bernabe, Reyes, A. Jr., and *Reyes, J. Jr.,*[*] *JJ.*, concur.

Caguioa, J., on leave.

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[25] *Rollo* (G.R. No. 221548), p. 49.

[26] See *Balatero v. Senator Crewing (Manila), Inc.*, *supra* note 11.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

SECOND DIVISION

[G.R. No. 221995. October 3, 2018]

REPUBLIC OF THE PHILIPPINES, represented by the **TOLL REGULATORY BOARD,** *petitioner, vs.* **SPOUSES TOMAS C. LEGASPI** and **RUPERTA V. ESQUITO, PABLO VILLA, TEODORA VILLA, FLORENCIO VILLA, and RURAL BANK OF CALAMBA (LAGUNA), INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF THE COURT; FACTUAL ISSUES PERTAINING TO THE VALUE OF THE PROPERTY SUBJECT OF EXPROPRIATION ARE QUESTIONS OF FACT WHICH ARE GENERALLY BEYOND THE SUBJECT OF JUDICIAL REVIEW; CASE AT BAR.—** In a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law should be raised and not questions of fact. Factual issues pertaining to the value of the property subject of expropriation are questions of fact which are generally beyond the scope of judicial review of this Court under Rule 45. Although this Court has recognized several exceptions to this rule, this case does not fall under any of the exceptions. Moreover, factual findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive on this Court, unless essential facts were overlooked or misinterpreted which would materially affect the disposition of the case. We find no reason to deviate from the factual findings of the trial court and the Court of Appeals.

2. **POLITICAL LAW; STATE; POWER OF EMINENT DOMAIN; JUST COMPENSATION IN EXPROPRIATION CASES; DEFINED; ITS PURPOSE IS TO COMPENSATE THE OWNER OF THE PROPERTY TAKEN BY THE STATE; STANDARDS FOR THE DETERMINATION THEREOF; CASE AT BAR.—** This Court has defined just compensation in expropriation cases as: Notably, just

compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample." The purpose of just compensation is to compensate the owner of the property taken by the State. Just compensation is the fair and full equivalent of the property at the time of the taking. Under Section 5 of RA 8974, the standards for the determination of just compensation are: Section 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards: (a) The classification and use for which the property is suited; (b) The developmental costs for improving the land; (c) The value declared by the owners; (d) The current selling price of similar lands in the vicinity; (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon; (f) The size, shape or location, tax declaration and zonal valuation of the land; (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible. x x x Clearly, the ruling of both the trial court and the Court of Appeals, fixing just compensation at ₱3,500 per square meter for the subject lots, is supported by evidence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Muya & Paderon Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 18 August 2015 Decision[2] and the 24 November 2015 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 103375. The Court of Appeals affirmed the 16 December 2009 Decision and 14 March 2014 Order of the Regional Trial Court, Branch 35, Calamba City in Civil Case No. 3781-05-C for expropriation.

The Facts

On 21 June 2005, the Republic of the Philippines (petitioner) filed a complaint[4] for expropriation before the Regional Trial Court of Calamba City (trial court) against respondents Spouses Tomas C. Legaspi and Ruperta V. Esquito, Pablo Villa, Teodora Villa, and Florencio Villa, who were the registered owners of the lots located in Barangay Saimsim, Calamba City, Laguna, portions of which were sought to be expropriated. Respondent Rural Bank of Calamba (Laguna), Inc. (bank) was impleaded because the lot of Spouses Tomas C. Legaspi and Ruperta V. Esquito was mortgaged to the bank. The affected subject lots,[5]

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 29-46. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting concurring.

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

[4] *Id*. at 50-58.

[5] As stated in petitioner's Urgent *Ex-Parte* Motion for Issuance of Writ of Possession filed with the trial court, the affected lots subject for expropriation were: (1) Lot 3148-x-N-D-1-B (3,628 sq.m.), owned by Spouses Tomas C. Legaspi and Ruperta V. Esquito; (2) Lot 2-A (1,772 sq.m.), owned by Pablo Villa; (3) Lots 3-A & 3-C (273 sq.m.), owned by Teodora Villa; (4) Lot 2394-X-A-2-B (4,568 sq.m.), owned by Florencio R. Villa; and (5) Lot 2392-C-2 (2,761 sq.m.), owned by Florencio R. Villa. CA *rollo*, pp. 70-71.

with a total area of 13,002 square meters, were expropriated for the construction and implementation of the South Luzon Tollway Extension Project.

On 12 September 2006, petitioner filed an Urgent *Ex Parte* Motion for Issuance of Writ of Possession,[6] stating that in accordance with Section 4(a) of Republic Act No. 8974 (RA 8974),[7] it has already deposited with the Development Bank of the Philippines and Land Bank of the Philippines the amount of ₱3,120,480, representing 100% of the zonal value of the affected subject lots, computed at ₱240 per square meter.[8] On 23 November 2006, respondents filed two motions: (1) Motion to Correct Initial Deposit and to Release it unto Defendants, alleging that the Bureau of Internal Revenue (BIR) zonal valuation of the subject lots should be ₱2,500 per square meter, based on the Tax Declarations issued by the City Assessor's Office of Calamba and not ₱240 per square meter, since the subject lots were classified as commercial lands; and (2) Motion to Order Plaintiff to Pay Defendants the Cost of Improvements, asserting that certain portions of the subject lots contain crops and trees.

In its Order dated 30 November 2006,[9] the trial court granted petitioner's Motion for Issuance of Writ of Possession and respondents' Motion to Correct Initial Deposit. The trial court ordered petitioner to deposit the amount of ₱29,384,020, which represents the difference between the initial deposit of ₱3,120,480 and the ₱32,505,500[10] zonal value of the subject lots computed at ₱2,500 per square meter. The trial court also

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[6] CA *rollo*, pp. 70-80.

[7] AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES.

[8] ₱240 x 13,002 = ₱3,120,480.

[9] Records, Volume 1, pp. 194-197.

[10] In the trial court's Order dated 30 November 2006, it computed the 100% zonal value of the 13,002 sq.m. affected lots as ₱32,505,500 (13,002 sq.m. x ₱2,500 per sq.m.).

ordered the parties to nominate their representatives to the Board of Commissioners, which is tasked to assist the trial court in determining just compensation. Subsequently, the trial court, in an Order dated 5 January 2007,[11] granted respondents' motion for the payment of improvements, and directed petitioner to pay: (1) ₱582,300 to Pablo Villa; (2) ₱111,375 to Teodora Villa; (3) ₱295,485.12 to Florencio Villa; and (4) ₱3,545,172 to Tomas Legaspi. On 20 March 2007, the trial court issued a writ of possession in favor of petitioner.[12]

On 7 November 2007, the trial court issued an order constituting the Board of Commissioners based on the nominees submitted by the parties.[13] The Commissioners made ocular inspections on the subject lots, conducted hearings, and held several interviews and deliberations to determine the fair market value of the lots. While the location of the lots was undeveloped, the Commissioners noted that it has a potential of becoming a mixed residential and commercial site. In fact, a Certification from the Office of the City Mayor of Calamba showed that based on Municipal Ordinance No. 256, Series of 2000, amending Ordinance No. 09, Series of 1981, the location was within Growth Management Zone 1.

On 20 November 2009, the Board of Commissioners submitted the Commissioners' Report,[14] with the following recommended amounts as just compensation for the subject lots: (1) Chairman of the Board of Commissioners, Atty. Allan Hilbero — ₱3,000 per square meter; (2) Commissioner Antonio Amata (petitioner's nominee) - ₱2,500 per square meter; and (3) Commissioner Cecilia Panganiban (respondents' nominee) — ₱4,500 per square meter.

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[11] Records, Volume 1, pp. 217-220.

[12] CA *rollo*, pp. 86-88.

[13] Records, Volume 1, pp. 333-334.

[14] *Rollo*, pp. 106-111.

The Ruling of the Trial Court

On 16 December 2009, the trial court rendered a Decision,[15] the dispositive portion of which reads:

> WHEREFORE, with the foregoing premises, this Court renders judgment fixing the amount of Three Thousand Five Hundred (Php3,500.00) Pesos per square meter as the just compensation for the properties of defendants herein. Accordingly, the Republic of the Philippines, represented by the Toll Regulatory Board is ordered to pay the defendants the amount of Php13,001,500.00 which represents the difference between the Php32,503,500 received by the defendant[s] as provisional payment for the 13,002 sq. meter lots owned by defendants and the amount of Php45,507,000.00 computed at the rate of Php3,500.00 per square meter.
>
> Further, the defendants are hereby ordered to pay Commissioner's fee of Ten Thousand Pesos (₱10,000.00) each Commissioner.
>
> SO ORDERED.[16]

Petitioner filed a Motion for Reconsideration, which the trial court granted through a Resolution dated 12 December 2011,[17] penned by Acting Presiding Judge Rommel O. Baybay. The trial court lowered the amount of just compensation to ₱240 per square meter. The trial court agreed with petitioner's assertion that the Commissioners' declaration that the subject properties have the potential of becoming residential and commercial sites is speculative and could not be used as the basis for determining just compensation.

Respondents moved for reconsideration of the 12 December 2011 Resolution. In an Order dated 14 March 2014,[18] the trial court, through Judge Gregorio M. Velasquez, set aside the 12 December 2011 Resolution, and reinstated the 16 December 2009 Decision of Judge Romeo C. De Leon which fixed the amount of just compensation at ₱3,500 per square meter.

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[15] CA *rollo*, pp. 55-61. Penned by Judge Romeo C. De Leon.

[16] *Id*. at 61.

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

[18] *Id*. at 62-63.

Petitioner appealed the 16 December 2009 Decision and the 14 March 2014 Order of the trial court.

The Ruling of the Court of Appeals

The Court of Appeals denied petitioner's appeal, and affirmed the 16 December 2009 Decision and the 14 March 2014 Order of the trial court.

The Court of Appeals held that just compensation is not solely based on BIR zonal value, which is the basis for the payment of the "provisional value" which is prerequisite to the issuance of a writ of possession. The Court of Appeals explained that while the provisional value is based on the current zonal value, just compensation is based on the prevailing market value of the property, of which the zonal value is only one of its indices. Other factors to consider in determining the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, its size, shape, and location, and the tax declarations thereon.

In addition, the Court of Appeals stressed that the relevant zonal valuation in this case is not ₱240 per square meter, which is the zonal value of agricultural lands in Barangay Saimsim, but ₱2,500 per square meter. Pursuant to the Zoning Ordinance of Calamba which was adopted in 2000, the tax declarations for the subject lots show that these were already classified as commercial, which has a zonal value of ₱2,500 per square meter. The Court of Appeals noted that Ordinance No. 256, Series of 2000, classified Barangay Saimsim, where the subject lots are located, as under Growth Management Zone I.[19] The area under Growth Management Zone 1 is considered highly suitable for urban development, hosting major industrial estates and is the location of major residential subdivisions and universities. Ordinance No. 256 also stated that Growth Management Zone 1 is the area intended to accommodate the urban expansion requirements of Calamba City. The classification of the subject

[19] Records, Volume 1, pp. 346-351.

lots was verified by the Calamba City Mayor who issued a Certificate of Market Value Classification stating that the subject lots were within Growth Management Zone 1 and have a market value of ₱5,000 per square meter.[20]

Taking into account the Commissioners' Report, the classification and valuation of the property as certified by the Mayor, the price paid by petitioner to other affected landowners, and other relevant factors, the Court of Appeals held that the trial court committed no reversible error in fixing the amount of just compensation at ₱3,500 per square meter, instead of only ₱240 per square meter as asserted by petitioner.

The Issue

Petitioner raises the sole issue of whether the Court of Appeals erred in upholding the trial court's decision and order, fixing just compensation for the subject lots at ₱3,500 per square meter.

The Court's Ruling

We find the petition without merit.

Petitioner argues that the amount of ₱3,500 per square meter is excessive and not supported by evidence. Petitioner maintains that just compensation for the subject lots should only be ₱240 per square meter based on the 2004 BIR zonal value, which is competent proof of the fair market value of the subject lots. Furthermore, petitioner stresses that the subject lots are classified as agricultural lands as indicated in the tax declarations, and there were no commercial establishments within the vicinity of the subject lots. Petitioner also cited the lack of cemented access roads leading to and from the subject lots.

In a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law should be raised and not questions of fact. Factual issues pertaining to the value of the property subject of expropriation are questions of fact which are generally beyond the scope of judicial review of this Court

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[20] *Id*. at 345.

under Rule 45.[21] Although this Court has recognized several exceptions to this rule,[22] this case does not fall under any of the exceptions. Moreover, factual findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive on this Court,[23] unless essential facts were overlooked or misinterpreted which would materially affect the disposition of the case.[24] We find no reason to deviate from the factual findings of the trial court and the Court of Appeals.

This Court has defined just compensation in expropriation cases as:

Notably, just compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by

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[21] *Evergreen Manufacturing Corporation v. Republic of the Philippines*, G.R. Nos. 218628 and 218631, 6 September 2017.

[22] The exceptions are: 1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *Umali v. Hobbywing Solutions, Inc*., G.R. No. 221356, 14 March 2018, citing *Angeles v. Pascual*, 673 Phil. 499 (2011).

[23] *Espina-Dan v. Dan*, G.R. No. 209031, 16 April 2018; *Rebadulla v. Republic*, G.R. Nos. 222159 and 222171, 31 January 2018; *Gatan v. Vinarao*, G.R. No. 205912, 18 October 2017.

[24] *Mactan Rock Industries, Inc. v. Germo*, G.R. No. 228799, 10 January 2018; *Rep. of the Phils. v. C.C. Unson Company, Inc*., 781 Phil. 770 (2016); *Rep. of the Phils. v. Heirs of Sps. Pedro Bautista and Valentina Malabanan*, 702 Phil. 284 (2013).

the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample."[25]

The purpose of just compensation is to compensate the owner of the property taken by the State.[26] Just compensation is the fair and full equivalent of the property at the time of the taking.[27] Under Section 5 of RA 8974, the standards for the determination of just compensation are:

Section 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

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[25] *Evergreen Manufacturing Corporation v. Republic of the Philippines*, *supra*, citing *Republic v. Judge Mupas*, 785 Phil. 40, 90 (2016).

[26] *Republic v. Macabagdal*, G.R. No. 227215, 10 January 2018.

[27] *Mateo v. Department of Agrarian Reform*, G.R. No. 186339, 15 February 2017, 817 SCRA 461; *National Power Corporation v. Malapascua-Malijan*, G.R. Nos. 211731 and 211818, 7 December 2016, 813 SCRA 453.

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

The Court of Appeals, in affirming the trial court's valuation of ₱3,500 per square meter as just compensation, considered several factors including the standards enumerated under Section 5 of RA 8974. In affirming the valuation of ₱3,500 per square meter as just compensation for the subject lots, the Court of Appeals explained:

All told, from a consideration of the above-stated figures, namely: (1) Php 3,000.00 per square meter proposed by the Chairman of the Board of Commissioners; (2) Php 2,500.00 per square meter proposed by plaintiff-appellant Republic's nominee; (3) Php 4,500.00 per square meter proposed by defendants-appellees' nominee; (4) Php 5,000.00 per square meter valuation as certified by the Office of the City Mayor; (5) Php 9,000.00 per square meter selling price of Ayala Land; (6) Php 2,500.00 per square meter zonal value five (5) years prior to the filing of the complaint; (7) Php 3,400 per square meter revised zonal value in 2010; and [8] Php 2,250.00 per square meter paid by plaintiff-appellant Republic to other affected landowners, it can be easily gleaned that plaintiff-appellant Republic's insistence on the price of Php 240.00 per square meter, which is about ten (10) times less than the lowest rate of Php 2,250.00 per square meter, is outrageous and unjustified.

It should be borne in mind that the word "just" is used to modify the meaning of the word "compensation", to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample. The owner's loss is not only his property but also its income-generating potential. Prescinding from all the foregoing, this Court finds that the lower court's valuation of Php 3,500.00 per square meter is fair and sensible under the circumstances. The lower court exercised reasonable judgment in arriving at a compromise between the proposals of the parties' nominees, and this Court finds no cogent reason to disturb the same.[28]

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[28] *Rollo*, p. 45.

Clearly, the ruling of both the trial court and the Court of Appeals, fixing just compensation at ₱3,500 per square meter for the subject lots, is supported by evidence. Furthermore, petitioner's insistence that just compensation should be pegged at the zonal value of ₱240 per square meter is erroneous.[29] This Court has ruled in several expropriation cases that the zonal valuation, which is merely one of the indices of the fair market value of real estate, cannot be the sole basis for the determination of just compensation of properties under expropriation.[30] Indeed, under Section 5 of RA 8974, the zonal valuation of the land is only one of the standards to be considered in determining the valuation of the land subject of expropriation.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 18 August 2015 and the Resolution dated 24 November 2015 of the Court of Appeals in CA-G.R. CV No. 103375.

SO ORDERED.

Perlas-Bernabe, Reyes, A. Jr., and *Reyes, J. Jr.,*[*] *JJ.*, concur.

Caguioa, J., on leave.

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[29] Even petitioner's nominee, Commissioner Amata, proposed a higher valuation at ₱2,500 per square meter, alleging that petitioner has entered into compromise agreements with other landowners of expropriated properties in which the amount for just compensation was pegged at ₱2,250 per square meter. RTC Decision dated 16 December 2009, p. 4; CA *rollo*, p. 58.

[30] *Rebadulla v. Republic*, G.R. Nos. 222159 and 222171, 31 January 2018; *Republic v. Cebuan*, G.R. No. 206702, 7 June 2017, 826 SCRA 521; *Rep. of the Phils. v. Asia Pacific Integrated Steel Corp.*, 729 Phil. 402 (2014); *Bases Conversion Dev't. Authority v. Reyes*, 711 Phil. 631 (2013); *Rep. of the Phils. v. Sps. Tan*, 676 Phil. 337 (2011).

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

THIRD DIVISION

[G.R. No. 222219. October 3, 2018]

REYNALDO S. GERALDO, *petitioner, vs.* **THE BILL SENDER CORPORATION/MS. LOURDES NER CANDO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYEE; TWO KINDS OF REGULAR EMPLOYEE; CASE AT BAR.— The issue of whether Geraldo was, indeed, illegally dismissed depends upon the nature of his relationship with the company. Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed. x x x In the instant case, it is undisputed that the company was engaged in the business of delivering bills and other mail matters for and in behalf of their customers, and that Geraldo was engaged as a delivery/messenger man tasked to deliver bills of the company's clients. Clearly, the company cannot deny the fact that Geraldo was performing activities necessary or desirable in its usual business or trade for without his services, its fundamental purpose of delivering bills cannot be accomplished. On this basis alone, the law deems Geraldo as a regular employee of the company. But even considering that he is not a full time employee as the company insists, the law still deems his employment as regular due to the fact that he had been performing the activities for more than one year. x x x Without question, this amount of time that is well beyond a decade sufficiently discharges the requirement of the law. While length of time may not be the controlling test to determine if an employee is indeed a regular employee, it is vital in establishing if he was hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer.

2. ID.; ID.; ID.; THE FACT THAT THE EMPLOYEE IS PAID BY THE PIECE DOES NOT NEGATE ONE'S REGULAR EMPLOYMENT; CASE AT BAR.— The Court, moreover, cannot subscribe to the company's contention that Geraldo is not a regular employee but merely a piece-rate worker since his salary depends on the number of bills he is able to deliver. In *Hacienda Leddy/Ricardo Gamboa, Jr. v. Villegas*, We held that the payment on a piece-rate basis does not negate regular employment. The term "wage" is broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Thus, the fact that Geraldo is paid on the basis of his productivity does not render his employment as contractual. It must be remembered that notwithstanding any agreements to the contrary, what determines whether a certain employment is regular is not the will and word of the employer, to which the desperate worker often accedes, much less the procedure of hiring the employee or the manner of paying his salary. It is the nature of the activities performed in relation to the particular business or trades considering all circumstances, and in some cases the length of time of its performance and its continued existence.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; BURDEN OF PROOF IS UPON THE EMPLOYER TO PROVE THAT THE EMPLOYEE'S TERMINATION FROM SERVICE IS FOR JUST AND VALID CAUSE; ILLEGAL DISMISSAL, ESTABLISHED IN CASE AT BAR.— [I]n illegal dismissal cases like the one at bench, the burden of proof is upon the employer to prove that the employee's termination from service is for a just and valid cause. Here, the company claims that Geraldo was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work. The Court, however, finds that apart from this self-serving allegation, the company failed to adduce proof of overt acts on the part of Geraldo showing his intention to abandon his work. Time and again, the Court has held that to justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal

intent on the part of the employee to discontinue employment. x x x Apart from the absence of just and valid cause in the termination of Geraldo's employment, the Court rules that his dismissal was also done without the observance of due process required by law. It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her. The company in the present case, however, failed to show its compliance with the twin-notice rule. x x x In view of the foregoing premises, therefore, the Court is convinced that Geraldo, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the company to comply with the substantial and procedural requirements of the law.

4. **MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; IN ILLEGAL DISMISSAL CASES, CORPORATE OFFICERS MAY BE HELD SOLIDARILY LIABLE WITH THE CORPORATION IF THE TERMINATION WAS DONE WITH MALICE OR BAD FAITH; CASE AT BAR.—** It must be noted, x x x that respondent Cando cannot be held personally and solidarily liable with the company for the monetary claims of Geraldo. As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. To pierce this fictional veil, it must be shown that the corporate personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue. In illegal dismissal cases, corporate officers may be held solidarily liable with the corporation if the termination was done with malice or bad faith. To hold a director or officer personally liable for corporate obligations, two requisites must concur, to wit: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith. In the

instant case, however, there is no showing that Cando, as President of the company, was guilty of malice or bad faith in terminating the employment of Geraldo. Thus, she should not be held personally liable for his monetary claims.

APPEARANCES OF COUNSEL

Legal Advocates For Worker's Interest for petitioner.
Moises S. Tolentino, Jr. 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 August 7, 2014 and the Resolution[2] dated September 28, 2015 of the Court of Appeals (*CA*) in CA-G.R. SP No. 131235.

The antecedent facts are as follows:

On June 20, 1997, respondent The Bill Sender Corporation, engaged in the business of delivering bills and other mail matters for and in behalf of their customers, employed petitioner Reynaldo S. Geraldo as a delivery/messenger man to deliver the bills of its client, the Philippine Long Distance Telephone Company (*PLDT*). He was paid on a "per-piece basis," the amount of his salary depending on the number of bills he delivered. On February 6, 2012, Geraldo filed a complaint for illegal dismissal alleging that on August 7, 2011, the company's operations manager, Mr. Nicolas Constantino, suddenly informed him that his employment was being terminated because he failed to deliver certain bills. He explained that he was not the

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Danton Q. Bueser, concurring; *rollo*, pp. 32-39.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Ramon M. Bato, Jr. and Danton Q. Bueser, concurring; *id.* at 29-30.

messenger assigned to deliver the said bills but the manager refused to reconsider and proceeded with his termination. Thus, he claims that his dismissal was illegal for being done without the required due process under the law and that the company and its president, respondent Lourdes Ner Cando, be held liable for his monetary claims.[3]

For its part, the company countered that Geraldo was not a full time employee but only a piece-rate worker as he reported to work only as he pleased and that it was a usual practice for messengers to transfer from one company to another to similarly deliver bills and mail matters. As such, he would only be given bills to deliver if he reports to work, otherwise, the bills would be assigned to other messengers. Moreover, contrary to Geraldo's claims, the company asserts that he was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work. Thus, the burden was on him to substantiate his claims for illegal dismissal.[4]

On November 29, 2012, the Labor Arbiter (*LA*) held that contrary to the company's assertion, the burden of proving that the dismissal of an employee is for just cause rests on the employer, without distinction whether the employer admits or does not admit the dismissal, pursuant to Article 277(b) of the Labor Code. It also ruled that Geraldo is considered as a regular employee of the company because he was doing work that is usually necessary and desirable to the trade or business thereof. Moreover, even if the performance of his job is not continuous or is merely intermittent, since he has been performing the same for more than a year, the law deems the repeated and continuing need thereof as sufficient evidence of the necessity, if not indispensability, of his work to the company's business. In addition, the LA found that the company failed to substantiate its contention that Geraldo was employed with another company and that he abandoned his job. But even if it was true that he abandoned his job, it was incumbent on the company to send

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[3] *Id*. at 55-56.

[4] *Id*. at 45.

him a notice ordering him to report to work and to explain his absences as mandated by Sections 2 and 5, Book V, Rule XIV of the Labor Code. Finding that Geraldo was illegally dismissed, the LA ordered the company to pay him separation pay, service incentive leave pay, and attorney's fees in the aggregate amount of ₱352,214.13.[5]

In a Decision[6] dated May 9, 2013, the National Labor Relations Commission (*NLRC*) affirmed the LA ruling with clarification that the computation of backwages must be from the time of his dismissal up to the finality of the NLRC Decision. According to the NLRC, the company failed to discharge the burden of proving a deliberate and unjustified refusal of Geraldo to resume his employment without any intention of returning as well as to observe the twin-notice requirement to insure that due process has been accorded to him. Moreover, said commission also rejected the company's claim that Geraldo abandoned his job since he filed his complaint only after seven (7) months from the alleged dismissal for the lapse of time between the dismissal of an employee for abandonment and the filing of the complaint is not a material *indicium* of abandonment.[7]

On August 7, 2014, however, the CA set aside the NLRC Decision. According to the appellate court, since Geraldo was paid on a per piece basis, he was hired on a per-result basis, and as such, he was not an employee of the company. The absence of an employer-employee relationship was further highlighted by the fact that messengers would habitually transfer from one messengerial company to another depending on the availability of mail matters. Thus, since Geraldo was not an employee of the company, there was no basis in awarding separation pay, backwages, 13th month pay, service incentive leave pay, and attorney's fees.[8] Thereafter, in a Resolution dated September

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

[6] *Id.* at 44-51.

[7] *Id.* at 48-50.

[8] *Id.* at 35-39.

28, 2015, the CA further denied Geraldo's Motion for Reconsideration.

Aggrieved, Geraldo filed the instant petition on November 26, 2015 invoking the following arguments:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE COMPLAINT ON THE GROUND THAT PETITIONER BEING A PIECE-RATE EMPLOYEE IS NOT AN EMPLOYEE OF RESPONDENT AND NOT ENTITLED TO SECURITY OF TENURE ON THE BASIS OF THE ALLEGATIONS THAT PETITIONER WAS PAID ON A PER PIECE BASIS.

II.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE COMPLAINT AND SET ASIDE THE MONETARY AWARD FOR BACKWAGES, SEPARATION PAY, SERVICE INCENTIVE LEAVE, 13TH MONTH PAY AND ATTORNEY'S FEES WITHOUTH BASES IN FACT AND IN LAW.

III.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE OFFICERS OF RESPONDENT CORPORATION ARE NOT LIABLE FOR THE MONETARY CLAIMS OF PETITIONER.

In his petition, Geraldo posits that the existence of an employer-employee relationship cannot be denied and as a regular employee, he is entitled to a security of tenure. According to him, his being a piece-rate employee is just a manner of payment of his compensation and not the basis of his regularity of work. The regular nature of his work, moreover, is shown by the fact that the same is usually necessary and desirable to the nature of the company's business, which is the delivery of bills and other mail matters for and in behalf of its customers. Geraldo further claims that since he was illegally dismissed, for his employment was terminated without due process of law, he is entitled to his monetary claims as correctly awarded by the

LA, and that Cando, as President of the company, should be held solidarily liable therefor. The mere fact that he was illegally dismissed, underpaid and deprived of his 13th month pay and service incentive leave pay constitutes bad faith on Cando's part as president of said company. As such, she cannot escape personal liability.[9]

The petition is partially meritorious.

The issue of whether Geraldo was, indeed, illegally dismissed depends upon the nature of his relationship with the company. Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

In *Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission*,[10] we held that the test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.

In the instant case, it is undisputed that the company was engaged in the business of delivering bills and other mail matters for and in behalf of their customers, and that Geraldo was engaged as a delivery/messenger man tasked to deliver bills of the company's clients. Clearly, the company cannot deny the fact that Geraldo was performing activities necessary or desirable in its usual business or trade for without his services, its fundamental purpose of delivering bills cannot be accomplished.

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[9] *Id*. at 10-21.

[10] 503 Phil. 875, 882-883 (2005).

On this basis alone, the law deems Geraldo as a regular employee of the company. But even considering that he is not a full time employee as the company insists, the law still deems his employment as regular due to the fact that he had been performing the activities for more than one year. In fact, counting the number of years from the time he was engaged by the company on June 20, 1997 up to the time his services were terminated on August 7, 2011 reveals that he has been delivering mail matters for the company for more than fourteen (14) years. Without question, this amount of time that is well beyond a decade sufficiently discharges the requirement of the law. While length of time may not be the controlling test to determine if an employee is indeed a regular employee, it is vital in establishing if he was hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer.[11]

The Court, moreover, cannot subscribe to the company's contention that Geraldo is not a regular employee but merely a piece-rate worker since his salary depends on the number of bills he is able to deliver. In *Hacienda Leddy/Ricardo Gamboa, Jr. v. Villegas*,[12] We held that the payment on a piece-rate basis does not negate regular employment. The term "wage" is broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Thus, the fact that Geraldo is paid on the basis of his productivity does not render his employment as contractual. It must be remembered that notwithstanding any agreements to the contrary, what determines whether a certain employment is regular is not the will and word of the employer, to which the desperate worker often accedes, much less the procedure of hiring the employee or the manner of paying his salary. It is the nature of the activities

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[11] *Hacienda Leddy/Ricardo Gamboa, Jr. v. Villegas*, 743 Phil. 530, 539 (2014).

[12] *Id*.

performed in relation to the particular business or trades considering all circumstances, and in some cases the length of time of its performance and its continued existence.[13]

Having established that Geraldo was a regular employee of the company, it becomes incumbent upon the latter to show that he was dismissed in accordance with the requirements of the law for the rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to prove that the employee's termination from service is for a just and valid cause.[14] Here, the company claims that Geraldo was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work. The Court, however, finds that apart from this self-serving allegation, the company failed to adduce proof of overt acts on the part of Geraldo showing his intention to abandon his work. Time and again, the Court has held that to justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. Mere absence is not sufficient. It must be accompanied by manifest acts unerringly pointing to the fact that the employee simply does not want to work anymore. Hence, it bears emphasis that the fact that Geraldo filed the instant illegal dismissal complaint negates any intention on his part to sever his employment with the company. The records reveal that he even sought permission to return to work but was rejected by the company. Contrary to the company's assertion, moreover, the mere lapse of seven (7) months from Geraldo's alleged dismissal to the filing of his complaint is not a material indication of abandonment, considering that the complaint was filed within a reasonable period during the three (3)-year period provided under Article 291 of the Labor Code.[15]

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[13] *Id*. at 541.

[14] *Id*. at 538.

[15] *Padilla Machine Shop, et al. v. Javilgas*, 569 Phil. 673, 683 (2008).

Apart from the absence of just and valid cause in the termination of Geraldo's employment, the Court rules that his dismissal was also done without the observance of due process required by law. It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.[16] The company in the present case, however, failed to show its compliance with the twin-notice rule. In fact, in its Comment, it even expressly admitted its failure to serve Geraldo with any written notice, merely insisting that its oral notice should be considered substantial compliance with the law.

In view of the foregoing premises, therefore, the Court is convinced that Geraldo, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the company to comply with the substantial and procedural requirements of the law. Thus, We sustain the award of the LA and the NLRC of separation pay, in lieu of reinstatement, attorney's fees, as well as Geraldo's monetary claims of 13th month pay and service incentive leave pay in view of the failure of the company to adduce evidence to show that Geraldo has been paid said benefits.

It must be noted, however, that respondent Cando cannot be held personally and solidarily liable with the company for the monetary claims of Geraldo. As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. To pierce this fictional veil, it must be shown that the corporate personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue. In illegal dismissal cases, corporate officers may be held solidarily liable

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[16] *Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, July 2, 2018.

with the corporation if the termination was done with malice or bad faith.[17] To hold a director or officer personally liable for corporate obligations, two requisites must concur, to wit: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith.[18] In the instant case, however, there is no showing that Cando, as President of the company, was guilty of malice or bad faith in terminating the employment of Geraldo. Thus, she should not be held personally liable for his monetary claims.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED.** The assailed Decision dated August 7, 2014 and Resolution dated September 28, 2015 of the Court of Appeals in CA-G.R. SP No. 131235 are **REVERSED** and **SET ASIDE.** The Decision dated May 9, 2013 of the National Labor Relations Commission is **REINSTATED** with the **MODIFICATION** that Lourdes Ner Cando is absolved of any personal liability as regards the money claims awarded to petitioner.

SO ORDERED.

Reyes, A. Jr.[*] and *Reyes, J. Jr., JJ.,* concur.

Leonen, J., on wellness leave.

Gesmundo, J., on official business.

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[17] *Culili v. Eastern Telecommunications Philippines, Inc*., *et al.,* 657 Phil. 342, 372 (2011).

[18] *Id*.

[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

THIRD DIVISION

[G.R. No. 222523. October 3, 2018]

JOSE JOHN C. GUERRERO, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., CELEBRITY CRUISES, and CARLOS C. SALINAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY ERRORS OF LAW ARE GENERALLY REVIEWED THEREIN.— Elementary is the principle that this Court is not a trier of facts, and this applies with greater force in labor cases; only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Factual questions are for the labor tribunal to resolve. Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court. Accordingly, the instant petition must be dismissed outright as it raises a question of fact.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION'S AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS; DISABILITY BENEFITS; COMPENSABILITY OF DISABILITY; ELEMENTS.— For disability to be compensable, 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. Work-related injury pertains to injury(ies) resulting in disability or death arising out of, and in the course of, employment. Jurisprudence elucidates that 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.

3. ID.; ID.; ID.; ID.; WHOEVER CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD ESTABLISH HIS RIGHT THERETO BY SUBSTANTIAL EVIDENCE.— Work-relatedness of an injury or illness means that the seafarer's injury or illness has a possible connection to one's work, and thus, allows the seafarer to claim disability benefits therefor. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Thus, the burden is placed upon Guerrero to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his injury. The *onus probandi* fell on Guerrero to establish his claim for disability benefits by the requisite quantum of evidence that would serve as basis for the grant of the relief. Unfortunately, Guerrero utterly failed to prove a reasonable connection between his work as a Casino Dealer and his alleged lumbar disc injury. x x x We cannot overemphasize that self-serving and unsubstantiated declarations are insufficient to establish a case where the quantum of proof required to establish as fact is substantial evidence. Awards of compensation cannot rest entirely on bare assertions and presumptions.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MATTERS THAT ARE NEITHER ALLEGED IN THE PLEADINGS NOR RAISED DURING THE PROCEEDINGS BELOW CANNOT BE VENTILATED FOR THE FIRST TIME ON APPEAL AND ARE BARRED BY ESTOPPEL.— Guerrero's contentions that his disability is permanent and total because Dr. Catbagan, the company-designated physician, failed to issue a medical certificate as to his fitness for work resumption or disability within the 240-day maximum period, and because his chosen physician, Dr. Garcia, issued a medical certificate finding him unfit for further service as a seafarer, would not advance his cause against the respondents. To begin with, these arguments offered by Guerrero

via the present petition were not raised before the labor tribunal and, thus, cannot be considered on appeal. It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel. 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. To consider the alleged fact and argument belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.

5. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INTENDED TO CORRECT ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, DEFINED.— [T]he CA correctly ruled that no grave abuse of discretion can be attributed to the NLRC in dismissing Guerrero's complaint. The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it 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 at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

APPEARANCES OF COUNSEL

Maria Carmen De Jesus Villacrusis for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, ***J.*:**

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the September 10, 2015 Decision[1] and the January 14, 2016 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 132711.

The case traces its roots to a Complaint[3] filed by petitioner Jose John C. Guerrero (*Guerrero*) for permanent and total disability benefits, compensatory damages, exemplary damages, moral damages and attorney's fees against respondents Philippine Transmarine Carriers, Inc. (*PTCI*), Celebrity Cruises (*CC*), and/or Carlos Salinas (*Salinas*) [*collectively, respondents*].

A series of conferences between Guerrero and respondents were held before the Labor Arbiter (*LA*), but the parties failed to reach an amicable settlement. Hence, the LA required the parties to submit their respective position papers.

In his Position Paper,[4] Guerrero alleged that on August 15, 2011, he was employed by PTCI, represented by its President, Carlos Salinas, on behalf of its principal, CC, as a Casino Dealer on board the vessel GTS Constellation for a period of six (6) months with a basic monthly salary of US$255.00. Prior to embarkation, he underwent pre-employment medical examination at Metrics Center, Makati City, and was declared "fit to work as a seaman." He boarded the vessel on October 12, 2011. His duties and responsibilities as a casino dealer include having an understanding of all the games he will operate, dealing cards, distributing dice, operating game apparatus such as roulette wheel or baccarat wheel, as well as keeping an eye on patrons

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Pedro B. Corales, concurring; *rollo*, pp.15-25.

[2] *Id*. at 27.

[3] *Id*. at 85-86.

[4] *Id*. at 89-111.

to make sure they are not cheating, and the gamblers are having a good time.

Guerrero averred that: sometime in January 2012 during a gastro-intestinal outbreak in the ship, he and other crew members were tasked and ordered to bring elderly guests out of the ship through wheelchairs; since the platform was not levelled with the ship's door exit, and the bridge connecting the platform and the door exit was too steep, they decided that the best way to move and transfer the elderly passengers was by pulling the wheelchairs; while he was pulling a wheelchair with a passenger, a sudden motion occurred which caused him to lose his balance but managed to prevent the wheelchair, the passenger and himself from falling; in order to keep the passenger safe, he had to push the wheelchair really hard to gain control over it; after said incident, he started experiencing back pains which he just ignored due to the demands of his work as a casino dealer; to manage his back pain, he took mefenamic acid tablets and applied pain relieving liniment and hot water on the painful area; and later, his back pain became unbearable prompting him to consult the doctor of the vessel who prescribed him pain reliever medication and sleeping pills.

While his vessel was docked at a port in the Caribbean, Guerrero underwent a Magnetic Resonance Imaging (*MRI*) procedure at the Isle Imaging Center of St. George, Caribbean, and after which, the attending physician made the following Impression: *Findings revealed changes of Lumbar Spondylosis involving L2-3, L3-4, L4-5 disc causing of compression of left L5 and bilateral L4 roots as described. No cords conus abnormality seen*.[5] In view of his medical condition, he was recommended for medical repatriation. Upon his arrival in Manila on March 26, 2012, Guerrero immediately reported to respondents and was referred to the Manila Doctors Hospital and the Philippine General Hospital (*PGH*) for post-employment medical examination and for further treatment. He underwent a series of physical therapy sessions at the Orthopedics Department of the PGH under the supervision of the company-

[5] *Id*. at 116.

designated physician/surgeon, Dr. Adrian Catbagan (*Dr. Catbagan*). On October 19, 2012, a major surgery called Transforaminal Lumbar Interbody Fusion L3-L4 & L4-L5 was performed on Guerrero by Dr. Catbagan at the Manila Doctors Hospital. On November 19, 2012, Dr. Catbagan issued a Medical Certificate[6] stating that Guerrero was confined at the Manila Doctors Hospital on October 19, 2012 and was discharged on November 9, 2012 with the following final diagnosis: *Degenerative Disc Disease & Disc Herniation L3-L4 & L4-L5 Moyamoya Disease, resolved*. After Guerrero's surgery, he continued his therapy sessions with Dr. Catbagan until January 15, 2013.

Guerrero alleged that since the pain still persisted notwithstanding the medical procedures performed on him, he consulted, on January 17, 2013, Dr. Cesar H. Garcia (*Dr. Garcia*), an orthopedic surgeon/bone and joint disease, who issued on even date a medical certificate[7] declaring him "UNFIT for further sea service in whatever capacity as a SEAFARER." Guerrero alleged that despite his permanent unfitness for further sea service as determined by his physician, respondents failed to compensate him of permanent and total disability benefits. He maintained that he sustained a spinal injury due to an accident arising out, and in the course of, his employment.[8]

In their Position Paper,[9] respondents maintained that Guerrero is not entitled to disability benefits because he sustained the alleged injury during an incident at the crew gym. Respondents adduced in evidence documents denominated as Crew Injury Statement,[10] dated March 22, 2012, and Personal Injury Illness Statement[11] in support their submission.

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[6] *Id*. at 120.

[7] *Id*. at 121-124.

[8] *Id.*at 90-96.

[9] *Id.*at 139-150.

[10] *Id*. at 157.

[11] *Id.* at 158-160.

Respondents alleged that the essential duties of Guerrero as a Casino Dealer are reflected in the Job Description Manual. They contended that going to the gym and the use of gym facilities are not part of Guerrero's job and could not have any relation to his duties as a Casino Dealer. Respondents theorized that disability benefits are compensable only when the seafarer, such as Guerrero, suffers work-related injury or illness during the term of his contract. They posited that Guerrero's injury is not compensable since it has not arisen from a work-related incident. Respondents alleged that Guerrero's claim for damages and attorney's fees are bereft of any factual and legal basis stressing that they had faithfully complied with their contractual obligation to him and had even provided him with extensive medical attention for humanitarian consideration. By way of counterclaim, respondents alleged that the filing by Guerrero of a baseless complaint tarnished their reputations and were constrained to engage the services of an attorney to protect their rights. For these reasons, they prayed that they should be awarded damages of ₱200,000.00 attorney's fees and cost of litigation in the sum of ₱400,000.00.[12]

The LA Ruling

On February 28, 2013, the Labor Arbiter rendered a Decision[13] declaring that PTCI and CC are solidarily liable for disability compensation to Guerrero. The *fallo* of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents PHILIPPINE TRANSMARINE CARRIERS [INC.]/CELEBRITY CRUISES, jointly and severally, liable to pay JOSE JOHN GUERRERO the amount of US DOLLARS: SIXTY THOUSAND (US$60,000.00) or its peso equivalent at the prevailing rate of exchange at the time of actual payment representing his total permanent disability benefits and attorney's fees.
>
> Mr. Carlos Salinas is hereby EXCLUDED/DROPPED as party-respondent in this case.

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[12] *Id*. at 142-148.

[13] Penned by Labor Arbiter *J*. Potenciano F. Napenas, Jr., *id*. 187-195.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[14]

The LA ruled that although Guerrero's injury had resulted from a gym incident, the same would not release respondents PTCI and CC from their liability for disability benefits. It held that Guerrero's medical condition has rendered him permanently incapacitated to be a seafarer, as found by his chosen physician, Dr. Garcia. Lastly, it observed that Guerrero has been incapacitated to work for more than 120 days from the date he was repatriated and seen by the company-designated physician.

Not in conformity, respondents PTCI and CC filed a joint appeal before the National Labor Relations Commission (*NLRC*) praying for the reversal and nullification of the February 28, 2013 Decision of the LA and for the dismissal of Guerrero's complaint for lack of merit.

The NLRC Ruling

On July 31, 2013, the NLRC rendered a Decision[15] reversing February 28, 2013 Decision of the LA. The NLRC disposed the case as follows:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE, and the case DISMISSED for UTTER LACK OF MERIT.

SO ORDERED.[16]

The NLRC ruled that Guerrero is not entitled to disability benefits and payment of his other monetary claims because his injury is not work-related or not an injury sustained while working on-board the vessel. The NLRC added that apart from Guerrero's assertion, no other evidence was adduced to support and

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[14] *Id*. at 195.

[15] Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus, concurring; *id*. at 339-357.

[16] *Rollo*, pp. 356-357.

corroborate his "wheelchair theory," which incident allegedly caused his injury.

Guerrero's motion for reconsideration was denied by the NLRC in its September 13, 2013 Resolution.[17]

Aggrieved, Guerrero assailed the NLRC Decision and Resolution via a petition for *certiorari* filed before the CA, ascribing grave abuse of discretion on the part of the NLRC in denying his claim for permanent and total disability benefits and for attorney's fees.

The CA Ruling

In its September 10, 2015 Decision, the CA resolved to deny the petition for certiorari based on the same ratiocinations the NLRC had rendered. The dispositive portion of the Decision reads:

> WHEREFORE, in the light of all the foregoing, the petition is hereby DENIED. Accordingly, the Decision dated 31 July 2013 and Resolution dated 13 September 2013 issued by public respondent National Labor Relations Commission, Second Division, in NLRC LAC No. 05-000495-13 are hereby AFFIRMED.
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> SO ORDERED.[18]

The CA held that the challenged decision of the NLRC was in accordance with law and prevailing jurisprudence and that no grave abuse of discretion amounting to lack or excess of jurisdiction can be imputed against said labor tribunal.

Guerrero filed a motion for reconsideration, but the same was denied by the CA in its January 14, 2016 Resolution.

Unfazed, Guerrero filed the present petition insisting that he is entitled to disability benefits as well as to the award of damages and attorney's fees.

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[17] *Id*. at 368-369.

[18] *Id*. at 24.

The Court's Ruling

The petition is devoid of merit.

From a perusal of the arguments raised by Guerrero, it is quite apparent that this petition is raising a question of fact inasmuch as this Court is being asked to revisit and assess anew the uniform factual findings of the CA and the NLRC that his injury was not work-related. Guerrero is fundamentally assailing the findings of the CA and the NLRC that the evidence on record does not support his claim for disability benefits. In effect, he would have us sift through, calibrate and re-examine the credibility and probative value of the evidence on record so as to ultimately pass upon whether or not there is sufficient basis to hold PTCI and CC accountable for refusing to pay disability benefits to him under the Philippine Overseas Employment Administration's (POEA's) "Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels," which is deemed written in his contract of employment. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.[19]

Elementary is the principle that this Court is not a trier of facts, and this applies with greater force in labor cases; only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Factual questions are for the labor tribunal to resolve.[20] Moreover, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court.[21] Accordingly, the instant petition must be dismissed outright as it raises a question of fact.

Even if the Court is willing to overlook this procedural lapse, the present petition would just the same fail.

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[19] *CBL Transit, Inc. v. National Labor Relations Commission*, 469 Phil. 363, 371 (2004).

[20] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

[21] *Acevedo v. Advanstar Company, Inc*., 511 Phil. 279, 287 (2005).

We carefully examined and evaluated the records of this case.Try as we might, however, this Court failed to identify any error committed by the CA in declaring that the NLRC did not commit grave abuse of discretion in dismissing Guerrero's complaint. Likewise, the Court sees no reason to disturb the similar factual findings of the CA and the NLRC regarding the non-work relatedness of the subject injury of Guerrero.

For disability to be compensable, 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.[22] Work-related injury pertains to injury(ies) resulting in disability or death arising out of, and in the course of, employment.[23] Jurisprudence elucidates that 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.[24]

Work-relatedness of an injury or illness means that the seafarer's injury or illness has a possible connection to one's work, and thus, allows the seafarer to claim disability benefits therefor.The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence.[25] Thus, the burden is placed upon Guerrero to present substantial evidence, or such relevant

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[22] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, 630 Phil. 352, 362-363 (2010).

[23] *NYK-Fil Ship Management, Inc. v. Talavera*, 591 Phil. 786, 800 (2008).

[24] *Racelis v. United Philippine Lines, Inc.*, 746 Phil. 758, 768 (2014).

[25] *InterOrient Maritime Enterprise, Inc. v. Creer III*, 743 Phil. 164, 183 (2014).

evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his injury. The *onus probandi* fell on Guerrero to establish his claim for disability benefits by the requisite quantum of evidence that would serve as basis for the grant of the relief.

Unfortunately, Guerrero utterly failed to prove a reasonable connection between his work as a Casino Dealer and his alleged lumbar disc injury. Apart from his bare allegation that he sustained an injury sometime in January 2012 while assisting an elderly passenger on a wheelchair to disembark from the vessel in compliance to an order from the management, no other competent and independent evidence was proffered to substantiate and to corroborate his foregoing claim. We cannot overemphasize that self-serving and unsubstantiated declarations are insufficient to establish a case where the quantum of proof required to establish as fact is substantial evidence.[26]Awards of compensation cannot rest entirely on bare assertions and presumptions.[27]

On the other hand, respondents were able to expose the falsity of Guerrero's story when they submitted in evidence the Crew Injury Statement dated March 22, 2012, which contained Guerrero's admission to the effect that the subject injury resulted from his gym workout. For clarity, we hereto quote Guerrero's relevant narration of the gym incident which was written entirely in his own handwriting, thus:

On JAN 22, I went to the gym to do my usual workout after that I felt pain on my lower back. I went to see a doctor on that day and gave me 24 hrs. to rest after that I go back to work, but everytime I bend, I felt something painful on my left buttock so I decided to see the doctor again on March 4 after that the pain keeps coming back ever since.

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[26] *Ceriola v. NAESS Shipping Philippines, Inc*., 758 Phil. 321, 337(2015).

[27] *Leonis Navigation Co., Inc. v. Obrero*, 794 Phil. 481, 488 (2016).

Were you on duty at the time of the injury? *No. It's my long break. I decided to go to gym to keep myself fit & healthy.*

Please state what you could have done to avoid the accident? *Do proper workout*.[28]

The occurrence of the aforesaid incident was confirmed in a document denominated as Personal Injury Illness Statement which provided, *inter alia*, the following:

Brief Desc: Persistent painful lower back since heavy lifting in crew gym
Incident cause: SPORTS RELATED
Primary Factor: HUMAN ERROR
Lighting Type: Artificial Light-Bright
Location Condition: Clean
Involved Equipment Desc: gym
Equipment Condition: Good Working Order
Protective Gear Desc: Did Not Wear

These documentary evidence effectively belied Guerrero's insistence that he incurred the injury during the wheelchair incident. Guerrero's strenuous physical activity consisting of frequent bending and improper lifting of heavy objects during his routine workout at the crew gym on January 22, 2012 produced extreme torsional stress on his back which caused his subject injury. As aptly contended by the respondents, there is nothing in the Job Description Manual which states that part of Guerrero's duty as a Casino Dealer is to go to the crew gym and use its facility for his physical workout. Verily, Guerrero failed to prove work-causation of the subject injury. It may not be amiss to state at this juncture that the LA, the NLRC and the CA have similarly concluded that Guerrero's injury resulted from his crew gym workout on January 22, 2012.

Guerrero's contentions that his disability is permanent and total because Dr. Catbagan, the company-designated physician, failed to issue a medical certificate as to his fitness for work resumption or disability within the 240-day maximum period,

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[28] *Rollo*, p. 157.

and because his chosen physician, Dr. Garcia, issued a medical certificate finding him unfit for further service as a seafarer, would not advance his cause against the respondents.

To begin with, these arguments offered by Guerrero via the present petition were not raised before the labor tribunal and, thus, cannot be considered on appeal. It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel.[29] 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. To consider the alleged fact and argument belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[30]

Further, the Court finds that the declaration of Dr. Garcia in the medical certificate that Guerrero is "UNFIT for further sea service in whatever capacity as a SEAFARER" leaves much to be desired. Said medical certification was not supported by any relevant and necessary diagnostic tests and/or procedures. No medical records or other sufficient proof was adduced to justify the above-mentioned pronouncement/diagnosis. It bears stressing that Dr. Garcia issued the medical certificate on the very same day that he was consulted by Guerrero.It is undisputed that the recommendation of Dr. Garcia was based on a single medical report which outlined the alleged findings and medical history of Guerrero despite the fact that said physician examined Guerrero only once.In the absence of adequate tests and reasonable findings, Dr. Garcia's assessment should not be taken at face value. At best, Dr. Garcia's medical certificate was merely concerned on the examination of Guerrero for purposes of diagnosis and treatment and not for the determination of whether the latter incurred a disability.

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[29] *Commissioner on Internal Revenue v. Puregold Duty Free, Inc*., 761 Phil. 419, 434-435(2015).

[30] *Ayala Land Inc. v. Castillo*, 667 Phil. 274, 297(2011).

At any rate, any further discussion as to whether Guerrero suffered a permanent and total disability which entitles him to disability benefits, would be a mere surplusage. The medical certificate issued by Dr. Garcia and the alleged failure of Dr. Catbagan to issue the pertinent medical certificate within the maximum period of 240 days, are of no use and will not give Guerrero that cause of action he sorely lacked at the time he filed his complaint. His injury is not work-related, hence, not compensable.

Lastly, the Court observes that Guerrero proffered varying narrations/versions as to how he allegedly incurred his injury. In his Position Paper, Guerrero alleged that he sustained his injury when he lost his balance while assisting an elderly passenger on a wheelchair to get off the vessel as required by the management, but was able to regain equilibrium by pushing the wheelchair really hard. However, he gave Dr. Catbagan a different account by stating that he started feeling the back pain "after doing exercise at the gym" and this was reflected in the Medical Abstract/Discharge Summary.[31] Meanwhile, in his Comment/Opposition to Respondents-Appellants' Memorandum of Appeal,[32]Guerrero modified his version of the incident by adding that he heard a snap on his back while trying to maneuver the wheelchair and that "the gym incident was only the aggravating factor to complainant's severe back pain."[33] But in this present petition, Guerrero alleged:

> Sometime in January 2012, he was involved in a medical call due to gastrointestinal problem of an elderly. Together with a fellow crew, they placed the elderly on a wheelchair, but due to big waves, the vessel suddenly swayed before they could pass the platform of the bridge. As a consequence, petitioner was out of balanced and fell with his back landed first on the metal floor.[34]

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[31] *Rollo*, p. 119.

[32] *Id*. at 236-247.

[33] *Id*. at 239.

[34] *Id*. at 34. (Underscoring ours).

Nowhere in any of his pleadings filed before the labor tribunals and the CA was there any mention that Guerrero accidentally fell with his back hitting the metal floor during the wheelchair incident. His conflicting and inconsistent statements cast serious doubt on the veracity of his wheelchair theory. Obviously, Guerrero willfully made such false statements in his futile attempt to deceive the labor tribunals, the CA and this Court that he suffered a work-related injury so as to obtain a favorable judgment. Thus, for not coming to court with clean hands and in order to prevent him from profiting from his own deception, basic rules of fair play dictate that we should deny his claim for disability benefits all the more.

Viewed in the light of the foregoing, the CA correctly ruled that no grave abuse of discretion can be attributed to the NLRC in dismissing Guerrero's complaint. The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[35] Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.[36] To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it 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 at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[37]

In the case at bench, Guerrero failed to demonstrate that the dismissal of his complaint by the NLRC was tainted with grave abuse of discretion or that the NLRC had no jurisdiction to order the same. On the contrary, the dismissal was proper and warranted since Guerrero has no cause of action against the

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[35] *Saludaga v. Hon. Sandiganbayan, 4th Division*, 633 Phil. 369, 383(2010).

[36] *Feliciano v. Villasin*, 578 Phil. 889, 905(2008).

[37] *Julie's Franchise Corp. v. Hon. Judge Ruiz*, 614 Phil. 108, 116 (2009).

respondents. We are so mindful that the respondents have exerted real efforts to extend medical assistance and even paid for all the expenses incurred in the course of the treatment of Guerrero. There is nothing on record that would justify a compensation on top of the aid and assistance already extended to him.

Let it be underscored that the constitutional policy to afford full protection to labor is never meant to be a sword to oppress employers. While the Court is committed to the cause of the labor, the same would not deter us from sustaining the employer when it is correct and proper. It must be emphasized that justice is, in every case, for the deserving and must be dispensed with after a thorough scrutiny and circumspect evaluation of the established facts, the applicable law/s and the prevailing jurisprudence.

WHEREFORE, PREMISES CONSIDERED, the petition is **DENIED**. The Court of Appeals Decision dated September 10, 2015 and Resolution dated January 14, 2016 in CA-G.R. SP No. 132711 are hereby **AFFIRMED**.

SO ORDERED.

Reyes, A. Jr.[*] and *Reyes, J. Jr., JJ.,* concur.

Leonen, J., on wellness leave.

Gesmundo, J. on official business.

SECOND DIVISION

[G.R. No. 225213. October 3, 2018]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CEASAR CONLU *y* BENETUA,** *appellant.*

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[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** For an accused to be convicted for illegal sale of dangerous drugs, the following elements must concur: (1) that the transaction or sale took place between the accused and the poseur-buyer; and (2) that the dangerous drug subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.

2. **ID.; ID.; ID.; THE POSEUR-BUYER SHOULD BE PRESENTED AS A WITNESS TO PROVE THAT THE ILLEGAL SALE ACTUALLY TRANSPIRED WHEN THE POLICE OFFICERS WERE AT A CONSIDERABLE DISTANCE AWAY FROM THE CRIMINAL TRANSACTION AND THE BUY-BUST ITEM IS OF MINISCULE AMOUNT; CASE AT BAR.—** In this case, there is serious doubt that the sale of the 0.01 gram of methamphetamine hydrochloride or shabu between appellant and the poseur-buyer ever took place. The poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court. While the prosecution argues that the non-presentation of the poseur-buyer was not fatal to its case because there were eyewitnesses, we deem otherwise. The ten or seven meter distance between the police officers waiting for the pre-arranged signal from the poseur-buyer and the appellant made it difficult for the supposed eyewitnesses to see (and hear) what exactly was happening between appellant and the poseur-buyer. x x x In *Sindac v. People*, the Court, in acquitting the accused, took into account the distance between the police officers and the site of the alleged drug transaction. x x x In *People v. Guzon*, the Court found that the prosecution failed to prove that the illegal sale actually transpired, given the distance between the police officer and the poseur-buyer. x x x Moreover, the prosecution's failure to present the poseur-buyer proved fatal to its case. In *People v. Andaya*, the Court reversed the Court of Appeals' conviction of the accused since the prosecution failed to prove the illegal sale of the dangerous drug beyond reasonable doubt. There, the prosecution did not present the poseur-buyer to describe how exactly the transaction between him and the accused had

taken place. x x x It must also be noted that, as appellant maintains, the buy-bust item was only 0.01 gram in weight which is minuscule in amount for PO2 Libo-on and PO2 Bernil to clearly see the alleged illegal transaction that took place. In *People v. Casacop*, the Court held that the poseur-buyer should have been presented as a witness considering the minuscule amount of the buy-bust item x x x.

3. ID.; ID.; CHAIN OF CUSTODY RULE; AN UNBROKEN CHAIN OF CUSTODY OF THE DANGEROUS DRUG IS REQUIRED IN THE SUCCESSFUL PROSECUTION OF ILLEGAL DRUG CASES.— [T]here is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from appellant up to the time it was presented in court, was unbroken. PO2 Libo-on's testimony does not clearly state that he saw the poseur-buyer giving the buy-bust item to PO2 Bernil and PO2 Libo-on seems uncertain whether he had custody of the buy-bust item from the time it was allegedly handed by the poseur-buyer to PO2 Bernil x x x. In *People v. Ismael*, the Court stressed that in cases of illegal sale of dangerous drugs, the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x In this case, x x x there was uncertainty whether the dangerous drug allegedly purchased by the poseur-buyer was actually handed over by the poseur-buyer to PO2 Bernil since PO2 Libo-on's testimony did not clearly establish that he saw the hand over. Thus, there is no testimony on the precise moment the dangerous drug was allegedly turned over to PO2 Bernil. Accordingly, the unbroken chain of custody of the dangerous drug, which is required in the successful prosecution of illegal drug cases, was not established.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

This appeal challenges the 30 September 2015 Decision[1] of the Court of Appeals Cebu City in CA-G.R. CR HC No. 01755, which affirmed the 14 October 2013 Decision[2] of the Regional Trial Court, Branch 69, Silay City (RTC), convicting appellant Ceasar Conlu *y* Benetua[3] for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165 in Criminal Case Nos. 8615-69 and 8616-69. Since appellant was acquitted in Criminal Case No. 8615-69, the subject of this appeal is Criminal Case No. 8616-69 only.

The Information in Criminal Case No. 8616-69 reads:

> That on April 18, 2012 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one heat[-]sealed sachet of shabu marked as "PALI-BBI" to an asset of the Silay City PNP posing as a poseur buyer in exchange for One two hundred peso bill with serial number T300611 and [one] fifty peso bill with serial number GF888950 all marked with an underline at the last digit of each serial number.
>
> CONTRARY TO LAW.[4]

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[1] *Rollo*, pp. 5-19. Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Jhosep Y. Lopez and Marie Christine Azcarraga-Jacob concurring.

[2] CA *rollo*, pp. 47-63. Penned by Presiding Judge Felipe G. Banzon.

[3] Referred to as "Cesar Conlu *y* Benetua" in some parts of the records.

[4] Records, p. 1.

Upon arraignment, appellant pleaded not guilty. Thus, trial ensued.

Version of the Prosecution

The prosecution presented nine witnesses: P/Inspector Hernand Donado y Gutierrez, PO2 Edwin Albarico y Tupaz, P/C Insp. Paul Jerome Puentespina y Sedigo, PO2 Christopher Panes y Padernilla, Renato Palermo y De la Cruz (Barangay Captain Palermo), PO3 Joel Portus y Tumbale, PO2 Reynaldo Bernil, Jr. y Belmis (PQ2 Bernil), Noel Rojo y Solatorio (Kagawad Rojo), and PO2 Ian Libo-on y Jurisprudencia (PO2 Libo-on).

In its Brief, the prosecution presented the following version of the facts:[5]

Based on reports of rampant drug pushing in various areas in Silay City, Negros Occidental, the Chief of Police of Silay City PNP ordered the conduct of surveillance and monitoring in order to confirm such reports.

To verify the report that appellant and his brother are known to be drug pushers, the police conducted a test buy operation in their area through their asset, who was able to buy a small sachet of a white crystalline substance which when tested was positive for shabu.

With this confirmation, the Chief of Police ordered a buy-bust operation by members of the Silay PNP and their civilian agents. They coordinated with the Philippine Drug Enforcement Agency (PDEA) in Silay City.

Marked money worth ₱250.00 was prepared and duly recorded before it was given to the police asset for use in the planned buy-bust. They then proceeded to the target area in Villa Hergon, Barangay Rizal, Silay City, Negros Occidental. The poseur-buyer went ahead to the target location.

Police operatives followed and went to the location of the operation after fifteen (15) minutes. Police officers Libo-on

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[5] CA *rollo*, pp. 79-81.

and Bernil were located approximately fifty (50) meters from where the asset and appellant were supposed to conduct their transaction when the poseur-buyer then called up the police operatives and told them to get ready. The police then moved toward the site, approximately ten (10) meters from where their asset and appellant were about to meet.

The poseur-buyer at that moment approached appellant and gave the latter the marked money. Appellant then put the marked money in the right front pocket of his cargo short pants, and then pulled out a small sachet containing crystalline substance and gave it to the poseur-buyer. To notify the operatives that the transaction was complete, the asset performed the pre-arranged signal by putting his right hand over his head. The operatives immediately rushed to the scene to arrest appellant.

PO2 Libo-on was the first to approach and arrest appellant, followed by PO2 Bernil and the rest of the buy-bust team. They recited to appellant his rights under the law and then brought the latter outside of their compound while other police operatives called for barangay officials.

When the barangay officials came, appellant was searched by Kagawad Rojo but was stopped after a resident carrying a bladed weapon caused a commotion. Police and local authorities brought appellant to the police station where the search was continued in a separate room where only the police and barangay officials were present. The body search yielded more sachets of shabu.

After the remaining sachet specimens were marked, a Certificate of Inventory was prepared for the witnesses and the police to sign. PO2 Libo-on then prepared a Request for Laboratory Examination, and then brought the specimens to the Crime Laboratory for testing. The Chemistry Report dated 19 April 2012 confirmed that the sachets containing white crystalline substance yielded positive for methamphetamine hydrochloride or shabu.

Version of the Defense

The defense presented four witnesses: Veluz Conlu y Canson, Helen Francisco y Poblacion, Ladisla Libo-on y Flores and appellant, Ceasar Conlu y Benetua.

In his Brief, appellant summarized the testimonies of his witnesses, as follows:[6]

Veluz Conlu (Veluz) testified that on 18 April 2012 he was at his house located in Villa Hergon, Brgy. Rizal cleaning his feet when all of a sudden, two (2) armed men in civilian clothes arrested his son, appellant Conlu, who was at the time taking gravel from the bakery. Veluz claimed that he does not know these persons. The two persons introduced themselves as police officers. Veluz told the police officers not to search the body of the appellant and requested that it be the Barangay Captain who should conduct the search.

Appellant was brought outside their house and sat on a bench until the Barangay Captain and two Barangay Kagawad arrived. Upon instructions of the police officers, Kagawad Rojo searched the body of the appellant by pulling all the six (6) pockets upside down. The neighbors who witnessed the search applauded when the search was completed as nothing was recovered from appellant. After the search, a commotion started as one person was carrying a knife. Thereafter, the police officers told the appellant to go with them to the police station.

Helen Francisco (Helen) testified that on 18 April 2012 at around 9:00 o'clock in the morning she was at home, which was located beside the house of appellant's father in Villa Hergon, Silay City. While she was sweeping in the yard of her house, she noticed several persons running towards the house of Veluz. As she was curious, she followed and proceeded to the house of Veluz until she saw that appellant was being forcibly handcuffed. As a concerned citizen, she immediately called for the assistance of the Punong Barangay. Thereafter, Barangay Captain Palermo and Kagawad Rojo arrived at the place of the

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[6] *Id.* at 37-38.

incident where the body search was made by Kagawad Rojo. The crowd cheered and applauded as nothing was recovered from appellant.

Right after the body search was conducted, a commotion took place but was later on pacified and appellant was made to board a police car to be brought to the police station. Helen asked the police officers why appellant would be brought to the police station considering that no items were recovered from him. The police officers replied that appellant would be investigated in the police station.

Ladisla Libo-on (Ladisla) averred that on 18 April 2012, she was outside her house in Villa Hergon, Brgy. Rizal doing laundry when she saw five to six police officers entering the house of appellant's father. Upon gaining entrance, the police officers apprehended appellant who was at that time was spading the sand. Ladisla stated that the police officers were forcibly arresting the appellant, while the latter begged the apprehending team not to harm him as he would not resist. While outside the house, the family of appellant requested that only the barangay officials would conduct the body search and not the police officers.

The people surrounding the place of arrest applauded as nothing was recovered from appellant when Kagawad Rojo made the body search. Appellant was brought to the police station with his wife, Barangay Captain, and two Barangay Kagawad.

Appellant averred that on 18 April 2012 at around 9:00 o'clock in the morning, he was inside the compound of the house of his father in Villa Hergon, Silay City when suddenly two armed persons barged into the compound and handcuffed him. The apprehending team forced appellant to go outside the compound and made him sit on a long bench. Thereafter, they waited for the barangay officials who would conduct the search as appellant's father insisted that it be the barangay officials who should make the body search and not the police officers. Subsequently, a body search was conducted by Kagawad Rojo who recovered nothing when the former inspected the six pockets of the short pants which appellant was wearing.

Appellant was brought later on to the police station despite the fact that no items were recovered from him. It was PO2 Bernil who continued the search inside the office of the police station with Barangay Captain Palermo, Kagawad Rojo, PO2 Libo-on, and PO2 Bernil. Appellant's family was not allowed to enter the office where the search was made. PO2 Bernil and appellant were positioned with their backs turned against the two barangay officials when the search was made. Surprisingly, a piece of cigarette paper and aluminum foil fell down to the ground. When opened, the cigarette paper contained eight small plastic sachets.

The RTC Decision

In Criminal Case No. 8616-69, for violation of Section 5, Article II of RA 9165, the RTC held that the prosecution "more than amply complied"[7] with the requisites for a successful buy-bust operation concerning illegal drugs. The RTC stated that "the buy-bust operation on accused x x x was not a random police operation. It was well-planned and duly coordinated with the Philippine Drug Enforcement Agency (PDEA). The material and focal incidents in the conduct of said operation were well-documented and clearly laid by the prosecution."[8]

The RTC rejected appellant's defenses of denial and alibi. The RTC viewed with skepticism the testimony of appellant's father, given his close relationship to appellant. The other defense witnesses, meanwhile, had no knowledge as to where the appellant was and what appellant was doing immediately prior to his arrest.[9] The RTC held that bare denials cannot prevail over the positive testimonies of the police officers who conducted the buy-bust operation, absent any showing of improper motive to testify falsely against appellant.[10]

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[7] *Id*. at 57.

[8] *Id*. at 58.

[9] *Id*. at 57.

[10] *Id*. at 58.

In Criminal Case No. 8615-69, for violation of Section 11, Article II of RA 9165, the RTC found that the prosecution failed to prove, by sufficient and conclusive evidence, that the items recovered from appellant in the police station were in fact in the possession of the appellant at the time of his arrest and were recovered from his possession after a search was done on his body. Therefore, the RTC acquitted appellant.

The dispositive portion of the RTC's decision reads:

WHEREFORE, PREMISES CONSIDERED:

In Criminal Case No. 8615-69, this Court finds accused, CEASAR CONLU Y BENETUA, ALIAS "PALI", NOT GUILTY of "Violation of Section 11 of Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002), as the Prosecution had not proven his guilt beyond any reasonable doubt.

In Criminal Case No. 8616-69, this Court finds accused, CEASAR CONLU Y BENETUA, ALIAS "PALI", GUILTY of "Violation of Section 5, Article II of Republic Act No. 9165" (The Comprehensive Dangerous Drugs Act of 2002), as his guilt had been proven by the prosecution beyond any reasonable doubt.

Accordingly, this Court sentences accused, CEASAR CONLU Y BENETUA, ALIAS "PALI", to suffer the penalty of Life Imprisonment, the same to be served by him at the National Penitentiary, Muntinlupa City, Rizal.

Accused, Ceasar Conlu y Benetua, alias "Pali", is further, ordered to pay a fine of ₱500,000.00.

In the service of the sentence imposed on accused, Ceasar Conlu y Benetua, alias "Pali", his period of detention pending trial of this case shall be credited in his favor.

Accused, Ceasar Conlu y Benetua, alias "Pali", is, in the meantime, remanded to the custody of the Jail Warden of the Bureau of Jail Management and Penology (BJMP), Silay City, Negros Occidental, pending his transfer to the National Bilibid Prisons, where he shall serve the sentence imposed on him by this Court.

The one (1) small heat-sealed transparent plastic sachet containing white crystalline substances in it of methamphetamine hydrochloride ("Shabu") subjet of the buy-bust operation on the accused (Exhibit

"I-1", prosecution) and the eight (8) small heat-sealed plastic sachets, likewise, containing methamphetamine hydrochloride ("Shabu") on them (Exhibits "I-2" to "I-9", prosecution), are ordered remitted to the Philippine Drug Enforcement Agency (PDEA), Negros Occidental Police Office, Camp Alfredo Montelibano, Bacolod City, for proper disposition.

NO COSTS.

SO ORDERED.[11]

The Court of Appeals' Ruling

In affirming the RTC's decision, the Court of Appeals found all the requirements for the prosecution of illegal sale of dangerous drugs have been positively and clearly established through the credible testimonies of the arresting officers.

According to the Court of Appeals, the "testimony of PO2 Libo-on, coupled by the execution of the poseur buyer of the pre-arranged signal to show consummation of the sale and the delivery by accused-appellant of the shabu to the poseur buyer and subsequently from the poseur buyer to PO2 Bernil, glaringly show that accused-appellant is guilty as charged."[12]

The Court of Appeals found that the non-presentation of the poseur-buyer did not weaken the evidence for the prosecution. It held that "the testimonies of the police officers sufficiently established that the appellant is guilty of selling a dangerous drug. Their referral to the shabu handed by the appellant to the poseur buyer as something, merely indicates that at the time of the sale, they could only presume that the specimen sold by the appellant was shabu since they were conducting a buy bust operation. They still had to submit the specimen to the crime laboratory for testing."[13]

The dispositive portion of the Court of Appeals' decision reads:

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[11] Records, pp. 172-173.

[12] *Rollo*, p. 16.

[13] *Id*. at 17.

IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS *in toto* the assailed Decision dated October 14, 2013, of the Regional Trial Court, Branch 69, Silay City, in Criminal Case No. 8616-69.

SO ORDERED.[14]

Hence, this appeal.

The Court's Ruling

We acquit for failure of the prosecution to prove the illegal sale of the dangerous drug beyond reasonable doubt and failure of the prosecution to prove the unbroken chain of custody of the dangerous drug.

For an accused to be convicted for illegal sale of dangerous drugs, the following elements must concur: (1) that the transaction or sale took place between the accused and the poseur-buyer; and (2) that the dangerous drug subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.[15]

In this case, there is serious doubt that the sale of the 0.01 gram of methamphetamine hydrochloride or shabu between appellant and the poseur-buyer ever took place. The poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court. While the prosecution argues that the non-presentation of the poseur-buyer was not fatal to its case because there were eyewitnesses, we deem otherwise. The ten or seven meter distance between the police officers waiting for the pre-arranged signal from the poseur-buyer and the appellant made it difficult for the supposed eyewitnesses to see (and hear) what exactly was happening between appellant and the poseur-buyer. This is clear from PO2 Libo-on's testimony, to wit:

Q. Where was your position with the poseur buyer called you to proceed?
A. At the Matagoy area.

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[14] *Id*. at 18.

[15] *People v. Andaya*, 745 Phil. 237, 246 (2014).

Q. Around how many meteres were you from the target place?
A. Fifty (50) meters.

Q. What happened when the poseur buyer called you up and told you to get ready, what did you do?
A. We go near the subject person and we positioned ourselves, more or less ten (10) meters.

Q. Where was the poseur buyer at that time when you were ten (10) meters away from the accused?
A. The poseur buyer was slowly approaching the subject person.

Q. You were how many meters away when he was approaching the accused?
A. We were more or less seven (7) meters from our target position.

Q. After that, what happened?
A. We saw the suspect and/or target person and he was being approached by our poseur buyer.

Q. Did you clearly see them while they were transacting?
A. Yes, Ma'am, we saw the subject person and the poseur buyer.

Q. Since the subject person transacting [sic] your poseur buyer he gave the signal?
A. Yes, Ma'am.

Q. What did you see while they were transacting [sic] each other?
A. As pre-arranged signal from our poseur buyer he exchanged for the marked money and handed to the suspect.

Q. So what did the suspect do when the marked money was handed to him by the poseur buyer?
A. The suspect took the marked money, then put it inside his right front pocket and **took something from his right side** because he was wearing a cargo shorts at that time and that we believed that it was a Shabu [sic] and gave it to our poseur buyer.

x x x x x x x x x[16] (Emphasis supplied)

While PO2 Libo-on testified that he saw appellant and the poseur-buyer "transacting" and that appellant "took something from

[16] TSN, 17 January 2013, pp. 23-24.

his right side," he failed to describe clearly what he actually saw. PO2 Libo-on merely stated that he "believed that [the something] was shabu," without giving any description of the "something." In other words, PO2 Libo-on's testimony hardly qualifies as an eyewitness account of what kind of "transaction" actually transpired between appellant and the poseur-buyer. Specifically, PO2 Libo-on's testimony did not clearly establish that he saw and heard that appellant was selling shabu to the poseur-buyer, and the latter was buying shabu from appellant.

While PO2 Bernil testified, on direct-examination, that "the subject person (appellant) gave the suspected shabu to the poseur buyer"[17] after the poseur-buyer gave the money to the appellant, and on cross-examination, that he "saw the actual exchange between the poseur buyer and the suspect,"[18] there was nothing in his testimony describing what exactly he saw. In fact, there was no description of the appearance or condition of the "suspected shabu," which was handed to the poseur-buyer. This is precisely because PO2 Bernil and PO2 Libo-on were positioned approximately ten meters away from the appellant and the poseur-buyer.

In *Sindac v. People*,[19] the Court, in acquitting the accused, took into account the distance between the police officers and the site of the alleged drug transaction. The Court invalidated the *in flagrante delicto* arrest and warrantless search on the ground that no criminal overt act could be attributed to the accused as to result in suspicion in the mind of the arresting officers, to wit:

> Considering that PO3 Peñamora was at a considerable distance away from the alleged criminal transaction (five [5] to ten [10] meters), not to mention the atomity of the object thereof (0.04 gram of white crystalline substance contained in a plastic sachet), the Court finds it highly doubtful that said arresting officer was able to reasonably

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[17] TSN, 18 October 2012, p. 19.

[18] TSN, 18 October 2012, p. 24.

[19] 794 Phil. 421 (2016).

ascertain that any criminal activity was afoot so as to prompt him to conduct a lawful *in flagrante delicto* arrest and, thereupon, a warrantless search. These similar circumstances were availing in the cases of *Comerciante v. People* and *People v. Villareal* where the Court likewise invalidated the *in flagrante delicto* arrest and ensuing warrantless search. In this relation, it should also be pointed out that no criminal overt act could be properly attributed to Sindac so as to rouse any reasonable suspicion in the mind of either PO3 Peñamora or PO1 Asis that Sindac had just committed, was committing, or was about to commit a crime. Sindac's actuations of talking to and later on, receiving an unidentified object from Cañon, without more, should not be considered as ongoing criminal activity that would render proper an *in flagrante delicto* arrest under Section 5(a), Rule 113 of the Revised Rules of Criminal Procedure.[20]

In *People v. Guzon*,[21] the Court found that the prosecution failed to prove that the illegal sale actually transpired, given the distance between the police officer and the poseur-buyer. The Court held:

In addition to the foregoing, the Court finds merit in Guzon's argument that the non-presentation of the poseur-buyer to the witness stand was fatal to the prosecution's cause. We emphasize that in a prosecution for illegal sale of dangerous drugs, the prosecution must convincingly prove that the transaction or sale actually transpired. In the instant case, the poseur-buyer in the buy-bust operation, a civilian, was the witness competent to prove such fact, given the testimony of PO2 Tuzon that at time the supposed sale happened, he and PO3 Manuel were positioned about 20 meters away from Guzon and the poseur-buyer. Although PO2 Tuzon testified during the trial on the supposed sale, such information he could offer was based only on conjecture, as may be derived from the supposed actions of Guzon and the poseur-buyer, or at most, hearsay, being information that was merely relayed to him by the alleged poseur-buyer. Given the 20-meter distance, it was unlikely for PO2 Tuzon to have heard the conversations between the alleged buyer and seller. True enough, his testimony provided that he and PO3 Manuel merely relied on an

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[20] *Id*. at 433.

[21] 719 Phil. 441 (2013).

agreed signal, i.e., the poseur-buyer's removal of his cap, to indicate that the sale had been consummated. x x x.[22]

Moreover, the prosecution's failure to present the poseur-buyer proved fatal to its case. In *People v. Andaya*,[23] the Court reversed the Court of Appeals' conviction of the accused since the prosecution failed to prove the illegal sale of the dangerous drug beyond reasonable doubt. There, the prosecution did not present the poseur-buyer to describe how exactly the transaction between him and the accused had taken place. The Court held:

> Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence.
>
> Here, the confidential informant was not a police officer. He was designated to be the poseur buyer himself. It is notable that the members of the buy-bust team arrested Andaya on the basis of the pre-arranged signal from the poseur buyer. The pre-arranged signal signified to the members of the buy-bust team that the transaction had been consummated between the poseur buyer and Andaya. However, **the State did not present the confidential informant/poseur buyer during the trial to describe how exactly the transaction between him and Andaya had taken place.** There would have been no issue against that, except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction.[24] (Emphasis supplied)

It must also be noted that, as appellant maintains, the buy-bust item was only 0.01 gram in weight which is minuscule in

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[22] *Id*. at 460.

[23] *Supra* note 15.

[24] *Supra* note 15, at 247.

amount for PO2 Libo-on and PO2 Bernil to clearly see the alleged illegal transaction that took place.

In *People v. Casacop*,[25] the Court held that the poseur-buyer should have been presented as a witness considering the minuscule amount of the buy-bust item, thus:

> The transaction was between accused-appellant and the poseur-buyer, while PO1 Bautista watched the transaction a few meters away.
>
> His statement that he saw "accused[-appellant] hand over something" creates reasonable doubt whether the item given by the poseur-buyer to PO1 Bautista is the same "something" that accused-appellant allegedly gave the poseur-buyer.
>
> x x x x x x x x x
>
> Non-presentation of the poseur-buyer also defeats the case of the plaintiff-appellee. The testimony of the poseur-buyer is not "merely corroborative of the apprehending officers-eyewitnesses' testimonies[,]" as plaintiff-appellee alleges. The poseur-buyer had personal knowledge of the transaction since he conducted the actual transaction. PO1 Bautista was merely an observer from several meters away. Further, **the amount involved is so small that the reason for not presenting the poseur-buyer does not square with such a minuscule amount.**[26] (Emphasis supplied)

Furthermore, there is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from appellant up to the time it was presented in court, was unbroken. PO2 Libo-on's testimony does not clearly state that he saw the poseur-buyer giving the buy-bust item to PO2 Bernil and PO2 Libo-on seems uncertain whether he had custody of the buy-bust item from the time it was allegedly handed by the poseur-buyer to PO2 Bernil, to wit:

> Q. Where did you recover the mark [sic] money?
> A. From his right front pocket.

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[25] 755 Phil. 265 (2015).

[26] *Id*. at 279, 283.

Q. Then what happened after you recovered the marked money from his right front pocket?
A. After the recovery, I show [sic] him the marked money but then he was struggling and we requested for the barangay officials to be the one to search him.

Q. How about the buy bust item which you were shown to the accused, what happened?
A. The buy bust item was given by the poseur buyer to PO2 Bernil and PO2 Bernil handed to me.

Q. What did you do with that buy bust item?
A. **I think I was the one who made custody of the buy bust item** and I marked the buy bust item as "PALI-BBI" as buy bust item.[27] (Emphasis supplied)

PO2 Bernil testified that the "poseur buyer gave to PO Bernil the one small heat-sealed transparent plastic sachet of suspected shabu that was handed by the suspect to him in exchange to the marked money,"[28] after the recovery of the marked money by PO2 Libo-on from the appellant. However, there was no testimony of who had custody of the buy-bust item from the time PO2 Bernil handed it to PO2 Libo-on until the appellant and the buy-bust item were brought to the police station.

In *People v. Ismael*,[29] the Court stressed that in cases of illegal sale of dangerous drugs, the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

Section 21, Article II of RA 9165 pertinently states:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs. Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment-The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs,

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[27] TSN, 17 January 2013, p. 26.

[28] TSN, 18 October 2012, p. 19.

[29] G.R. No. 208093, 20 February 2017, 818 SCRA 122.

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;

x x x x x x x x x

The Implementing Rules and Regulations further elaborate on the proper procedure to be observed in Section 21 (a) of RA 9165, thus:

(a) The apprehending office/team having initial custody and control of the drugs shall, inmlediately 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 requirement" under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In *Mallillin v. People*,[30] cited in *People v. Ismael*,[31] the Court explained the chain of custody rule as follows:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence

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[30] 576 Phil. 576, 587 (2008).

[31] *Supra* note 29.

sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Emphasis supplied)

In this case, as stated, there was uncertainty whether the dangerous drug allegedly purchased by the poseur-buyer was actually handed over by the poseur-buyer to PO2 Bernil since PO2 Libo-on's testimony did not clearly establish that he saw the hand over. Thus, there is no testimony on the precise moment the dangerous drug was allegedly turned over to PO2 Bernil. Accordingly, the unbroken chain of custody of the dangerous drug, which is required in the successful prosecution of illegal drug cases, was not established.

WHEREFORE, we **GRANT** the appeal. We **ACQUIT** appellant Ceasar Conlu y Benetua for violation of Section 5, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt and ORDER his immediate release from confinement at the New Bilibid Prison in Muntinlupa City.

We DIRECT the Director of the Bureau of Corrections to implement the immediate release of Ceasar Conlu y Benetua, unless he is confined for any other lawful cause; and to report his compliance within ten days from receipt of this Decision.

SO ORDERED.

Perlas-Bernabe, Reyes, A. Jr., and *Reyes, J. Jr.*,[*] *JJ.*, concur.

Caguioa, J., on leave.

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[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

SECOND DIVISION

[G.R. No. 225624. October 3, 2018]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARIANITO ARCES, JR.,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— There are three (3) guiding principles in reviewing rape cases: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; EVIDENCE; CREDIBILITY; FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE APPELLATE COURT, ARE BINDING ON THE SUPREME COURT, BUT A REEVALUATION OF THE EVIDENCE TO DETERMINE WHETHER MATERIAL FACTS OR CIRCUMSTANCES HAVE BEEN OVERLOOKED OR MISINTERPRETED BY THE LOWER COURTS IS NOT PRECLUDED.— We are not unmindful of the fact that as a general rule, the findings of the trial court, when affirmed by the appellate court, are binding on this Court. However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the lower courts. The Court has not hesitated to reverse judgments of conviction when there were strong indications pointing to a possibility that the rape charge was false. In this case, we find that the evidence for the prosecution failed to establish, beyond reasonable doubt, that Arces is guilty of the crime charged.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; FOR AN ACCUSED TO BE CONVICTED OF RAPE SOLELY ON THE BASIS OF THE TESTIMONY OF THE COMPLAINANT, SUCH TESTIMONY SHOULD MEET THE TEST OF CREDIBILITY.— The RTC and CA relied heavily on the testimony of AAA to find Arces guilty of the crime of rape. And while an accused may be convicted of rape solely on the basis of the testimony of the complainant, such testimony should meet the test of credibility — it should be straightforward, clear, positive, and convincing. In this case, we find that the testimony of AAA did not meet these requirements. A review of AAA's testimony would show that she is very indifferent and nonchalant about the events that had allegedly transpired.

4. ID.; ID.; ID.; DELAY IN REPORTING AN INCIDENT OF RAPE IS NOT AN INDICATION OF FABRICATION AND DOES NOT NECESSARILY CAST DOUBT ON THE CREDIBILITY OF THE VICTIM, BUT A RAPE CHARGE BECOMES DOUBTFUL WHEN THE DELAY IN REVEALING ITS COMMISSION IS UNREASONABLE OR UNEXPLAINED.— [I]t took AAA almost two (2) years to tell her mother about the alleged incidents. Generally, a delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the victim. However, if the delay in reporting such incident is unreasonable or unexplained, this may discredit the victim. Time and again, this Court has held that a rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained. This is because the long delay in reporting the incident creates doubt in the Court's mind as to the allegation of rape. x x x However, this is not to say a delay of two (2) years or more in reporting a rape incident automatically renders the credibility of a complainant doubtful. The delay must be unreasonable and unexplained, and it must be determined whether such delay in the reporting was justified. There have indeed been cases where the delay lasted for more than two years but the Court still upheld the conviction of rape because the victims were found to be credible. Unfortunately, in this case, the delay in reporting is unexplained and unjustified.

5. REMEDIAL LAW; EVIDENCE; ALIBI; NOT ALWAYS UNDESERVING OF CREDIT AND THE FACT THAT THE WITNESS TO THE ALIBI IS A RELATIVE OF THE ACCUSED DOES NOT AUTOMATICALLY AFFECT THE PROBATIVE VALUE OF THE TESTIMONY.— The lower courts found the defense of alibi to be weak and self-serving because the testimonies were given by Arces and his relatives. While it is true that alibi is weak and viewed with skepticism, it is not always undeserving of credit — there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts. Moreover, the fact that the witness to the alibi is a relative of the accused does not automatically affect the probative value of the testimony. Family relationship does not by itself render a witness' testimony inadmissible or devoid of evidentiary weight.

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; WHILE A MEDICAL REPORT IS NOT INDISPENSABLE TO THE PROSECUTION OF A RAPE CASE, THE MEDICO-LEGAL'S FINDINGS CAN STILL RAISE SERIOUS DOUBT AS TO THE CREDIBILITY OF THE ALLEGED RAPE VICTIM; CASE AT BAR.— [T]he medical report strengthens the challenge against the credibility of AAA. While a medical report is not indispensable to the prosecution of a rape case, and is not at all controlling because its value is merely corroborative, the medico-legal's findings can still raise serious doubt as to the credibility of the alleged rape victim. In this case, the medical report found AAA's hymen intact with no signs of hematoma or any vaginal deformities and no signs of lacerations of the vaginal wall. The conclusion that the medical findings were inconsistent with penile penetration casts further cloud on AAA's already doubtful narration of events.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee,
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO, *J.*:

The Case

On appeal is the 26 November 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 01908, which affirmed the 3 June 2013 Decision[2] of Branch 41 of the Regional Trial Court (RTC), Bacolod City in Criminal Case No. 08-31346 finding appellant Marianito Arces, Jr. (Arces) guilty of the crime of rape.

The Facts

On 19 April 2006, at around 5:30 a.m., AAA's father, mother, elder brother, and younger brother left the house leaving AAA,[3] who was nine (9) years old, alone in the house. While sleeping, AAA was awakened by her uncle, Arces who appeared beside her and started to undress her. Arces took off his clothes, positioned himself on top of AAA and inserted his penis into her vagina. AAA complained that what he was doing was painful. Arces stopped, dressed AAA, put on his clothes, and warned AAA not to tell anyone what had happened. The following day, Arces returned to AAA's house where she was again left alone. Arces took off his clothes, laid on top of AAA, and made pumping motions while AAA was fully clothed. AAA never revealed these incidents with Arces with anyone.

On 4 January 2008, AAA's mother had an argument with her cousin Marites Moraña (Marites), who is Arces' sister. Marites and AAA's mother were neighbors and the smoke coming from the trash being burned by Marites caused the argument

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[1] *Rollo*, pp. 5-13. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring.

[2] CA *rollo*, pp. 45-65. Penned by Judge Ray Alan T. Drilon.

[3] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept confidential

between the two. They had an exchange of words where Marites' sister Maricel Lacuba (Maricel) commented that AAA's mother was good at minding other people's business but was unaware of her daughter's sexual activities. Angered by this accusation, AAA's mother confronted AAA about the accusation. AAA did not say anything but upon the prodding of her mother, she told what had happened. AAA stated that she did not tell her sooner because Arces had threatened her. Together, AAA and AAA's mother reported the incident to the police station. On 7 January 2008, AAA was examined by Dr. Jesus Medardo Buyco (Dr. Buyco) of the City Health Office. Dr. Buyco observed that AAA's hymen was intact, there were no signs of hematoma or any vaginal deformities, and there were no signs of lacerations of AAA's vaginal wall. Dr. Buyco concluded that the findings were not consistent with penile penetration.

Arces vehemently denied the allegations against him, arguing that on the day that he allegedly raped AAA, he was already at sea catching crabs with his brother-in-law, Jonathan Lacuba (Lacuba). Lacuba testified that on the day and time of the alleged incident, he was working together with Arces at sea. Arces also asserted that he usually leaves at around 4:30 to 5:30a.m. and would return only at 8:00 a.m.

Further, Arces argued that on the date of the alleged incident, 19 April 2006, AAA and her family were not home as they attended a barangay fiesta in the town of Dueñas in Iloilo. In fact, AAA's parents had invited him to go but he refused as he had no money for transportation to Iloilo.

Finally, Arces alleged that on 20 August 2006, he had moved to Jaro, Iloilo and worked there for two years.[4] After the complaint for rape was filed against him, he was forced to return from Iloilo to answer the accusation against him.

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by replacing their names and other personal circumstances with fictitious intials, and by blotting out the specific geographical location that may disclose the identities of the victims.

[4] CA *rollo*, p. 49.

Arces' sisters Marites and Maricel testified that the charge against Arces was instigated by the existing conflict and ill-feelings between them and AAA's mother.

Marites testified that she and AAA's mother had an argument where AAA's mother accused her and her sister Maricel as being whores, to which she replied that AAA's mother should watch her daughter instead. AAA's mother replied that they better stand by what they charge because there will come a time that they will cry tears of blood for what she will do.[5] Marites also stated that she knew AAA and her mother went to Iloilo on 15 April 2006 to attend a fiesta as AAA's mother borrowed money from her.

Likewise, Maricel testified that they used to have good relations with AAA's mother but that their relationship turned sour. Maricel also stated that she saw AAA and her playmate playing house while the playmate was only in his briefs.[6]

Due to the altercation between AAA's mother and the sisters of Arces, AAA's mother filed a case against Marites and Maricel before the Punong Barangay. During their confrontation at the barangay conciliation hearing, it was intimated that it was AAA's playmate who had sexual activities with AAA. This was denied by AAA's playmate.

Arces was charged with the crime of Rape under Article 266-A, par. 1(d), in relation to Article 266-B, of the Revised Penal Code. He entered a plea of not guilty.

The Ruling of the RTC

In a Decision dated 3 June 2013, the RTC found Arces guilty of the crime of rape, to wit:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered, finding the defendant MARIANITO ARCES, JR., GUILTY of the offense charged and is hereby sentenced to a penalty of RECLUSION PERPETUA.

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[5] *Id*. at 51.

[6] *Id*. at 52.

The defendant is ordered to pay the complainant [AAA], the sum of Seventy Five Thousand Pesos (Php75,000.00) as moral damages and the sum of Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages.

SO ORDERED.[7]

The RTC found that the allegation of Arces that he was falsely charged because of the ill-will and quarreling between AAA's mother and his sisters is far-fetched as to be persuasive. It held that the defense of denial put up by Arces — being a negative and self-serving defense — cannot prevail over the affirmative allegations of the victim. The RTC found AAA's testimony to be credible in its entirety, albeit not perfect in all details. It held that the defense was too weak given the direct, positive, and straightforward testimony of the child complainant.

The Ruling of the CA

In a Decision dated 26 November 2015, the CA affirmed, with modification as to the penalty, the Decision of the RTC. The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED. The Decision dated 3 June 2013 of the Regional Trial Court of Bacolod City, Branch 41, finding Marianito Arces, Jr. guilty beyond reasonable doubt of rape in Criminal Case No. 08-31346 is AFFIRMED with MODIFICATION. Marianito Arces, Jr. is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Further, he is ORDERED to pay AAA the amount of Ph100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision.

SO ORDERED.[8]

The CA held that the feud between the Arces' sisters and AAA's mother was too trivial for the latter to allow her daughter to admit having been defiled. The CA also found that the RTC

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[7] *Id*. at 64-65.

[8] *Rollo*, p. 13.

properly upheld the testimony of AAA, which served as the basis for Arces' conviction. As to the finding of Dr. Buyco that there was no penile penetration, the CA held that this does not negate the commission of rape as rape can be established even in the absence of external signs or physical injuries or a medical finding relating to such fact.

The Issue

The issue to be resolved in this appeal is whether or not the CA gravely erred in finding Arces guilty of the crime of rape.

The Ruling of the Court

We find the appeal to be meritorious.

There are three (3) guiding principles in reviewing rape cases: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[9] Based on the foregoing principles, we find that Arces should be acquitted of the crime of rape.

Doubtful Testimony of AAA

We are not unmindful of the fact that as a general rule, the findings of the trial court, when affirmed by the appellate court are binding on this Court.[10] However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the lower courts.[11] The Court has not hesitated to reverse judgments of conviction when there were strong

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[9] *People v. Rubillar, Jr.*, G.R. No. 224631, 23 August 2017.

[10] *People v. Agalot*, G.R. No. 220884, 21 February 2018.

[11] *People v. Cruz*, 736 Phil. 564 (2014).

indications pointing to a possibility that the rape charge was false.[12] In this case, we find that the evidence for the prosecution failed to establish, beyond reasonable doubt, that Arces is guilty of the crime charged.

The RTC and CA relied heavily on the testimony of AAA to find Arces guilty of the crime of rape. And while an accused may be convicted of rape solely on the basis of the testimony of the complainant, such testimony should meet the test of credibility — it should be straightforward; clear, positive, and convincing.[13] In this case, we find that the testimony of AAA did not meet these requirements. A review of AAA's testimony would show that she is very indifferent and nonchalant about the events that had allegedly transpired. Her answers to the questions addressed to her are almost devoid of any emotion:

Atty. Umahag:

Q: For how long did this Marianito pump, Madam Witness?
A: A few seconds.

Q: Does his penis penetrate your vagina?
A: Yes, ma'am.

Q: And you said you complained that it's painful, that's why he stopped, Madam Witness?
A: Yes, ma'am.

Q: And actually, he dressed up your shorts again, Madam Witness?
A: Yes, ma'am.

Q: And he also put on his shorts, Madam Witness?
A: Yes, ma'am.

Q: And for all those time, you did not say anything to him, Madam Witness?
A: No, only the accused said something.

Q: And you did not even cry, Madam Witness?

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[12] *Id*., citing *People v. Divina*, 440 Phil. 72, 79 (2002).

[13] *People v. Bermejo*, 692 Phil. 373 (2012).

A: No, ma'am.

Q: And Marianito Arces told you not to tell your mother, Madam Witness?
A: Yes ma'am.

Q: Only to your mother, Madam Witness?
A: Not to tell my mother and not to tell anyone.

Q: And you said after that, you just went to sleep, Madam Witness?
A: Yes, ma'am.

Q: As if nothing happened, Madam Witness?
A: Yes, ma'am.[14]

In addition to the manner of her testimony, her attitude after the alleged incidents is also very odd and not in accordance with ordinary human experience. AAA stated that she did not speak or even cry and merely went to sleep after the alleged incidents as if nothing happened. While it is true that victims of rape are not expected to act in a certain way, her actions after the alleged incidents, together with the indifferent manner of her testimony, raise doubts on her narration of the events.

Moreover, it is also curious that she remained entirely silent during the second alleged incident, where Arces allegedly laid on top of her at around noontime while fully clothed. She testified that her entire family was just outside of the house, although she did not know exactly where. AAA testified:

Q: Let me clarify. You said the second incident also happened on April 20 or was it April 19, Madam Witness?
A: April 20.

Q: You mean to say the next day, Madam Witness?
A: Yes, ma'am.

Q: And you said that was around 12:00 o'clock noon, Madam Witness?
A: Yes, ma'am.

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[14] CA *rollo*, pp. 59-60.

Q: After your lunch, Madam Witness, you said?
A: Yes, ma'am.

Q: At that time, Madam Witness, where were your mother, brother and father, Madam Witness?

A: They were just outside of the house, I do not know where.[15]

If she knew that her family was just outside of the house, she could have easily called out for help if Arces was truly doing the malicious deeds to her. However, similar to the first alleged incident, she did not say or do anything. Again, while we recognize that victims of rape are not expected to act in a certain way, her actions during this second alleged incident are against ordinary human experience. To the mind of this Court, it creates doubts and uncertainties as to her allegations against Arces.

Although the trend in procedural law is to give wide latitude to the questioning of a child witness, the Court must not lose track of the basic tenet that the truth must be ascertained.[16] In this case, we find that the testimony of AAA raises too many questions and doubts, and is insufficient to prove beyond reasonable doubt the allegations made against Arces.

Delay in reporting the incident

We also take note of the fact that it took AAA almost two (2) years to tell her mother about the alleged incidents. Generally; a delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the victim.[17] However, if the delay in reporting such incident is unreasonable or unexplained, this may discredit the victim.[18]

Time and again, this Court has held that a rape charge becomes doubtful only when the delay in revealing its commission is

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[15] *Id*. at 60-61.

[16] *People v. Fernandez*, 434 Phil. 435 (2002).

[17] *People v. Velasco*, 722 Phil. 243, 255 (2013).

[18] *People v. Madsali,* 625 Phil. 431 (2010).

unreasonable and unexplained.[19] This is because the long delay in reporting the incident creates doubt in the Court's mind as to the allegation of rape.[20] In *People v. Relorcasa*,[21] the alleged victim therein reported the incident ten (10) months after the said incident. The Court found this delay of ten (10) months to be unreasonable and unexplained, despite the allegation that the accused threatened to kill her, because there was no evidence that the alleged victim was under the watchful eye of the accused. The accused and the alleged victim therein lived several kilometers apart and she only saw the accused three or four times after the incident. Thus, the Court found that there was no surveillance by the accused, and the alleged victim had all the opportunities to report the incident. The delay created doubt in the mind of the Court that the alleged victim was indeed raped by the accused.

However, this is not to say a delay of two (2) years or more in reporting a rape incident automatically renders the credibility of a complainant doubtful. The delay must be unreasonable and unexplained, and it must be determined whether such delay in the reporting was justified. There have indeed been cases where the delay lasted for more than two years but the Court still upheld the conviction of rape because the victims were found to be credible.[22]

Unfortunately, in this case, the delay in reporting is unexplained and unjustified. Arces moved to Jaro, Iloilo a few months after the alleged incidents. AAA had every opportunity to report the matter to her family, but she chose not to. AAA opened up about the incidents only after the prodding of her mother, which sprang from the argument between the sisters of Arces and AAA's mother. There was no explanation as to why AAA chose not to tell others of the alleged incidents and

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[19] *People v. Domingo,* 579 Phil. 254, 264 (2008).

[20] *People v. Relorcasa*, 296-A Phil. 24 (1993).

[21] *Id*.

[22] *People v. Pangilinan*, 547 Phil. 260 (2007).

why it took her so long to report them. Again, even if Arces allegedly told AAA not to tell anyone, he had already moved away, and thus AAA was no longer under any threat. Failure of the alleged victim to report that she was raped despite several opportunities to do so renders doubtful her rape charge.[23]

The doubt created by the unexplained delay in reporting the incidents, along with the cloud on the credibility of AAA, compels this Court to acquit the accused. A conviction in a criminal case must be supported by proof beyond reasonable doubt. The evidence for the prosecution must stand or fall on its own merits. It is fundamental that the prosecution's case cannot be allowed to draw strength from the weakness of the evidence for the defense.[24]

Defense of Alibi and Medical Report

The lower courts found the defense of alibi to be weak and self-serving because the testimonies were given by Arces and his relatives. While it is true that alibi is weak and viewed with skepticism, it is not always undeserving of credit — there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts.[25] Moreover, the fact that the witness to the alibi is a relative of the accused does not automatically affect the probative value of the testimony.[26] Family relationship does not by itself render a witness' testimony inadmissible or devoid of evidentiary weight.[27]

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[23] *People v. Relorcasa*, *supra* note 20, citing *People v. Torio*, 211 Phil. 442 (1983), *People v. Lao*, 222 Phil. 60 (1985).

[24] *People v. Amarela and Racho*, G.R. Nos. 225642-43, 17 January 2018, citing *People v. Cruz*, 736 Phil. 564, 571 (2014), further citing *People v. Painitan*, 402 Phil. 297, 312 (2001); *People v. Bormeo*, 292-A Phil. 691, 702-703 (1993), citing *People v. Quintal*, 211 Phil. 79, 94 (1983); *People v. Garcia*, 289 Phil. 819, 830 (1992).

[25] *People v. Manambit*, 338 Phil. 57 (1997), citing *People v. Maongco*, 300 Phil. 603 (1994).

[26] *Id*.

[27] *Id*., citing *People v. Adofina*, 309 Phil. 62 (1994).

In this case, Arces testified that he was at sea during the time AAA was allegedly raped by him. This was corroborated by his brother-in-law, Lacuba, who also testified that on the day and time of the alleged incident, he was working together with Arces at sea. If AAA's testimony was clear, straightforward, and trustworthy, this defense of alibi would be considered weak and undeserving. However, as already discussed, there are clouds of doubt on AAA's testimony. Thus, the defense of Arces must be considered thoroughly by this Court. Nonetheless, whether or not the defense of alibi of Arces is meritorious is entirely irrelevant if the prosecution itself failed to discharge the burden of proof against Arces. And in this case, we find that the evidence for the prosecution is insufficient to sustain the conviction of Arces.

Lastly, we also note that the medical report strengthens the challenge against the credibility of AAA. While a medical report is not indispensable to the prosecution of a rape case, and is not at all controlling because its value is merely corroborative, the medico-legal's findings can still raise serious doubt as to the credibility of the alleged rape victim.[28] In this case, the medical report found AAA's hymen intact with no signs of hematoma or any vaginal deformities and no signs of lacerations of the vaginal wall. The conclusion that the medical findings were inconsistent with penile penetration casts further cloud on AAA's already doubtful narration of events.

Based on the foregoing, this Court reverses the rulings of the lower courts due to the failure of the prosecution to prove, beyond reasonable doubt, that Arces is guilty of the crime charged.

WHEREFORE, the appeal is **GRANTED**. The 26 November 2015 Decision of the Court of Appeals in CA-G.R. CEB-CR HC No. 01908, affirming with modification the 3 June 2013 Decision of the Regional Trial Court, Bacolod City, Branch 41 in Criminal Case No. 08-31346, is **REVERSED** and **SET ASIDE**.

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[28] *People v. Amarela and Racho*, G.R. Nos. 225642-43, 17 January 2018.

Appellant Marianito Arces, Jr. is **ACQUITTED** of the crime of rape on the ground of reasonable doubt. His **IMMEDIATE RELEASE** from custody is hereby ordered unless he is being held for other lawful cause.

SO ORDERED.

Perlas-Bernabe, Reyes, A. Jr., and *Reyes, J. Jr.,*[*] *JJ.,* concur.

Caguioa, J., on leave.

SECOND DIVISION

[G.R. No. 234291. October 3, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAYSON BOMBIO *y* DE VILLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.

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[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

2. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— [I]n order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

3. ID.; ID.; DANGEROUS DRUGS CASE; THE DANGEROUS DRUG ITSELF FORMS PART OF THE *CORPUS DELICTI* OF THE CRIME, SO THE PROSECUTION MUST PROVE WITH MORAL CERTAINTY THE IDENTITY OF THE PROHIBITED DRUG.— The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

4. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; MINOR PROCEDURAL LAPSES OR DEVIATIONS FROM THE PRESCRIBED CHAIN OF CUSTODY ARE EXCUSED SO LONG AS IT CAN BE SHOWN BY THE PROSECUTION THAT THE ARRESTING OFFICERS PUT IN THEIR BEST EFFORT TO COMPLY WITH THE SAME AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE IS PROVEN AS A FACT.— Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph one (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted x x x. In 2014, R.A. No. 10640 amended R.A. No. 9165, specifically Section 21 thereof, to

further strengthen the Anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2) x x x. Since the offenses subject of this appeal were committed before the amendment introduced by R.A. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply x x x. [I]t is clear that the venue of physical inventory is not limited to the place of apprehension. The venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation. x x x Another mandatory requirement set forth in Section 21 is the presence of three witnesses during the physical inventory of the seized items, *i.e.*, **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media.** x x x The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused **so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact**. The prosecution cannot simply invoke the saving clause found in Section 21—that the integrity and evidentiary value of the seized items have been preserved - without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. x x x In the present case, the prosecution failed to justify their non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items. The unjustified absence of these witnesses during the inventory constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of having them sign the certificate of inventory. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, Bombio must be acquitted.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; AN ACCUSED IN A CRIMINAL CASE SHALL BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED AND THE FAILURE OF THE PROSECUTION TO DISCHARGE ITS BURDEN TO OVERCOME SUCH PRESUMPTION DESERVES A JUDGMENT OF ACQUITTAL.— [I]t is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*, the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, A., JR., *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Jayson Bombio *y* De Villa (Bombio) assailing the Decision[2] dated June 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08167, which affirmed the Joint Decision[3] dated December 2, 2015 of the Regional Trial Court (RTC) of San Pablo City, Branch 32 in Criminal Cases Nos. 20886-SP

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[1] CA *rollo*, pp. 133-135.

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Jhosep Y. Lopez, concurring; *rollo*, pp. 2-16.

[3] Rendered by Presiding Judge Agripino G. Morga; CA *rollo*, pp. 35-45.

(14) and 20887-SP (14) finding Bombio guilty beyond reasonable doubt of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002".

The Facts

The facts, as culled from the records, read as follows:

Bombio was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165, before the RTC of San Pablo City, Laguna, Branch 32 in Criminal Cases Nos. 20886-SP (14) and 20887-SP (14), respectively. The Informations[4] read:

That on or about April 11, 2014, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously distribute and sell one (1) heat-sealed transparent plastic sachet marked 'A(JJOE)' containing 0.03 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug without being authorized by law.

CONTRARY TO LAW.

That on or about April 11, 2014, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named did then and there willfully, unlawfully and feloniously have in his possession four (4) pieces heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride marked as 'B(RVM 1' to E(RVM-4', to wit:

B (RVM 1) ---------- 0.04
C (RVM 2) ---------- 0.03
D (RVM 3) ---------- 0.03
E (RVM 4) ---------- 0.03
TOTAL ---------- 0.13

with a total weight of 0.13 grams of Methamphetamine Hydrochloride (shabu) a dangerous drug, without being authorized by law.

[4] *Id*. at 36.

CONTRARY TO LAW.

On arraignment, Bombio pleaded not guilty to the offenses charged. During the pre-trial conference, the parties stipulated on the identity of Bombio, jurisdiction of the court, and the due execution of Chemistry Report No. LD-324-14. Thereafter, joint trial on the merits ensued.[5]

The prosecution presented the following witnesses: arresting officers Police Officer 1 Jesus Jerson Exconde (PO1 Exconde) and PO1 Rhowinson Malacaman (PO1 Malacaman). The defense, on the otherhand, presented Bombio himself and Maris Hernandez (Hernandez).[6]

Version of the Prosecution

On April 11, 2014, at 8:30 a.m., a confidential agent relayed to PO1 Exconde information about a person named "Ogie" who was selling *shabu* at Guadalupe 1, Barangay II-B, San Pablo City. PO1 Exconde informed his superior, Police Inspector Lauro Moratillo (P/Insp. Moratillo), who instructed him to conduct surveillance. He and the confidential agent went to the area and observed for 30 minutes. There, they saw a male person, wearing a *sando* near the railroad track, selling *shabu*. Thereafter, they returned to the police station and reported the results of their surveillance to P/Insp. Moratillo. PO1 Exconde then entered into the police blotter the results of the surveillance operation. Immediately, they had briefing for the conduct of a buy-bust operation wherein PO1 Exconde was designated as the poseur buyer, PO1 Malacaman as his back up and another four police officers as perimeter security. They also prepared the marked money, pre-operation report and Philippine Drug Enforcement Agency (PDEA) coordination letter.[7]

The operation team arrived at the target area at around 11:45 a.m. of the same day. Upon seeing "Ogie" at the railroad track,

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[5] *Id*. at 37.

[6] *Id*.

[7] *Id*. at 38.

PO1 Exconde immediately wore a wig and sunglasses then approached the latter. PO1 Exconde said: *"Kukuha ako ng dalawang pisong bato*." "Ogie" then retrieved from his right pocket a small tin can with the markings "Hershey's Milk Chocolate," took one small piece of heat-sealed plastic sachet containing *shabu* then gave it to PO1 Exconde. In exchange, the latter handed "Ogie" the marked money.[8]

The transaction having been consummated, PO1 Exconde held "Ogie's" right hand and introduced himself as a police officer by saying, *"Huwag kang gagalaw, pulis ako.*" PO1 Malacaman arrived and frisked "Ogie". He recovered the Hershey box containing four plastic sachets. PO1 Exconde marked the plastic sachet subject of the sale while PO1 Malacaman marked the Hershey box with four plastic sachets obtained from "Ogie's" pocket immediately at the scene of the incident.[9]

Thereafter, "Ogie" was brought to the Police Station and was later identified as Bombio. At the police station, the certificates of custody, inventory, and request for laboratory examination were prepared. Bombio was then brought to the barangay to have photographs of the seized items taken with the barangay official. Thereafter, they returned to the police station for taking of photographs with the other mandatory representatives. At about 4:30 p.m., Bombio was brought to Philippine National Police Crime Laboratory for drug testing and laboratory examination.[10]

The laboratory examination of the suspected plastic sachets of *shabu* yielded a positive result to the presence of methamphetamine hydrochloride, which was reduced in writing as Chemistry Report No. LD-324-14.[11]

Version of the Defense

Bombio vehemently denied the charges against him. According to him, at around 9:00 a.m. of April 11, 2014, he

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[8] *Id.*

[9] *Id.* at 39.

[10] *Id.*

[11] *Id.*

and Hernandez were eating sandwich near the railroad tracks at Guadalupe 1, when several male persons arrived, asking who and where Ogie was. Bombio then raised his hands saying, *"Ako po si Ogie, bakit po?"* PO1 Exconde, wearing slippers, shorts, and T-shirt, handcuffed and dragged him to a tricycle and brought him to the police station. Bombio did not resist the arrest but he requested Hernandez to tell his mother about the matter. At the police station, a box was shown to him, then photographs were taken. Bombio claimed that he was never frisked by the police officers.[12]

In a Joint Decision[13] dated December 2, 2015, the trial court found the evidence adduced by the prosecution sufficient to convict Bombio of the crimes charged. It held that Bombio's defense of denial cannot prevail over the positive and affirmative testimonies of the police officers. Moreover, it ruled that absent proof of ill motive on the part of the apprehending officers, the presumption of regularity runs in their favor. The dispositive portion of the RTC decision reads:

> **WHEREFORE**, premises considered, this Court **FINDS** [**BOMBIO**] guilty beyond reasonable doubt of the offense of violation of Section 5, Article II of [R.A.] No. 9165, and hereby imposes upon him the penalty of life imprisonment and a fine of ₱500,000.00 in Criminal Case No. 20886-SP(14).
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> This Court also **FINDS** him guilty beyond reasonable doubt of the offense of violation of Section 11, Article II of [R.A.] No. 9165 in Criminal Case No. 20887-SP and hereby imposes upon him the penalty of imprisonment of twenty (20) years, plus a fine of ₱100,000.00.
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> x x x x x x x x x
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> **SO ORDERED.**[14]

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[12] *Id*. at 40.

[13] *Id*. at 35-45.

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

On appeal, the CA affirmed the findings of the trial court that the prosecution's evidence sufficiently established the unbroken chain of custody. As such, it held that the prosecution was able to establish that the integrity and evidentiary value of the seized items were properly preserved as required by Section 21. Likewise, all of the elements of illegal sale and illegal possession of a dangerous drug was proven. Bombio argued that there was failure on the part of the police officers to immediately conduct a physical inventory of the seized items. He also pointed out that when the inventory was done at the police station, none of the required witnesses to the inventory were present, *i.e.*, elected public official, representative from the Department of Justice (DOJ) and media representative. Anent Bombio's defense of denial and frame-up, the CA agreed with the trial court that there was no clear and convincing evidence to overcome the presumption that the police officers have performed their duties in a regular and proper manner. The dispositive portion of the CA Decision[15] dated June 30, 2017 reads:

WHEREFORE, premises considered, the instant appeal is **DENIED.** The assailed Joint Decision dated 2 December 2015 is hereby **AFFIRMED.**

SO ORDERED.[16]

Hence, the present appeal.

The Issue

Whether or not the CA committed a reversible error in affirming Bombio's conviction for violation of Sections 5 and 11 of R.A. No. 9165.

Ruling of the Court

The appeal is meritorious.

To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the

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[15] *Id*. at 111-125.

[16] *Id*. at 125.

following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[17]

On the other hand, in order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[18]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[19]

In this case, Bombio was charged with the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11,[20] Article II of R.A. No.

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[17] *People of the Philippines v. Salim Ismael y Radang,* G.R. No. 208093, February 20, 2017; *Reyes v. CA,* 686 Phil. 137, 148 (2012), citing *People v. Sembrano,* 642 Phil. 476, 490-491 (2010).

[18] *People of the Philippines v. Salim Ismael y Radang, id*.

[19] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014); *People v. Alivio*, *et al.,* 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[20] **Section 11.** *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos

9165. Bombio insists that he should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and failing to give credence to his defense of denial. Bombio likewise argues that the inventory of the seized items was made only at the police station and not at the place of apprehension. Moreover, there was no elected public official and representatives from either the DOJ or media present at the time of the inventory.

In *People v. Relato*,[21] the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the **State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence**

(₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu"*, or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

[21] 679 Phil. 268 (2012).

in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[22]

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph one (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

> **SEC. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
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> 1. The apprehending team having initial custody and control of the 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 and underscoring Ours)

In 2014, R.A. No. 10640[23] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the Anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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[22] *Id*. at 277-278.

[23] 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 June 9, 2014.

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 for 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 by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two — an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. It is likewise worthy to note that failure of the arresting officers to justify the absence of the required witnesses, *i.e.,* the

representative from the media or the DOJ and any elected official, constitutes as a substantial gap in the chain of custody.

Since the offenses subject of this appeal were committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply, *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 evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items. (Emphasis and underscoring Ours)

From the foregoing, it is clear that the venue of physical inventory is not limited to the place of apprehension. The venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation. Thus, in this regard, the Court finds no reason to reverse the ruling of the appellate court.

Another mandatory requirement set forth in Section 21 is the presence of three witnesses during the physical inventory of the seized items, *i.e.*, **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media.** The Court, in *People v. Mendoza*,[24] explained that

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[24] 736 Phil. 749 (2014).

the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or 'planting' of evidence, *viz.*:

> [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 [R.A. No.] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[25]

According to the CA, there were representatives from the media and the DOJ as evidenced by their signatures in the Certificate of Inventory and as such, there was compliance with Section 21(a), Article II of the IRR of R.A. No. 9165.

The Court disagrees.

There is no question that the said witnesses affixed their signatures in the Certificate of Inventory. However, the fact that they were not able to witness the actual inventory and were only made to sign the certificate after the same had already been conducted defeats the purpose of Section 21. In addition, these witnesses were not in the presence of each other when they affixed their signatures. The pertinent portion of the assailed CA decision reads:

> Contrary to [Bombio's] claim, there were representatives from the media and the DOJ, as evidenced by their signatures in the Certificate of Inventory. Granting that they were not present during the actual preparation of the Certificate of Inventory, it would not *ipso facto* result in the unlawful arrest of [Bombio] or render inadmissible in evidence the items seized.[26] (Underscoring Ours)

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[25] *Id.* at 764.

[26] *Rollo*, pp. 10-11.

Citing *People v. Sanchez*[27] and *People v. Salvador, et al.*,[28] the CA ratiocinated that what is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.[29]

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused **so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact**. The prosecution cannot simply invoke the saving clause found in Section 21 - that the integrity and evidentiary value of the seized items have been preserved - without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[30] is instructive on the matter:

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official

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[27] 590 Phil. 214 (2008).

[28] 726 Phil. 389 (2014).

[29] *Rollo*, p. 11.

[30] 686 Phil. 1024 (2012).

duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, 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 accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[31] (Citations omitted)

In the present case, the prosecution failed to justify their non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items. The unjustified absence of these witnesses during the inventory constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of having them sign the certificate of inventory. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti.* As such, Bombio must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[32] that an accused in a criminal case shall

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[31] *Id*. at 1054.

[32] Article III, Section 14(2) of the Constitution mandates:

be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[33] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08167 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Jayson Bombio *y* De Villa is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

Caguioa, J., on official business.

Sec. 14. x x x x x x x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[33] G.R. No. 210610, January 11, 2018.

[*] Designated as Acting Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 237703. October 3, 2018]

JOSEPH C. SY, *petitioner, vs.* **SANDIGANBAYAN (THIRD DIVISION) and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOTNESS DOCTRINE; THE COURT MAY TAKE COGNIZANCE OF A MOOT CASE WHEN THE ISSUE RAISED IS CAPABLE OF REPETITION AND WHEN THE RESOLUTION OF THE CASE WOULD SERVE TO GUIDE THE BAR AND ESPECIALLY THE BENCH IN DECIDING SIMILAR CASES; CASE AT BAR.— [R]ecords show that the petition was timely filed within sixty (60) days from Sy's receipt of the third SB Resolution dated January 17, 2018 which denied Motion C. However, it has been argued that the petition is already moot because the travel period for which Sy requested an allow departure order (*i.e.*, January 17 to 31, 2018) had already lapsed. While the assertion is indeed true, the Court nonetheless deems it proper to take cognizance of this case because it falls under certain exceptions to the mootness doctrine. In particular, the issue of whether Sy should be issued an allow departure order is clearly capable of repetition given the frequency of his requests for travel and the likelihood of him making similar requests in the future in view of his personal and professional engagements. Moreover, the Court's resolution in this case would also serve to guide the bar and especially the bench in deciding similar cases wherein they are called upon to rule on whether to issue, upon motion, an allow departure order without unduly restricting an accused's constitutional right to travel.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO TRAVEL; NOT ABSOLUTE, AS IT IS SUBJECT TO CONSTITUTIONAL, STATUTORY, AND INHERENT LIMITATIONS.— The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law. However, this right is not absolute,

as it is subject to constitutional, statutory, and inherent limitations. One of the inherent limitations is the power of courts to prohibit persons charged with a crime from leaving the country. In one case, the Court held that the court's power to prohibit a person admitted to bail from leaving the Philippines is a necessary consequence of the nature and function of a bail bond. As a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel. x x x Verily, the purpose of the restriction on an accused's right to travel is to ensure that courts can effectively exercise their jurisdiction over such person. As such, courts are authorized to issue hold departure orders against the accused in criminal cases, and accordingly, the court's permission is required before an accused can travel abroad.

3. ID.; ID.; ID.; ID.; POWER OF THE COURTS TO PROHIBIT PERSONS CHARGED WITH A CRIME FROM LEAVING THE COUNTRY; AN ACCUSED REQUESTING FOR PERMISSION TO TRAVEL ABROAD HAS THE BURDEN TO SHOW THE NEED FOR HIS TRAVEL AND SUCH PERMISSION MUST NOT BE UNDULY WITHHELD IF IT IS SUFFICIENTLY SHOWN THAT ALLOWING HIS TRAVEL WOULD NOT DEPRIVE THE COURT OF ITS EXERCISE OF JURISDICTION OVER HIS PERSON.— Indeed, whether the accused should be permitted to leave the jurisdiction is a matter addressed to the court's sound discretion. Nevertheless, such discretion must not be arbitrarily exercised**. In deciding the matter, the court must delicately balance, on the one hand, the right of the accused to the presumption of his innocence and the exercise of his fundamental rights, and on the other hand, the interest of the State to ensure that the accused will be ready to serve or suffer the penalty should he be eventually found liable for the crime charged.** x x x ***While an accused requesting for permission to travel abroad has the burden to show the need for his travel, such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person,*** as in this case. In making such assessment, courts should act judiciously, and thus, base their findings on **concrete variables**, such as the purpose of the travel, the need for similar travels before the criminal case was instituted, the ties of the accused in the Philippines,

as well as in the destination country, the availability of extradition, the accused's reputation, his travel itinerary including confirmed tickets to return to the Philippines, the possibility of reporting to the Philippine embassy in the foreign country, and other similar factors. While said requests should be resolved on a case-to case basis, it may not be amiss to state that courts should always be mindful that an accused is afforded the constitutional presumption of innocence, and hence, entitled to the entire gamut of his rights, subject only to reasonable restrictions that are based on concrete facts, and not mere speculation.

APPEARANCES OF COUNSEL

Dennis P. Manalo Law Office for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court is a petition for *certiorari*[1] seeking to annul the Resolutions dated November 21, 2017,[2] December 22, 2017,[3] and January 17, 2018[4] of the Sandiganbayan (SB) in SB-17-CRM-2081 on the ground of grave abuse of discretion. Pending the resolution of this case, petitioner Joseph C. Sy (Sy) filed a Motion for an Allow Departure Order[5] dated April 5, 2018, praying that he be permitted to travel abroad for the period from April 23, 2018 to May 23, 2018.

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[1] Dated March 15, 2018. *Rollo*, pp. 3-37.

[2] See Minute Resolution dated November 21, 2017; *id*. at 43.

[3] See Minute Resolution dated December 22, 2017; *id*. at 44.

[4] *Id*. at 45-46. Penned by Associate Justice Bernelito R. Fernandez with Associate Justices Amparo M. Cabotaje-Tang and Zaldy V. Trespeses, concurring.

[5] *Id*. at 318-338.

The Facts

On October 13, 2017, an Information[6] dated August 17, 2017 was filed before the SB charging Sy, among others, with violation of Section 3 (e) of Republic Act No. 3019. Immediately upon learning of this development, Sy posted a cash bond amounting to ₱30,000.00 for his provisional liberty, which was approved by the SB on November 7, 2017.[7] On even date, the SB issued a Hold Departure Order[8] against Sy and his co-accused to prevent them from leaving the country.

On November 16, 2017, Sy filed a Motion for an Allow Departure Order[9] for the period from November 28 to December 7, 2017 (**Motion A**) to embark on business trips in Hong Kong, Macau, and Xiamen, China. He stated that such travel was necessary for him to personally attend to important business matters that needed his direct and special attention. To secure the SB's permission, he manifested his willingness to post a bond and to report to the SB within five (5) days upon his return from abroad. He likewise attached a copy of his plane ticket,[10] indicating the time and place of his departure from and return to Manila, Philippines, as well as the cities he will visit.

The prosecution opposed[11] the motion on these grounds: (*a*) it does not contain any itinerary of travel; (*b*) it does not indicate the place where Sy would stay; (*c*) there is no urgency for the desired travel; (*d*) the probability of flight is great considering that his family name and middle name are Chinese; and (*e*) he must be amenable at all times to the SB's jurisdiction.[12]

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[6] *Id*. at 216-221.

[7] *Id*. at 7. See also Order dated November 7, 2017; *id*. at 222.

[8] *Id*. at 47.

[9] *Id*. at 224-226.

[10] See Ticket Receipt issued on November 11, 2017; *id*. at 229.

[11] See Order dated November 20, 2017; *id*. at 231-232.

[12] *Id*. at 232.

In reply, Sy expressed his willingness to post a bond as may be directed, stating that his strong family and commercial ties will compel him to return to the Philippines.[13] In particular, he cited his functions as the chairperson of a publicly-listed Philippine corporation, Global Ferronickel Holdings, Inc. (FNI),[14] the committee Chairman for Mining of the Philippine Chamber of Commerce and Industry,[15] and the Vice-Chairman of the Philippine International Chamber of Commerce.[16] He also submitted a detailed itinerary and hotel bookings for his trip mentioning the places where he would be staying.[17]

In a **Resolution**[18] **dated November 21, 2017**, the SB denied Motion A, explaining that: (*i*) Sy failed to show the indispensability of his business trip; (*ii*) the alleged need for the intended travel cannot outweigh the SB's inherent power to preserve the effectiveness of its jurisdiction over his person; and (*iii*) business interests and ties do not, by themselves, remove the probability of flight.[19]

On December 5, 2017, Sy filed another motion to travel[20] this time to Japan and Hong Kong for the period from December 17, 2017 to January 5, 2018 (**Motion B**) to accompany his wife

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[13] See *id*.

[14] *Id*. at 10. See also Manifestation dated November 22, 2017; *id*. at 233-234.

[15] See Certification dated December 1, 2017 issued by Secretary General Crisanto S. Frianeza stating that Sy is a member of the Philippine Chamber of Commerce and Industry; *id*. at 81.

[16] *Id*. at 10.

[17] *Id*. at 9-10. See also *id*. at 233-234.

[18] *Id*. at 43.

[19] *Id*.

[20] See Entry of Appearance of Collaborating Counsel with Motion for Leave to Allow Travel Abroad dated December 5, 2017 (*id*. at 48-55) and Supplement to Motion for Leave to Allow Travel Abroad dated December 8, 2017 (*id*. at 84-86).

and minor son for a family vacation.[21] After hearing, the SB denied the motion in a **Resolution**[22] **dated December 22, 2017**, stating that a similar motion was previously denied and there were no new matters to substantially address.[23]

On January 8, 2018, Sy filed the third motion to travel,[24] this time to Hong Kong and China for the period from January 17 to 31, 2018 (**Motion C**) to attend business meetings. During the hearing, the SB allegedly informed Sy that it conducted a background search on him and doubted his intention to return to the country based on an issue regarding his citizenship.[25] After the hearing, the SB denied Motion C in a **Resolution**[26] **dated January 17, 2018**, stating that it has continuously denied Sy's pleas to travel abroad and reiterating the same grounds for which it denied Motion A.[27] The SB added that it remains unconvinced with Sy's assertions relative to his citizenship.[28]

On March 16, 2018, Sy filed the instant *certiorari* petition assailing the SB's three (3) Resolutions, which denied his motions to allow his foreign travels. He argued that: (*a*) the purposes of his travels were indispensable to his occupation as chairman

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[21] Without any action from the SB and since the original proposed departure date had lapsed, Sy filed a motion to amend the date of departure from December 17, 2017 to December 23, 2017 (*id*. at 4). See also Very Urgent Manifestation and Motion to Amend dated December 21, 2017; *id*. at 114-116.

[22] *Id*. at 44.

[23] See *id*.

[24] See 3rd Motion for an Allow Departure Order dated January 5, 2018; *id*. at 120-130.

[25] *Id*. at 31-33. See also Transcript of Stenographic Notes dated January 11, 2018; *id*. at 256.

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

[27] See *id*.

[28] *Id*. at 46. The SB stated thus: "Additionally, this Court, after its own queries made during the hearing on the Motion on January 11, 2018, continues to remain unconvinced with the assertions of [Sy] relative to his citizenship."

of a publicly-listed Philippine corporation, as well as his paternal duty to his family; (*b*) his strong and established business interests and ties in the Philippines negate the probability of flight; (*c*) his consent to a conditional arraignment effectively preserved the SB's jurisdiction over his person for the duration of the case; (*d*) his citizenship is confirmed by public records; and (*e*) the SB acted with undue interest, partiality, and bias when it *motu proprio* gathered evidence extraneous to the submission of the parties and used its own findings as basis to question his intent to return to the country.[29] Sy also invoked the Court's ruling in *Cojuangco v. Sandiganbayan*,[30] citing several instances wherein the SB allowed the accused therein to travel for business purposes. Sy also submitted his travel history[31] from 2014 to 2017 to show that the motions were not contrived for the purpose of absconding.[32]

In its Comment,[33] the Office of the Special Prosecutor (OSP) insisted that the SB acted within the scope of its jurisdiction when it denied Sy's motions for travel abroad based on reasonable and valid grounds. It also contended that, as disclosed during the hearing on Motion C, a complaint before the National Bureau of Investigation attacking Sy's citizenship is still pending resolution. The OSP further argued that Sy failed to convince the SB that he is not a flight risk, especially since he acknowledged his strong business connections in China and his Chinese lineage.[34]

On April 5, 2018, pending the resolution of the petition, Sy filed before the Court a Motion for an Allow Departure

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[29] See *id*. at 14-36.

[30] 360 Phil. 559 (1998).

[31] See Certification issued by Bureau of Immigration's Acting Chief of the Certification and Clearance Section Rodelio A. Siapian dated December 7, 2017; *rollo*, pp. 109-113.

[32] *Id*. at 27.

[33] Dated August 7, 2018. *Id*. at 383-395.

[34] See *id*. at 388-394.

Order[35] for the period from April 23, 2018 to May 23, 2018 to attend business meetings with Baiyin International Investment Ltd. in Hong Kong and several places in China.[36] He justified the filing of the motion with this Court by vigorously contending that the SB is "bent on the absolute deprivation of [his] right to travel on the same basis set forth in the Assailed Resolutions."[37] He reiterated that his business trips are indispensable to the companies he represents because foreign suppliers and buyers prefer to deal exclusively with him due to his experience, reputation, and acumen in business and the years he has spent developing and forging strong ties and relationships. He also stressed that his business interests and ties in the Philippines are well-established to remove the probability of his flight and to ensure his presence when required by the SB.[38]

In its Comment[39] to the motion, the OSP contended that the motion is already moot because the period of Sy's intended travel had already lapsed.[40] At any rate, the OSP vehemently opposed the motion on the grounds that: (*a*) Sy is a flight risk, which is further highlighted by the uncertainty of his assertion on his citizenship; and (*b*) there is no urgent necessity for the business trip; and (*c*) as held by the SB, the alleged need for the intended travel cannot outweigh the SB's inherent power to preserve and maintain the effectiveness of its jurisdiction over Sy's person by making himself available whenever it requires.[41]

The Issues Before the Court

The issues before the Court are whether or not: (*a*) the petition for *certiorari* assailing the SB's denial of Sy's motions for the

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[35] *Id*. at 318-337.

[36] See *id*. at 319-320.

[37] *Id*. at 319.

[38] See *id*. at 331-334.

[39] Dated June 8, 2018. *Id*. at 358-362.

[40] See *id*. at 358.

[41] *Id*. at 358-360.

issuance of allow departure orders should be granted; and (*b*) the Motion for an Allow Departure Order dated April 5, 2018 filed before the Court should be granted.

The Court's Ruling

I.

The petition for *certiorari* is partly granted.

Procedurally, Section 4, Rule 65 of the Rules of Court states that a petition for *certiorari* must be filed "not later than sixty (60) days from notice" of the assailed resolution. In this case, Sy received the first assailed Resolution on November 29, 2017[42] and the second assailed Resolution on January 9, 2018[43] but filed the instant petition only on March 16, 2018 or beyond the sixty (60)-day reglementary period to assail the aforementioned Resolutions. Thus, as the petition was filed out of time in these respects, petitioner cannot validly assail these two (2) SB Resolutions.

On the other hand, records show that the petition was timely filed within sixty (60) days from Sy's receipt[44] of the third SB Resolution dated January 17, 2018 which denied Motion C. However, it has been argued that the petition is already moot[45] because the travel period for which Sy requested an allow departure order (*i.e.*, January 17 to 31, 2018) had already lapsed. While the assertion is indeed true, the Court nonetheless deems it proper to take cognizance of this case because it falls under certain exceptions[46] to the mootness doctrine. In particular, the

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[42] *Id*. at 4.

[43] *Id*.

[44] Sy alleged that he received the Resolution dated January 17, 2018 on January 18, 2018 and filed the *certiorari* petition on March 16, 2018 or within the sixty (60)-day reglementary period (*id*. at 5).

[45] In *Carpio v. Court of Appeals*, 705 Phil. 153, 163 (2013), citing *Osmeña III v. Social Security System*, 559 Phil. 723, 735 (2007), the Court held that "[a] case or issue is considered moot when it ceases to present a justiciable controversy due to supervening events, such that an adjudication of the case or a declaration on the issue would be of no practical value or use."

[46] The Court generally declines jurisdiction over moot cases, subject to these recognized exceptions: (1) there was a grave violation of the Constitution;

issue of whether Sy should be issued an allow departure order is clearly capable of repetition given the frequency of his requests for travel and the likelihood of him making similar requests in the future in view of his personal and professional engagements. Moreover, the Court's resolution in this case would also serve to guide the bar and especially the bench in deciding similar cases wherein they are called upon to rule on whether to issue, upon motion, an allow departure order without unduly restricting an accused's constitutional right to travel. That being said, the Court proceeds to resolve the substantive issues raised in Sy's *certiorari* petition.

The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law.[47] However, this right is not absolute, as it is subject to constitutional, statutory, and inherent limitations.[48] One of the inherent limitations is the power of courts to prohibit persons charged with a crime from leaving the country.[49] In one case, the Court held that the court's power to prohibit a person admitted to bail from leaving the Philippines is a necessary consequence of the nature and function of a bail bond.[50] As a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel.[51]

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(2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review (*Timbol v. Commission on Elections*, 754 Phil. 578, 585 [2015]).

[47] See *Marcos v. Sandiganbayan*, 317 Phil. 149, 167 (1995).

[48] See *Genuino v. De Lima*, G.R. Nos. 197930, 199034, 199046, April 17, 2018. See also *Leave Division, Office of Administrative Services - Office of the Court Administrator v. Heusdens*, 678 Phil. 328, 340 (2011).

[49] *Leave Division, Office of Administrative Services - Office of the Court Administrator v. Heusdens*, *id*., citing *Silverio v. Court of Appeals*, 273 Phil. 128, 133-134 (1991).

[50] See *Manotoc, Jr. v. Court of Appeals*, 226 Phil. 75, 82 (1986).

[51] See *Marcos v. Sandiganbayan*, *supra* note 47.

In *People v. Uy Tuising*,[52] the Court explained that an accused is prohibited from leaving the Philippine jurisdiction "because, otherwise, [the court's] orders and processes would be nugatory; and inasmuch as the jurisdiction of the court from which they issued does not extend beyond that of the Philippines, they would have no binding force outside of said jurisdiction."[53] This situation became extant in *Silverio v. Court of Appeals*[54] wherein the accused, who was released on bail, went abroad several times without court approval resulting in postponements of the arraignment and scheduled hearings. In ruling that the trial court correctly directed the Commission on Immigration to prevent the accused from leaving the country again, the Court pronounced thus:

> Petitioner x x x has posted bail but has violated the conditions thereof by failing to appear before the [c]ourt when required. Warrants for his arrest have been issued. Those orders and processes would be rendered nugatory if an accused were to be allowed to leave or to remain, at his pleasure, outside the territorial confines of the country**. Holding an accused in a criminal case within the reach of the [c]ourts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law.** The offended party in any criminal proceeding is the People of the Philippines. It is to their best interest that criminal prosecution should run their course and proceed to finality without undue delay, with an accused holding himself amenable at all times to [c]ourt [o]rders and processes.[55] (Emphasis supplied)

Verily, the purpose of the restriction on an accused's right to travel is to ensure that courts can effectively exercise their jurisdiction over such person.[56] As such, courts are authorized

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[52] 61 Phil. 404 (1935).

[53] *Id*. at 408.

[54] *Supra* note 49.

[55] *Id*. at 134-135.

[56] See *Manotoc, Jr. v. Court of Appeals*, *supra* note 50, at 82. "The condition imposed upon petitioner to make himself available at all times

to issue hold departure orders against the accused in criminal cases, and accordingly, the court's permission is required before an accused can travel abroad.[57]

In this case, the SB issued a hold departure order restricting Sy's right to travel abroad. Respecting such order, he filed motions to be allowed to travel abroad for business and personal errands, but all of his motions were denied by the SB. The question now before the Court is **whether the SB gravely abused its discretion amounting to lack or excess of jurisdiction when it denied Sy's request to be allowed to travel abroad.**

Grave abuse of discretion refers to such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, as when the act amounts to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.[58]

Indeed, whether the accused should be permitted to leave the jurisdiction is a matter addressed to the court's sound discretion.[59] Nevertheless, such discretion must not be arbitrarily exercised. **In deciding the matter, the court must delicately**

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whenever the court requires his presence operates as a valid restriction on his right to travel." (*Id*.)

[57] The Court held that "this inherent right of the court is recognized by petitioner himself, notwithstanding his allegation that he is at total liberty to leave the country, for he would not have filed the motion for permission to leave the country in the first place, if it were otherwise." (*Id*. at 83.) See also *Defensor-Santiago v. Vasquez*, 291 Phil. 664, 684 (1993), wherein the Court stated that where a hold departure order has been issued, "the party concerned must first exhaust the appropriate remedies therein, through a motion for reconsideration or other proper submissions, *or by the filing of the requisite application for travel abroad*." (Italics supplied)

[58] See *Padilla v. Congress of the Philippines*, G.R. Nos. 231671 & 231694, July 25, 2017 and *Republic v. Caguioa*, 704 Phil. 315, 333 (2013).

[59] See *Marcos v. Sandiganbayan*, *supra* note 47, at 167. In *Leave Division, Office of Administrative Services - Office of the Court Administrator v. Heusdens*, *supra* note 48, the Court held that "[i]n such cases, the permission of the court is necessary." See also *Gutierrez v. People*, G.R. No. 193728, April 4, 2018, citing *Enrile v. Sandiganbayan*, 767 Phil. 147, 161, stating:

balance, on the one hand, the right of the accused to the presumption of his innocence and the exercise of his fundamental rights, and on the other hand, the interest of the State to ensure that the accused will be ready to serve or suffer the penalty should he be eventually found liable for the crime charged.[60]

Based on this premise, the Court finds that the SB committed grave abuse of discretion when it denied Sy's third request to travel abroad on the grounds that he failed to "show the indispensability of the business travel," that his "business interests and ties do not, by themselves, remove the probability of flight," and that the SB remains unconvinced with Sy's assertions relative to his citizenship.[61]

While an accused requesting for permission to travel abroad has the burden to show the need for his travel,[62] ***such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person***, as in this case. In making such assessment, courts should act judiciously, and thus, base their findings on **concrete variables**, such as the purpose of the travel, the need for similar travels before the criminal case was instituted, the ties of the accused in the Philippines, as well as in the destination country, the availability of extradition, the accused's reputation, his travel itinerary including confirmed tickets to return to the Philippines, the possibility of reporting to the Philippine embassy in the foreign country, and other similar factors. While said requests should be resolved on a case-to

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"Worthy to mention is that the grant of temporary liberty to an accused is an incident of judicial power."

[60] See *Gutierrez v. People*, *id*.

[61] *Rollo*, pp. 45-46.

[62] See *Manotoc, Jr. v. Court of Appeals*, *supra* note 50, at 82, wherein the Court stated that "[i]ndeed, if the accused is allowed to leave the country *without sufficient reason,* he may be placed beyond the reach of courts." (Italics supplied). See also *Marcos v. Sandiganbayan*, *supra* note 47.

case basis, it may not be amiss to state that courts should always be mindful that an accused is afforded the constitutional presumption of innocence,[63] and hence, entitled to the entire gamut of his rights, subject only to reasonable restrictions that are based on concrete facts, and not mere speculation.

In this case, a perusal of Sy's travel records[64] for the period 2014 to 2017 from the Bureau of Immigration reveals that he frequently travelled to and from the Philippines even before the filing of the criminal case. This supports his contention that his requested travels were not contrived for him to abscond from criminal prosecution. Moreover, contrary to the prosecution's stance, Sy's Chinese-sounding surname and middle name do not serve to increase the probability of his flight but, at most, merely points to his lineage. Besides, restricting Sy's right to travel based on his surname would be tantamount to unduly faulting him for a status natural to his person (*i.e.*, his surname), which he did not choose for himself and for which he was not responsible for.

Likewise, the Court finds that the SB unduly relied on the unresolved claims against Sy's citizenship before other governmental bodies[65] to justify the denial of his travel request, especially considering that his birth certificate clearly indicates his Filipino citizenship. Settled is the rule that public documents, such as birth certificates, are *prima facie* evidence of the facts contained therein such as on citizenship.[66] No evidence was even presented to counter Sy's status as a Filipino citizen or show that he is a citizen of his destination country that would

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[63] See Section 14 (2), Article III of the 1987 CONSTITUTION.

[64] *Rollo*, pp. 109-113.

[65] Before the Securities and Exchange Commission, the Bureau of Immigration, and the National Bureau of Investigation (See Transcript of Stenographic Notes during the hearing dated January 11, 2018; *rollo,* pp. 256-258).

[66] See *Republic v. Harp*, 787 Phil. 33, 53 (2016). See also Article 410 of the Civil Code and Section 44, Rule 130 of the Rules of Court.

enable him to have a prolonged stay therein. For these reasons, the SB should have given more weight to Sy's birth certificate stating that he is a Filipino citizen rather than the unresolved claims to the contrary, which were not even presented by the prosecution before the SB.

Furthermore, Sy's pivotal roles as Chairman of FNI, as Committee Chairman for Mining of the Philippine Chamber of Commerce and Industry, and Vice-Chairman of the Philippine International Chamber of Commerce render his foreign travels necessary for him to effectively execute his corporate duties. In *Cojuangco v. Sandiganbayan*,[67] the Court allowed petitioner therein to travel abroad, noting that the risk of flight is diminished by his recent reinstatement as Chairman and Chief Executive Officer of San Miguel Corporation, giving him more reason to travel to oversee the operations of the company abroad.[68] In this case, Sy has shown his critical function in the strategic cooperation between FNI and China's Baiyin Nonferrous Group Co., Ltd. to improve the nickel value chain in the Philippines[69] and has argued that the restriction on his business travels overseas economically threatens the companies he represent.[70]

All these considered, there appears to be no sufficient justification for the SB's refusal to grant Sy's motion to travel abroad. Accordingly, the instant *certiorari* petition should be partly granted insofar as it timely assails the third SB Resolution, which is heretofore declared null and void.

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[67] 360 Phil. 559 (1998).

[68] *Id*. at 590.

[69] See *rollo,* pp. 71-73. Sy signed the Memorandum of Cooperation between FNI and Baiyin Nonferrous Group Co. Ltd. during the Philippine President's state visit in China. The partnership is intended to promote closer industrial and commercial cooperation between the two (2) companies and Sy appears personally involved in that venture.

[70] See *id*. at 125-126.

II.

Meanwhile, Sy's Motion for an Allow Departure Order dated April 5, 2018 is denied as the same should have been filed before the SB, which has jurisdiction over the main case. It is fundamental that all ancillary incidents, such as this motion, should be resolved by the court handling the main case. It should be emphasized that the Court in this case only acts as a reviewing tribunal and only for the limited purpose of determining whether the SB gravely abused its discretion. Besides, as above-discussed, the impetus behind restricting the right to travel is for the court to maintain its jurisdiction over the person of the accused; undoubtedly, it is the SB who is necessarily interested in preserving its jurisdiction over the accused.[71] Aside from this, Sy's averred circumstances to permit him to travel pertain to questions of fact that should be determined in the first instance by the SB.[72]

As a final point, it goes without saying that if Sy subsequently requests for permission to travel, the SB should be guided by the considerations discussed in this Decision. Notably, should there remain doubts on whether he would abscond, ***the SB is not precluded from imposing travel restrictions to ensure his return***, such as the deposit of a travel bond, submission of a detailed and confirmed flight and travel itinerary, specification of a limited area and duration of travel, appearance before a Philippine consul upon arrival in the destination country, designation of a personal agent with authority to act in his behalf, as well as personal appearance or written advice to the court upon his return to the Philippines,[73] or, ultimately, if the doubts

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[71] Section 6, Rule 135 of the Rules of Court states:

Section 6. *Means to carry jurisdiction into effect.* – When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes[,] and other means necessary to carry it into effect may be employed by such court or officer x x x."

[72] See *Marcos v. Sandiganbayan*, *supra* note 47, at 167-168.

[73] See the Court's various resolutions allowing the accused to travel abroad in these cases: *Gutierrez v. People*, G.R. No. 193728, April 4, 2018;

are serious enough, the SB may opt not to allow him to travel based on the standards set herein. After all, while the right to travel is indeed a constitutional right, it nevertheless remains subject to reasonable restrictions that on the other end, further the State's compelling interest in criminal prosecution.

WHEREFORE, the Court resolves as follows:

1) The petition for *certiorari* is **PARTLY GRANTED**. Accordingly, the Resolution dated January 17, 2018 of the Sandiganbayan in SB-17-CRM-2081 is **NULLIFIED** and **SET ASIDE**.

2) The Motion for an Allow Departure Order dated April 5, 2018 is **DENIED** for being improperly filed before the Court and not to the Sandiganbayan as discussed in this Decision.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

Caguioa, J., on leave.

Minute Resolution in *Macairan v. People*, G.R. No. 215104, October 9, 2017; Minute Resolution in *Valera v. People*, G.R. Nos. 209099-100, May 18, 2017; Minute Resolution in *Amposta-Martel v. People*, G.R. No. 220500, June 6, 2016, November 21, 2016, June 7, 2017, November 29, 2017; and *People v. Sandiganbayan, Devanadera*, G.R. Nos. 212706-13, May 4, 2016.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

THIRD DIVISION

[G.R. No. 238889. October 3, 2018]

ANTONIO PLANTERAS, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW SHOULD BE RAISED THEREIN; EXCEPTIONS; SIMILARLY APPLY IN PETITIONS FOR REVIEW FILED BEFORE THE SUPREME COURT INVOLVING CIVIL, LABOR, TAX, OR CRIMINAL CASES.— The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. These

exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.

2. **ID.; ID.; ID.; QUESTION OF FACT; THERE IS A QUESTION OF FACT WHEN THE REVIEW OF THE TRUTHFULNESS OR FALSITY OF THE ALLEGATIONS OF THE PARTIES IS REQUIRED, OR WHEN THE ISSUE PRESENTED IS THE CORRECTNESS OF THE LOWER COURT'S APPRECIATION OF THE EVIDENCE PRESENTED BY THE PARTIES.—** A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties. In this case, petitioner asks this Court to review the evidence presented by the prosecution. Clearly, this is not the role of this Court.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 9208; PROMOTING TRAFFICKING IN PERSONS; ELEMENTS.—** [I]n order for one to be convicted of the offense of promoting trafficking in persons, the accused must (a) knowingly lease or sublease, or allow to be used any house, building or establishment, and (b) such use of the house, building or establishment is for the purpose of promoting trafficking in persons. Trafficking in persons is defined under Section 3(a) of R.A. No. 9208 x x x.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE, DISTINGUISHED; THE DIFFERENCE BETWEEN DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE DOES NOT RELATE TO THE PROBATIVE VALUE OF THE EVIDENCE.—** Direct evidence and circumstantial evidence are classifications of evidence with legal consequences. The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense. Their difference does not relate to the probative value of the evidence. Direct evidence proves a challenged fact without drawing any inference. Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the fact-finder must draw an inference or reason from circumstantial evidence." The probative

value of direct evidence is generally neither greater than nor superior to circumstantial evidence. The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred." The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt. A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator. There is no requirement in our jurisdiction that only direct evidence may convict. After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

5. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; REQUISITES; THE DETERMINATION OF WHETHER CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING OF GUILT IS A QUALITATIVE TEST NOT A QUANTITATIVE ONE.— Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence: "Section 4. *Circumstantial evidence, when sufficient*. - Circumstantial evidence is sufficient for conviction if: (a)There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." The commission of a crime, the identity of the perpetrator, and the finding of guilt may all be established by circumstantial evidence. The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime. The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one. x x x "[N]o general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

6. ID.; ID.; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ARE ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT BECAUSE OF ITS UNIQUE OPPORTUNITY TO OBSERVE THE WITNESSES FIRST HAND AND TO NOTE THEIR DEMEANOR, CONDUCT, AND ATTITUDE UNDER GRUELLING EXAMINATION.— [W]hen the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. The assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these, unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9208; TRAFFICKING IN PERSONS; KNOWLEDGE OR CONSENT OF THE MINOR IS NOT A DEFENSE.— As to the claim of petitioner that AAA freely engaged in prostitution, thus, no trafficking in person was committed, such is unmeritorious. Knowledge or consent of the minor is not a defense under Republic Act No. 9208. The victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.

APPEARANCES OF COUNSEL

Piquero Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 18, 2018, of petitioner Antonio Planteras, Jr. that seeks to reverse and set aside the Decision[1] dated April 24, 2017 and Resolution[2] dated March 21, 2018 of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 02077,which affirmed the Decision[3] dated November 10, 2014 of the Regional Trial Court (*RTC*), Branch 20, Cebu City convicting the same petitioner of violation of Section 5, par. (a)of Republic Act (*R.A.*) No. 9208 or promoting trafficking in persons.

The facts follow.

P/S Int. Audie Villacin directed the elements of the Regional Investigation Detective Management Division (*RIDM*) to conduct surveillance operations at [redacted] Lodge, located along [redacted], Cebu City, after receiving reports sometime in the second week of March 2009, about the alleged trafficking in persons and sexual exploitation being committed at the said place. On March 16, 2009, reports came in that pimps were indeed offering the sexual services of young girls to various customers at the entrance/exit door of the [redacted] Lodge, owned by petitioner and his wife, Christina Planteras.

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[1] Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of then Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez; *rollo*, pp. 29-52.

[2] Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of then Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez.

[3] Penned by Presiding Judge Bienvenido R. Saniel, Jr.; *rollo*, pp. 62-86.

On March 19, 2009, PO3 Jose Erwin Dumaguit(*PO3 Dumaguit*) and PO1 Arnold Rusiana(*PO1 Rusiana*) conducted another surveillance. They proceeded to the [redacted] Lodge armed with a concealed camera and at the said place, they were met by Marlyn Buhisan who offered girls for sex. The girls were made to line up in front of the police officers. Thereafter, Buhisan led the police officers upstairs where they saw petitioner at the reception counter who appeared to be aware and listening to the on-going negotiation. When PO1 Rusiana asked about the room rates, petitioner informed him that the room charge is ₱40.00 per hour plus ₱50.00 for every succeeding hour. After that, the police officers and the girls who were introduced to them left the lodge for drinks within the vicinity of [redacted], Cebu City.

Subsequently, an entrapment operation was conducted on April 28, 2009 by members of the Regional Special Investigation Unit, the Carbon Police Station, *barangay tanods*, and representatives from the Department of Social Welfare and Development (*DSWD*). PO1 Hazal Tomongtong (*PO1 Tomongtong*) was assigned as the photographer and recorder, PO2 Linda Almohallas(*PO2 Almohallas*) as evidence custodian, and PO3 Dumaguit and PO1 Ariel Llanes (*PO1 Llanes*) as poseur-customers and were given the marked money consisting of fifteen (15) ₱100.00 bills.

At the [redacted] Lodge, PO3 Dumaguit and PO1 Llanes were approached by Marichu Tawi who offered girls for sexual favors for the price of ₱300.00 each. PO3 Dumaguit and PO1 Llanes, along with three (3) girls, namely, BBB, CCC, DDD, then went upstairs. PO3 Dumaguit requested the services of one more girl from Tawi.At that time, Buhisan arrived and joined the on-going negotiation. Tawi left and when she returned, she brought with her a young girl, AAA. Petitioner was behind the reception counter when the said negotiation took place and appeared to be listening to the said transaction. PO3 Dumaguit and PO1 Llanes chose three (3) girls, one of whom was AAA, and then handed over the marked money (₱900.00) to Buhisan. The police officers also gave ₱200.00 as "tip" for Tawi. After

that, PO3 Dumaguit executed the pre-arranged signal, a "missed call" on the cellphoneto the rest of the team.When the rest of the team arrived at the [redacted]Lodge, PO3 Dumaguit announced that they are police officers and immediately thereafter, Buhisan, Tawi, petitioner and his wife, Christina, were arrested. PO3 Dumaguit retrieved the marked money from Buhisan, and Tawi then handed it over to PO2 Almohallas. Consequently, the police officers brought the persons arrested to their office and turned over the girls who were exploited to the DSWD.

As a result, two (2) Informations were filed against Buhisan, Tawi, Christina and petitioner, thus:

In Criminal Case No. CBU-86038 (against [petitioner] Planteras and Christina Planteras)

That on or about the 28th day of April 2009, and for sometime prior thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with one another, with deliberate intent, with intent of gain, did then and there knowingly allow its establishment [redacted] Lodge located at [redacted], Cebu City, to be used for the purpose of promoting trafficking in persons, that is, by allowing BBB, CCC, DDD and AAA, a minor, 17 years old, to engage in prostitution in the said establishment.

CONTRARY TO LAW.

In Criminal Case No. CBU-86039 (against Buhisan and Tawi)

That on or about the 28th day of April 2009, at about 10:00 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent of gain, did then and there recruit, transport and then maintain for the purpose of prostitution, pornography, or sexual exploitation four females, namely,DDD, CCC, BBB and one (1) of which is a child in the name of AAA, 17 years old, with the qualifying aggravating circumstances:

1. The trafficked persons are children; and

2. That the crime is committed in large scale.

CONTRARY TO LAW.[4]

On arraignment, petitioner and his co-accused all pleaded "not guilty" to their respective charges.

The prosecution presented the testimonies of PO3 Dumaguit and PO2 Almohallas. The prosecution also presented the testimony of AAA to corroborate the testimonies of the said police officers.

AAA, who was then 17 years old, testified that, in February 2009, while looking for her sister at the vicinity of [redacted], Cebu City, she met Buhisan who inquired whether she wanted money in exchange for her sexual services to customers. AAA agreed and, thereafter,Buhisan would find customers for her. Upon instructions of Buhisan, the latter would bring the customers to the [redacted] Lodge where the illicit activity will be consummated. AAA further narrated that she is familiar with Tawi, who was also a prostitute. Tawi, according to AAA, on previous occasions, also acted as a pimp for her. Each customer would pay Php300.00 for AAA's services. Of the said rate, she receives only Php200.00, while the remainder is kept by either Buhisan or Tawi as their commission.

Regarding petitioner, AAA said that he and his wife owned the [redacted] Lodge and that the spouses received payments for room charges and sold condoms at the hotel. AAA further testified that on one occasion, after providing service to a customer, petitioner offered her to another customer.

After the prosecution had rested its case, all the accused, including petitioner, filed a Demurrer to Evidence. The Demurrer was granted, but only in favor of Christina Planteras and, accordingly, the case against her was dismissed in an Order dated January 21, 2013.

The defense presented the testimonies of petitioner, Buhisan and Tawi.

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[4] *Rollo*, pp. 31-32.

During trial, petitioner testified that he is the registered owner of the [redacted] Lodge, and that on April 28, 2009, around 9 o'clock in the evening, while he was watching television at the Lodge, three (3) males and three (3) females went inside the same Lodge. Petitioner denied hearing the conversation that took place among the 6 persons and claimed that his attention was fixed on the television show. After a few minutes, petitioner noticed one of the women go down the stairs and then went back with another girl. Thereafter, policemen arrived, searched the area, and arrested him and his wife, Christina. Petitioner insisted that he does not know Buhisan and Tawi.

Buhisan testified that she was merely a helper at the [redacted] Lodge, and that on April 28, 2009, petitioner called her to assist four (4) guests who were accompanied by Tawi. After Buhisan was able to prepare their rooms, she was requested by one of the guests to find for them girls for hire which she refused to do. Buhisan also claimed that she declined the said request despite a promise of payment. However, according to Buhisan, petitioner instructed her to collect the payment from the four (4) guests which she complied. The customers gave her ₱200.00, but they immediately took the payment back from her and was then immediately handcuffed and arrested. Buhisan further testified that she knows AAA and the other girls in the Lodge that night, because they frequently brought their customers to the New Perlito's Lodge.

Tawi, during her testimony, admitted that she was a sex worker and that she knows AAA and Buhisan because they were engaged in the same activity. According to Tawi, on April 28, 2009, upon the request of PO3 Dumaguit and PO1 Llanes, she and Buhisan introduced some girls to them. Tawi even offered her services in order to earn money for herself, however on that same night, they were arrested by the police officers.

The RTC rendered a Decision convicting petitioner, Buhisan and Tawi guilty beyond reasonable doubt of their respective charges, thus:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. CBU-86039, the Court finds accused MARLYN BUHISAN and MARICHU TAWI GUILTY beyond reasonable doubt of the crime of qualified trafficking in persons in violation of Section 4, in relation to Section 6 of Republic Act No. 9208, and hereby sentences each of them to life imprisonment. Each accused is also ordered to pay fine in the amount of Two Million Pesos (PhP2,000,000.00).

2. In Criminal Case No. CBU-86038, the Court finds accused ANTONIO PLANTERAS, JR. GUILTY beyond reasonable doubt of the crime of knowingly allowing [redacted] Lodge to be used for the purpose of promoting trafficking in persons in violation of Section 5 of Republic Act No. 9208, and hereby sentences him to a prison term of Fifteen (15) Years and to pay [a] fine in the amount of Five Hundred Thousand Pesos (PhP500,000.00).

The bail bond posted by accused Antonio Planteras, Jr. is hereby cancelled. Let a warrant of arrest forthwith issue against accused Antonio Planteras, Jr.

SO ORDERED.[5]

Petitioner, Buhisan and Tawi, after their motion for reconsideration was denied by the RTC, elevated the case to the CA. Eventually, the CA denied their appeals and affirmed their convictions, thus:

WHEREFORE, premises considered, the appeals are DENIED. The Joint Decision dated 10 November 2014, and the Order dated 17 April 2015, of the Regional Trial Court of Cebu City, 7th Judicial Region, Branch 20, in Criminal Case Nos. CBU-86038 and CBU-86039, are AFFIRMED.

SO ORDERED.[6]

Hence, the present petition under Rule 45 of the Rules of Court of petitioner Planteras, Jr.

Petitioner raises the following errors:

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[5] *Id*. at 86.

[6] *Id*. at 53.

THE COURT OF APPEALS MISAPPREHENDED THE FACTS OF THE CASE WHICH RESULTED TO ITS ERRONEOUS CONCLUSION THAT THROUGH CIRCUMSTANTIAL EVIDENCE THE PROSECUTION HAS SUFFICIENTLY ESTABLISHED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT

THE COURT OF APPEALS GRAVELY ERRED IN INTERPRETING THE TERM TRAFFICKING IN PERSONS WITHIN THE MEANING AND INTENT OF THE LAW.[7]

According to petitioner, there is no evidence that he was engaged in the trafficking of women or that his acts would amount to the promotion of the trafficking of women. He further argues that to be convicted of the charge against him, the offender must not just be conscious of the fact that he or she is leasing the premises but that this consciousness must extend to being aware that such acts promote the trafficking in persons. Petitioner also claims that the prosecution's evidence is insufficient to prove the presence of criminal intent and cannot be said to have successfully overthrown the constitutional presumption of innocence that he enjoyed. In addition, he avers that the case against him is not a case against "trafficking in persons" within the meaning and intent of the law.

The petition lacks merit.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[8] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[9] when supported by substantial evidence.[10] Factual findings of the

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[7] *Id*. at 16.

[8] Rules of Court, Rule 45, Sec. 1.

[9] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil), Inc.,* 364 Phil. 541, 546 (1999) [Per *J*. Pardo, First Division].

[10] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J*. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per

appellate courts will not be reviewed nor disturbed on appeal to this court.[11]

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[12]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[13]

These exceptions similarly apply in petitions for review filed before this court involving civil,[14] labor,[15] tax,[16] or criminal cases.[17]

J. Bellosillo, First Division]; and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988) [Per *J.* Paras, Second Division].

[11] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

[12] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[13] *Id.* at 232.

[14] *Dichoso, Jr. v. Marcos,* 663 Phil. 48 (2011) [Per *J.* Nachura, Second Division] and *Spouses Caoili v. Court of Appeals,* 373 Phil. 122, 132 (1999) [Per *J.* Gonzaga-Reyes, Third Division].

[15] *Go v. Court of Appeals*, 474 Phil. 404, 411 (2004) [Per *J.* Ynares-Santiago, First Division] and *Arriola v. Pilipino Star Ngayon*, *Inc.*, *et al.,* 741 Phil. 171 (2014) [Per *J.* Leonen, Third Division].

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.[18] This review includes assessment of the "probative value of the evidence presented."[19]

There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[20] In this case, petitioner asks this Court to review the evidence presented by the prosecution. Clearly, this is not the role of this Court.

Nevertheless, granting that this Court shall review the factual incidents of this case, the petition must still fail.

Section 5 (a) of R.A. No. 9208, reads as follows:

> Section 5. *Acts that Promote Trafficking in Persons*. – The following acts, which promote or facilitate trafficking in persons, shall be unlawful:
>
> (a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons.
>
> x x x x x x x x x

Under the above provisions of the law, in order for one to be convicted of the offense of promoting trafficking in persons, the accused must (a) knowingly lease or sublease, or allow to

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[16] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil), Inc.,* 364 Phil. 541, 546-547 (1999) [Per *J*. Pardo, First Division].

[17] *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per *J*. Leonen, Second Division]; *Benito v. People*, 753 Phil. 616 (2015) [Per *J*. Leonen, Second Division].

[18] *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) [Per *J*. Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* 665 Phil. 784, 788 (2011) [Per *J*. Carpio-Morales, Third Division].

[19] *Republic v. Ortigas and Company Limited Partnership*, *supra* note 18, at 288.

[20] *Pascual v. Burgos, et al*., 776 Phil. 167, 183 (2016).

be used any house, building or establishment, and (b) such use of the house, building or establishment is for the purpose of promoting trafficking in persons. Trafficking in persons is defined under Section 3(a) of R.A. No. 9208, thus:

> (a) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving, or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.
>
> The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph.

Petitioner insists that there is no direct evidence that he knowingly allowed the use of the [redacted] Lodge as a place for the trafficking of persons. He further maintains that he has no participation in the negotiation for the sexual services of, among others, AAA and that he did not hear the conversation among the police officers,Buhisan, and Tawi on April 28, 2009. He also contends that there was, in fact, no human trafficking because AAA was not recruited to be a prostitute. As such, according to petitioner, he is not guilty of promoting trafficking in persons. However, this Court finds otherwise.

The RTC, as affirmed by the CA, still convicted petitioner of the crime charged against him based on circumstantial evidence and the credibility of the testimonies of the witnesses presented by the prosecution.

Direct evidence and circumstantial evidence are classifications of evidence with legal consequences.[21]

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[21] *Marlon Bacerra v. People*, G.R. No. 204574, July 3, 2017.

The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense.[22] Their difference does not relate to the probative value of the evidence.[23]

Direct evidence proves a challenged fact without drawing any inference.[24] Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the fact-finder must draw an inference or reason from circumstantial evidence."[25]

The probative value of direct evidence is generally neither greater than nor superior to circumstantial evidence.[26] The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred."[27] The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt.[28]

A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator.[29] There is no requirement in our jurisdiction that only direct evidence may convict.[30] After all, evidence is

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[22] *Id.*

[23] *Id.*

[24] *People v. Ramos*, 310 Phil. 186, 195 (1995) [Per *J.* Puno, Second Division].

[25] *People v. Villaflores*, 685 Phil. 595, 614 (2012) [Per *J.* Bersamin, First Division].

[26] *People v. Fronda*, 384 Phil. 732, 744 (2000) [Per *C.J.* Davide, Jr., First Division].

[27] *Id.*

[28] *Id.*

[29] See *People v. Villaflores*, *supra* note 25, at 613-618; *People v. Whisenhunt*, 420 Phil. 677, 696-699 (2001) [Per *J.* Ynares-Santiago, First Division].

[30] See *People v. Villaflores*, *supra* note 25, at 614; *People v. Whisenhunt*, *supra* note 29, at 696.

always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence:

> Section 4. *Circumstantial evidence, when sufficient*.— Circumstantial evidence is sufficient for conviction if:
>
> (a)There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[31]

The commission of a crime, the identity of the perpetrator,[32] and the finding of guilt may all be established by circumstantial evidence.[33] The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime.[34]

The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one.[35] The proven circumstances must be "consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[36]

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[31] RULES OF COURT, Rule 133, Sec. 4.

[32] *Cirera v. People*, 739 Phil. 25, 41 (2014) [Per *J.* Leonen, Third Division].

[33] *People v. Villaflores*, *supra* note 25, at 615-617.

[34] *People v. Whisenhunt*, *supra* note 29, at 696.

[35] See *People v. Ludday*, 61 Phil. 216, 221 (1935) [Per *J.* Vickers, *En Banc*].

[36] *Id*. at 221-222.

The CA, therefore, did not err in finding that based on circumstantial evidence, petitioner is guilty beyond reasonable doubt of the offense charged against him, thus:

Guided by the foregoing decisional and reglementary yardsticks, and based on the evidence presented, We find that, through circumstantial evidence, the prosecution has sufficiently established that the [redacted] Lodge, with the full knowledge and permission of accused-appellant Planteras, was used for promoting trafficking in persons. The material circumstances that led the Trial Court to the same conclusion are as follows:

> Admittedly, Antonio Jr. owns and manages the [redacted] Lodge which is engaged in the business of renting out rooms to lodgers/transients. It was issued a Mayor's Business Permit and a Sanitary Permit. The evidence has established that the pimps and prostitutes who hang around at the premises or sidewalk outside [redacted] Lodge bring and engage their customers in sexual intercourse at the said lodge. The customer pays Php50.00 per hour. The payment is received by Antonio Jr. who stays at the counter or, at times, by his wife Christina. This goes on night after night, various prostitutes, different customers. Antonio Jr. cannot feign ignorance because he is always there. He sees it when the negotiation or transaction takes place between the pimp, the prostitute and the customer. Definitely, he knew that the lodge was being used for prostitution or trafficking in persons and he allowed it. Yet, the most damning evidence against Antonio Jr. was the testimony of AAA that at one time he requested her to accommodate a customer for sex.
>
> x x x x x x x x x
>
> In the case at bar, the negotiation between Marlyn, Marichu and the girls, on the one hand, and the poseur-customers (police), on the other, for the use of the girls for sexual intercourse happened in the [redacted] Lodge, right in the presence of Antonio Jr. Thus, he knew it. If he did not approve of it or that it be done at the lodge, he could have easily told them to go somewhere else. That he did nothing about it only means that he acquiesced and consented to it as he has been wont to do.

Of the foregoing circumstances, We agree with the Trial Court that the most telling is accused-appellant Planteras' own act of pimping

in a not so distant past AAA herself. This occasion was vividly narrated by AAA on the stand. This circumstance further leads to the logical inference that accused-appellant Planteras knows AAA and her trade. With accused-appellant Planteras being only 1.5 m. from where the indecent proposal was taking place among PO3 Dumaguit and PO1 Llanes, on one hand, and accused-appellants Buhisan and Tawi, on the other, the presence of AAA herself, accused-appellant Planteras' feigned ignorance of the real nature of the transaction taxes credulity too much.

The totality of these circumstances constitutes an unbroken chain leading to the inescapable conclusion that accused-appellant Planteras, through his acts and omissions, knew that the transaction happening within his hearing distance is for prostitution, and he knowingly permitted the use of his establishment therefor.

We, therefore, find, as did the Trial Court, that the prosecution has, through testimonial, documentary, and object evidence, overwhelmingly proved the elements of *Promoting Trafficking in Persons* with moral certainty against accused-appellant Plateras.[37]

It is indisputable that petitioner owns and manages the [redacted]. Evidence was also presented to establish that the pimps, customers and prostitutes who hang out near the said place utilize the same place for their illegal activities. Petitioner's knowledge about the activities that are happening inside his establishment was also properly established by the prosecution, most notably, through the testimony of AAA, thus:

ATTY. INOCENCIO, JR. (to witness)

Q: You also testified earlier, AAA, that there was one occasion where Antonio Planteras also provided you or gave you a customer, can you still recall that incident?

AAA: (witness)

A: I cannot recall the date, but I can remember that it happened.

Q: And so can you tell us where were you at that time when you said that Antonio Planteras gave you a customer?

A: I had just came out from (sic) the room.

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[37] *Rollo*, pp. 48-50. (Citations omitted)

Q: Why did you came (sic) out of the room?
A: I had just finished having sexual intercourse.

Q: And how did you come to meet your customer at that time?
A: It was him who approached me.

Q: And so what happened next after you came out of the room at that time?
A: When I came out of the room, Antonio Planteras called me and he requested me to have sexual intercourse with the customer, because in the past the woman of that customer always leave him.

Q: And who said that to you again, AAA?
A: Antonio Planteras.

COURT: (to witness)

Q: Did you agree to this request?
A: Yes, your Honor.

Q: In effect, did you have sexual intercourse with that customer who was offered to you by Antonio Planteras?
A: Yes, you Honor.[38]

It must be remembered that, "[n]o general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[39] In this case, the totality of the circumstantial evidence presented by the prosecution prove beyond reasonable ground that petitioner allowed the use of his establishment in the promotion of trafficking in persons.

Also, it has been maintained in a catena of cases that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its

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[38] TSN (Chavez), March 25, 2010, pp. 36-38.

[39] *People v. Ludday*, *supra* note 35, at 221-222.

conclusions anchored on said findings, are accorded high respect, if not conclusive effect.[40] The assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.[41] The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these,[42] unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case.[43] In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[44]

As to the claim of petitioner that AAA freely engaged in prostitution, thus, no trafficking in person was committed, such is unmeritorious. Knowledge or consent of the minor is not a defense under Republic Act No. 9208.[45] The victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking.[46] Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.[47]

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[40] *People v. Resurrecion Juanillo Manzano, Jr., et al*., G.R. No. 217974, March 5, 2018, citing *People v. Dayaday*, G.R. No. 213224, January 16, 2017, 814 SCRA 414, 422.

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

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

[43] *People v. Macaspac*, *supra* note 41.

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

[45] *People v. Casio*, 749 Phil. 458, 475 (2014).

[46] *Id*., citing United Nations Office on Drugs and Crime, "Human Trafficking FAQs" (visited November 26, 2014).

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

This Court further finds it proper to award ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages to the victim, AAA. These amounts are in accordance with the ruling in *People v.Casio,*[48] where this Court held that:

> The payment of ₱500,000 as moral damages and ₱100,000 as exemplary damages for the crime of Trafficking in Persons as a Prostitute finds basis in Article 2219 of the Civil Code, which states:
>
> Art. 2219. Moral damages may be recovered in the following and analogous cases:
>
> (1) A criminal offense resulting in physical injuries;
>
> (2) Quasi-delicts causing physical injuries;
>
> (3) Seduction, abduction, rape, or other lascivious acts;
>
> (4) Adultery or concubinage;
>
> (5) Illegal or arbitrary detention or arrest;
>
> (6) Illegal search;
>
> (7) Libel, slander or any other form of defamation;
>
> (8) Malicious prosecution;
>
> (9) Acts mentioned in Article 309; and
>
> (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.
>
> x x x x x x x x x.
>
> The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. x x x.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 18, 2018, of petitioner Antonio Planteras, Jr. is **DENIED** for lack of merit. Consequently, the Decision dated April 24, 2017 and the Resolution March 21, 2018 of the Court of Appeals in CA-G.R. CR HC No. 02077 are **AFFIRMED** with the **MODIFICATION** that petitioner is **ORDERED** to **PAY** AAA

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[48] *Id.* at 482, citing *People v. Lalli*, *et al.*, 675 Phil. 126, 158-159 (2011)[Per *J.* Carpio, Second Division].

the amounts of ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages.

SO ORDERED.

Leonen, Reyes, A. Jr.,[*] and *Reyes, J. Jr., JJ.,* concur.

Gesmundo, J., on official business.

FIRST DIVISION

[A.M. No. MTJ-18-1917. October 8, 2018]
(Formerly OCA IPI No. 15-2812-MTJ)

EDGAR A. ABIOG, Court Stenographer I, Municipal Circuit Trial Court, Brooke's Point-Española, Bataraza, Palawan, *complainant, vs.* **HON. EVELYN C. CAÑETE, Presiding Judge, Municipal Circuit Trial Court, Brooke's Point-Española, Bataraza, Palawan,** *respondent.*

SYLLABUS

LEGAL ETHICS; JUDGES; VIOLATION OF THE SUPREME COURT'S DIRECTIVE ENJOINING THE STRICT USE OF THE HALLS OF JUSTICE FOR OFFICIAL FUNCTIONS ONLY IS CONSIDERED A LESS SERIOUS CHARGE; PENALTY IN CASE AT BAR.— [R]espondent judge occupied a portion of the Halls of Justice at Brooke's Point as her residential quarters. In a number of cases, this Court has consistently reminded government officials that the Halls of Justice must strictly be used for official functions only, in accordance with Administrative Circular No. 3-92 x x x [and]

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[*] Designated Acting Member per Special Order No. 2588 dated August 28, 2018.

Section 3 of A.M. No. 01-9-09-SC x x x. [T]he justifications proffered by respondent judge fail to persuade. For one, it is irrelevant whether or not the living quarters she occupied was an extension of her chambers; the fact remains that the same was inside and part of the Halls of Justice. In any event, the Court held in *Bautista v. Costelo, Jr.* that "[t]he prohibition against the use of Halls of Justice for purposes other than that for which they have been built extends to their immediate vicinity including their grounds." Also, her denial of having solicited from the local government the provision of a living quarters does not deserve credence. x x x [T]he local executive agreed to provide free quarters to respondent judge at the local government's expense. Propriety demands that respondent judge should have refused the offer; she ought to have exhibited enough good sense to decline it especially since the provision of a residential quarters is not among her privileges as a judge. Neither should respondent judge expect the local government to "compensate" her for services rendered, particularly as regards the speedy disposition of complaints, since this is the very essence of, and expected from, her office. x x x [R]espondent judge's use of the courthouse as dwelling "brings the court into public contempt and disrepute" "in addition to exposing judicial records to danger of loss or damage." x x x Respondent judge must know that there is always a price to pay for tainted offerings, however innocuous or harmless they may appear. And the price is almost always loss of integrity or at the very least, compromised independence. Needless to say, that is a stiff price to pay, especially by a member of the judiciary, whose basic, irreducible qualification, is unimpeachable integrity. x x x [S]he ought to have lived up to the standards of judicial excellence by strictly adhering to laws and rules, directives, and circulars of the Court. Under A.M. No. 01-8-10-SC, violation of Supreme Court rules, directives, and circulars is considered a less serious charge punishable by (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. Considering the prevailing circumstances, a fine in the amount of ₱11,000.00 is appropriate.

D E C I S I O N

DEL CASTILLO, *J.*:

This is a complaint filed by Edgar A. Abiog (complainant), Court Stenographer I of the Municipal Circuit Trial Court (MCTC), Brooke's Point-Española, Bataraza, Palawan against Judge Evelyn C. Cañete (respondent judge) of the same court.

In his Complaint,[1] complainant charged respondent judge with serious misconduct, dishonesty, conduct unbecoming of a judge, and conduct prejudicial to the best interest of service committed, as follows:

> That [in] August 2011 and subsequent thereafter up to this day, Presiding Judge Evelyn C. Cañete x x x moved by personal gain, without justifiable reason, in a scandalous manner, and in an act debasing the dignity of the exalted position of a Municipal Circuit Trial Court Presiding Judge, did then and there stayed and resided at her chamber[s] and the extension of her chamber[s] which was constructed under her direct supervision x x x utilizing the same as her living and residential quarter[s], and from time to time her families' and her visitors' living and residential quarter[s] with the Municipal Government paying their electric bills and water bills thereby inviting public criticism and criticism among the employees of the Judiciary.[2]

In her Comment,[3] respondent judge denied the charges against her. She averred that there was no such extension to her chambers; that the living quarters referred to by complainant was actually occupied at one time by the public prosecutor, public attorney, and the clerk of court; that when the premises were vacated, the municipal government had it repaired "as a way of thanking [her] for the contribution that [she] made in the community;"[4] that she gave up the apartment she was renting upon her designation as Assisting Judge in Puerto Princesa City in September 2012 and transferred to the "living quarters assigned

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[1] *Rollo*, p. 2.

[2] *Id*.

[3] *Id*. at 24-27.

[4] *Id*. at 25.

to [her] by the Municipal Government";[5] that since she normally rendered overtime work, it was "very convenient and safe for [her] to stay at the quarters";[6] that prior to the filing of this complaint, she again rented an apartment but "still utilize[d] [her] quarters in the many instances that [she had] to work overtime;"[7] and, that she would not have been nominated as Outstanding MCTC Judge if there was any truth in the allegations of complainant.

In a Report[8] dated September 8, 2016, the Office of the Court Administrator (OCA) found substantial evidence to hold respondent judge guilty of improper conduct prejudicial to the efficient administration of justice and best interest of the service, viz.:

> Respondent Judge herself has admitted that she accepted the offer of the municipal government x x x of the free use of the newly-repaired living quarters as dwelling house, which premises is adjacent to the trial court's chambers. x x x
>
> Respondent Judge committed an act of impropriety when she accepted the local government's offer of free use of its facilities ostensibly in recognition of her excellent service to the community.
>
> x x x x x x x x x
>
> Respondent Judge's justification that she was compelled to give up her apartment of more than four (4) years in exchange for the controversial living quarters due to her additional court assignment as an assisting judge, stationed at the MTC, Puerto Princesa City, Palawan, is not persuasive. The same with her claim that the distance from Brooke's Point, Palawan to Puerto Princesa City, Palawan would entail a four (4)-hour travel.
>
> Indeed, respondent Judge's explanations deserve scant consideration because her action cannot, by any stretch of the imagination, be considered right and proper. Quite frankly, respondent Judge exploited her title in office to enjoy privileges accorded to her by the local government of Brooke's Point, Palawan.

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[5] *Id*.

[6] *Id*.

[7] *Id*. at 26.

[8] *Id*. at 92-98.

As an administrator of justice, respondent Judge should have avoided any form of accommodation or privileges to her office so as to steer away from being involved in situations that would tend to taint the integrity and independence of the judicial system.

In *Mah-Arevalo v. Judge Mantua*, A.M. No. RTJ-13-2360 (Formerly A.M. OCA IPI No. 08-3010-RTJ), 19 November 2014, the Court declared:

x x x x x x x x x

SC Administrative Circular No. 3-92 explicitly states that the Halls of Justice may only be used for functions related to the administration of justice and for no other purpose.

x x x x x x x x x

Given the foregoing, it is evident that there is substantial evidence to establish the culpability of respondent Judge in the instant case. Moreover, respondent Judge's insistence that the living quarters she is occupying do not form part of the court's chambers cannot serve as a valid defense and will not exculpate her from administrative liability. The truth remains that she has desecrated the essence of the Halls of Justice that the same should solely be devoted for the dispensation of justice.[9]

The OCA thus recommended that respondent judge be found guilty of violation of Administrative Circular No. 3-92 in relation to A.M. No. 01-9-09-SC and fined the amount of ₱11,000.00 with warning that a repetition of the same or similar infraction shall be dealt with more severely.[10]

Our Ruling

We agree with the findings and recommendation of the OCA.

It is beyond cavil that respondent judge occupied a portion of the Halls of Justice at Brooke's Point as her residential quarters.

In a number of cases,[11] this Court has consistently reminded government officials that the Halls of Justice must strictly be

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[9] *Id*. at 95-97.

[10] *Id*. at 98.

[11] *Plaza v. Atty. Amamio*, 630 Phil. 181 (2010); *Paas v. Almarvez*, 448 Phil. 670 (2003); *Atty. Santos v. Judge Bernardo*, 581 Phil. 286 (2008).

used for official functions only, in accordance with Administrative Circular No. 3-92, which partly states:

ADMINISTRATIVE CIRCULAR NO. 3-92 August 31, 1992

TO: ALL JUDGES AND COURT PERSONNEL

SUBJECT: PROHIBITION AGAINST USE OF HALLS OF JUSTICE FOR RESIDENTIAL AND COMMERCIAL PURPOSES

All judges and court personnel are hereby reminded that the Halls of Justice may be used only for purposes directly related to the functioning and operation of the courts of justice, and may not be devoted to any other use, least of all as residential quarters of the judges or court personnel, or for carrying on therein any trade or profession.

x x x x x x x x x

FOR STRICT COMPLIANCE.

Section 3 of A.M. No. 01-9-09-SC reiterates the said prohibition, thus:

SEC. 3. Use of [Halls of Justice] HOJ.

SEC. 3.1. The HOJ shall be for the exclusive use of Judges, Prosecutors, Public Attorneys, Probation and Parole Officers and, in the proper cases, the Registries of Deeds, including their support personnel.

SEC. 3.2. The HOJ shall be used only for court and office purposes and shall not be used for residential, i.e., dwelling or sleeping, or commercial purposes.

SEC. 3.3. Cooking, except for boiling water for coffee or similar beverage, shall not be allowed in the HOJ.

Moreover, the justifications proffered by respondent judge fail to persuade. For one, it is irrelevant whether or not the living quarters she occupied was an extension of her chambers; the fact remains that the same was inside and part of the Halls of Justice. In any event, the Court held in *Bautista v. Castelo, Jr.*[12] that "[t]he prohibition against the use of Halls of Justice

[12] 324 Phil. 375, 385-386 (1996).

for purposes other than that for which they have been built extends to their immediate vicinity including their grounds."

Also, her denial of having solicited from the local government the provision of a living quarters does not deserve credence. According to Atty. Mary Jean D. Feliciano, Municipal Mayor of Brooke's Point, Palawan, in her July 23, 2015 letter[13] addressed to complainant:

"a **verbal agreement** was made between the Local Chief Executive and the Presiding Judge, Hon. Evelyn C. Cañete, that **instead of granting the latter an additional Representation Allowance and Transportation Allowance (RATA)**, the local government gave her the privilege to use the extension of the said office, which was constructed by the municipal government, as her living quarter[s].

Such arrangement was made as the municipal government's way of **compensating the services of the Presiding Judge** whose presence paved the way for a speedy decision on complaints filed not only by the residents of Brooke's Point but of the neighboring municipalities which redound to the convenience and comfort of the transacting public.

Further, said arrangement was in consideration of the safety and security of the Presiding Judge and the risk posed by travelling to and fro her office. Living in the premises where offices of other national agencies are located x x x provides more security.[14] (Emphasis supplied)

Respondent judge ought to have known that the local government was not obligated to pay her additional allowance or RATA.[15] She was already properly compensated for her services by the Court. Besides, it appears that the local government could not afford to grant her the usual RATA; in lieu thereof, the local executive agreed to provide free quarters to respondent judge at the local government's expense. Propriety demands that respondent judge should have refused the offer; she ought to have exhibited

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[13] *Rollo*, p. 38.

[14] *Id*. at 38.

[15] Representation and Transportation Allowance.

enough good sense to decline it especially since the provision of a residential quarters is not among her privileges as a judge. Neither should respondent judge expect the local government to "compensate" her for services rendered, particular as regards the speedy disposition of complaints, since this is the very essence of, and expected from, her office. Moreover, the claim that living within the premises of the Halls of Justice provides more convenience, safety and security to respondent judge fails to sway. On the contrary, respondent judge's use of the courthouse as dwelling "brings the court into public contempt and disrepute"[16] "in addition to exposing judicial records to danger of loss or damage."[17] Besides, if we give weight to respondent judge's explanation, then all judges might as well reside within the premises of the Halls of Justice.

Respondent judge must know that there is always a price to pay for tainted offerings, however innocuous or harmless they may appear. And the price is almost always loss of integrity or at the very least, compromised independence. Needless to say, that is a stiff price to pay, especially by a member of the judiciary, whose basic, irreducible qualification, is unimpeachable integrity.

Finally, her being a nominee as Outstanding MCTC Judge will not in any manner erase or justify her infraction. On the contrary, she ought to have lived up to the standards of judicial excellence by strictly adhering to laws and rules, directives, and circulars of the Court. Under A.M. No. 01-8-10-SC, violation of Supreme Court rules, directives, and circulars is considered a less serious charge punishable by (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. Considering the prevailing circumstances, a fine in the amount of ₱11,000.00 is appropriate.

WHEREFORE, this Court finds Judge Evelyn C. Cañete, Municipal Circuit Trial Court-Brooke's Point-Española,

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[16] *Bautista v. Costelo, Jr.*, *supra* note 12 at 386.

[17] *Id.* at 385.

Bataraza, Palawan, **GUILTY** of violating SC Administrative Circular No. 3-92 and is hereby ordered to pay a **FINE** of ₱11,000.00, with a **STERN WARNING** that a repetition of the same or kindred offense shall be dealt with more severely.

Let copies of this Decision be attached to the personnel record of respondent in the Office of Administrative Service, Office of the Court Administrator.

SO ORDERED.

Leonardo-de Castro, C. J., Jardeleza, and *Tijam, JJ.*, concur.

Bersamin, J., on official leave.

FIRST DIVISION

[A.M. No. RTJ-18-2535. October 8, 2018]
(formerly OCA IPI No. 16-4583-RTJ)

CARLOS GAUDENCIO M. MAÑALAC, *complainant, vs.* **HON. PEPITO B. GELLADA, Presiding Judge, Branch 53, Regional Trial Court, Bacolod City, Negros Occidental,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; ISSUING AN ORDER IN VIOLATION OF THE PRINCIPLE OF IMMUTABILITY OF JUDGMENT CONSTITUTES GROSS IGNORANCE OF THE LAW.— In *Mercado v. Judge Salcedo (Ret.)*, this Court found therein respondent judge guilty of gross ignorance of the law when he effectively modified a decision that had attained finality. x x x Of course, there are exceptions to this rule, such as "the correction of clerical errors, or the making of so-called *nunc pro tunc* entries, which cause no prejudice to any party, and [the nullification of a] judgment [that] is void." None of the exceptions

obtain in this case, however. The March 19, 2015 Order terminating the rehabilitation proceedings became final and executory after Judge Gellada denied MADCI's motion for reconsideration to reverse the same. It, thus, became imperative for Judge Gellada to respect his own final and executory decision in keeping with the basic principle of finality or immutability of judgments. "The doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, dictates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law." To do otherwise, as what Judge Gellada did by issuing the May 5, 2016 Order, rendered him administratively liable for gross ignorance of the law.

2. ID.; ID.; ID.; WHEN A JUDGE DISPLAYS AN UTTER LACK OF FAMILIARITY WITH THE RULES, HE ERODES THE PUBLIC'S CONFIDENCE IN THE COMPETENCE OF THE COURTS, AND SUCH IS GROSS IGNORANCE OF THE LAW.— Neither will Judge Gellada's explanation, that the motion to revive the proceedings was wrongfully granted for being based on the outdated 2000 Rules and 2008 Rules, merit an exoneration from administrative liability. Even if this Court were to consider such mistaken interpretation of the amendments to the Rules on Corporate Rehabilitation, his explanation in itself highlighted his gross ignorance of the law in failing to apply the latest law on the matter, *i.e.*, FRIA. Considering that RTC Bacolod City Branch 53 is a commercial court, it all the more makes Judge Gellada's ignorance of the applicable law glaring. "This Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law."

3. ID.; ID.; ID.; VIOLATION OF THE POLICY OF NON-INTERFERENCE OVER THE JUDGMENTS OR PROCESSES OF A CO-EQUAL COURT CONSTITUTES GROSS IGNORANCE OF THE LAW.— Even if this Court were to brush aside the impropriety of Judge Gellada's May 5, 2016 Order, his act of granting MADCI's *ex-parte* motion for execution infringes on the time-honored principle that "the notice requirement in a motion is mandatory" because a "notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand

> that [a party's] right be not affected without an opportunity to be heard." What is striking was Judge Gellada's act of granting MADCI's *ex-parte* motion despite being aware of PI ONE's previous writ of possession over the assailed property before RTC Kabankalan City Branch 61; and of his nullifying the foreclosure and subsequent proceedings despite the pendency of a complaint for nullification of foreclosure proceedings before the RTC Bacolod City Branch 54. Not only was this a wanton disregard of PI ONE's right to due process but it also interfered with the orders and processes of a co-equal court. Although involving the issuance of a temporary restraining order, our pronouncement in *Atty. Cabili v. Judge Balindong* explains the importance of maintaining a policy of non-interference over the judgements or orders of a co-equal court x x x.

D E C I S I O N

DEL CASTILLO, *J.*:

Complainant Carlos Gaudencio M. Mañalac, for and on behalf of Philippine Investment One (SPV-AMC), Inc. (PI One),filed this complaint[1] against respondent Judge Pepito B. Gellada (Judge Gellada), former Presiding Judge of Branch 53, Regional Trial Court of Bacolod City (RTC Bacolod City Branch 53), Negros Occidental for "(a) gross ignorance of the law and interference with the proceedings of a co-equal and coordinate court in issuing the nullification of the foreclosure[of] and the subsequent proceeding[s] taken thereafter; (b) gross ignorance of the law and grave abuse of discretion in granting relief which has not specifically been sought in the pleadings by the parties; and (c) gross ignorance of the law when he acted upon the Ex-Parte Motion for Issuance of Writ of Execution filed by [Medical Associates Diagnostic Center Inc.] MADCI on 13 May 2016 and issued an Order on that very day granting the issuance of the corresponding writ of execution without the required hearing and without prior notice to PI One."[2]

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[1] *Rollo*, pp. 1-12.

[2] *Id*. at 11.

PI One is a corporation existing under and by virtue of the laws of the Philippines. In particular, it was organized as a Special Purpose Vehicle by virtue of Republic Act No. 9182 and is thus "empowered to acquire or purchase assets from banking and financial institutions".[3]

Previously, MADCI obtained a loan from the Development Bank of the Philippines (DBP) secured by a mortgage over a property covered by Transfer Certificate of Title (TCT) No. T-200764. MADCI defaulted in its obligations and its loan eventually became past due. Subsequently, DBP transferred to PI One all its rights, title, and interest on the non-performing loan of MADCI.

Meanwhile, MADCI filed an action for corporate rehabilitation which was raffled to RTC Bacolod City Branch 53 presided by Judge Gellada. After due proceedings, theRTC Bacolod City Branch 53 issued on March 19, 2015 an Order[4]terminating the rehabilitation proceedings for failure of MADCI to comply with its obligations under the rehabilitation plan.

With the termination of the rehabilitation proceedings, PI One proceeded to foreclose on the mortgage. When MADCI failed to redeem, the ownership of the property was eventually consolidated to PI One under TCT No. 166-2015000786.[5] PI One thereafter succeeded in obtaining a writ of possession from RTC Kabankalan City Branch 61 and effectively acquired lawful possession of the property covered by the new TCT.

Meanwhile, on June 10, 2015, the RTC Bacolod City Branch 53 issued an Order[6] denying with finality MADCI's motion for reconsideration of the March 19, 2015 Order. On October 7, 2015,[7]

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[3] *Id*. at 2.

[4] *Id*. at 29-31.

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

[6] *Id*. at 119.

[7] *Id*. at 153.

MADCI filed a Complaint[8] for Declaration of Nullity of Foreclosure Proceedings which was docketed as Civil Case No. 15-14609 and raffled to RTC Bacolod City Branch 54.

Complainant alleged that, notwithstanding the termination of the rehabilitation proceedings, MADCI filed a *Motion to Allow Petitioner to Avail of the Provisions of Rule 2 Sec. 73 of the Financial Rehabilitation Rules of Procedure*[9] dated October 5, 2015. MADCI prayed that it "be given a final opportunity to remedy the breach in the rehabilitation plan in lieu of the direct termination of the rehabilitation proceedings."[10]In other words, MADCI prayed that it be allowed to revive or reopen the rehabilitation proceedings.

In an Order[11] dated May 5, 2016, Judge Gellad agranted MADCI's motion and ordered MADCI to comply with the provisions of the rehabilitation plan within 15 days; declared null and void the foreclosure and the proceedings taken after such foreclosure; and ordered PI One to restore MADCI in possession of the subject property. The dispositive portion of the assailed May 5, 2016 Order reads as follows:

> WHEREFORE, premises considered, the Motion to Allow Petitioner to Avail of the Provisions of Rule 2, Section 73 of the Financial Rehabilitation Rules of Procedure is GRANTED. Petitioner is given a period of fifteen (15) days to comply with the provisions of the Rehabilitation Plan and the provisions of Rule 2, Section 73 FRIA Rules of Procedure.
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> x x x x x x x x x
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> Furthermore, the court hereby declares the FORECLOSURE of the property of petitioner MADCI INC. including the hospital, and subsequent proceedings taken thereafter as NULL AND VOID. PI

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[8] *Id*. at 153-159.

[9] *Id*. at 120-124.

[10] *Id*. at 123.

[11] A copy of which is not attached to the complaint-affidavit or the records of the instant administrative case.

ONE is ORDERED to RESTORE IMMEDIATELY petitioner to the possession of the property and the hospital and its facilities. Pending compliance with the ORDERS above-stated, petitioner is hereby RESTORED to its ACTIVE STATUS in the above-entitled case.

SO ORDERED.[12]

MADCI thus filed on May 13, 2016an *Ex-Parte Motion for Execution*[13] to enforce the May 5, 2016 Order. This *ex-parte* motion was granted and a Writ of Execution was issued on even date.[14]

Against this backdrop, PI One charged Judge Gellada with gross ignorance of the law (a) when he issued the May 5, 2016 Order reviving or reopening the rehabilitation proceedings notwithstanding the final and executory nature of the March 19, 2015 Order[15] terminating the rehabilitation proceedings; (b) when he issued the May 5, 2016 Order annulling the foreclosure and subsequent proceedings taken thereafter despite the pendency of a *Complaint for Declaration of Nullity of Foreclosure Proceedings* before RTC Bacolod City Branch 54; and in immediately restoring MADCI in possession of the subject property despite the RTC Kabankalan City Branch 61 having already previously issued a writ of possession in favor of PI ONE, thereby unduly interfering with the judgments and decrees of co-equal courts; moreover, Judge Gellada granted said reliefs despite their not being prayed for in MADCI's pleadings; and, (c) when he issued the May 13, 2016 Order granting MADCI's motion for execution without hearing or notice to PI ONE.

Judge Gellada denied the charges against him. In his Comment,[16] he asserted that the Order lifting the termination of the rehabilitation proceedings was not without support.[17] He

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

[13] *Id*. at 328.

[14] *Id*. at 6.

[15] *Id*. at 29-31.

[16] *Id*. at 340-351.

[17] *Id*. at 349.

claimed that PI ONE's motion to terminate the rehabilitation proceedings was anchored on Section 27, Rule 4 of the old Rules on Corporate Rehabilitation of 2000 (2000 Rules) which rule later became the Interim Rules on Corporate Rehabilitation of 2008 (2008 Rules); that MADCI's motion to revive the proceedings was grounded on the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), Section 75 of which repealed Section 27 of the 2000 Rules and Section 23 of the 2008 Rules. Judge Gellada averred that he granted MADCI's aforesaid motion to avail of provisions of the FRIA because the rehabilitation case had not been properly terminated in accordance with Section 74[18]

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[18] Improperly cited by Respondent as Section 75. Section 74 of the Financial Rehabilitation and Insolvency Act of 2010 states:

SECTION 74. *Termination of Proceedings.* — The rehabilitation proceedings under Chapter II shall, upon motion by any stakeholder or the rehabilitation receiver, be terminated by order of the court either declaring a successful implementation of the Rehabilitation Plan or a failure of rehabilitation.

There is failure of rehabilitation in the following cases:

(a) Dismissal of the petition by the court;

(b) The debtor fails to submit a Rehabilitation Plan;

(c) Under the Rehabilitation Plan submitted by the debtor, there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period;

(d) The Rehabilitation Plan or its amendment is approved by the court but in the implementation thereof, the debtor fails to perform its obligations thereunder, or there is a failure to realize the objectives, targets or goals set forth therein, including the timelines and conditions for the settlement of the obligations due to the creditors and other claimants;

(e) The commission of fraud in securing the approval of the Rehabilitation Plan or its amendment; and

(f) Other analogous circumstances as may be defined by the rules of procedure.

Upon a breach of, or upon a failure of the Rehabilitation Plan, the court, upon motion by an affected party, may:

(1) issue an order directing that the breach be cured within a specified period of time, failing which the proceedings may be converted to a liquidation;

(2) issue an order converting the proceedings to a liquidation;

thereof. According to Judge Gellada, the FRIA provides that, in the event the rehabilitation proceedings fail, the same may be converted into liquidation proceedings[19] which disallows foreclosure for a period of 180 days.[20]Judge Gellada noted that when MADCI did not comply with the provisions of the Rehabilitation Plan, PI ONE immediately moved for the termination of the rehabilitation proceedings instead of asking for its conversion to liquidation proceedings; moreover, it immediately foreclosed on the mortgage and consolidated its ownership over the subject property. According to Judge Gellada, the aforesaid acts of PI ONE did not comply with the express and mandatory terms of FRIA and in violation of due process; consequently, the March 19, 2015 Order terminating the rehabilitation proceedings did not attain finality and "[n]ot having attained finality, Branch 53 as a commercial court, effectively retained jurisdiction of the rehabilitation proceedings."[21]

Judge Gellada maintained that the FRIA allows the issuance of a Stay Order[22] which "suspends all actions or proceedings in court or otherwise,"[23] including the "filing [of] a petition for foreclosure, actually conducting the foreclosure sale, and subsequently the consolidation of the title to the property of the debtor."[24] Thus, PI ONE's foreclosure on the mortgage

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(3) allow the debtor or rehabilitation receiver to submit amendments to the Rehabilitation Plan, the approval of which shall be governed by the same requirements for the approval of a Rehabilitation Plan under this subchapter;

(4) issue any other order to remedy the breach consistent with the present regulation, other applicable law and the best interests of the creditors; or

(5) enforce the applicable provisions of the Rehabilitation Plan through a writ of execution.

[19] *Rollo*, p. 342.

[20] *Id.*

[21] *Id.* at 345.

[22] *Id.* at 345.

[23] *Id.* at 346.

[24] *Id.*

and the consolidation of title over the subject property were all done in violation of FRIA.[25]

In conclusion, Judge Gellada stated that the "present administrative complaint filed against respondent [was] a bitter pill to swallow. It came just more than a week after he [had] officially retired after 23 years of faithful and loyal service to the government, the Supreme Court, and the country, a stint that has not been tainted by any whiff of irregularity."[26]

Report and Recommendation of the Office of the Court Administrator

In a Report[27] dated April 18, 2017, the Office of the Court Administrator (OCA) found respondent judge guilty of gross ignorance of the law, *viz*.:

> This legal reality, known as immutability of judgment, is an elementary principle of law and procedure. The petition for corporate rehabilitation and the Termination Order dated 19 March 2015 ending the rehabilitation proceedings is in itself a judgment. Once a judgment becomes final, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether it is attempted to be made by the court rendering it or by the Highest Court of the land. The only recognized exceptions are the correction of clerical errors, or the making of the so-called *nunc pro tunc* ("now for then") entries which cause no prejudice to any party, and where the judgment is void, *and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.* Judge Gellada's ground for modifying the order is not among these recognized exceptions. In fact, after 2015 (the 10th year), MADCI still failed to comply with the rehabilitation plan. Moreover, respondent Judge did not answer squarely the issue on whether his Order dated 13 May 2016 granting the writ of execution was set for hearing.
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> True it is that jurisprudence is replete with doctrines stating that a *judge is not liable for an erroneous decision in the absence of*

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[25] *Id*.

[26] *Id*. at 350-351.

[27] *Id*. at 426-433.

malice or wrongful conduct in rendering it. For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. But the doctrine of immutability of judgment should be at every judge's fingertips and the procedural requirement of setting for hearing every motion for execution. Hence, by ignoring this basic doctrine, one can be presumed to have acted in bad faith.

x x x x x x x x x

Respondent Judge also violated Rule 3.01, Canon 3 of the Code of Judicial Conduct which mandates professional competence on the part of the judge. A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence, otherwise, he erodes the confidence of the public in the courts. x x x[28]

Taking into account Judge Gellada's compulsory retirement on July 28, 2016, his length of service spanning 23 years, 6 months, and 13 days in the judiciary, and the fact that his two previous offenses merited only an admonition (for failing to take immediate steps to locate a missing record) and a reprimand (for delay in resolving Special Proceeding No. 7245), the OCA recommended that he be meted out a fine of ₱20,000.00.

Our Ruling

We agree with the OCA's finding that respondent judge exhibited gross ignorance of the law and procedure in issuing the Order dated May 5, 2016 as it violated the principle of immutability of judgment and the policy of non-interference over the judgments or processes of a co-equal court.

In *Recto v. Hon. Trocino*,[29] we defined gross ignorance of the law in the following manner:

Gross ignorance of the law is the disregard of the basic rules and settled jurisprudence. A judge owes it to his office to simply apply

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[28] *Id.* at 431-432.

[29] A.M. No. RTJ-17-2508, November 7, 2017.

the law when the law or a rule is basic and the facts are evident. Not to know it or to act as if one does not know it constitutes gross ignorance of the law. (citations omitted)

In *Mercado v. Judge Salcedo (Ret.)*,[30] this Court found therein respondent judge guilty of gross ignorance of the law when he effectively modified a decision that had attained finality.

> x x x [W]hen a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. x x x[31]

Of course, there are exceptions to this rule, such as "the correction of clerical errors, or the making of so-called *nunc pro tunc*entries, which cause no prejudice to any party, and [the nullification of a] judgment [that] is void."[32] None of the exceptions obtain in this case, however.

The March 19, 2015 Order terminating the rehabilitation proceedings became final and executory after Judge Gellada denied MADCI's motion for reconsideration to reverse the same. It, thus, became imperative for Judge Gellada to respect his own final and executory decision in keeping with the basic principle of finality or immutability of judgments. "The doctrine of finality of judgment, which is grounded on fundamental considerations of public policy and sound practice, dictates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law."[33] To do otherwise, as what Judge Gellada did by issuing the

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[30] 619 Phil. 3, 31 (2009).

[31] *Equitable Banking Corporation (EQUITABLE-PCI BANK) v. Sadac,* 523 Phil. 781, 823-824 (2006).

[32] *Id*. at 824.

[33] *Engr. Tupaz v. Hon. Apurillo*, 487 Phil. 271, 279 (2004), citing *Mercury Drug Corporation v. Court of Appeals*, 390 Phil. 902, 914 (2000).

May 5, 2016 Order, rendered him administratively liable for gross ignorance of the law.

Neither will Judge Gellada's explanation, that the motion to revive the proceedings was wrongfully granted for being based on the outdated 2000 Rules and 2008 Rules, merit an exoneration from administrative liability. Even if this Court were to consider such mistaken interpretation of the amendments to the Rules on Corporate Rehabilitation, his explanation in itself highlighted his gross ignorance of the law in failing to apply the latest law on the matter, *i.e.,* FRIA. Considering that RTC Bacolod City Branch 53 is a commercial court, it all the more makes Judge Gellada's ignorance of the applicable law glaring. "This Court has ruled that when a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law."[34]

Even if this Court were to brush aside the impropriety of Judge Gellada's May 5, 2016 Order, his act of granting MADCI's *ex-parte* motion for execution infringes on the time-honored principle that "the notice requirement in a motion is mandatory"[35] because a "notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that [a party's] right be not affected without an opportunity to be heard."[36] What is striking was Judge Gellada's act of granting MADCI's *ex-parte* motion despite being aware of PI ONE's previous writ of possession over the assailed property before RTC Kabankalan City Branch 61; and of his nullifying the foreclosure and subsequent proceedings despite the pendency of a complaint for nullification of foreclosure proceedings before the RTC Bacolod City Branch 54. Not only was this a wanton disregard of PI ONE's right to due process but it also interfered with the orders and processes of a co-equal court.

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[34] *Barredo-Fuentes v. Judge Albarracin*, 496 Phil. 31, 38 (2005), citing *Guillen v. Cañon,* 424 Phil. 81, 88-89 (2002).

[35] *Sarmiento v. Zaratan*, 543 Phil. 232, 243 (2007).

[36] *Id.*

Although involving the issuance of a temporary restraining order, our pronouncement in *Atty. Cabili v. Judge Balindong*[37] explains the importance of maintaining a policy of non-interference over the judgements or orders of a co-equal court, to wit:

> The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders **of another court of concurrent jurisdiction** having the power to grant the relief sought by the injunction. The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, **to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment**.
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> Thus, we have repeatedly held that a case where an execution order has been issued is considered as **still pending**, so that all the proceedings on the execution are still proceedings in the suit. A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes. To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of incidents arising in execution proceedings. Splitting of jurisdiction is obnoxious to the orderly administration of justice.
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> Jurisprudence shows that a violation of this rule warrants the imposition of administrative sanctions.[38] (Emphasis in the original. Underscoring supplied. Citations omitted.)

Judge Gellada's administrative liability becomes more palpable as MADCI's *Motion to Allow Petitioner to Avail of the Provisions of Rule 2, Sec. 73 of the Financial Rehabilitation Rules of Procedure* did not even pray for the nullification of the foreclosure proceedings or restoration of possession of the subject property.

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[37] 672 Phil. 398 (2011).

[38] *Id*. at 406-407.

The confluence of these infractions showed Judge Gellada's gross ignorance of the law, "which is classified as a serious charge, [and] punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from service."[39] Given the fact that Judge Gellada compulsorily retired on July 28, 2016, and in the absence of a finding of bad faith, dishonesty, or some other ill motive, a fine of ₱21,000.00 would be appropriate under the circumstances.

WHEREFORE, Judge Pepito B. Gellada, former Presiding Judge of Branch 53, Regional Trial Court, Bacolod City, Negros Occidental, is found **GUILTY** of gross ignorance of the law and procedure and is **FINED** the amount of ₱21,000.00, to be deducted from his retirement benefits.

SO ORDERED.

Leonardo-de Castro, C.J., Perlas-Bernabe, and *Tijam, JJ.,* concur.

Bersamin, J., on leave.

FIRST DIVISION

[G.R. No. 198237. October 8, 2018]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **LAND INVESTORS AND DEVELOPERS CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; AS A

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[39] *Department of Justice v. Judge Mislang*, 791 Phil. 219, 231 (2016).

RULE, ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS, NOT ESTABLISHED IN CASE AT BAR.— Time and again, the Court has stressed that only questions of law should be raised in petitions for review under Rule 45 of the Rules of Court. The Court does not entertain questions of fact given that factual findings of the appellate court are final, binding, or conclusive on the parties and on this Court. The assessment of the probative value of the evidence presented and of whether the lower courts' appreciation of the evidence is correct are questions of fact which the Court does not address in a Rule 45 petition. While it is true that there are certain recognized exceptions to the rule that factual findings of the [CA] are binding on the Court, such as when its findings are contrary to that of the trial court, as in this case, this alone does not automatically warrant a review of the appellate court's factual findings. x x x "[O]nly a showing, on the face of the record, of gross or extraordinary misperception or manifest bias in the Appellate Court's reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province." The instant petition demonstrates no such exceptional circumstance.

2. ID.; EVIDENCE; ADMISSIBILITY; A PRIVATE DOCUMENT REQUIRES AUTHENTICATION IN THE MANNER ALLOWED BY LAW OR THE RULES OF COURT BEFORE IT MAY BE RECEIVED IN EVIDENCE; WHEN AUTHENTICATION IS NOT REQUIRED; CASE AT BAR.— A private document requires authentication in the manner allowed by law or the Rules of Court before it may be received in evidence. However, authentication of a private document is not required when: (a) the document is an ancient one under Section 21, Rule 132 of the Rules of Court; (b) the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) the genuineness and authenticity of the document have been admitted; or (d) the document is not being offered as genuine. To begin with, the Court notes that the trial court had admitted all of respondent's exhibits to which BPI raised no further objections. The admissibility of respondent's pieces of evidence should no longer be further litigated. It also appears that BPI admitted and stipulated on the genuineness and due execution of the questioned checks and withdrawal slips during the preliminary conference and further admitted that these checks

and withdrawal slips were obtained from the microfilm copies of BPI. It was further alleged and admitted that these very same checks and withdrawal slips were honored by BPI. Thus, the foregoing judicial admissions dispense with the ordinarily required proof that the checks and withdrawal slips were authentic.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; BREACH OF CONTRACT; ESTABLISHED IN THE PERFORMANCE OF OBLIGATION, ONE IS GUILTY OF NEGLIGENCE, FOR WHICH LIABILITY FOR DAMAGES SETS IN; CASE AT BAR.— Dela Peña cannot be held solidarily liable with BPI as held by the CA. To emphasize, BPI's liability proceeds from a breach of contract. Under Article 1980 of the Civil Code, "fixed, savings, and current deposits of money in banks x x x shall be governed by the provisions concerning simple loan[s]." By the contract of loan or *mutuum*, one party delivers money to another upon the condition that the same amount shall be paid. To recall, respondent was defrauded by several withdrawals from its deposit accounts being allowed by BPI solely on the basis of Dela Peña's signature despite specific instructions that withdrawals be done only upon the signatures of any two of respondent's authorized signatories, and additional withdrawals being allowed on the basis of the forged signatures of respondent's other authorized signatory. It is basic that those who, in the performance of their obligations, are guilty of negligence, and those who in any manner contravene the tenor thereof, are liable for damages. When BPI allowed Dela Peña to make unauthorized withdrawals, it failed to comply with its obligation to secure said accounts by allowing only those withdrawals authorized by respondent. In so doing, BPI violated the terms of its contract of loan with respondent and should be held liable in this regard.

4. ID.; ID.; JOINT AND SOLIDARILY LIABILITY; NOT ESTABLISHED WHEN THE CIVIL LIABILITY OF ONE IS TOTALLY DISTINCT AND SEPARATE FROM THE SOURCE OF ANOTHER'S LIABILITY; CASE AT BAR.— Dela Peña's liability arises from the commission of the crime of estafa. Dela Peña had in fact been charged and convicted of estafa. Thus, respondent's action to recover actual damages against Dela Peña was deemed instituted with the criminal action, unless waived, reserved or previously instituted. There is no

indication that such reservation had been done by respondent. As such, to hold Dela Peña solidarily liable for damages in this case may result in double recovery which is proscribed. In any case, it is clear that the civil liability upon which Dela Peña was being held liable by the CA is totally distinct and separate from the source of BPI's liability. Thus, BPI and Dela Peña's respective liabilities cannot be deemed joint and solidary.

5. ID.; ID.; INTERESTS; MODIFICATION OF THE COMPUTATION OF THE RATE OF INTEREST, PROPER IN CASE AT BAR.— The computation of the rate of interest likewise needs modification. In *Nacar v. Gallery Frames, et al*., the Court modified the guidelines regarding the manner of computing legal interest. x x x *Nacar* also instructs that the new rate is to be applied prospectively, or from July 1, 2013. Applying the foregoing guidelines to the instant case, the amount of ₱3,652,095.01 shall earn interest at the rate of 12% *per annum* from September 16, 2002, or the date when judicial demand was made, until June 30, 2013 and 6% *per annum* from July 1, 2013 until satisfaction thereof.

APPEARANCES OF COUNSEL

Benedicto Versoza & Burkley for petitioner.
Morales Rojas & Risos-Vidal for respondent.

D E C I S I O N

TIJAM, *J.*:

Through this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, petitioner Bank of the Philippine Islands (BPI) seeks to annul the Decision[2] dated February 28, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93752 which

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[1] *Rollo*, pp. 7-25.

[2] Penned by Associate Justice Mariflor P. Punzalan, concurred in by Associate Justices Josefina Guevarra-Salonga and Franchito N. Diamante; *id*. at 30-48.

reversed and set aside the Resolutions dated April 14, 2009 and June 26, 2009 of the Regional Trial Court (RTC) of Makati City, Branch 61.

In its assailed Decision, the CA found BPI liable to its depositor, respondent Land Investors and Development Corporation for breach of fiduciary duty.

Antecedent Facts

Between the years 1995 and 1999, respondent maintained savings and current accounts with the Pamplona, Las Piñas Branch of Far East Bank & Trust Company (FEBTC). FEBTC later on merged with BPI.[3] In its transactions with the bank, respondent authorized any two of its Ruth Fariñas (Fariñas), Orlando Dela Peña (Dela Peña) and Juanito Collas (Collas) as bank signatories. Dela Peña was respondent's President.[4]

Sometime in 2001, Dela Peña was convicted for *estafa* and was consequently dismissed from employment. It was also around this time that respondent discovered that Dela Peña, acting in alleged conspiracy or taking advantage of the gross negligence of BPI, succeeded in unlawfully withdrawing various amounts from respondent's deposit accounts. Respondent alleged that BPI was negligent and violated its fiduciary duties when it allowed the withdrawals in the total amount of ₱3,652,095.01 on the basis of Dela Peña's lone signature or thru the forged signatures of his co-signatories.[5] Despite demand, BPI failed to heed respondent's claims which prompted the latter to file the complaint *a quo* for sum of money and damages against BPI and Dela Peña.[6]

BPI initially moved to dismiss the complaint on the ground that respondent's claims covering the withdrawals prior to September 30, 1998 have already prescribed. The RTC denied

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[3] *Id*. at 8-9.

[4] *Id*. at 9.

[5] *Id*.

[6] *Id*. at 9 and 55.

the motion to dismiss and reasoned that the period of prescription is reckoned from the discovery of the fraud, or from 2001.[7] This led BPI to file its answer, raising the defenses of lack of cause of action, prescription, and laches.[8] On the other hand, Dela Peña failed to file his answer and was consequently declared in default.[9]

During the preliminary conference, respondent moved for the production of documents to compel BPI to produce the originals of the signature cards and withdrawal slips marked as Exhibits "A", "A-1", "B", "B-1", "G", "G-1" and "H" to "H-28." Instead of producing the originals, BPI admitted said exhibits, except for Exhibits "A" and "B-1", and stipulated that Exhibits "G" to "H-28" were obtained by respondent from the microfilm copies of BPI.[10]

Trial on the merits ensued until respondent filed its formal offer of exhibits, which included the following:

1. Signature cards (Exhibits "A", "A-1", "B" and "B-1") with petitioner that show the names and specimen signatures of the authorized signatories of respondent;

2. Respondent's Board Resolution (Exhibit "C") showing the authority of the signatories in "any two" capacity;

3. Counterchecks taken from the bank's checkbook which allowed Dela Peña to make encashments on the basis of Dela Peña's lone signature (Exhibits "D" to "D-2" and "E") and checks that bear the lone signature of Dela Peña (Exhibit "F" to "F-6");

4. Withdrawal slips bearing Dela Peña's lone signature (Exhibits "G" to "G-1"); withdrawal slips bearing Dela Peña's lone signature and in some cases, together with the forged signature of Fariñas (Exhibits "H" to "H-28"); checks bearing

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[7] *Id*. at 55-56.

[8] *Id*. at 32.

[9] *Id*. at 32-33.

[10] *Id*. at 56-57.

the signatures of Dela Peña with the forged signatures of Fariñas (Exhibits "I" to "I-80"); and

5. Sample signatures of Fariñas (Exhibits "Q" to "Q-17"); NBI Comparison Charts showing the sample and questioned signatures of Fariñas (Exhibits "S" to "S-12" and "T" to "T-17"); and the NBI Report with the conclusion that the questioned and standard/sample signatures of Fariñas were not written by one and the same person (Exhibit "R").[11]

Respondent's exhibits were all admitted by the court *a quo*.[12]

For its part, BPI filed a demurrer to evidence on the ground that respondent has shown no right to relief with respect to: (a) Exhibits H, H-1 up to H-28 representing various withdrawal slips bearing the allegedly forged signature of Fariñas because no evidence whatsoever was adduced to prove the alleged forgery of Fariñas' signatures in these exhibits; (b) Exhibits D, D-1, D-2, F, F-1, F-2, F-3, F-4, F-5, F-6, G and G-1 representing counterchecks, checks, withdrawal slips because these exhibits were not identified by any of respondent's witnesses as required by Section 20, Rule 132 of the Rules of Court; (c) Exhibits I-1 to Exhibits I-12 representing various checks with the alleged forged signature of Fariñas which were examined by NBI Document Examiner because it was not proved that the alleged sample or specimen signatures used for comparison were indeed genuine signatures of Fariñas; (d) Exhibits I to I-80 representing various checks with the allegedly forged signature of Fariñas because no corroborative evidence was adduced to prove the alleged forgeries; (e) claims covering allegedly unauthorized withdrawals prior to September 30, 1998 because these claims are barred by prescription; (f) the entirety of its claims because its loss or damage is attributable to its own fault or negligence.[13]

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[11] *Id*. at 58-59.

[12] *Id*. at 33.

[13] *Id*. at 9-10.

The RTC granted BPI's demurrer to evidence, reasoning thus:

"In a nutshell, the grievance of [respondent] against BPI is that the latter, through the 'deliberate malfeasance' or 'gross negligence' of its 'Pamplona Branch personnel,' conspired with the herein defendant [Dela Peña] in defrauding the former the total sum of Three Million Six Hundred Fifty-Two Thousand Ninety[-]Five Pesos and One Centavo (₱3,652,095.01).

Necessarily, the herein [respondent] should prove by strong and convincing evidence that the defendant [BPI] colluded with Mr. Dela Peña and that BPI failed to exercise the diligence higher than that of a good father of a family in dealing with [respondent's] account with it.

The testimonial and documentary pieces of evidence of the herein [respondent] are so barren when it comes to its allegation of connivance between BPI and Mr. Dela Peña. This Court has perused the record apropos over and over again but it could not find any proof of conspiracy between Mr. Dela Peña and BPI adduced by [respondent]. It would seem that [respondent] may have forgotten about this particular allegation of it against BPI. Hence, on this score alone, the demurrer to evidence extant of BPI has no merit.

Withal, the evidence presented by the [respondent] herein is also very inadequate to establish gross negligence on the part of defendant [BPI].[14]

Resultantly, the RTC disposed:

WHEREFORE, premises duly considered, the instant "Demurrer to Evidence" of the herein defendant [BPI] is hereby **GRANTED**.

Congruently with Section 1, Rule 33 of the Revised Rules of Court, the case extant is hereby **DISMISSED** apropos herein defendant [BPI] on the ground that upon the facts and the law the [respondent] herein has shown no right to relief.

Vis-a-vis herein defendant [Dela Peña], who was declared in default by the Court via its fiat on 30 November 2004, in accordance with Section 3, Rule 10 of the Revised Rules of Court, he is hereby **ORDERED t**o pay the herein [respondent] the following sums, to wit:

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[14] *Id*. at 61.

1. Three Million Six Hundred Fifty-Two Thousand Ninety [-] Five Pesos and One Centavo (₱3,652,095.01), plus legal interest counted from the date of each unauthorized withdrawal until the entire amount is fully paid as and for actual damages;

2. Five Hundred Thousand Pesos (₱500,000.00) as and by way of moral damages;

3. Two Hundred Thousand Pesos ([₱]200,000.00) as and by way of exemplary damages;

4. One Hundred Thousand Pesos (₱100,000.00) as and for attorney's fees; and

5. The costs of suit.

Serve copies of this Resolution to the plaintiff herein and herein defendant bank and to their respective counsel of record, including the defaulted defendant at his given address on record.

SO ORDERED.[15]

Respondent's motion for reconsideration having been denied, it appealed to the CA.

Ruling of the CA

While agreeing with the RTC that respondent failed to demonstrate that indeed Dela Peña conspired with BPI, the CA nevertheless held that the non-existence of conspiracy would not necessarily exculpate BPI from liability if there is evidence to show that the latter violated its fiduciary duty to respondent. In other words, the CA ruled that a negligent bank is liable regardless of any allegation of conspiracy.[16]

In finding BPI to be negligent, the CA factually found that it allowed withdrawals from respondent's accounts with just the signature of Dela Peña, despite respondent's instruction that the signatures of "any two" of its authorized signatories are required to effect payment of funds. The lone signature of Dela Peña for which BPI allowed withdrawals are to be found

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

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

on three counterchecks (Exhibits "D" to "D-2"), seven checks (Exhibits "F" to "F-6") and two withdrawal slips (Exhibits "G" and "G-1"). Disregarding BPI's defense that these exhibits were not properly identified or authenticated as required by Section 20, Rule 132 of the Rules of Court, the CA ruled that BPI's failure to specifically deny under oath said exhibits resulted to an implied admission of their genuineness and due execution pursuant to Section 8, Rule 8 of the Rules of Court.[17]

As regards the other withdrawal slips (Exhibits "H" to "H-28") and checks (Exhibits "I" to "I-80"), the CA found that these carried forged signatures of Fariñas. According to the CA, the fact of forgery was proven not only by Fariñas' testimony but also by the presentation of her standard signatures and by the testimony of a handwriting expert.[18] The CA held that the differences between the questioned signatures appearing on the withdrawal slips and checks and Fariñas' standard signatures are readily apparent. Moreover, the CA found that these exhibits were in fact properly identified by Fariñas and admitted by BPI to have been sourced from its own microfilm copies.[19]

The CA, thus, held that the evidence sufficiency established that BPI breached its fiduciary duty when it honored the subject withdrawals with only Dela Peña's signature in violation of the "any two" authorized signatories requirement. The CA also found that BPI failed to exercise extraordinary diligence in scrutinizing the checks.

These findings led the CA to conclude that the RTC committed reversible error in granting BPI's demurrer to evidence. Instead, the CA ruled that BPI should be held solidarily liable with Dela Peña for actual losses plus 12% legal interest from the date of each unauthorized withdrawal.

In disposal, the CA held:

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[17] *Id*. at 38.

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

[19] *Id*. at 43.

WHEREFORE, above premises considered, the instant appeal is **GRANTED**. The Resolutions of the RTC of Makati City, Branch 61 dated 14 April 2009 and 26 June 2009, respectively, are **REVERSED** and **SET ASIDE**.

Defendant-appellee BPI and defendant [Dela Peña], who was declared in default, are solidarily liable to [respondent]. Defendant-appellee and defendant [Dela Peña] are ORDERED to pay (1) actual damages in the amount of ₱3,652,095.01 plus 12% legal interest from the date of each unauthorized withdrawal until the entire amount is fully paid and (2) ₱100,000.00 as attorney's fees in favor of [respondent].

SO ORDERED.[20]

BPI's motion for reconsideration was similarly denied by the CA in its Resolution[21] dated August 12, 2011.

Hence, this petition.

Issues

BPI argues that the CA erred in applying the rule on actionable documents to extend probative value to respondents' Exhibits D, F, and G and its sub-markings considering that BPI was not a party nor a signatory to said counterchecks, checks and withdrawal slips.

Also, BPI questions the CA's finding that Fariñas' signatures as appearing on the Exhibits "H" to "H-28" and Exhibits "I" to "I-80" were forged. According to BPI, the bare claim that Fariñas' signatures were forged is not sufficient pursuant to the Court's ruling in *Sps. Salonga v. Sps. Concepcion*.[22] Admitting for the sake of argument that the signatures were forged, BPI claims that respondent is guilty of negligence which precludes it from setting up forgery or want of authority.

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[20] *Id*. at 47-48.

[21] *Id*. at 50-51.

[22] 507 Phil. 287 (2005).

BPI also disputes the imposition of interest and the award of attorney's fees in the absence of evident bad faith.

Ruling of the Court

The assailed CA decision is affirmed but with the modification that: (1) Dela Peña should not be held solidarily liable with BPI considering that their specific liabilities are anchored on two separate sources of obligations; and (2) the rate and reckoning period of the interest imposed.

Time and again, the Court has stressed that only questions of law should be raised in petitions for review under Rule 45 of the Rules of Court. The Court does not entertain questions of fact given that factual findings of the appellate court are final, binding, or conclusive on the parties and on this Court.[23] The assessment of the probative value of the evidence presented and of whether the lower courts' appreciation of the evidence is correct are questions of fact[24] which the Court does not address in a Rule 45 petition.

While it is true that there are certain recognized exceptions[25] to the rule that factual findings of the [CA] are binding on the

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[23] *Pascual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

[24] *Rep. of the Phils. v. Ortigas and Co. Ltd. Partnership*, 728 Phil. 277, 287-288 (2014).

[25] As those enumerated by this Court in *DBP v. Traders Royal Bank, et al.*, 642 Phil. 547, 556-557 (2010):

(1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain

Court, such as when its findings are contrary to that of the trial court, as in this case, this alone does not automatically warrant a review of the appellate court's factual findings.[26] The binding nature of the factual findings of the CA was explained in *Pascual v. Burgos, et al.*,[27] as follows:

> [T]he doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence. x x x.[28] (Citation omitted)

As such, "only a showing, on the face of the record, of gross or extraordinary misperception or manifest bias in the Appellate Court's reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province."[29] The instant petition demonstrates no such exceptional circumstance.

On the contrary, we find that the findings of the CA that BPI allowed several withdrawals despite the fact that the checks and withdrawal slips used bore the lone signature of Dela Peña and/or with the forged signatures of Fariñas, in opposition to respondent's "two authorized signatory" resolution, are amply supported by the record.

BPI argues that these checks and withdrawal slips are inadmissible essentially because (1) these are private documents which were not properly authenticated, and that (2) there was no satisfactory evidence presented to prove the alleged forgery. Both arguments fail to convince.

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relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[26] *Uniland Resources v. DBP*, 277 Phil. 839, 844 (1991).

[27] 776 Phil. 167 (2016).

[28] *Id.* at 188.

[29] *Id.*

A private document requires authentication in the manner allowed by law or the Rules of Court before it may be received in evidence. However, authentication of a private document is not required when:

> (a) the document is an ancient one under Section 21, Rule 132 of the Rules of Court; (b) the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) the genuineness and authenticity of the document have been admitted; or (d) the document is not being offered as genuine.[30] (Citations omitted)

To begin with, the Court notes that the trial court had admitted all of respondent's exhibits to which BPI raised no further objections. The admissibility of respondent's pieces of evidence should no longer be further litigated. It also appears that BPI admitted and stipulated on the genuineness and due execution of the questioned checks and withdrawal slips during the preliminary conference and further admitted that these checks and withdrawal slips were obtained from the microfilm copies of BPI. It was further alleged and admitted that these very same checks and withdrawal slips were honored by BPI.[31] Thus, the foregoing judicial admissions dispense with the ordinarily required proof that the checks and withdrawal slips were authentic.

As regards BPI's contention that there was no evidence presented to prove that Fariñas' signatures on the subject checks and withdrawal slips were forged, the CA correctly observed that Fariñas herself categorically denied signing the said instruments and identified her genuine signatures. Corroborating Fariñas' testimony was that of a handwriting expert who also presented her report and comparison charts to prove that the signatures appearing on the checks and the withdrawal slips were not genuine signatures of Fariñas. Considering these other pieces of evidence, there is no reason to apply the Court's pronouncement in *Salonga* that a bare claim of forgery is insufficient.

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[30] *Patula v. People*, 685 Phil. 376, 397-398 (2012).

[31] *Rollo*, pp. 76-78.

At any rate, the CA itself found that there were significant variances" between Fariñas' standard signatures as appearing on her valid identification cards and the signatures appearing on the questioned withdrawal slips and checks.[32] We observe that the matter herein involved is not highly technical as to preclude the appellate court from examining the signatures and thereafter ruling on whether or not they are indeed forgeries.[33] Thus, we find no reason to deviate from the CA's factual findings.

Nevertheless, Dela Peña cannot be held solidarily liable with BPI as held by the CA.

To emphasize, BPI's liability proceeds from a breach of contract. Under Article 1980 of the Civil Code, "fixed, savings, and current deposits of money in banks x x x shall be governed by the provisions concerning simple loan[s]." By the contract of loan or *mutuum*, one party delivers money to another upon the condition that the same amount shall be paid.[34]

To recall, respondent was defrauded by several withdrawals from its deposit accounts being allowed by BPI solely on the basis of Dela Peña's signature despite specific instructions that withdrawals be done only upon the signatures of any two of respondent's authorized signatories, and additional withdrawals being allowed on the basis of the forged signatures of respondent's other authorized signatory. It is basic that those who, in the performance of their obligations, are guilty of

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[32] *Id*. at 40.

[33] *Equitable Cardnetwork, Inc. v. Capistrano*, 681 Phil. 462, 475 (2012).

[34] Article 1933 of the Civil Code provides, in part:

> By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.
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> x x x x x x x x x
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> Simple loan may be gratuitous or with a stipulation to pay interest.
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> x x x x x x x x x

negligence, and those who in any manner contravene the tenor thereof, are liable for damages.[35] When BPI allowed Dela Peña to make unauthorized withdrawals, it failed to comply with its obligation to secure said accounts by allowing only those withdrawals authorized by respondent. In so doing, BPI violated the terms of its contract of loan with respondent and should be held liable in this regard.

On the other hand, Dela Peña's liability arises from the commission of the crime of estafa. Dela Peña had in fact been charged and convicted of estafa. Thus, respondent's action to recover actual damages against Dela Peña was deemed instituted with the criminal action, unless waived, reserved or previously instituted.[36] There is no indication that such reservation had been done by respondent. As such, to hold Dela Peña solidarily liable for damages in this case may result in double recovery which is proscribed.[37] In any case, it is clear that the civil liability upon which Dela Peña was being held liable by the CA is totally distinct and separate from the source of BPI's liability. Thus, BPI and Dela Peña's respective liabilities cannot be deemed joint and solidary.

The computation of the rate of interest likewise needs modification. In *Nacar v. Gallery Frames, et al.*,[38] the Court modified the guidelines regarding the manner of computing legal interest as follows:

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[35] Article 1170 of the Civil Code.

[36] Section 1, Rule 111, Revised Rules of Criminal Procedure.

[37] Articles 2176 and 2177 of the Civil Code provides:

Article 2176. Whoever by act or omission causes damage to another, there being no 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.

Article 2177. Responsibility for fault or negligence under the preceding article 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.

[38] 716 Phil. 267 (2013).

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. **Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially** (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.[39] (Emphasis ours and italics in the original)

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[39] *Id.* at 281-283.

Nacar also instructs that the new rate is to be applied prospectively, or from July 1, 2013.

Applying the foregoing guidelines to the instant case, the amount of ₱3,652,095.01 shall earn interest at the rate of 12% *per annum* from September 16, 2002, or the date when judicial demand was made, until June 30, 2013 and 6% *per annum* from July 1, 2013 until satisfaction thereof.

Finally, there is no reason to disturb the award of attorney's fees where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[40]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 28, 2011 of the Court of Appeals in CA-G.R. CV No. 93752 is **AFFIRMED with MODIFICATION**. Petitioner Bank of the Philippine Islands is held liable to pay respondent Land Investors and Developers Corporation actual damages in the amount of ₱3,652,095.01 with interest at the rate of twelve percent (12%) *per annum* from September 16, 2002, or the date when judicial demand was made, until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until satisfaction of this Decision and attorney's fees in the amount of ₱100,000.00.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo,[*] and *Caguioa,*[**] *JJ.,* concur.

Bersamin, J., on official business.

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[40] Article 2208(11) of the Civil Code.

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

11. In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

[*] Designated Acting working Chairperson per Special Order No. 2606 dated September 28, 2018.

[**] Designated Additional Member per Raffle dated June 20, 2018 *vice* Associated Justice Francis H. Jardeleza.

FIRST DIVISION

[G.R. No. 203923. October 8, 2018]

IONA LERIOU, ELEPTHERIOS L. LONGA, and STEPHEN L. LONGA, *petitioners, vs.* **YOHANNA FRENESI S. LONGA (Minor) and VICTORIA PONCIANA S. LONGA (Minor), represented by their mother MARY JANE B. STA. CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45; CONTENTS OF PETITION; CERTIFICATION AGAINST FORUM SHOPPING; MUST BE SIGNED BY THE PARTY-PLEADER AND IF HE IS UNABLE TO PERSONALLY SIGN THE CERTIFICATION, HE MUST EXECUTE A SPECIAL POWER OF ATTORNEY AUTHORIZING HIS COUNSEL TO SIGN IN HIS BEHALF.— Rule 45, Section 4 of the Revised Rules of Court requires the petition to contain a sworn certification against forum shopping. x x x It should be emphasized that it is the party-pleader who must sign the sworn certification against forum shopping for the reason that he/she has personal knowledge of whether or not another action or proceeding was commenced involving the same parties and causes of action. If the party-pleader is unable to personally sign the certification, he/she must execute a special power of attorney (SPA) authorizing his/her counsel to sign in his/her behalf. x x x In the instant case, it was not petitioners but Atty. Joseph Lemuel B. Baquiran (Baquiran) of Sianghio Lozada and Cabantac Law Offices who signed the certification against forum shopping despite the absence of any showing that petitioners executed an SPA authorizing Atty. Baquiran to sign in their behalf. x x x The Petition should be dismissed pursuant to our ruling in *Anderson v. Ho* where the Court clarified that a certification signed by a counsel without an SPA is a valid cause for the dismissal of the Petition x x x.

2. ID.; SPECIAL PROCEEDINGS; ALLOWANCE OR DISALLOWANCE OF A WILL; NOTICE REQUIREMENT; A PERSONAL NOTICE IS NOT A JURISDICTIONAL

REQUIREMENT IN A TESTATE OR INTESTATE SETTLEMENT OF A DECEASED'S ESTATE BECAUSE IT IS A PROCEEDING *IN REM,* SUCH THAT THE PUBLICATION UNDER THE RULES VESTS THE COURT WITH JURISDICTION OVER ALL PERSONS WHO ARE INTERESTED THEREIN.— Contrary to petitioners' argument that personal notice under Section 4 of Rule 76 is a jurisdictional requirement, the Court, in *Alaban v. Court of Appeals*, explained that it is just a matter of personal convenience. x x x [I]t should be emphasized that a testate or intestate settlement of a deceased's estate is a proceeding *in rem*, such that the publication under Section 3 of the same Rule, vests the court with jurisdiction over all persons who are interested therein. In the instant case, the Order dated July 4, 2007 was published for three consecutive weeks in *Balita*, a newspaper of general circulation, on the following dates: July 27, 2007, August 3, 2007, and August 10, 2007. By such publication which constitutes notice to the whole world, petitioners are deemed notified about the intestate proceedings of their father's estate.

3. **ID.; ID.; LETTERS OF ADMINISTRATION; THE PREFERENCE GIVEN TO THE SURVIVING SPOUSE, NEXT OF KIN, AND CREDITORS IS NOT ABSOLUTE, AND THE APPOINTMENT OF AN ADMINISTRATOR GREATLY DEPENDS ON THE ATTENDANT FACTS AND CIRCUMSTANCES OF EACH CASE.—** As to whom the Letters of Administration should be issued, the Court, in *Gabriel v. Court of Appeals*, gave emphasis on the extent of one's interest in the decedent's estate as the paramount consideration for appointing him/her as the administrator. x x x Here, petitioners cannot assert their preferential right to administer the estate or that their choice of administrator should be preferred because they are the nearest of kin of the decedent. It is worth emphasizing that the preference given to the surviving spouse, next of kin, and creditors is not absolute, and that the appointment of an administrator greatly depends on the attendant facts and circumstances of each case. x x x In view of the evident disqualification of petitioners and respondents and the lack of any known creditors, the parties have no choice but to have somebody else administer the estate for them. Petitioners nominated Juan Manuel Elizalde (Elizalde) but failed to give adequate justification as to why Letters of Administration should

be issued in Elizalde's favor. We fully agree with the ruling of the trial and appellate courts in choosing respondent-administratrix over Elizalde. Compared to Elizalde whose interest over the decedent's estate is unclear, respondent-administratrix's interest is to protect the estate for the benefit of her children with Enrique. Indeed, it is respondents who would directly benefit from an orderly and efficient management by the respondent-administratrix. In the absence of any indication that respondent-administratrix would jeopardize her children's interest, or that of petitioners in the subject estate, petitioners' attempts to remove her as administratrix of Enrique's estate must fail.

4. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE AND MAY NOT BE RE-EXAMINED BY THE SUPREME COURT.— [T]he findings of fact of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive and may not be re-examined by this Court. Although this rule admits of exceptions, none of the exceptional circumstances applies herein.

APPEARANCES OF COUNSEL

Ubano Sianghio Lozada & Cabantac Law Offices for petitioners.

De Castro And Chua Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

Before Us is a Petition for Review on *Certiorari* filed by petitioners Iona Leriou (Iona), Eleptherios L. Longa (Eleptherios), and Stephen L. Longa (Stephen) assailing the Decision[1] dated June 28, 2012 and Resolution[2] dated October 8, 2012 of the

[1] *Rollo*, pp. 8-18; penned by Associate Justice Japar B. Dimaampao with Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela concurring.

[2] *Id*. at 19-20.

Court of Appeals in CA-G.R. CV No. 92497, affirming the Orders[3] dated July 18, 2008 and November 3, 2008 of the Regional Trial Court (RTC) of Muntinlupa City Branch 276, which denied petitioners' Omnibus Motion to remove respondent Mary Jane B. Sta. Cruz as administratrix; and to appoint petitioner Eleptherios or his nominee as administrator of the estate of deceased Enrique Longa (Enrique).

The factual antecedents are as follows:

Respondent-minors Yohanna Frenesi S. Longa[4] (Yohanna) and Victoria Ponciana S. Longa[5] (Victoria), represented by their mother, Mary Jane B. Sta. Cruz, instituted a special proceeding entitled "*In the Matter of the Intestate Estate of Enrique T. Longa Petition for Letters of Administration*,"[6] docketed as SP Proc. No. 07-035, with the RTC in Muntinlupa City on June 19, 2007. Respondents alleged that Enrique died intestate, survived by petitioners Eleptherios and Stephen and respondents Yohanna and Victoria, his legitimate and illegitimate children, respectively; and that Enrique left several properties[7] with no creditors. In the meantime, respondents were deemed as pauper litigants and exempt from paying the filing fee, subject to the payment thereof once a final judgment is rendered in their favor.[8]

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[3] Records, pp. 279-282 & 341-343.

[4] Born on September 29, 2002 per Certificate of Live Birth, Records, p. 63.

[5] Victoria is approximately four years younger than Yohanna, TSN (October 16, 2007) p. 4, Records, p. 68.

[6] *Id*. at 33-36.

[7] a) Parcel of land in Ayala Alabang Village, Muntinlupa City covered by Transfer Certificate of Title (TCT) No. 159705; b) Parcel of land in Rizal Village, Cupang, Muntinlupa City, covered by TCT No. 166270; c) Parcel of land in Moonwalk Village, Parañaque City, covered by TCT No. 36663; d) Condominium Unit in Baguio Green Valley Village, covered by Condominium Certificate of Title (CCT) No. C-3424; e) Shares of Stocks in various companies; f) Palms Country Club shares; g) Alabang Country Club shares; h) Gold Rolex watch; and i) Box of precious coins. (Records, p. 34.)

[8] Records, p. 52.

On November 5, 2007, Acting Presiding Judge Romulo SG. Villanueva of the RTC issued an Order,[9] appointing Mary Jane B. Sta. Cruz (respondent-administratrix) as the administratrix of Enrique's estate, thus:

> WHEREFORE, premises considered, Mary Jane B. Sta. Cruz, being the mother, representative, and legal guardian of minor children Yohanna Frenesi S. Longa and Victoria Ponciana S. Longa, is hereby appointed Administratrix of the properties or estate of deceased Enrique T. Longa. Let a Letter of Administration be issued in her favor upon posting of a bond in the amount of FOUR HUNDRED EIGHTY THOUSAND (Php480,000.00) pesos, and after taking the required Oath of Office, she may discharge the rights, duties and responsibilities of her trust.
>
> As such Administratrix, she is hereby directed to do the following:
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> 1. To make and return to the Court within three (3) months from assumption of her office, subject to such reasonable extension as may be approved by the Court, a true and complete inventory of all the property, real and personal, of the deceased which shall come to her possession or knowledge or to the knowledge of any other person for her.
> 2. To faithfully execute the duties of her trust, to manage and dispose of the estate according to the rules for the best interest of the deceased.
> 3. To render a true and just account of all the estate of the deceased in her hands and of all proceeds and interest derived therefrom, and of the management and disposition of the same, at the time designated by the rules and such other times as the Court directs, and at the expiration of her trust, to settle her account with the Court and to deliver and pay over all the estate, effects, and moneys remaining in her hands, or due from her on such settlement, to the person lawfully entitled thereto.
> 4. To perform all orders of the Court by her to be performed.

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[9] *Id*. at 71-73.

The RTC issued the Letters of Administrator[10] on December 19, 2007. On March 18, 2008, respondent-administratrix submitted a Report of the Inventory and Appraisal[11] of the real and personal properties of the decedent, which was duly noted by the RTC in its Order[12] dated March 27, 2008.

On May 20, 2008, petitioners filed an *Omnibus Motion 1. To Remove Jane Sta. Cruz as Administratrix; and 2. Appoint Eleptherios L. Longa or His Nominee as Administrator* (Omnibus Motion).[13] Petitioners alleged that they were denied due process of law because they did not receive any notice about respondents' Petition for Letters Administration. Petitioners accuse respondent-administratrix of: 1) neglect for failing to abide by the order of the RTC for her to coordinate with the Department of Foreign Affairs (DFA) for the proper service of the Petition and Order dated July 4, 2007 to petitioners; and 2) two acts of misrepresentation for not disclosing all the assets of the decedent and for pretending to be a pauper litigant. Petitioners also averred that respondent-administratrix did not post a bond as required by Administrative Matter No. 03-02-05-SC, or the "Rule on Guardianship of Minors." Petitioners assert that each of them, being the surviving spouse and legitimate children of Enrique, has a preferential right over respondents to act as administrator of the estate, or to designate somebody else to administer the estate in their behalf, pursuant to the order of preference under Rule 78, Section 6.

On June 6, 2008, respondent-administratrix filed her Opposition to the Omnibus Motion,[14] alleging that she mailed the Petition for Letters of Administration and the RTC Order dated July 4, 2007 to petitioners in the addresses that the latter gave her, and that she coordinated with the Department of Foreign

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[10] *Id*. at 107.

[11] *Id*. at 109-111.

[12] *Id*. at 116.

[13] *Id*. at 118-139.

[14] *Id*. at 172-180.

Affairs (DFA) for the service of the Petition for Letters of Administration to petitioners as evidenced by the RTC Order bearing the stamp[15] "RECEIVED" by the DFA Records Division on July 27, 2007. Respondent-administratrix also exchanged correspondences with petitioners and their counsels about her decision to let the court settle Enrique's estate, as shown by her letter dated June 22, 2007 addressed to petitioners' counsels, and her electronic mails (e-mails) with petitioner Eleptherios.[16]

Respondent-administratrix denied committing any act of misrepresentation. With regard to the non-disclosure of some assets of the decedent, respondent-administratrix explained that she did not include those properties which were not declared or registered in Enrique's name, and that it was only after the Petition was filed with the RTC that respondent-administratrix learned about a certain real property in Carmona, Cavite. Likewise, respondent-administratrix maintained that she is a pauper litigant since she has no capacity to pay the ₱480,000.00 bond and she had to borrow money from a friend to pay the ₱25,000.00 premium[17] to Travellers Insurance Surety Corporation so that she may post a surety bond.

Respondent-administratrix also said that Administrative Matter No. 03-02-05-SC or the "Rule on Guardianship of Minors" does not apply to her as she is merely representing her children in the administration and preservation of the estate of respondents' father.

In opposing petitioners' preferential right to administer the estate, respondent-administratrix averred that petitioners are disqualified to act as administrators because petitioner Iona, a Greek national, is already divorced from Enrique and has already remarried as shown by her name – Iona Leriou Regala in the Omnibus Motion, and petitioners Eleptherios and Stephen are non-residents of the Philippines.

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[15] *Id*. at 181.

[16] *Id*. at 182-186.

[17] *Id*. at 187.

Respondent-administratrix recognizes that respondents Yohanna and Victoria's shares in the decedent's estate are significantly less than the shares of petitioners Eleptherios and Stephen who are Enrique's legitimate children. However, respondent-administratrix sensed that petitioner Eleptherios is slowly depleting the estate by charging his plane fares to and from the United States of America (USA) and huge phone bills against the estate. In addition, petitioner Eleptherios ordered respondent-administratrix to transfer all of the estate to him so that he could personally partition the properties to Enrique's heirs. Thus, respondent-administratrix was forced to seek the help of the courts for the proper settlement of Enrique's estate.

After the filing of petitioners' Reply and respondent-administratrix's Rejoinder, the Omnibus Motion was submitted for decision.

On June 18, 2008, the RTC issued the assailed Order denying petitioners' Omnibus Motion. The RTC ratiocinated:

Section 2 of Rule 82 of the Rules of Court provides the grounds by which an administrator may be removed by the court:

> Section 2. *Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal.* — If an executor or administrator neglects to render his account and settle the estate according to law, to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or, in its discretion, may permit him to resign. x x x.

The Court, after going over all the evidence submitted by the parties in support of their respective positions, finds and so holds that the [petitioners] in their instant Omnibus Motion has not shown any circumstance as sufficient grounds for the removal of Ms. Jane Sta. Cruz as the court-appointed Administratrix of the estate of the late Enrique Longa.

Records show that Ms. Sta. Cruz has substantially complied with the Court's Order and coordinated with the Department of Foreign Affairs for the service of the Petition and the Order to the [petitioners] in the address/es furnished by her, as shown by the stamp receipt on

the Order. x x x. There was any showing that she deliberately or maliciously neglected her duty. Nonetheless, the record would show that Ms. Sta. Cruz never intended to hide the filing of the Petition from the [petitioners] as she was in constant communication with them, particularly with Eleptherios, through e-mails and this fact was never denied by the latter in his pleadings.

Neither will the non-disclosure of Ms. Sta. Cruz of all the assets of the decedent in her initiatory pleading affects her appointment as administrator. Section 2 of Rule 76 of the Rules of Court requires only an allegation of the probable value and character of the property of the estate. If the true value and properties would be known later on, the same should be reported and made known to the Court, just as what the Administratrix did in the instant case when she submitted to the Court the true inventory and appraisal of all the real and personal properties of the estate after her appointment as Administratrix.

The mere imputation of misrepresentation on the alleged financial capacity of the Administratrix as a pauper litigant without any concrete and categorical proof is not also a sufficient ground for the removal of the Administratrix. The record shows that Ms. Sta. Cruz' petition to litigate as pauper underwent the required hearing and compliance of all the requirements as provided by law before she was allowed to do so. The mere fact that Ms. Sta. Cruz resides in the posh Ayala Alabang Village does not necessarily disqualify her as a pauper litigant. There must be a showing that she is the owner of the said property.

Anent the ground that Ms. Sta. Cruz is disqualified to represent the minors in this instant proceedings for her failure to post the required guardian's bond, it should be stressed that this is a proceeding for the settlement of estate of the late Enrique T. Longa, not the estate of the minor children-[respondents], where the rights of ownership of the children over the properties of their deceased father is merely inchoate as long as the estate has not been fully settled. [Salvador vs. Sta. Maria, 20 SCRA 603 (1967)]. Unless there is partition of the estate of the deceased, the minors cannot yet be considered owners of properties, hence, the requirement of guardian bond is immaterial in this case. Needless to state, in instituting this proceedings (sic) in behalf of her minor children, Ms. Sta. Cruz is just exercising her legal, moral and natural right and duty as the mother in order to protect her children's right and claim over the estate of their deceased father.

While it may be true that the [petitioners], (except for Iona) being the legitimate children of the late Enrique Longa, have a superior right over the Court appointed Administratrix, it must be stressed that Ms. Sta. Cruz was appointed as the Administratrix, being the representative and biological parent of the minors Yohanna Frenesi and Victoria Ponciana, who are equally considered surviving heirs of the late Enrique Longa, albeit, illegitimate children of the latter. As the representative and biological parent of the minor heirs, Ms. Sta. Cruz has all the right to protect the property for the benefit of her children. Indeed, if the properties will be properly managed and taken cared of, this will definitely redound to the benefit of Yohanna and Victoria Ponciana, whose future will therefor be protected.

Moreover, the appointment of Elepheriosis (sic) L. Longa as Administrator is not allowed under Rule 78 Section 1(b) which provided that "No person is competent to serve as executor or administrator who is not a resident of the Philippines."

In fine, the grounds relied upon by the [petitioners] are not sufficient to remove the duly court appointed Administratrix.

The settled rule is that the removal of an administrator under Section 2 of Rule 82 of the Rules of Court "lies within the discretion of the Court appointing him/her. As aptly expressed by the Supreme Court in the case of Degala vs. Ceniza and Umipig, 78 Phil. 791, 'the sufficiency of any ground for removal should thus be determined by said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not comfortable to or in disregard of the rules or the orders of the court.[18]

The RTC, ultimately, decreed:

WHEREFORE, premises considered, the "Omnibus Motion (1) to remove Jane Sta. Cruz as Administratrix; and (2) Appoint Eleptherios L. Longa or his Nominee as Administrator" is hereby DENIED.[19]

Petitioners filed a Motion for Reconsideration,[20] which the trial court denied in an Order[21] dated November 3, 2008.

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[18] *Id*. at 280-281.

[19] *Id*. at 282.

[20] *Id*. at 287-295.

[21] *Id*. at 335-337.

Petitioners appealed to the Court of Appeals, which was docketed as CA-G.R. CV No. 92497.

In a Decision dated June 28, 2012, the appellate court affirmed the Orders dated July 18, 2003 and November 3, 2008 of the trial court. Petitioners filed a Motion for Reconsideration[22] but it was denied in a Resolution dated October 8, 2012.

Hence, petitioners filed the instant Petition for Review on *Certiorari*,[23] raising the following issues:

THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE, *VIZ*:

A. IT DISPENSED WITH THE MANDATORY AND JURISDICTIONAL REQUIREMENTS OF SECTION 3, RULE 79, IN RELATION TO SECTIONS 3 & 4, RULE 76 OF THE RULES OF COURT, AND THE COURT A QUO'S OWN ORDER DATED 04 JULY 2007, WHEN IT CONSIDERED THE MERE PROOF OF SERVICE OF THE ORDER DATED 04 JULY 2007 ON THE DEPARTMENT OF FOREIGN AFFAIRS COMPLIANT WITH THE SAID LEGAL REQURIEMENTS.

B. IT CONSIDERED THE EXCHANGE OF ELECTRONIC MAILS BETWEEN RESPONDENT STA. CRUZ AND PETITIONER ELEPTHERIOS AS A POSITIVE INDICATION THAT PETITIONERS HEIRS LONGA WERE ALLEGEDLY OFFICIALLY SERVED AND HAD PERSONAL KNOWLEDGE OF THE PETITION DESPITE THE FACT THAT SAID ELECTRONIC MAILS WERE ONLY BETWEEN RESPONDENT STA. CRUZ AND PETITIONER ELEPTHERIOS.

C. IT DISREGARDED THE PREFERENTIAL AND SUPERIOR RIGHTS OF THE LEGITIMATE CHILDREN OVER THE ILLEGITIMATE CHILDREN OF THE DECEDENT.

D. IT DISREGARDED THE SUBSTANTIATED GROUNDS RAISED BY PETITIONERS HEIRS LONGA, SHOWING THE UNFITNESS OF RESPONDENT STA. CRUZ TO DISCHARGE HER

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[22] CA *rollo,* pp. 217-234.

[23] *Rollo*, pp. 46-79.

DUTIES AS ADMINISTRATRIX OF THE ESTATE OF THE DECEDENT.[24]

The Court's Ruling

A perusal of the Petition for Review on *Certiorari* reveals that it contains the same issues and arguments raised by petitioners in their Omnibus Motion and Appellants' Brief.

The Petition Suffers a Technical Infirmity.

Rule 45, Section 4 of the Revised Rules of Court requires the petition to contain a sworn certification against forum shopping. Section 4 provides:

> SECTION 4. *Contents of petition*. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) **contain a sworn certification against forum shopping** as provided in the last paragraph of Section 2, Rule 42. (Emphasis supplied.)

It should be emphasized that it is the party-pleader who must sign the sworn certification against forum shopping for the reason that he/she has personal knowledge of whether or not another action or proceeding was commenced involving the same parties and causes of action. If the party-pleader is unable to personally sign the certification, he/she must execute a special power of

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

attorney (SPA) authorizing his/her counsel to sign in his/her behalf. In *Jacinto v. Gumaru, Jr.*,[25] the Court elucidated:

> It is true, as petitioner asserts, that if for reasonable or justifiable reasons he is unable to sign the verification and certification against forum shopping in his CA Petition, he may execute a special power of attorney designating his counsel of record to sign the Petition on his behalf. In *Altres v. Empleo*, this view was taken:
>
> > For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
> >
> > 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
> >
> > 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
> >
> > 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
> >
> > 4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons**."
> >
> > 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those

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[25] 734 Phil. 685, 696-697 (2014).

> who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
>
> 6) **Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf**. (Emphases supplied, citation omitted.)

In the instant case, it was not petitioners but Atty. Joseph Lemuel B. Baquiran (Baquiran) of Sianghio Lozada and Cabantac Law Offices who signed the certification against forum shopping despite the absence of any showing that petitioners executed an SPA authorizing Atty. Baquiran to sign in their behalf. By Atty. Baquiran's own revelation, their law firm had lost communication and they could not locate any of the petitioners who are apparently residing in the United States of America (USA). Atty. Baquiran, in the verification and certification portion of the Petition, stated:

> 5. Considering that our law Firm has lost communication with petitioners and has yet to re-establish communication with petitioners who are residing in the United States of America, I executed this Verification and Certification Against Forum Shopping pursuant to my duty as a lawyer in order to protect the rights and interest of petitioners by availing of and exhausting all available legal reliefs.[26]

The Petition should be dismissed pursuant to our ruling in *Anderson v. Ho*[27] where the Court clarified that a certification signed by a counsel without an SPA is a valid cause for the dismissal of the Petition, thus:

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[26] *Rollo*, p. 77.

[27] 701 Phil. 6, 14-15 (2013).

The requirement that it is the petitioner, not her counsel, who should sign the certificate of non-forum shopping is due to the fact that a "certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action." "Obviously, it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether [she] actually filed or caused the filing of a petition in that case." Per the above guidelines, however, if a petitioner is unable to sign a certification for reasonable or justifiable reasons, she must execute an SPA designating her counsel of record to sign on her behalf. "[A] certification which had been signed by counsel without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition."

In this light, the Court finds that the CA correctly dismissed Anderson's Petition for Review on the ground that the certificate of non-forum shopping attached thereto was signed by Atty. Oliva on her behalf *sans* any authority to do so. While the Court notes that Anderson tried to correct this error by later submitting an SPA and by explaining her failure to execute one prior to the filing of the petition, this does not automatically denote substantial compliance. It must be remembered that a defective certification is generally not curable by its subsequent correction. And while it is true that in some cases the Court considered such a belated submission as substantial compliance, it "did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping." (Citations omitted.)

The Petition is Not Meritorious.

Even if we brush aside the technical defect, the instant Petition must fail just the same.

Petitioners allege that respondents failed to adduce evidence, *i.e.*, Return of Service, to show that petitioners were furnished with the Petition for Letters Administration and the RTC Order dated July 4, 2007. Petitioners assert that the e-mails between respondent-administratrix and petitioner Elephterios, and the stamp "RECEIVED" of the DFA Records Division, do not prove that they actually received the Petition for Letters of

Administration and the RTC Order dated July 4, 2007. Petitioners contend that, without the mandatory and jurisdictional requirement on notice to the known heirs of the decedent, all proceedings before the RTC relative to the Petition for Letters Administration are null and void.

We are not convinced. Sections 3 and 4, Rule 76 of the Revised Rules of Court provide:

> SECTION 3. *Court to appoint time for proving will. Notice thereof to be published*. — When a will is delivered to, or a petition for the allowance of a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, previous to the time appointed, in a newspaper of general circulation in the province.
>
> But no newspaper publication shall be made where the petition for probate has been filed by the testator himself.
>
> SECTION 4. *Heirs, devisees, legatees, and executors to be notified by mail or personally*. — The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing.
>
> If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

Contrary to petitioners' argument that personal notice under Section 4 of Rule 76 is a jurisdictional requirement, the Court, in *Alaban v. Court of Appeals*,[28] explained that it is just a matter of personal convenience. Thus:

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[28] 507 Phil. 682, 695 (2005).

According to the Rules, notice is required to be personally given to known heirs, legatees, and devisees of the testator. A perusal of the will shows that respondent was instituted as the sole heir of the decedent. Petitioners, as nephews and nieces of the decedent, are neither compulsory nor testate heirs who are entitled to be notified of the probate proceedings under the Rules. Respondent had no legal obligation to mention petitioners in the petition for probate, or to personally notify them of the same.

Besides, assuming *arguendo* that petitioners are entitled to be so notified, the purported infirmity is cured by the publication of the notice. After all, personal notice upon the heirs is a matter of procedural convenience and not a jurisdictional requisite. (Emphasis supplied, citations omitted.)

Moreover, it should be emphasized that a testate or intestate settlement of a deceased's estate is a proceeding *in rem,*[29] such that the publication under Section 3 of the same Rule, vests the court with jurisdiction over all persons who are interested therein.

In the instant case, the Order dated July 4, 2007 was published for three consecutive weeks in *Balita*, a newspaper of general circulation, on the following dates: July 27, 2007, August 3, 2007, and August 10, 2007.[30] By such publication which constitutes notice to the whole world, petitioners are deemed notified about the intestate proceedings of their father's estate. As the Court elucidated in *Alaban v. Court of Appeals*[31]:

However, petitioners in this case are mistaken in asserting that they are not or have not become parties to the probate proceedings.

Under the Rules of Court, any executor, devisee, or legatee named in a will, or any other person interested in the estate may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed. Notice of the time and place for proving the will must be published for three (3) consecutive weeks, in a

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[29] *Pilapil v. Heirs of Maximino R. Briones,* 543 Phil. 184, 199 (2007).

[30] Records, p. 6.

[31] *Supra* note 28 at 692-693.

newspaper of general circulation in the province, as well as furnished to the designated or other known heirs, legatees, and devisees of the testator. **Thus, it has been held that a proceeding for the probate of a will is one *in rem*, such that with the corresponding publication of the petition the court's jurisdiction extends to all persons interested in said will or in the settlement of the estate of the decedent**.

Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. Thus, even though petitioners were not mentioned in the petition for probate, they eventually became parties thereto as a consequence of the publication of the notice of hearing. (Emphasis supplied, citations omitted.)

The instant case is analogous to *Pilapil v. Heirs of Maximino R. Briones*[32] where some of the heirs did not receive any personal notice about the intestate proceedings, yet they were deemed notified through publication since the intestate proceeding is *in rem*. The Court in *Pilapil* adjudged:

While it is true that since the CFI was not informed that Maximino still had surviving siblings and **so the court was not able to order that these siblings be given personal notices of the intestate proceedings, it should be borne in mind that the settlement of estate, whether testate or intestate, is a proceeding *in rem*, and that the publication in the newspapers of the filing of the application and of the date set for the hearing of the same, in the manner prescribed by law, is a notice to the whole world of the existence of the proceedings and of the hearing on the date and time indicated in the publication. The publication requirement of the notice in newspapers is precisely for the purpose of informing all interested parties in the estate of the deceased of the existence of the settlement proceedings, most especially those who were not named as heirs or creditors in the petition, regardless of whether such omission was voluntarily or involuntarily made**. (Emphasis supplied.)

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[32] *Supra* note 29 at 199.

As to whom the Letters of Administration should be issued, the Court, in *Gabriel v. Court of Appeals*,[33] gave emphasis on the extent of one's interest in the decedent's estate as the paramount consideration for appointing him/her as the administrator. The Court pronounced:

> In the appointment of the administrator of the estate of a deceased person, the principal consideration reckoned with is the interest in said estate of the one to be appointed as administrator. This is the same consideration which Section 6 of Rule 78 takes into account in establishing the order of preference in the appointment of administrators for the estate. The underlying assumption behind this rule is that those who will reap the benefit of a wise, speedy and economical administration of the estate, or, on the other hand, suffer the consequences of waste, improvidence or mismanagement, have the highest interest and most influential motive to administer the estate correctly.

Here, petitioners cannot assert their preferential right to administer the estate or that their choice of administrator should be preferred because they are the nearest of kin of the decedent. It is worth emphasizing that the preference given to the surviving spouse, next of kin, and creditors is not absolute, and that the appointment of an administrator greatly depends on the attendant facts and circumstances of each case. In *Uy v. Court of Appeals,*[34] the Court decreed:

> The order of preference in the appointment of an administrator depends on the attendant facts and circumstances. In *Sioca v. Garcia*, this Court set aside the order of preference, to wit:
>
> > It is well settled that a probate court cannot arbitrarily and without sufficient reason disregard the preferential rights of the surviving spouse to the administration of the estate of the deceased spouse. But, if the person enjoying such preferential rights is unsuitable the court may appoint another person. The determination of a person's suitability for the office of administrator rests, to a great extent, in the sound judgment of

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[33] 287 Phil. 459, 466-467 (1992).

[34] 519 Phil. 673, 680 (2006).

> the court exercising the power of appointment and such judgment will not be interfered with on appeal unless it appears affirmatively that the court below was in error. (Citation omitted.)

In the instant case, petitioners are non-residents of the Philippines, which disqualify them from administering the decedent's estate pursuant to Rule 78, Section1[35] of the Rules of Court. We are mindful that respondents are also disqualified by reason of their minority. In view of the evident disqualification of petitioners and respondents and the lack of any known creditors, the parties have no choice but to have somebody else administer the estate for them. Petitioners nominated Juan Manuel Elizalde (Elizalde) but failed to give adequate justification as to why Letters of Administration should be issued in Elizalde's favor.[36] We fully agree with the ruling of the trial and appellate courts in choosing respondent-administratrix over Elizalde. Compared to Elizalde whose interest over the decedent's estate is unclear, respondent-administratrix's interest is to protect the estate for the benefit of her children with Enrique. Indeed, it is respondents who would directly benefit from an orderly and efficient management by the respondent-administratrix. In the absence of any indication that respondent-administratrix would jeopardize her children's interest, or that of petitioners in the subject estate, petitioners' attempts to remove her as administratrix of Enrique's estate must fail.

Notably, the trial and appellate courts did not find any factual or legal ground to remove Mary Jane B. Sta. Cruz as administratrix of Enrique's estate. Both courts cleared respondent-administratrix of the charges of misrepresentation of being a pauper and concealment of assets of Enrique's estate. We quote with approval the ruling of the Court of Appeals:

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[35] Section 1. *Who are incompetent to serve as executors or administrators*. — No person is competent to serve as executor or administrator who:

(a) Is a minor;

(b) Is not a resident of the Philippines[.]

[36] CA *rollo*, p. 208.

While it is conceded that the court is invested with ample discretion in the removal of an administrator, it must, however, have some fact legally before it in order to justify such removal. There must be evidence of an act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court which it deems sufficient or substantial to warrant the removal of the administrator. Suffice it to state that the removal of an administrator does not lie on the whims, caprices and dictates of the heirs or beneficiaries of the estate.[37]

Likewise, respondent-administratrix is not required to pay a guardianship bond under Section 16,[38] A.M. No. 03-02-05-SC, also known as the Rule on Guardianship of Minors, before she could discharge her functions as administratrix of Enrique's estate. This is self-explanatory and needs no further elaboration.

All told, the Court sustains the above findings especially so that petitioners did not present any new persuasive argument in their Petition. It is well-settled that the findings of fact of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive and may not be re-examined by this Court.[39] Although this rule admits of exceptions, none of the exceptional circumstances applies herein.

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[37] *Rollo*, p. 16.

[38] Sec. 16. Bond of parents as guardians of property of minor. – If the market value of the property or the annual Income of the child exceeds ₱50,000.00, the parent concerned shall furnish a bond In such amount as the court may determine, but in no case less than ten per centum of the value of such property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the Family Court of the place where the child resides or, if the child resides in a foreign country, in the Family Court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding In which all incidents and issues regarding the performance of the obligations of a general guardian shall be heard and resolved.

[39] It is generally settled in jurisprudence that the findings of fact of the trial court specially when affirmed by the CA are final, binding and conclusive

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated June 28, 2012 and Resolution dated October 8, 2012 of the Court of Appeals in CA-G.R. CV No. 92497 are **AFFIRMED.**

SO ORDERED.

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

Bersamin, J., on official business.

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and may not be re-examined by this Court. There are, however, several exceptions to this rule, to wit:

1] When the findings are grounded entirely on speculation, surmises or conjectures;

2] When the inference made is manifestly mistaken, absurd or impossible;

3] When there is grave abuse of discretion;

4] When the judgment is based on misapprehension of facts;

5] When the findings of facts are conflicting;

6] When in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

7] When the findings of the CA are contrary to that of the trial court;

8] When the findings are conclusions without citation of specific evidence on which they are based;

9] When the facts set forth in the petition as well as in the main and reply briefs are not disputed;

10] When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

11] When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Republic v. Hachero,* 785 Phil. 784, 792-793 [2016].)

FIRST DIVISION

[G.R. No. 227707. October 8, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEROME PASCUA *y* AGOTO *a.k.a.* "OGIE",** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; PHYSICAL INVENTORY AND PHOTOGRAPHY OF SEIZED ITEMS; THREE-WITNESSES RULE; IN CASE THE PRESENCE OF THE NECESSARY WITNESSES WAS NOT OBTAINED, THE PROSECUTION MUST ALLEGE AND PROVE NOT ONLY THE REASONS FOR THEIR ABSENCE, BUT ALSO THE FACT THAT EARNEST EFFORTS WERE MADE TO SECURE THEIR ATTENDANCE; CASE AT BAR.— In the recent case of *People v. Lim* the Court stressed the importance of the presence of the three witnesses (i.e. any elected public official and the representative from the media and the DOJ) during the physical inventory and the photograph of the seized items. x x x [U]nder prevailing jurisprudence, in case the presence of the necessary witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance. Here, the prosecution failed to prove both. Under RA 9165, the law prevailing at that time, the physical inventory and photography must be witnessed by three necessary witnesses. In this case, x x x there was only one valid witness, media person Curameng, who signed the Receipt of Properties/ Article Seized. The Court has carefully reviewed the records and found that no explanation was x x x offered by the prosecution to explain the absence of the DOJ representative and an elected public official, nor did it show that earnest efforts were exerted to secure the presence of the same. In view of the foregoing, the Court is constrained to reverse the conviction of the appellant due to the failure of the prosecution to provide a justifiable reason for the non-compliance with the Chain of

Custody Rule, which creates doubt as to the integrity and evidentiary value of the seized plastic sachet of *shabu*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal filed by appellant Jerome Pascua *y* Agoto *a.k.a.* "Ogie" from the October 9, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05998, affirming the December 4, 2012 Decision[2] of the Regional Trial Court (RTC) of Laoag City, Branch 13, in Criminal Case No. 14722, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

The Factual Antecedents

Appellant was charged with violations of Sections 5 and 12, Article II of RA 9165, while his co-accused, Manilyn Pompa *y* Remedios (Manilyn), was charged with violation of Section 12 of Article II of the same law. Pertinent portions of the said Informations are quoted below:

Criminal Case No. 14722: Violation of Section 5, Article II of RA 9165

That on or about the 31st day of March 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being a person authorized [to] sell, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, feloniously and knowingly sell 0.0154 grams of met[h]amphetamine hydrochloride,

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Francisco P. Acosta.

[2] CA *rollo*, pp. 24-41; penned by Presiding Judge Philip G. Salvador.

a dangerous drug placed inside one (1) heat sealed transparent plastic sachet.

CONTRARY TO LAW.[3]

Criminal Case No. 14723: Violation of Section 12, Article II of RA 9165

That on or about the 31st day of March 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously have in their possession, control and custody the following dangerous drugs [paraphernalia] to wit: one (1) piece glass tooter; one (1) piece black lighter; three (3) pieces foil; two (2) pieces wooden clip; one (1) piece paper scoop; and one (1) piece brown box, without any license or authority to possess the same, in violation of the aforesaid law.

CONTRARY TO LAW.[4]

When arraigned, appellant entered a plea of not guilty to both crimes of illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 and illegal selling of *shabu* under Section 5, Article II of the same law.[5] Manilyn, on the other hand, entered a plea of not guilty to the crime of illegal possession of drug paraphernalia.[6]

During the trial, the prosecution and the defense stipulated on the proffered testimonies of the receiving officer of the Ilocos Norte Provincial Crime Laboratory Office, SPO2 Teodoro Flojo (SPO2 Flojo), and the forensic chemist of the said crime laboratory, Police Inspector Roanalaine Baligod (PI Baligod). Forensic chemist PI Baligod was called to the stand to explain why she failed to indicate the "TCF" markings placed by SPO2 Flojo on the plastic sachet of *shabu* and glass tooter submitted as specimen.[7]

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[3] Records, p. 1.

[4] CA *rollo*, p. 25.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 26.

Thereafter, the prosecution presented on the witness stand PO2 Jefferson Sulmerin (PO2 Sulmerin), the poseur-buyer, and PO2 Cristopher[8] Pola (PO2 Pola), one of the arresting officers.[9]

Version of the Prosecution

Based on their testimonies, the version of the prosecution is, as follows:

At around 2:00 p.m. of March 31, 2011, the Office of the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) received an information or "tip" from a female informant regarding the rampant selling of *shabu* by appellant. Thereafter, PO2 Pola, PO2 Joey Aninag (PO2 Aninag) and PO2 Sulmerin coordinated with the resident agents of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG), PO2 Jovani Butay (PO2 Butay) and PO2 Dennis Ramos (PO2 Ramos), as well as with the members of the Philippine National Police (PNP) Laoag City led by SPO4 Rovimanuel Balolong (SPO4 Balolong) to conduct a buy-bust operation in the residence of appellant at Brgy. 40, Nalbo, Laoag City.[10]

At around 4:00 p.m., PO2 Sulmerin, the poseur-buyer, and the confidential informant went to the house of appellant.[11] PO2 Pola and PO2 Aninag, the designated arresting officers, stayed close behind while the rest of the team stayed inside their vehicles to wait for the pre-arranged signal, which was a "missed call" on the cellphone of PO2 Pola from PO2 Sulmerin.[12] When PO2 Sulmerin and the confidential informant reached the house of appellant, the confidential informant knocked on the door.[13] Appellant opened the door and asked the confidential informant

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[8] Spelled as "Christopher" in the RTC Decision and CA Decision.

[9] CA *rollo*, p. 26.

[10] *Id.*

[11] *Id.* at 27.

[12] *Id.*

[13] *Id.*

who she was with, referring to PO2 Sulmerin.[14] She said that PO2 Sulmerin was her companion who wanted to buy "stuff."[15] Appellant then invited them inside the living room of the house.[16] PO2 Sulmerin then told appellant his desire to buy *shabu* worth ₱1,000.00 and gave appellant the marked money.[17] Appellant placed the marked money inside his front pocket and went inside one of the rooms.[18] When he came back, he handed PO2 Sulmerin one heat-sealed plastic sachet containing white crystalline substance.[19] PO2 Sulmerin then called PO2 Pola's cellphone.[20] PO2 Pola and PO2 Aninag immediately rushed into the house and announced their authority as police officers.[21] Appellant was handcuffed, apprised of his constitutional rights, and frisked.[22] Recovered from him was the marked ₱1,000.00 bill.[23] He was then asked to sit in the living room while the team searched the room from where he got the *shabu*.[24] Inside the room, they found Manilyn sitting on the bed.[25] Likewise recovered from the room was a brown box which contained a glass tooter, a lighter, three pieces foil, two wooden clips, and a paper scoop.[26] PO2 Sulmerin asked Manilyn to join appellant in the living room.[27] PO2 Sulmerin then placed the seized items

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[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*

[21] *Id*.

[22] *Id*. at 28.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

together with the marked money and the plastic sachet of *shabu* on the table in the living room for marking and inventory in the presence of appellant, Manilyn, media person Juvelyn Curameng (Curameng) of the DZEA media station, and Chief Tanod Atanacio Bugaoisan (Chief Tanod Bugaoisan).[28] PO2 Sulmerin marked the items with his initials "JS" and the initial of appellant "JP" while PO2 Pola took pictures.[29]

After the inventory, PO2 Sulmerin placed the seized items inside a resealable bag.[30] Appellant and Manilyn were then brought to Camp Juan.[31] PO2 Elison Pasamonte (PO2 Pasamonte) prepared the booking sheets for both suspects while PO2 Pola prepared two sketches[32] of the vicinity and floor plan of the house.[33] PO2 Sulmerin prepared the request for laboratory examination and delivered the seized items to the crime laboratory.[34] SPO2 Flojo received the items, which he marked with his initials "TCF," and indorsed the same to forensic chemist PI Baligod.[35] Upon receipt of the seized items, forensic chemist PI Baligod conducted an initial test and a confirmatory test on the white crystalline substance contained in the plastic sachet and on the residue inside the glass tooter, which both tested positive for the presence of methamphetamine hydrochloride or commonly known as *shabu*.[36] She then prepared the Initial Laboratory Report[37] and the Confirmatory Chemistry Report.[38] After placing her initials

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[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Records, pp. 40-41.

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

[34] *Id.*

[35] *Id.*

[36] *Id.* at 28-29.

[37] Records, p. 37.

[38] *Id.* at 24.

"RBB" on the plastic sachet of *shabu* and the glass tooter, she kept the items and the reports in her evidence locker.[39] On April 7, 2011, she turned over the said items to the court through Clerk of Court Atty. Bernadette Espejo.[40]

Version of Appellant

Appellant and Manilyn denied the accusations against them.

Appellant testified that, around 1:00 p.m., he went out to buy a fluorescent lamp; that when he came back at around 2:00p.m., he saw his friend Ronald Ramos (Ronald) standing by the door of their house waiting for a friend; that after replacing the fluorescent lamp, appellant again went out to buy shampoo; that when he came back, Ronald was still at the door; that appellant went inside their house to get a towel and then went to the back of the house to take a bath; that while he was pumping water, he saw Ronald running towards the back of their house where there was an egress; that he heard someone shouting; that he looked inside their house and saw a woman he did not know; that he also saw the police officers, who were in civilian clothes, rummaging through their kitchen; that they asked him whose house it was; that when he answered that it was their house, they immediately handcuffed and pulled him inside the house; that they frisked him and took his money in the amount of ₱870.00; that he was boxed by one of the police officers; that he was allowed to sit at the living room; that he saw a glass tube being placed on the table in the living room; that he and Manilyn were boarded in a van and brought to Camp Juan; that when they were already at the camp, the police officers boxed him on the stomach and asked him where he placed the *shabu* and from whom was he getting the *shabu*; and that he denied any knowledge of what they were asking him.[41]

Manilyn, for her part, testified that she was the girlfriend of appellant; that on March 31, 2011, she visited appellant; that

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

[40] *Id*.

[41] *Id*. at 29-31.

at around 2:00 p.m., after eating, she went inside the room of appellant; that she heard somebody shout "police" in front of the house; that she did not go out to check as she was then texting her sister; that she noticed that somebody was trying to open the door of the room; that when it was opened, she saw a man wearing civilian clothes; that he pointed a gun at her and asked her where the rest of the *shabu* were hidden; that she told the man that she did not know what he was talking about; that she was told to get out of the room; that she saw appellant handcuffed in the living room; that she saw some items were being placed on the table in the living room; and that she and appellant were later taken to the camp.[42]

To corroborate the testimonies of appellant and Manilyn, the defense also presented the testimonies of Rogelio Pascua (Rogelio), the brother of appellant, and Reynald Burmudez (Reynald), the cousin and neighbor of appellant.

Rogelio testified that on March 31, 2011 at around 2:30 p.m., he went out of their house to take a snack; that when he returned to their house after 10 minutes, he saw his brother surrounded by three police officers at the back of their house; that when he went inside their house, he saw things being placed on the table in their living room; that he saw appellant and Manilyn, who were seated beside each other, being photographed; and that he saw the lady from DZEA and the Tanod, who were signing something.[43]

Reynald, on the other hand, testified that on March 31, 2011 at around 2:30 p.m., he went out of their house which was adjacent to the house of appellant; that he saw that the door of the house of appellant was open; that when he looked inside, he saw Ronald watching television; that while he and his cousin, Jonifer Loa-ang, were talking, they saw a lady going towards the house of appellant; that they saw her talking to Ronald in front of the house; that a closed van then arrived from which about five

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[42] *Id*.

[43] *Id*. at 31-32.

men alighted; that SPO4 Balolong pointed a gun at him and asked him where appellant was; that he replied that he did not know; that SPO4 Balolong went to the back of the house; that he also went to the back of the house and saw a man searching the drawer of a plastic cabinet; and that SPO4 Balolong again asked him if the man sitting inside the living room of the house was appellant.[44]

Ruling of the Regional Trial Court

On December 4, 2012, the RTC rendered a Decision finding appellant guilty of the crime of illegal sale of *shabu*. The RTC upheld the validity of the buy-bust operation and gave more credence to the testimonies of the prosecution's witnesses than to the denial of appellant as it found no ill motive on the part of the police officers to falsely accuse appellant.[45] As to the testimonies of Rogelio and Reynald, the RTC found that these did not help the defense of denial of appellant as Rogelio apparently only witnessed what happened after the arrest, while the testimony of Reynald did not negate the fact that a buy-bust operation was conducted on the said date.[46] The RTC also found that the chain of custody of the seized items was established by the prosecution.[47]

However, as to the charge of illegal possession of drug paraphernalia, the RTC resolved to acquit appellant and Manilyn due to inadmissibility of evidence. The RTC explained, that since appellant was already handcuffed, the possibility of him getting a weapon or any contraband in the room was remote. Thus, the search of the room incidental to the arrest was not valid.[48] As to Manilyn, the RTC found that there was no ample evidence to show that she was the live-in partner of appellant

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[44] *Id*. at 32.

[45] *Id*. at 33-39.

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

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

[48] *Id*. at 36-37.

or that she was in control and dominion of the room from which the seized paraphernalia were found.[49]

Thus, the dispositive portion of the Decision reads:

> WHEREFORE, judgment is hereby rendered finding [appellant] GUILTY beyond reasonable doubt as charged in Criminal Case No. 14722 of illegal sale of shabu as punished under Section 5, Article II of [RA] No. 9165 and is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a [fine] of ₱2,000,000.00.
>
> Said [appellant] and Manilyn Pompa are however ACQUITTED as charged in Criminal Case No. 14723 for illegal possession of drug paraphernalia for inadmissibility of evidence.
>
> The shabu and the drug paraphernalia subject hereof are confiscated, the same to be disposed as the law prescribes.
>
> SO ORDERED.[50]

Ruling of the Court of Appeals

Appellant appealed to the CA.

On October 9, 2015, the CA rendered a Decision affirming the RTC Decision. The CA ruled that there was a valid buy-bust operation based on the evidence presented.[51] Although there was no prior surveillance, the CA explained that it was not a prerequisite for a valid buy-bust operation.[52] The CA also found that the Chain of Custody Rule was complied with and that the failure of forensic chemist PI Baligod to indicate the actual markings on her reports was adequately explained.[53] The CA further said that the non-presentation of the confidential informant was not fatal to the case.[54] What is important was that the elements

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[49] *Id*. at 36.

[50] *Id*. at 41.

[51] *Rollo*, pp. 11-13.

[52] *Id*. at 13-14.

[53] *Id*. at 15-18.

[54] *Id*. at 18-19.

of the crime of illegal sale of *shabu* were duly established by the evidence presented by the prosecution.[55]

Hence, appellant filed the instant appeal, raising the same arguments he had in the CA.

Our Ruling

The appeal has merit.

The Chain of Custody Rule, embodied in Section 21, Article II of RA 9165,[56] the law applicable at the time of the commission of the crime charged, provides —

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*.— The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

(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.

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

[56] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE

(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.

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In the recent case of *People v. Lim*[57] the Court stressed the importance of the presence of the three witnesses (i.e. any elected public official and the representative from the media and the DOJ) during the physical inventory and the photograph of the seized items. In case of their absence, the Court ruled that —

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 of the Revised 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**

KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[57] G.R. No. 231989, September 4, 2018.

obtaining the presence of the required witnesses even before the offenders could escape.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

> 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 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. 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 full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

Simply put, under prevailing jurisprudence, in case the presence of the necessary witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance.

Here, the prosecution failed to prove both.

Under RA 9165, the law prevailing at that time, the physical inventory and photography must be witnessed by three necessary witnesses. In this case, PO2 Sulmerin conducted an inventory

of the seized items in the presence of appellant, Manilyn, media person Curameng, and Chief Tanod Bugaoisan, who, as aptly pointed out by Justice Bernabe, was not even an elected public official. There was also no DOJ representative present at the time. Thus, strictly speaking, there was only one valid witness, media person Curanmeng, who signed the Receipt of Properties/ Article Seized.[58] The Court has carefully reviewed the records and found that no explanation was also offered by the prosecution to explain the absence of the DOJ representative and an elected public official, nor did it show that earnest efforts were exerted to secure the presence of the same. In view of the foregoing, the Court is constrained to reverse the conviction of the appellant due to the failure of the prosecution to provide a justifiable reason for the non-compliance with the Chain of Custody Rule, which creates doubt as to the integrity and evidentiary value of the seized plastic sachet of *shabu*.

WHEREFORE, the appeal is **GRANTED**. The October 9, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05998, which affirmed the December 4, 2012 Decision of the Regional Trial Court of Laoag City, Branch 13, in Criminal Case No. 14722, finding appellant Jerome Pascua *y* Agoto guilty beyond reasonable doubt of the charges against him is **REVERSED** and **SET ASIDE**. Accordingly, appellant Jerome Pascua *y* Agoto, a.k.a. "Ogie," is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

SO ORDERED.

Leonardo-de Castro, C.J., Perlas-Bernabe,[*] and *Reyes, A. Jr.,*[**] *JJ.,* concur.

Bersamin, J., on official leave.

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[58] Records, p. 36.

[*] Per raffle dated September 13, 2017.

[**] Per raffle dated October 3, 2018.

SECOND DIVISION

[G.R. No. 228267. October 8, 2018]

MARIA NYMPHA MANDAGAN, *petitioner, vs.* **RUFINO DELA CRUZ of The Skills and Livelihood Training Center and DING VILLAREAL of the General Services Division, both of the Local Government Unit of San Juan City, Metro Manila, and THE OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

POLITICAL LAW; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); OFFICE OF THE OMBUDSMAN; FINAL AND UNAPPEALABLE DECISIONS IN ADMINISTRATIVE CASES; MAY BE ASSAILED BY THE AGGRIEVED PARTY BY FILING A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.— [C]ase law recognizes two (2) instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (*a*) where the respondent is absolved of the charge; and (*b*) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary. Nonetheless, in *Reyes, Jr. v. Belisario,* the Court clarified that in situations where the Ombudsman's ruling is deemed as "final and unappealable," an aggrieved party is not left without any recourse, as he may avail of the remedy of filing a petition for *certiorari* under Rule 65 of the Rules of Court x x x. In this case, considering that the Ombudsman ruling exonerated respondents from administrative liability — a ruling which is deemed "final and unappealable" — Mandagan correctly filed a Rule 65 petition for *certiorari* to assail the Ombudsman ruling on the ground of grave abuse of discretion x x x.

D E C I S I ON

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated July 4, 2016,[2] September 15, 2016,[3] and October 28, 2016[4] of the Court of Appeals (CA) in CA-G.R. SP No. 145966, which dismissed petitioner Maria Nympha Mandagan's (Mandagan) petition for *certiorari* before it on technical grounds, *i.e.*, availing of a wrong remedy as she should have purportedly filed an appeal from the Office of the Ombudsman's (Ombudsman) ruling.

The Facts

Mandagan alleged that on July 28, 2014, her Honda CRV figured into a collision with a Toyota Revo owned by the Local Government Unit of San Juan City, Metro Manila (LGU-San Juan) and driven by respondent Rufino Dela Cruz (Dela Cruz), Administrative Aide III of the Skills and Livelihood Training Center of LGU-San Juan. According to Mandagan, it was discovered during police investigation that the Toyota Revo's last registration was in 2002 and that Dela Cruz had no valid driver's license. Initially, Dela Cruz attempted to evade liability by introducing himself as a government employee performing official duties, but due to fear of possible administrative and civil charges against him, he later admitted to his fault and pleaded for amicable settlement, promising that the LGU-San Juan shall answer for the cost of the repairs of Mandagan's vehicle.[5] Thereafter, Mandagan made follow-ups with respondent

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[1] *Rollo*, pp. 3-11.

[2] *Id*. at 27-28. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela, concurring.

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

[4] *Id*. at 14-14-A.

[5] *Id*. at 34.

Ding Villareal (Villareal), Administrative Aide III of the General Services Division of LGU-San Juan, who allegedly misrepresented that the Toyota Revo driven by Dela Cruz was covered by insurance policies issued by the Government Service Insurance System (GSIS) and Malayan Insurance.[6] Despite the foregoing, Mandagan was unable to reimburse the costs of repairs of her vehicle, prompting her to send demand letters and make several calls to both Dela Cruz and Villareal (respondents). However, respondents not only failed to heed Mandagan's demands and to answer her calls, they also avoided her whenever she visited their office.[7] Hence, Mandagan filed an administrative complaint for Grave Misconduct, Gross Negligence, and Serious Dishonesty against respondents before the Ombudsman.[8]

In his defense, Villareal maintained that the Toyota Revo is indeed insured, and that upon receiving the report of the vehicular accident, he immediately asked their accredited repair shop and insurance providers to coordinate with Mandagan's insurance provider for the purpose of repairing her vehicle.[9] For his part, Dela Cruz insisted that he has a valid driver's license which he surrendered to the police traffic investigator at the scene of the accident. He likewise claimed that the investigation results were biased against him as the person driving Mandagan's vehicle at the time of the accident was a former official of the Philippine National Police.[10] Notably, both respondents asserted that they had no obligation to cause the registration of the Toyota Revo as the same should be handled by another division of the LGU-San Juan.[11]

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[6] *Id*.

[7] *Id*.

[8] *Id*. at 33.

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

[10] *Id*. at 35.

[11] *Id*.

The Ombudsman Ruling

In a Decision[12] dated November 26, 2015, the Ombudsman dismissed Mandagan's complaint against respondents for lack of factual and legal bases.[13] It found Mandagan's allegations that the Toyota Revo was unregistered and that Dela Cruz did not have a valid driver's license to be without merit as documents proving otherwise were presented during trial.[14] In this regard, the Ombudsman opined that respondents cannot be said to be remiss in their duties, considering that: (*a*) it has not been shown that, by the nature of their positions in the LGU-San Juan, they are required to have the Toyota Revo registered; and (*b*) as mere low-level employees of the LGU- San Juan, they cannot be faulted for any delay in facilitating the release of the money representing the repair costs of Mandagan's vehicle.[15]

Mandagan moved for reconsideration[16] but the same was denied in an Order[17] dated March 10, 2016. Aggrieved, she filed a petition for *certiorari*[18] under Rule 65 of the Rules of Court before the CA.

The CA Ruling

In a Resolution[19] dated July 4, 2016, the CA dismissed the petition on technical grounds. It held that Mandagan's plain, speedy, and adequate remedy to assail the Ombudsman's ruling is to file a petition for review under Rule 43 of the Rules of Court, and not a Rule 65 petition for *certiorari*.[20]

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[12] *Id*. at 33-38. Issued by Graft Investigation and Prosecution Officer II Joseph O. Menzon, reviewed by Director Moreno F. Generoso, and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang.

[13] *Id*. at 37.

[14] See *id*. at 36-37.

[15] *Id*.

[16] Dated February 4, 2016. *Id*. at 59-62.

[17] *Id*. at 29-32.

[18] Dated June 7, 2016. *Id*. at 39-47.

[19] *Id*. at 27-28.

[20] *Id*.

Undaunted, Mandagan filed two (2) motions for reconsideration,[21] both of which were, however, denied in Resolutions dated September 15, 2016[22] and October 28, 2016,[23] respectively. Hence, this petition.

The Issue Before the Court

The issue in this case is whether or not the CA erred in dismissing the petition for *certiorari*.

The Court's Ruling

Pertinent portions of Section 27 of Republic Act No. 6770,[24] otherwise known as "The Ombudsman Act of 1989," read:

> Section 27. *Effectivity and Finality of Decisions.*— x x x
>
> x x x x x x x x x
>
> Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.
>
> x x x x x x x x x

This provision is reflected in Section 7, Rule III of Administrative Order No. (AO) 07,[25] as amended, which further covers situations where a respondent is absolved of the charges against him, to wit:

> Section 7. *Finality and execution of decision*. — **Where the respondent is absolved of the charge**, and in case of conviction

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[21] See motion for reconsideration dated July 30, 2016 (*id*. at 89-93); and second motion for reconsideration dated October 19, 2016 (*id*. at 15-18).

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

[23] *Id*. at 14-14-A.

[24] Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," approved on November 17, 1989.

[25] Entitled "RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN" (April 10, 1990).

where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, **the decision shall be final, executory, and unappealable**. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

x x x x x x x x x (Emphases and underscoring supplied)

Based on the foregoing, case law recognizes two (2) instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (*a*) where the respondent is absolved of the charge; and (*b*) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary.[26] Nonetheless, in *Reyes, Jr. v. Belisario*,[27] the Court clarified that in situations where the Ombudsman's ruling is deemed as "final and unappealable," an aggrieved party is not left without any recourse, as he may avail of the remedy of filing a petition for *certiorari* under Rule 65 of the Rules of Court, to wit:

> The clear import of Section 7, Rule III of the Ombudsman Rules is **to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge**, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one month salary.

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[26] *Dagan v. Office of the Ombudsman*, 721 Phil. 400, 411 (2013), citing *Office of the Ombudsman v. Alano*, 544 Phil. 709, 714 (2007).

[27] 612 Phil. 936 (2009).

The absence of any *statutory* right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. *Over and above our statutes* is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides. A petition for *certiorari* is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (*i.e.*, without the appropriate legal power to resolve a case), or in excess of jurisdiction (*i.e.*, although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner equivalent to lack of jurisdiction). The Rules of Court and its provisions and jurisprudence on writs of *certiorari* fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules. The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA.[28] (Emphases and underscoring supplied)

In this case, considering that the Ombudsman ruling exonerated respondents from administrative liability – a ruling which is deemed "final and unappealable" – Mandagan correctly filed a Rule 65 petition for *certiorari* to assail the Ombudsman ruling on the ground of grave abuse of discretion,[29] instead of a Rule 43 petition for review as erroneously posited by the CA. On this note, since the Court recognizes that the dismissal of Mandagan's petition for *certiorari* was due to a mere technicality, it is only appropriate that this case be remanded to the CA for its resolution on the merits.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated July 4, 2016, September 15, 2016, and October 28, 2016

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[28] *Id.* at 954-955; citations omitted.

[29] See *rollo*, pp. 39-48.

of the Court of Appeals (CA) in CA-G.R. SP No. 145966 are hereby **REVERSED** and **SET ASIDE**. Accordingly, this case is **REMANDED** to the CA for its resolution on the merits.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa*, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,* *J.*, on official leave.

SECOND DIVISION

[G.R. No. 228779. October 8, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM VILLAROS *y* CARANTO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** The two elements of rape — (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation — are both present as duly proven by the prosecution in this case.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE ACCUSED MAY BE CONVICTED ON THE BASIS OF THE LONE, UNCORROBORATED TESTIMONY OF THE RAPE VICTIM, PROVIDED THAT HER TESTIMONY IS CLEAR, CONVINCING AND OTHERWISE CONSISTENT WITH HUMAN NATURE.—** AAA testified in detail how the accused-appellant committed the sexual abuses, and this testimony was given weight and credence by both the RTC

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* Designated as Additional Member per Special Order No. 2587 dated August 28, 2018.

and the CA. In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and substance.

3. **ID.; ID.; ID.; NOT IMPAIRED BY THE DELAY IN MAKING A CRIMINAL ACCUSATION IF SUCH DELAY IS SATISFACTORILY EXPLAINED.—** It is well settled that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained. In *People v. Historillo* (*Historillo*), the Court held that failure of the complainant to immediately report the rape to the police authorities does not detract from her credibility. Further, the Court in the said case considered (1) the victim's age, (2) the accused's moral ascendancy over the victim, and (3) his threats against her, in excusing the delay in filing the case. The same reasons justify the delay in the present case. Similar to the victim in *Historillo*, AAA was also just 12 years old when the first rape incident was committed, and was 13 years old when the same heinous act was repeated. Likewise, a threat was similarly made by the accused-appellant in this case which, no matter how much he tried to downplay its extent and the effect of the same on the victim, became a significant factor in both the victim's surrender to his lewd designs and her delay in reporting the crime to the proper authorities. These, along with the fact that x x x the accused had moral ascendancy over the victim, the Court holds that the delay in reporting the rapes to the authorities was justified in this case.

4. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; FORCE OR INTIMIDATION; IN RAPES COMMITTED BY A CLOSE KIN, IT IS NOT NECESSARY THAT ACTUAL FORCE OR INTIMIDATION BE EMPLOYED, FOR MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.—** The law does not impose on the rape victim the burden of proving resistance. In rape, the force and intimidation must be viewed

in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. The fact that the accused-appellant did not use any weapon is immaterial, especially since the victim in this case was just 12 or 13 years old at the time of the incidents. Moreover, this case involves a rape of a close kin. In rapes committed by a close kin, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation. The fact that the accused-appellant was only a "brother of her stepfather" does not diminish the fact that he exercised moral influence over the minor, much more so in this case where they actually live together in the same house.

5. ID.; ID.; ID.; MEDICAL EXAMINATION IS NOT INDISPENSABLE IN A PROSECUTION FOR RAPE.— The Court has held numerous times in the past that a medical examination is not indispensable in a prosecution for rape. x x x [T]he medico-legal officer's responsibility is only limited to finding out whether or not there is enough evidence to conclude that AAA was sexually abused. The medico-legal officer was not tasked to point to specific dates on when exactly the victim was abused, but merely to ascertain that she was indeed abused.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.— [B]oth denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.

7. ID.; ID.; ALIBI; CANNOT PROSPER AS A DEFENSE IF IT IS NOT PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE AT THE PLACE OF THE CRIME.— [F]or the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence. In the present case, accused-appellant was within the immediate vicinity of the place of the crime.

> Even if the accused-appellant's explanation is to be accepted as true, he was still within the same province as the place of the crime. By his own admission, the village he was supposedly working at during the time of the commission of the crime was "far from their house but is just a walking distance away." As it was not physically impossible for him to be at the place of the crime, his defense of alibi must thus necessarily fail.

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

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant William Villaros y Caranto (Villaros or accused-appellant) assailing the Decision[2] dated June 21, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07650, which affirmed the Decision[3] dated February 11, 2015 of the BBB, CCC,[4] Regional Trial Court (RTC) in Criminal Case Nos. 12108 and 12109, finding Villaros guilty beyond reasonable doubt of two (2) counts of rape.

The Facts

Two (2) separate Informations were filed against the accused-appellant for the rape of minor AAA,[5] which read:

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[1] *See* Notice of Appeal dated July 14, 2016; *rollo*, pp. 14-15.

[2] *Rollo*, pp. 2-13. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan concurring.

[3] CA *rollo*, pp. 42-47. Penned by Presiding Judge Josephine Zarate Fernandez.

[4] The names of the Municipality and the Province are replaced with fictitious initials pursuant to SC Administrative Circular No. 83-2015 dated July 27, 2015.

[5] The name of the victim is replaced with fictitious initials pursuant to SC Administrative Circular No. 83-2015 dated July 27, 2015.

Criminal Case No. 12108

That on or about the 27th day of December 2009, in the Municipality of [BBB],[6] Province of [CCC], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of complainant [AAA],[7] a minor, thirteen (13) years of age, against her will and without her consent, the said crime, having been attended by the Qualifying Circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and at Nighttime.

CONTRARY TO LAW.[8]

Criminal Case No. 12109

That on or about the 29th day of November 2009, in the Municipality of [BBB],[9] Province of [CCC], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of complainant [AAA],[10] a minor, twelve (12) years of age, against her will and without her consent, the same crime, having been attended by the Qualifying Circumstances of Treachery, Evident Premeditation, Abuse of Superior Strength and at Nighttime.

CONTRARY TO LAW.[11]

The facts, as summarized by the RTC, are as follows:

On November 29, 2009, the victim went inside the bathroom beside the room of accused Villaros. She was still there when accused Villaros peeped inside. When the said victim came out from the room, the accused told her to buy cigarettes. The victim could not look at the accused when she gave the cigarette to him as he was then only wearing

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[6] *See* note 4.

[7] *See* note 5.

[8] CA *rollo*, p. 42.

[9] *See* note 4.

[10] *See* note 5.

[11] CA *rollo*, pp. 42-43.

shorts. Upon receiving the cigarette, the accused pulled the victim inside his bedroom and closed the door. The door of the accused's bedroom is made from galvanized iron and while inside, he also closed the curtains. Accused Villaros who was then already naked told the victim to remove her clothes while he was covering her mouth. At the said time at around 6 o'clock in the afternoon there were no other persons inside the house because the victim's mother and stepfather were at work. As the victim refuses (*sic*) to remove her clothes[,] accused Villaros was the one who did so. The victim tried resisting but accused Villaros covered her mouth with one hand while the other held her hands. Even when the victim was petrified, she addressed the accused "Tito" as a sign of respect. After removing the victim's clothes, accused Villaros made her lie down on foam which he used as a bed. While crying, the accused touches (*sic*) the private part of the victim for about twenty (20) minutes and then mounted on top of her inserting his sexual organ into her private part. When done, the accused told the victim to dress up which she immediately did so and walked out of the room.

During the incident that transpired on December 27, 2009 at 6 o'clock in the evening the victim was alone in the house when the accused again sexually abused her. The victim cried and felt hurt when accused inserted his sexual organ into her private part. One of the accused's hands covered the victim's mouth while his other hand removes (*sic*) his shorts. The accused remained on top of the victim for fifteen (15) minutes after the intercourse and then hurriedly left. The accused warned the victim that he would hurt the victim's siblings if she will not let him do what he wanted. The victim and her siblings were all four (4) girls. The victim's next sibling is eleven (11) years old, the third is four (4) and the youngest is one (1) year old. At the time of the incident the siblings of the victim were in school playing. The incident occurred inside the house of the victim because accused Villaros had access thereto anytime.

The victim was already three (3) months pregnant when her relatives discovered about what happened to her. The victim's belly was getting bigger when her mother noticed her pregnant condition which was confirmed positive by means of a test kit. It was then when the victim then confided to her mother about the sexual ordeal committed upon her by the accused. At present, the victim's baby girl is with her aunt in the province.[12]

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

A genital examination was conducted by PCI Joseph Palmero on AAA with the consent of her mother. The said examination revealed that AAA had "deep-healed lacerations at 3 o'clock and shallow-healed sealed laceration at 6 o'clock position of the hymen." Through the genital examination, it was concluded that there was "definite evidence of abuse and sexual contact."[13]

On the other hand, the accused-appellant relied on denial and alibi to establish his innocence. The version of the defense was summarized by the RTC as follows:

> For the defense, only accused William Villaros testified that he knows the victim because she lives in the house of his brother [DDD],[14] [who is also the victim's] stepfather. Their houses are adjacent to one another. Accused Villaros has no family of his own and it is his nephews and nieces who live with him. Prior to his incarceration accused [was] a construction worker.
>
> On November 29, 2009, the accused was at [EEE], [BBB], [CCC][15] repairing a destroyed house. [EEE] is quite far from their house but is just a walking distance away. They worked from 8 to 5 o'clock and on said date and after work, accused Villaros went straight to a friend to sometimes drink alcohol. When accused Villaros went home[,] he [cooked] dinner.
>
> The accused denies that he had sex with the victim on November 29, 2009. He claims that the victim is just trying to ruin his reputation. The accused contends that the victim is angry with him for meddling in her fight with his nephews and nieces.
>
> From December 27, 2009 up to January, accused Villaros was at work in a construction at [EEE], [BBB], [CCC]. While, on November 29, he was at [FFF], [GGG], [CCC], renovating a house. Thus, there is no truth that he raped the victim on December 27, 2009. The accused denies responsibility in the victim getting pregnant. The accused does not know why the victim would file a case against him.[16]

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[13] *Id*. at 44.

[14] The name of the victim's stepfather is replaced with fictitious initials pursuant to SC Administrative Circular No. 83-2015 dated July 27, 2015.

[15] *See* note 4.

[16] RTC Decision, pp. 3-4 (CA *rollo*, p. 44 to next consecutive page with no pagination).

Ruling of the RTC

After trial on the merits, in its Decision[17] dated February 11, 2015, the RTC convicted Villaros of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 12108, finding accused William Villaros y Caranto GUILTY beyond reasonable doubt of the crime of Rape (Article 266-A 1 (a) & (b), in relation to Article 266-B, 1st paragraph of the Revised Penal Code, as amended by Republic Act 8353 and in further relation to Article 17 of the same Code) and sentencing him to suffer the penalty of *Reclusion Perpetua* and to indemnify the victim, [AAA], the amount of fifty thousand pesos (Php50,000.00) as civil indemnity, fifty thousand pesos (Php50,000.00) as moral damages and fifty thousand pesos (Php50,000.00) as exemplary damages.

2. In Criminal Case No. 12109, finding accused William Villaros y Caranto GUILTY beyond reasonable doubt of the crime of Rape (Article 266-A 1 (a) & (b), in relation to Article 266-B, 1st paragraph of the Revised Penal Code, as amended by Republic Act 8353 and in further relation to Article 17 of the same Code) and sentencing him to suffer the penalty of *Reclusion Perpetua* and to indemnify the victim, [AAA], the amount of fifty thousand pesos (Php50,000.00) as civil indemnity, fifty thousand pesos (Php50,000.00) as moral damages and fifty thousand pesos (Php50,000.00) as exemplary damages.

No pronouncement as to cost.

Accused William Villaros y Caranto is hereby ordered to be committed to the [New Bilibid Prison] in Muntinlupa City for service of sentence.

Accused William Villaros y Caranto is to be credited for the time spent for his preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by R.A 6127 and E.O 214.

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[17] CA *rollo*, pp. 42-47.

SO ORDERED.[18]

The RTC found that AAA gave a substantial recount of her sexual ordeal in a candid and straightforward manner which was actually even strengthened by her cross-examination.[19] The RTC also found Villaros' defense to be "lame," considering that he was not able to raise any substantial matter that would negate the veracity of the allegations and testimony of the victim. The RTC held that Villaros took advantage of his moral authority, as he was the brother of the stepfather of the victim, and likewise employed force, threats, and intimidation to accomplish his lewd design.[20] The RTC, however, did not appreciate any of the qualifying and aggravating circumstances alleged.

Aggrieved, the accused-appellant appealed to the CA.[21]

Ruling of the CA

In the questioned Decision[22] dated June 21, 2016, the CA affirmed the RTC's conviction of the accused-appellant, and held that the prosecution was able to sufficiently prove the elements of the crime charged.

The CA did not accord weight to any of the accused-appellant's assertions which should supposedly taint AAA's testimony, namely that: (1) her demeanor during and after the alleged rape incidents, which was supposedly inconsistent with the natural reaction and behavior of a woman whose person had been violated; (2) she did not shout for help despite supposedly having the opportunity to do so; (3) there was no showing that AAA was threatened not to report the incident; (4) contrary to what was impressed upon the lower court, AAA could not have felt extreme fear as Villaros had no moral ascendancy over her;

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

[19] *Id*. at 45.

[20] *Id*.

[21] *Supra* note 1.

[22] *Supra* note 2.

and (5) despite her claim that she developed fear towards Villaros after the incident on November 29, 2009, AAA still went to their house and exposed herself to further abuse.[23]

The appellate court, however, modified the award of exemplary damages by decreasing the same from ₱50,000.00 to ₱30,000.00, in accordance with *People v. Ramos*.[24]

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting the accused-appellant.

The Court's Ruling

The appeal is unmeritorious. The Court affirms the conviction of the accused-appellant as the prosecution was able to prove his guilt beyond reasonable doubt.

The two elements of rape — (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation[25] — are both present as duly proven by the prosecution in this case. AAA testified in detail how the accused-appellant committed the sexual abuses,[26] and this testimony was given weight and credence by both the RTC and the CA. In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe

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[23] *Id*. at 6.

[24] 743 Phil. 344 (2014).

[25] *People v. Soronio*, 281 Phil. 820, 824 (1991).

[26] *See* Brief for the Accused-Appellant, CA *rollo*, pp. 32-33, where the accused-appellant cited TSN dated April 25, 2012 when the victim testified regarding the rape incidents.

their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry great weight and substance.[27]

The accused-appellant, however, makes an issue out of supposed inconsistencies in her testimony. First, the accused-appellant raised as issue AAA's demeanor after the alleged rape incidents in that it was supposedly "inconsistent with the natural reaction and behavior of a woman whose person had been violated."[28] The accused-appellant pointed out that AAA testified that she would not have filed the case if she did not get pregnant,[29] and she, in fact, only complained because her mother found out she was already pregnant. The accused-appellant added that there was no showing that AAA was threatened not to report the incident. According to the accused-appellant, "[t]he records show that the threat happened on the second incident when the accused-appellant allegedly told her that he would do the same to her siblings. It appeared that the threat was not even immediate such that she could instantly succumb to fear."[30]

The Court is not persuaded. It is well settled that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained.[31] In *People v. Historillo*[32] (*Historillo*), the Court held that failure of the complainant to immediately report the rape to the police authorities does not detract from her credibility. Further, the Court in the said case considered (1) the victim's age, (2) the accused's moral ascendancy over the victim, and (3) his threats against her, in excusing the delay in filing the case.

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[27] *People v. Alemania*, 440 Phil. 297, 304-305 (2002).

[28] Brief for the Accused-Appellant, CA *rollo,* p. 35.

[29] Brief for the Accused-Appellant, *id*., citing TSN dated July 30, 2011.

[30] Brief for the Accused-Appellant, *id*. at 36.

[31] *People v. de la Peña*, 406 Phil. 640, 647 (2001).

[32] 389 Phil. 141, 148 (2000).

The same reasons justify the delay in the present case. Similar to the victim in *Historillo*, AAA was also just 12 years old when the first rape incident was committed, and was 13 years old when the same heinous act was repeated. Likewise, a threat was similarly made by the accused-appellant in this case which, no matter how much he tried to downplay its extent and the effect of the same on the victim, became a significant factor in both the victim's surrender to his lewd designs and her delay in reporting the crime to the proper authorities. These, along with the fact that, as will be further discussed later, the accused had moral ascendancy over the victim, the Court holds that the delay in reporting the rapes to the authorities was justified in this case. As the Court in *People v. Pareja*[33] aptly stated:

> Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.[34]

Accused-appellant also questions why AAA did not shout for help when, per her testimony, her mouth was not covered as accused-appellant's one hand was supposedly removing her clothes and the other held her hands.[35]

This argument deserves scant consideration. It is important to stress that not all rape victims react the same way.[36] Not every victim of a crime can be expected to act reasonably and conformably with the expectation of mankind.[37] There is,

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[33] 724 Phil. 759 (2014).

[34] *Id*. at 778-779.

[35] Brief for the Accused-Appellant, CA *rollo*, p. 36.

[36] *People v. Soriano*, 560 Phil. 415, 420 (2007).

[37] *People v. Gecomo*, 324 Phil. 297, 315 (1996).

unfortunately for accused-appellant, no typical reaction or norm of behavior that ensue forthwith or later from victims of rape.[38] It should be true, most certainly, when dealing with an innocent and immature child still of tender age.[39] As the CA correctly held:

> To consider the aforesaid claim would be tantamount to saying that fear is not a natural reaction to something unfamiliar or unusual but only a reaction that can easily be summoned or controlled, and its reasonableness, dependent on the victim's relationship with the culprit; that if the rapist is someone who has no moral ascendancy over the victim, it is a must for the latter to shout at the top of her lungs for help and to struggle with all her might before her rape claim can be given credence.[40]

In this connection, the accused-appellant brazenly blames the victim for "expos[ing] herself to further abuse."[41] According to the accused-appellant, AAA "claimed that she developed fear towards the accused-appellant after the incident on November 29, 2009, but still went at their house and exposed herself to further abuse."[42]

This reasoning is outrageous, if not outright despicable. In his desperate attempt to exculpate himself from criminal liability, the accused-appellant turned on his victim who, to repeat, was a minor at the time the rape incidents were committed, and blamed her for putting herself in a vulnerable position ***in her own home***. Grasping at straws, the accused-appellant not only committed the abhorrent practice of victim-blaming so prevalent in sexual abuse cases, but he also failed to recognize that he made the irrational proposition that the victim should not have been comfortable ***in her own abode***. Worth pointing out is the fact that our laws and jurisprudence regard our homes with

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[38] *People v. Deleverio*, 352 Phil. 382, 400 (1998).

[39] *Id.*

[40] CA Decision, *rollo,* p. 9.

[41] Brief for the Accused-Appellant, CA *rollo*, p. 36.

[42] *Id.*

much respect, so much so that our criminal law punishes trespass to dwelling as an offense by itself,[43] and considers "dwelling" as an aggravating circumstance in determining the exact liability in criminal prosecutions.[44] Although it will not be used in determining accused-appellant's exact penalty in this case, it bears emphasis that:

> "Dwelling" is considered an aggravating circumstance because **primarily of the sanctity of privacy the law accords to human abode**. According to one commentator, one's dwelling place is a "**sanctuary worthy of respect**" and that one who slanders another in the latter's house is more guilty than if he who offends him elsewhere.[45]

As aptly rebutted by the CA:

> Likewise, We find it unacceptable on the part of the accused-appellant to even suggest that if there is any truth to [AAA]'s claim that she had been raped, she should not have stayed at the family home after the alleged first incident and exposed herself to further abuse. At the risk of being repetitive, the victim here is a minor. She cannot be expected to think and act in a rational manner. Nonetheless, it is unconscionable to blame the victim and deprive her of the comfort of her family home just because she was unfortunate enough to become the subject of accused-appellant's unbridled lust. Why should the victim be the one to suffer for the beastly acts of accused-appellant?[46]

The accused-appellant further shifts the blame on the victim by claiming that she failed to establish that she employed significant resistance considering that she did not allege that he used any weapon during the alleged rape incidents.[47] He additionally claimed that AAA could not have felt extreme fear because he supposedly did not have moral ascendancy over her, he being only a brother of her stepfather.[48]

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[43] REVISED PENAL CODE, Arts. 280 and 281.

[44] REVISED PENAL CODE, Art. 14(3).

[45] *People v. Balansi*, 265 Phil. 614, 622 (1990).

[46] CA Decision, *rollo,* p. 9.

[47] Brief for the Accused-Appellant, CA *rollo*, p. 36.

[48] *Id.*

These arguments are downright specious. The law does not impose on the rape victim the burden of proving resistance.[49] In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[50] The fact that the accused-appellant did not use any weapon is immaterial, especially since the victim in this case was just 12 or 13 years old at the time of the incidents. Moreover, this case involves a rape of a close kin. In rapes committed by a close kin, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[51] The fact that the accused-appellant was only a "brother of her stepfather" does not diminish the fact that he exercised moral influence over the minor, much more so in this case where they actually live together in the same house.

Finally, the accused-appellant puts in issue the supposed failure of the testimony of the medico-legal officer to corroborate AAA's testimony. According to the accused-appellant, the "laceration was not traced with certainty to have been sustained on the date the [rapes incidents] were allegedly committed. The [allegation] that AAA was raped on November 29, 2009 and December 27, 2009 remains as a mere possibility."[52]

The above contention is clearly without merit. The Court has held numerous times in the past that a medical examination is not indispensable in a prosecution for rape.[53] As the Court held in *People v. Docena*:[54]

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[49] *People v. Fabian*, 453 Phil. 328, 337 (2003).

[50] *Id*.

[51] *People v. Padua*, 661 Phil. 366, 370 (2011).

[52] Brief for the Accused-Appellant, CA *rollo*, p. 37.

[53] *People v. Campos*, 394 Phil. 868, 872 (2000).

[54] 379 Phil. 903 (2000).

Medical findings or proof of injuries, virginity, **or an allegation of the exact time and date of the commission of the crime are not essential in a prosecution for rape.** This is so because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is, as in the cases at bar, the complainant's testimony. (Emphasis supplied)[55]

Further, as correctly found by the CA, the medico-legal officer's responsibility is only limited to finding out whether or not there is enough evidence to conclude that AAA was sexually abused.[56] The medico-legal officer was not tasked to point to specific dates on when exactly the victim was abused, but merely to ascertain that she was indeed abused.

In a last-ditch effort to cast doubt on his guilt, accused-appellant offers alibi and denial to prove that he did not rape AAA. According to him, he was working in other villages within the same province at the dates of the alleged rape incidents.[57] He contended that the victim filed the case only because she was angry at him for meddling in her fight with his nephews and nieces.[58]

The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[59] Further, the continuing case law is that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.[60]

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[55] *Id.* at 913-914.

[56] CA Decision, *rollo*, p. 10.

[57] RTC Decision, p. 4 (CA *rollo*, no pagination).

[58] *Id.*

[59] *People v. Piosang*, 710 Phil. 519, 527 (2013).

[60] *People v. Desalisa*, 451 Phil. 869, 876 (2003).

In the present case, accused-appellant was within the immediate vicinity of the place of the crime. Even if the accused-appellant's explanation is to be accepted as true, he was still within the same province as the place of the crime. By his own admission, the village he was supposedly working at during the time of the commission of the crime was "far from their house but is just a walking distance away."[61] As it was not physically impossible for him to be at the place of the crime, his defense of alibi must thus necessarily fail.

With regard to the amount of damages, the Court deems it proper to adjust the award of damages in consonance with *People v. Jugueta*.[62] Thus, the accused-appellant is hereby ordered to pay AAA, the amount of seventy-five thousand pesos (₱75,000.00) as civil indemnity, seventy-five thousand pesos (₱75,000.00) as moral damages, and seventy-five thousand pesos (₱75,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.[63]

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated June 21, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07650 is hereby**AFFIRMED WITH MODIFICATION** by increasing each of the awards for civil indemnity, moral damages, and exemplary damages from fifty thousand pesos (₱50,000.00) to seventy-five thousand pesos (₱75,000.00) for each case. Accordingly, accused-appellant William Villaros y Caranto is hereby **CONVICTED** of the crimes charged.

SO ORDERED.

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

Reyes, J. Jr.,[*] *J.*, on wellness leave.

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[61] RTC Decision, p. 4 (CA *rollo*, no pagination).

[62] 783 Phil. 806 (2016).

[63] *People v. Arcillas*, 692 Phil. 40, 54 (2012).

[*] Designated as Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 232496. October 8, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR ABADILLA *y* VERGARA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to secure a conviction for Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

2. ID.; ID.; ID.; THE DANGEROUS DRUG ITSELF FORMS PART OF THE *CORPUS DELICTI* OF THE CRIME AND IT IS THE PROSECUTION'S DUTY TO PROVE WITH MORAL CERTAINTY THE IDENTITY OF THE PROHIBITED DRUG.— The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

3. ID.; ID.; CHAIN OF CUSTODY RULE; IN ILLEGAL SALE OF DANGEROUS DRUGS, THE CHAIN OF CUSTODY BEGINS THE MOMENT THE DANGEROUS DRUGS ARE SEIZED FROM THE SELLER AFTER A CONSUMMATED

SALE TRANSACTION.— In cases involving Illegal Sale of Dangerous Drugs, the chain of custody begins the moment the dangerous drugs are seized from the seller after a consummated sale transaction. The prosecution must prove that from the time of seizure up until the seized items are presented in court as evidence, that there was no break or gap in the chain of custody that would ultimately cast doubt on the identity, integrity and evidentiary value of the seized items.

4. ID.; ID.; ID.; INVENTORY AND PHOTOGRAPHY OF SEIZED ITEMS; THREE-WITNESSES RULE; IN CASES INVOLVING BUY-BUST OPERATIONS, THE FAILURE OF THE ARRESTING OFFICERS TO JUSTIFY THE ABSENCE OF THE REQUIRED WITNESSES CONSTITUTES A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY WHICH CASTS SERIOUS DOUBTS ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* WHICH IS THE DANGEROUS DRUG ITSELF.— Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph one (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted x x x. In 2014, R.A. No. 10640 amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2) x x x. One of the amendments introduced by R.A. No. 10640 was the reduction of the number of witnesses required to be present during the inventory and photography of the seized items, from three to only two — an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage to obviate even the slightest possibility of switching, planting or contamination of evidence. x x x Since the offense subject of this appeal was committed before the amendment introduced by R.A. 10640, the old provisions of Section 21 and its IRR should apply x x x. In addition to the requirements of venue of physical inventory and photography of the seized items, Section 21 also requires the presence of three witnesses during the actual inventory, *i.e.*, **(1) an elected**

public official, (2) a representative from the DOJ and (3) a representative from the media. x x x The Court is well aware that a perfect chain of custody is almost always impossible to achieve, however, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved— without justifying their failure to comply with the requirements stated therein. In similar cases involving buy-bust operations, the Court has consistently ruled that failure of the arresting officers to justify the absence of the required witnesses constitutes a substantial gap in the chain of custody. x x x The buy-bust operation was carried out clearly within office hours and in broad daylight. There being no mention of any other circumstance or reason that prevented the arresting officers from securing the attendance of the witnesses at the inventory, the saving clause will not apply. x x x This procedural lapse cannot be cured by the simple expedient of invoking the saving clause found in Section 21 or the presumption that the arresting officers performed their duties in a regular manner. x x x There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti* which is the dangerous drug itself.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT STAND WHEN THE OFFICIAL ACT IN QUESTION IS IRREGULAR ON ITS FACE.— Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. x x x Where the official act in question is irregular on its face, the presumption of regularity cannot stand.

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

REYES, A. JR., *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Nestor Abadilla *y* Vergara (Abadilla) assailing the Decision[2] dated February 6, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07891, which affirmed the Decision[3] dated September 30, 2015 of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Criminal Case No. 15404-13 finding Abadilla guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5,[4] Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002".

The Facts

The facts, as culled from the records, read as follows:

Abadilla was charged with Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, before the RTC of Laoag City, Branch 13 in Criminal Case No. 15404-13. The accusatory portion of the Information[5] reads:

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[1] CA *rollo*, pp. 140-141.

[2] Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 2-17.

[3] CA *rollo*, pp. 52-67.

[4] **Sec. 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten Million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[5] CA *rollo*, p. 52.

That on or about the 3rd day of January 2013, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver to a police poseur buyer PO2 LAWRENCE GANIR two (2) heat sealed plastic sachets containing methamphetamine hydrochloride, commonly known as "*shabu*," a dangerous drug weighing 0.0245 grams and 0.0297 grams, respectively, valued in the total amount of One Thousand (₱1,000.00) Pesos, without any license or authority to sell and dispose the same.

CONTRARY TO LAW.[6]

On arraignment, Abadilla pleaded "not guilty" to the charge. During the preliminary conference, the parties marked their exhibits, listed their witnesses and entered into a stipulation of facts. A pre-trial followed on May 28, 2013 but the parties merely adopted the minutes of the preliminary conference since there was neither new nor additional matters to be considered. Trial on the merits thereafter ensued.[7]

The prosecution presented the following witnesses: Police Inspector Amiely Ann Navarro (P/Insp. Navarro) and Senior Police Officer 2 Teodoro Flojo (SPO2 Flojo), both of the Philippine National Police (PNP) Ilocos Norte Provincial Crime Laboratory Office whose testimonies were proffered in writing by the prosecution and admitted by the defense; PO2 Lawrence Ganir (PO2 Ganir), SPO1 Jonathan Alonzo and SPO4 Rovimanuel Balolong (Ret.) (SPO4 Balolong), all from the Laoag City Police Station (LCPS).[8]

Version of the Prosecution

At around 1:25 p.m. of January 3, 2013, one of the police assets of the LCPS called the Chief Intel operative, SPO4 Balolong, and reported to him that Abadilla then known by his alias "Mukat" was looking for buyers of *shabu*.[9]

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[6] *Id*.

[7] *Id*. at 53.

[8] *Id*.

[9] *Id*.

SPO4 Balolong, thus, asked the asset if he can send one of his Intel operatives to pose as buyer. When the asset answered in the affirmative and since Abadilla was then in the house of the asset, SPO4 Balolong immediately informed the Chief of Police who ordered the conduct of a buy bust operation. SPO4 Balolong therefore called his men then available for a short briefing. He assigned PO2 Ganir as poseur-buyer while he and SPO1 Arcel Agbayani (SPO1 Agbayani) will serve as back up. They agreed that the signal to indicate the consummation of the transaction will be a missed call from PO2 Ganir to the cellphone of SPO4 Balolong. Later, after SPO4 Balolong had recorded a Php 1,000.00 bill to be used as buy-bust money in the police blotter, the three policemen proceeded with the operation.[10]

PO2 Ganir went ahead in a public tricycle to the house of the asset located along Fariñas Street in Barangay 9, Laoag City. SPO4 Balolong and SPO1 Agbayani rode in the latter's car and followed tailing the tricycle of PO2 Ganir.[11]

As the tricycle of PO2 Ganir was approaching from the south along Fariñas Street, he saw the asset in front of their house talking to a male person whom he did not know yet to be Abadilla. At about 5 meters away, he alighted from the tricycle and as he was approaching the two, the asset introduced him to Abadilla. The transaction thereupon started, PO2 Ganir gave the buy-bust money to Abadilla who asked them to wait and he will get the stuff. Abadilla went towards the south where he boarded a tricycle which then turned to Gomburza Street.[12]

In the meantime, PO2 Ganir and the asset talked while the back-up who parked their vehicle about 15 m away from the house of the asset stood by. After 20 minutes, Abadilla returned riding in the tricycle and gave two plastic sachets of white crystalline substance suspected to be *shabu* to PO2 Ganir who,

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 53-54.

after pocketing the same, executed the pre-arranged signal and arrested Abadilla. When the back-up arrived at the place, they helped PO2 Ganir in arresting Abadilla whom they then boarded in their vehicle.[13]

At the LCPS where they brought Abadilla, the team prepared the charges against him. The two plastic sachets of white crystalline substance together with a letter request for laboratory examination was later submitted to the PNP Ilocos Norte Provincial Crime Laboratory Office where the forensic chemist, P/Insp. Navarro positively identified the crystalline substance as *shabu*.[14]

Version of the Defense

Abadilla, 34 years old, married and who claimed to be a part time mini bus conductor denied the accusation against him. He claimed that he was just illegally arrested. As can be pieced together from his short testimony, he was then in the house of his in-law Alberto de los Reyes located at Barangay 8, # 24, Panganiban Street, Laoag City that afternoon of January 3, 2013 standing by waiting for mini buses to clean. After washing several mini buses at the Badoc-Laoag bus near the YMCA, just across the house of his in-law, a male person approached and told him that he has a cellphone to sell. After looking at the cellphone, he told the male person to wait as he will go home to tell his daughter about it. He flagged down a tricycle but he was not able to leave anymore and was surprised when two men whom he did not know just grabbed him, boarded him in their white car and took him to the police station.[15]

The trial court opined that the accused was validly caught *in flagrante* selling *shabu* through a buy-bust operation conducted by members of the LCPS. The poseur-buyer, PO2 Ganir, positively identified him as the seller and testified that in the course of the buy-bust operation, the sale transaction took place.[16]

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[13] *Id*. at 54.

[14] *Id.*

[15] *Id*.

[16] *Id*. at 55.

According to the trial court, the narration of PO2 Ganir satisfied the "objective test" in buy-bust operations. Under the objective test, the prosecution must be able to present a complete picture detailing the buy-bust operation – from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale.[17]

Further, it held that prior surveillance, verification or test buy are not pre-requisites to a valid buy-bust operation. There is no law or rule requiring that these prior acts should be conducted before a buy bust operation can be implemented. Like prior surveillance, verification or test buy is not an element of and is not vital to a prosecution for illegal sale of dangerous drugs.[18]

In a Decision[19] dated September 30, 2015, it rendered a judgment of conviction, the dispositive portion of which reads:

> WHEREFORE, the Court finds [Abadilla] GUILTY beyond reasonable doubt as charged of illegal sale of *shabu* and is accordingly sentenced to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000.00.
>
> The *shabu* subject hereof is hereby confiscated for proper disposition as the law prescribes.
>
> SO ORDERED.[20]

On appeal, Abadilla imputed the following errors allegedly committed by the trial court:

I. THE TRIAL COURT GRAVELY ERRED IN NOT FINDING [ABADILLA'S] WARRANTLESS ARREST AS ILLEGAL;

II. THE TRIAL COURT ERRED IN CONVICTING [ABADILLA] DESPITE THE NON-PRESENTATION OF THE POLICE ASSET AS A WITNESS;

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[17] *Id*. at 58.

[18] *Id*. at 58-59.

[19] *Id*. at 52-67.

[20] *Id*. at 67.

III. THE TRIAL COURT GRAVELY ERRED IN FINDING [ABADILLA] GUILTY DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF [R.A.] NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS; and

IV. THE TRIAL COURT GRAVELY ERRED IN FINDING [ABADILLA] GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED *SHABU*.[21]

The CA found no reason to disturb the findings of the trial court. According to the CA, the recovery and handling of the seized illegal drugs were more than satisfactorily established by the prosecution. It likewise opined that since the integrity of the seized item has been maintained, the absence of an elected public official, representatives from the media and the Department of Justice (DOJ) during the marking, inventory and photography of the seized items is not fatal to the prosecution's case. Thus, in a Decision[22] dated February 6, 2017, it affirmed the judgment of conviction rendered by the trial court. The dispositive portion of the CA decision reads:

WHEREFORE, the appeal is **DENIED**. The Decision dated September 30, 2015 of the [RTC] of Laoag City, Branch 13, in Criminal Case No. 15404-13 is hereby **AFFIRMED.**

SO ORDERED.[23]

Hence, this appeal.

The Issue

Essentially, the main issue to be resolved is whether or not Abadilla is guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

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[21] *Rollo*, pp. 6-7.

[22] *Id*. at 2-16.

[23] *Id*. at 16.

Ruling of the Court

The appeal is meritorious. Abadilla should be acquitted based on reasonable doubt.

In order to secure a conviction for Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (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. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[24]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[25]

Abadilla was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Sections 5, Article II of R.A. No. 9165. Abadilla insists that his warrantless arrest being illegal, the allegedly confiscated *shabu* should not have been admitted in evidence for being fruit of the poisonous tree. He likewise argued that the prosecution failed to prove an unbroken chain of custody of the seized dangerous drugs —

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[24] *People of the Philippines v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[25] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014); *People v. Alivio*, *et al.,* 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

the items were not marked, inventoried and photographed in the presence of the three required witnesses, *i.e.*, a representative from the DOJ, a representative from the media and an elected public official, as mandated by Section 21, Article II of R.A. No. 9165.

In a series of jurisprudence,[26] the Court has repeatedly held that a buy-bust operation is "a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime."[27]

As discussed in *People v. Agulay*,[28] it is a valid and effective mode of apprehending drug pushers, *viz.*:

> A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[29]

A careful perusal of the records shows that a consummated buy-bust transaction transpired between Abadilla and the poseur-buyer, PO2 Ganir. The latter positively identified Abadilla as the person who voluntarily sold to him the two (2) sachets of *shabu* for Php 1,000.00. PO2 Ganir's testimony was not only clear and straightforward but was likewise corroborated by the testimony of SPO4 Balolong, the police

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[26] *People v. Adriano,* 745 Phil. 203 (2014), citing *People v. Mateo,* 582 Phil. 390, 410 (2008), *People v. Ong*, 476 Phil. 553, 571 (2004), and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[27] *People v. Adriano, id*. at 213.

[28] 588 Phil. 247 (2008).

[29] *Id*. at 272.

officer who acted as back-up during the buy-bust operation. Thus, the instant case clearly falls under the exception to the rule requiring a warrant before effecting an arrest.

In cases involving Illegal Sale of Dangerous Drugs, the chain of custody begins the moment the dangerous drugs are seized from the seller after a consummated sale transaction. The prosecution must prove that from the time of seizure up until the seized items are presented in court as evidence, that there was no break or gap in the chain of custody that would ultimately cast doubt on the identity, integrity and evidentiary value of the seized items.

In *People v. Relato*,[30] the Court explained that the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[31]

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph one (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

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

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[30] 679 Phil. 268 (2012).

[31] *Id*. at 277-278.

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 and underscoring Ours)

In 2014, R.A. No. 10640[32] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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 for whom such items were confiscated

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[32] 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 June 9, 2014.

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 by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

One of the amendments introduced by R.A. No. 10640 was the reduction of the number of witnesses required to be present during the inventory and photography of the seized items, from three to only two—an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage to obviate even the slightest possibility of switching, planting or contamination of evidence. The witnesses are also required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. R.A. No. 10640 likewise incorporated the saving clause contained in the Implementing Rules and Regulations (IRR) which in essence states that for as long as the integrity and evidentiary value of the seized items are preserved, non-compliance with the mandatory requirements found in Section 21 may be excused. This, however, comes with a proviso that the prosecution must be able to explain the reason behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.

Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its IRR should apply, *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 evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items. (Emphasis and underscoring Ours)

In addition to the requirements of venue of physical inventory and photography of the seized items, Section 21 also requires the presence of three witnesses during the actual inventory, *i.e.*, **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media.** The Court, in *People v. Mendoza*,[33] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or 'planting' of evidence, *viz.*:

[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 [R.A. No.] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[34]

According to the CA, Section 21 of the IRR of R.A. No. 9165 merely requires "substantial" and not necessarily "perfect

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[33] 736 Phil. 749 (2014).

[34] *Id*. at 764.

adherence", as long as it can be proven that the integrity and evidentiary value of the seized items are preserved. The pertinent portion of the assailed CA decision reads:

> [Abadilla] lamented that the items seized were not marked, inventoried and photographed in the presence of a member of the media, a representative from the DOJ, and an elective government official. While this factual allegation is admitted, the Court stresses that what Section 21 of the [IRR] of R.A. No. 9165 requires is "substantial" and not necessarily "perfect adherence," as long as it can be proven that the integrity and the evidentiary value of the seized items are preserved as the same would be utilized in the determination of the guilt or innocence of the accused.[35]

The Court is well aware that a perfect chain of custody is almost always impossible to achieve, however, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. In similar cases involving buy-bust operations, the Court has consistently ruled that failure of the arresting officers to justify the absence of the required witnesses constitutes a substantial gap in the chain of custody.

In the recent case of *People of the Philippines v. Vicente Sipin y De Castro*,[36] the Court stressed that 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, *viz*.:

> **The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of RA 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**

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[35] *Rollo*, pp. 13-14.

[36] G.R. No. 224290, June 11, 2018.

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. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.[37] (Emphasis and underscoring Ours)

Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[38] is instructive on the matter:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, **when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.** As a result, 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 accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up.

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[37] *Id.*

[38] 686 Phil. 1024 (2012).

Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[39] (Citations omitted and emphasis and underscoring Ours)

The arresting officers claimed that they were not able to secure the attendance of the required witnesses due to time constraints — they claimed that it was almost 5:00 p.m. when the operation ended. Interestingly, the records state that at around 1:40 p.m., the buy-bust team proceeded to the subject area to carry out the buy-bust operation. The records likewise state that the marked plastic sachets of *shabu* were submitted to the crime laboratory as early as 4:30 p.m. of the same day. Following the usual procedure observed in drugs cases, it is logical to assume that the seized items were marked, inventoried and photographed sometime between 2:00 p.m. to 4:00 p.m. — clearly within office hours. There is, thus, no excuse to dispense with the mandatory requirements under Section 21 of R.A. No. 9165.

The trial court, in its decision, similarly opined that the justification provided by the arresting officers was not impressive enough. The pertinent portion of the RTC decision reads:

At the outset, it must be emphasized that Section 21 of RA 9165 allows in cases of warrantless arrests such as a buy-bust operation that the inventory and taking of photographs including the marking of the seized drugs can be done at the nearest police station. This was done in this case. There were only no witnesses summoned and present in accordance with the law. In fact, the justification especially referring to the lack of time to call for the barangay officials, the

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[39] *Id*. at 1053-1054.

media and representative of the DOJ, is not impressive because it is not true that it was already about 5:00 o'clock in the afternoon. It must be noted that it was earlier at 4:30 (1630H) that the two plastic sachets were submitted to the crime lab. x x x.[40]

The buy-bust operation was carried out clearly within office hours and in broad daylight. There being no mention of any other circumstance or reason that prevented the arresting officers from securing the attendance of the witnesses at the inventory, the saving clause will not apply. As previously stated, the unjustified absence of these witnesses during the inventory constitutes a substantial gap in the chain of custody. This procedural lapse cannot be cured by the simple expedient of invoking the saving clause found in Section 21 or the presumption that the arresting officers performed their duties in a regular manner. Where the official act in question is irregular on its face, the presumption of regularity cannot stand. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti* which is the dangerous drug itself.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[41] that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[42] the Court ruled that the prosecution bears the burden

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[40] CA *rollo*, p. 65.

[41] Article III, Section 14(2) of the Constitution mandates:

> Sec. 14. x x x
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[42] G.R. No. 210610, January 11, 2018.

to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of the evidence presented by the defense.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated February 6, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07891 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Nestor Abadilla *y* Vergara is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

Reyes, J. Jr.,[*] *J.,* on wellness leave.

SECOND DIVISION

[G.R. No. 233084. October 8, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR VELASCO *y* PORCIUNCULA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. **ID.; ID.; CHAIN OF CUSTODY PROCEDURE; MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF SEIZED ITEMS; MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION AND THE INVENTORY AND PHOTOGRAPHY MUST BE DONE IN THE PRESENCE OF THE ACCUSED OR THE PERSON FROM WHOM THE ITEMS WERE SEIZED, OR HIS REPRESENTATIVE OR COUNSEL, AS WELL AS CERTAIN REQUIRED WITNESSES.—** To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody

and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY THEREWITH DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; SAVING CLAUSE, WHEN APPLICABLE.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; REQUIRED WITNESSES RULE; NON-COMPLIANCE THEREWITH MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR.— Anent the required witnesses rule, non-compliance

may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, 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 chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated January 20, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07192, which affirmed the Decision[3] dated November 21, 2014 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC) in Crim. Case Nos. 10-425 and 10-426 finding accused-appellant Victor Velasco *y* Porciuncula (Velasco) guilty beyond reasonable doubt of the crimes of Illegal Sale and Illegal

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[1] See Notice of Appeal dated February 1, 2017; *rollo*, pp. 16-17.

[2] *Id*. at 2-15. Penned by Associate Justice Jose C. Reyes, Jr. (now a member of the Court) with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando, concurring.

[3] CA *rollo*, pp. 64-77. Penned by Presiding Judge Myra B. Quiambao.

Possession of Dangerous Drugs, respectively defined and penalized under 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 Velasco 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. The prosecution alleged that at around nine (9) o' clock in the evening of May 13, 2010, a team comprised of members of the Philippine National Police Muntinlupa City, Station Anti-Illegal Drugs – Special Operations Task Group (PNP Muntinlupa SAID-SOTG) conducted a buy-bust operation against Velasco, during which: (*a*) he allegedly sold to the poseur-buyer a plastic sachet containing 0.02 gram of suspected methylamphetamine hydrochloride or *shabu*; and (*b*) during his arrest, another sachet containing 0.02 gram of suspected methylamphetamine hydrochloride or *shabu*, was recovered from him. The team, together with Velasco, then proceeded to the PNP Muntinlupa SAID-SOTG headquarters where the seized items were photographed and inventoried in the presence of one Jemma V. Gonzales of the Muntinlupa City Government's Drug Abuse Prevention and Control Office (DAPCO Operative Gonzales). Thereafter, the seized items were brought to the crime laboratory where, after examination,[6] they tested positive for the presence

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[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] The Information dated June 3, 2010 in Crim. Case No. 10-425 was for Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs); records, pp. 1-2; while the Information dated June 3, 2010 in Crim. Case No. 10-426 was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs); records, pp. 3-4.

[6] See Physical Science Report No. D-159-10S dated May 14, 2010; *id.* at 13.

of methylamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

For his part, Velasco denied the charges against him and claimed that on said date, he was just driving his tricycle when suddenly, two (2) police officers asked him to go with them and assured him that nothing will happen. When Velasco agreed, they inquired if he knew Danilo Enriquez (Enriquez) and Dexter Cayabyab (Cayabyab). He then accompanied the police officers to the houses of Enriquez and Cayabyab and the three (3) were brought to the police station. Velasco also claimed that the police officers demanded money from Enriquez and Cayabyab so that no cases will be filed against them. Cayabyab was released when his sibling paid the sum of ₱10,000.00, while Enriquez was released when the prosecutor from Manila talked with the police officers. Thereafter, he was told "*O baka meron ka pang ibang ipapahuli kase wala kang pang-areglo.*" Since he chose to remain silent, he was detained and later brought for inquest.[8]

In a Decision[9] dated November 21, 2014, the RTC found Velasco guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Crim. Case No. 10-425, to suffer the penalty of imprisonment for an indeterminate period 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; and (*b*) in Crim. Case No. 10-426 to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00.[10] The RTC held that the prosecution sufficiently established all the elements of the aforesaid crimes as it was able to prove that: (*a*) Velasco indeed sold a plastic sachet containing *shabu* to the poseur-buyer during a legitimate buy-bust operation; and (*b*) subsequent to his arrest, another plastic sachet containing *shabu* was recovered from

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[7] See *rollo*, pp. 4-5. See also CA *rollo*, pp. 65-67.

[8] See *rollo*, pp. 5-6. See also CA *rollo*, pp. 67-68.

[9] CA *rollo*, pp. 64-77.

[10] *Id*. at 76.

him. The RTC also observed that the integrity and evidentiary value of the seized items were preserved, considering that the buy-bust team substantially complied with the chain of custody rule.[11] Aggrieved, Velasco appealed[12] to the CA.

In a Decision[13] dated January 20, 2017, the CA upheld Velasco's conviction.[14] It held that the prosecution, through Police Officer 2 Salvador T. Genova (PO2 Genova), was able to establish the commission of the crimes charged. In light of the positive identification of Velasco as the perpetrator of the crimes, the CA did not give credence to his defense of denial and frame-up which was unsupported by clear and convincing evidence. Finally, the CA opined that the arresting officers were able to establish substantial compliance with the chain of custody rule.[15]

Hence, this appeal seeking that Velasco's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[16] it is essential that the identity of the

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[11] See *id*. at 68-76.

[12] See Notice of Appeal dated December 16, 2014; *id*. at 14.

[13] *Rollo*, pp. 2-15.

[14] *Id*. at 14.

[15] See *id*. at 8-14.

[16] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*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; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092,

dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[17] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[19] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[20] The law further requires that the

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February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil.730, 736 [2015].)

[17] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*.; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[18] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[19] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 16; *People v. Miranda*, *supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 17.

[20] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[21] "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official";[22] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media."[23] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[24]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[25] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody

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[21] 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.

[22] Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

[23] Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

[24] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 16. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[25] See *People v. Miranda*, *id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 18, at 1038.

[26] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id*.

procedure may not always be possible.[27] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[28] The foregoing is based on the saving clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was adopted into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] and 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.[32]

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the

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[27] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[28] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[29] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***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[.]**"

[30] Section 1 of RA 10640 pertinently states: "***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**."

[31] *People v. Almorfe*, *supra* note 28.

[32] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

given circumstances.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] 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 chain of custody rule.[35]

Notably, the Court, in *People v. Miranda*,[36] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[37]

In this case, a perusal of the Receipt/Inventory of Property Seized[38] dated May 13, 2010 shows that while DAPCO Operative Gonzales was present during the inventory of the seized items, she is not one of the required witnesses under the law, *i.e.*, an elected public official, a representative from the DOJ, or a representative from the media. When asked about this matter on cross-examination, re-direct examination, and re-cross-examination, the poseur-buyer, PO2 Genova, testified as follows:

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[33] See *People v. Manansala*, *supra* note 16.

[34] See *People v. Gamboa*, *supra* note 18, citing *People v. Umipang*, *supra* note 17, at 1053.

[35] See *People v. Crispo*, *supra* note 16.

[36] *Supra* note 16.

[37] See *id*.

[38] Records, p. 16.

CROSS-EXAMINATION:

[Atty. Mary Glenn Moldez (Atty. Moldez)]: Before proceeding with this buy bust operation did you not coordinate with the barangay official of this Katarungan place in Muntinlupa City?
[PO2 Genova]: No, ma'am.

Q: Mr. Witness, isn't (sic) not a fact that you need to coordinate with the barangay official to conduct this buy bust operation?
A: No, ma'am.

Q: I will show you the inventory that you made. Earlier, you testified that you were the one who made this inventory, am I correct?
A: Yes, ma'am.

Q: And who is this witness again?
A: A DAPCO employee.

Q: She is only a witness as to the making of inventory, am I correct?
A: Yes, ma'am.

Q: But for the actual seizure she was not there?
A: Yes, ma'am.

Q: And you said that she was a DAPCO official?
A: Yes, ma'am.

Q: And it is only your testimony that can prove that this Gemma Gonzales is a DAPCO?
A: Yes, ma'am.

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Q: So meaning to say Mr. Witness, you did not coordinate with the barangay official and you did not make them as witness to the actual seizure of the substance from Victor Velasco?
A: Yes, ma'am.

x x x x x x x x x[39] (Emphases and underscoring supplied)

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[39] TSN, June 7, 2011, pp. 24-25.

RE-DIRECT EXAMINATION:

[Public Prosecutor Tomas Ken Romaquin]: Do you know if this Victor Velasco has connections in the barangay in that area where you conducted the buy bust operation? Ms. Witness (sic), how long have you been an evidence custodian of the NBI?

[PO2 Genova]: I have none in particular.

Q: So that's why you did not coordinate with the barangay because you are not sure if there is a possibility that this Victor Velasco has connections in the barangay?
A: Yes, sir.

Q: And this could burn your operations?
A: Yes, sir.

x x x x x x x x x[40] (Emphases and underscoring supplied)

RE-CROSS-EXAMINATION:

[Atty. Moldez]: Mr. Witness you said earlier you did not coordinate with the barangay because you don't know whether this accused has a connection in the barangay?
[PO2 Genova]: Yes, ma'am.

Q: Do you really inquire as to the connections of every persons suspected to be selling *shabu* whether they are connected with the barangay?
A: We tried, whatever connections the subject person has.

Q: But in this particular case, did you inquire as to the connections of this accused to the barangay?
A: No, ma'am.

x x x x x x x x x[41] (Emphases and underscoring supplied)

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, the justification offered by PO2

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[40] *Id*. at 26.

[41] *Id*. at 28.

Genova – that they suspect Velasco to have connections with the barangay which could jeopardize the buy-bust operation against him – was not only flimsy, but also self-serving and unsubstantiated. In fact, PO2 Genova himself admitted that the buy-bust team did not even bother to check if Velasco indeed had such connections. As these justifications would not pass the foregoing standard to trigger the operation of the saving clause, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Velasco were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 20, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07192 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Victor Velasco *y* Porciuncula is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Jardeleza,*[*] *Caguioa,* and *Reyes, A. Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 236540. October 8, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALICIA ALUNEN *y* PRITO @ "ALICE" and ARJAY LAGUELLES *y* DONAIRE @ "AIFA",** *accused-appellants.*

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[*] Designated Additional Member per Special Order No. 2587-C dated September 5, 2018.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; REQUISITES THAT MUST CONCUR TO SECURE A CONVICTION; THE PROSECUTION MUST PROVE EVERY LINK IN THE CHAIN OF CUSTODY OF THE SEIZED DRUGS, WHICH IS THE *CORPUS DELICTI* OF THE OFFENSE.— Jurisprudence dictates that to secure a conviction for illegal sale of *shabu* under Section 5, Article II of R.A. 9165, the following must concur: (i) the identity of the buyer and the seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefore. It is necessary that the sale transaction actually took place coupled with the presentation in court of the *corpus delicti* as evidence. Indeed, in cases of illegal sale, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense charged. Thus, the prosecution must prove with certitude each link in the chain of custody over the dangerous drug. The dangerous drug recovered from the suspect must be the very same object presented before the court as exhibit.

2. ID.; ID.; ID.; FAILURE TO ESTABLISH THE UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS AND TO PROVE THAT THE CASE FALLS WITHIN THE RECOGNIZED EXCEPTION IS FATAL TO THE PROSECUTION'S CAUSE; ACQUITTAL OF THE ACCUSED FOLLOWS.— After a careful review of the records of the case, the Court finds that the prosecution failed to establish the unbroken chain of custody of the seized drugs in violation of Section 21, Article II of R.A. No. 9165. x x x [T]he failure of the police team to comply with the procedural safeguards prescribed by law left a reasonable doubt in the chain of custody of the confiscated drug. The records of the case show that the buy-bust operation conducted against the accused-appellants was arranged and scheduled prior to its execution. The police team even coordinated with the PDEA in the conduct of the buy-bust. Despite these preparations, however, the police team failed to secure the presence of the representative from the DOJ and the media to witness the conduct of the inventory and photograph of the seized items. x x x In the present case, however, while it may be true that non-compliance with Sec. 21 of R.A.

No. 9165, specifically on the three witnesses rule, is not fatal to the prosecution's case, the exception will only be triggered by the existence of the above-quoted grounds which will justify the departure from the general rule. Records of the present case, however, show that the prosecution miserably failed to prove that its case falls within the jurisprudentially recognized exception to the rule. Equally significant is the Court's pronouncement in *People v. Reyes, et al.*, where it held that non-compliance with the required procedure must be justifiably explained and stated in a sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the confiscated item. Any shortcoming on the part of the prosecution, as in this case, is fatal to its cause. x x x Accused-appellants Alicia Alunen y Prito @ Alice and Arjay Laguelles y Donaire @ Aifa are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

TIJAM, *J.*:

On appeal is the July 18, 2017 Decision[1] of the Court of Appeals (CA) in *CA-G.R. CR HC No. 08567*, which affirmed the November 8, 2015 Decision[2] of the Regional Trial Court (RTC), Branch 77, San Mateo, Rizal, in Criminal Case No. 11774, finding accused-appellants Alicia Alunen y Prito (Alunen) and Arjay Laguelles y Donaire (Laguelles) (collectively referred to as "accused-appellants") guilty of violating Section 5, 1st paragraph, Article II, of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] Penned by Associate Justice Fernanda Lampas Peralta with the concurrence of Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes; *rollo*, pp. 2-29.

[2] Penned by Judge Lily Villareal Biton; CA *rollo*, pp. 42-53.

FACTS OF THE CASE

On March 15, 2010, at about 10:00 a.m., the Anti-Illegal Drugs Special Operation Task Force (AIDSOTF) received a tip from a confidential informant that an illegal drug transaction between him and Alunen was to take place around 3:00 p.m., inside Jollibee in Rodriguez, Rizal (target place).[3]

Upon validation of the information, PCI Narciso Langcauon arranged for the members of the AIDSOTF-Special Operations Unit, in coordination with the Philippine Drug Enforcement Agency (PDEA), to conduct a buy-bust operation against Alunen.[4]

At about 1:30 p.m., the team proceeded to the target place together with the confidential informant. When Alunen and Laguelles arrived thereat, the confidential informant introduced PO3 Marlo Frando (PO3 Frando) as the "'buyer." After negotiations, Alunen handed to PO3 Frando a blue pouch containing plastic sachets of illegal drugs, and the latter, in turn, handed the marked money to Laguelles.[5]

Immediately, PO3 Frando introduced himself as a police officer while the other members of the police team entered the target place and arrested Alunen and Laguelles. PO3 Frando took custody of the seized items consisting of four (4) plastic sachets of illegal drugs and marked them with the initials "MVF", while SPO2 Salvador Sorreda (SPO2 Sorreda) took custody of the marked money. Thereafter, PO3 Frando prepared and signed the inventory of the seized items in the presence of Barangay Chairman Roger Frias together with two Barangay Tanods.[6]

Also, PO3 Frando prepared a request for examination of the seized items and brought the same to the PNP Crime Laboratory.

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[3] *Rollo*, p. 3.

[4] *Id*.

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

[6] *Id*. at 4.

Upon examination, the same tested positive for *Methylamphetamine Hydrochloride*, a dangerous drug.[7]

Thus, an Information[8] dated March 16, 2010 was filed against accused-appellants for violation of Section 5, 1st paragraph, Article II of R.A. No. 9165, to wit:

> That on or about the 15 (sic) day of March 2010, in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.85 gram, 4.32 grams, 4.20 grams and 0.84 gram or a total weight of 10.21 grams of white crystalline substance contained in four (4) heat sealed transparent plastic sachets, which were found positive to the test for Methylamphetamine Hydrochloride, a dangerous drug, for the agreed price of Php90,000.00 in violation of the above-cited law.
>
> Contrary to law.[9]

Upon arraignment on May 19, 2010, accused-appellants entered a plea of not "guilty."[10]

For their defense, accused-appellants denied having in their possession the illegal drugs which were sold to PO3 Frando. They countered that, while they were dining at the Jollibee, a man approached them and asked if they could share the table with him. When they agreed, the man placed a bag on the table and told them that he would order his food. Suddenly, several men, who later identified themselves as police officers, approached them and arrested them.[11]

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[7] *Id*.

[8] Records, pp. 1-2.

[9] *Rollo*, p. 5.

[10] *Id*.

[11] *Id*. at 4.

RTC RULING

On November 8, 2015, the RIC rendered its Decision[12] wherein it found accused appellants guilty of the crime charged and sentenced them as follows:

> WHEREFORE, premises considered, judgment is rendered finding accused ALICIA ALUNEN y PRITO @ ALICE and ARJAY LAGUELLES y DONAIRE @ AIFA, GUILTY beyond reasonable doubt of Sale of Dangerous Drugs (Violation of Section 5, 1st Paragraph, Article II of R.A. 9165) and hereby sentences each to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of ₱500,000.00.
>
> The Branch Clerk of Court is directed to turn over to the Philippine Drug Enforcement Agency (PDEA) the four (4) plastic sachets of shabu subject matter of this case for proper disposition.
>
> SO ORDERED.[13]

In convicting accused-appellants, the RTC held that the prosecution was able to prove beyond reasonable doubt the requisite quantum of evidence to prove the guilt of accused-appellants of the crime charged.[14]

CA RULING

In a Decision[15] dated July 18, 2017, the CA affirmed the Decision of the RTC *in toto*, thus:

> WHEREFORE, the appeal is DENIED for lack of merit; consequently, the trial court's Decision dated November 8, 2015 is AFFIRMED.
>
> SO ORDERED.

The CA held that all the elements of the crime of illegal sale of *shabu* were established beyond reasonable doubt by the

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[12] CA *rollo*, pp. 42-53.

[13] *Id*. at 53.

[14] *Id*.

[15] *Rollo*, pp. 2-29.

prosecution through the credible testimonies of PO3 Frando and SPO2 Sorreda. Thus, there is no reason to disturb the findings of the trial court.

Hence, the present appeal.

Accused-appellants raised the following errors in their appeal:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE PROCEDURE FOR THE CUSTODY AND CONTROL OF THE SEIZED PROHIBITED DRUG WAS COMPLIED WITH.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS PRESCRIBED BY R.A. NO. 9165.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE ABSENCE OF A VALID BUY-BUST OPERATION.

IV.

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANTS' DEFENSE OF DENIAL.[16]

The accused-appellants aver that because of the irregularities on the part of the apprehending team and the uncertainties surrounding the present case, reasonable doubt clearly exists as regards their guilt.

RULING OF THE COURT

The appeal has merit.

Jurisprudence dictates that to secure a conviction for illegal sale of *shabu* under Section 5, Article II of R.A. 9165, the following must concur: (i) the identity of the buyer and the

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[16] CA *rollo*, pp. 24-25.

seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefore. It is necessary that the sale transaction actually took place coupled with the presentation in court of the *corpus delicti* as evidence.[17]

Indeed, in cases of illegal sale, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense charged. Thus, the prosecution must prove with certitude each link in the chain of custody over the dangerous drug. The dangerous drug recovered from the suspect must be the very same object presented before the court as exhibit.[18]

After a careful review of the records of the case, the Court finds that the prosecution failed to establish the unbroken chain of custody of the seized drugs in violation of Section 21, Article II of R.A. No. 9165.

Specifically, Section 21 of R.A. 9165, relating to the custody and disposition of the confiscated drugs provides:

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;

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[17] *People of the Philippines v. Angelita Reyes y Ginove and Josephine Santa Maria y Sanchez*, G.R. No. 219953, April 23, 2018.

[18] *People v. Viterbo, et al.*, 739 Phil. 593 (2014).

> (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;

Corollarily, Section 21 (a) of the Implementing Rules and Regulations of R.A. 9165 provides as follows:

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

In this case, the failure of the police team to comply with the procedural safeguards prescribed by law left a reasonable doubt in the chain of custody of the confiscated drug. The records of the case show that the buy-bust operation conducted against

the accused-appellants was arranged and scheduled prior to its execution. The police team even coordinated with the PDEA in the conduct of the buy-bust. Despite these preparations, however, the police team failed to secure the presence of the representative from the DOJ and the media to witness the conduct of the inventory and photograph of the seized items.

In *People v. Lim*,[19] the Court enumerated instances where non-compliance with the presence of the three witnesses rule may be excused, to wit:

> (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 of the Revised 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."

In the present case, however, while it may be true that non-compliance with Sec. 21 of R.A. No. 9165, specifically on the three witnesses rule, is not fatal to the prosecution's case, the exception will only be triggered by the existence of the above-quoted grounds which will justify the departure from the general rule. Records of the present case, however, show that the prosecution miserably failed to prove that its case falls within the jurisprudentially recognized exception to the rule.

Equally significant is the Court's pronouncement in *People v. Reyes, et al.*,[20] where it held that non-compliance with the

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[19] G.R. No. 231989, September 4, 2018.

[20] G.R. No. 219953, April 23, 2018.

required procedure must be justifiably explained and stated in a sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the confiscated item. Any shortcoming on the part of the prosecution, as in this case, is fatal to its cause.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 18, 2017 of the Court of Appeals in CA-G.R. CR. HC No. 08567 is hereby **REVERSED** and **SET ASIDE**. Accused-appellants Alicia Alunen y Prito @ Alice and Arjay Laguelles y Donaire @ Aifa are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered to be immediately **RELEASED**, unless they are being lawfully held in custody 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.

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

Bersamin, J., on official business.

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[*] Designated Acting Working Chairperson per Special Order No. 2605 dated September 28, 2018.

FIRST DIVISION

[G.R. No. 237742. October 8, 2018]

CELSO OLIVIER T. DATOR, *petitioner, vs.* **HON. CONCHITA CARPIO-MORALES, in her capacity as the Ombudsman, and HON. GERARD A. MOSQUERA, in his capacity as the Deputy Ombudsman for Luzon, and the DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; APPEALS FROM DECISIONS IN ADMINISTRATIVE DISCIPLINARY CASES OF THE OMBUDSMAN SHOULD BE TAKEN TO THE CA VIA A PETITION FOR REVIEW; LIBERAL APPLICATION IN CASE AT BAR.— [A]ppeals from decisions in administrative disciplinary cases of the OMB should be taken to the CA via a Petition for Review under Rule 43 of the Rules of Court. x x x Although Dator filed a petition for injunction, a close scrutiny of the petition, its allegations and discussion would clearly disclose that it questioned the decision in its entirety. The CA should not have been quick to dismiss the said petition on procedural grounds alone. Given the peculiar circumstances of the case, where Dator is unsure of whether the suspension that is immediately executory is one month and one day or six months, and the resolution of his motion for clarification is still forthcoming, Dator understandably sought relief. Without further belaboring the point, We find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioner is justified in straightforwardly seeking the intervention of this Court. While the Rules of Procedure must be faithfully followed, the same Rules may be relaxed for persuasive and weighty reasons to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. x x x The petition for injunction set out circumstances that merited the relaxation of the rules. It cannot be emphasized enough that the suspension from office of an elective official,

whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.

2. ID.; CIVIL PROCEDURE; RULE ON FORUM SHOPPING.— The case of *Yamson, et al. vs. Castro, et al.*, discusses the rule on forum shopping succinctly: The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping may be committed in three ways: (1) **through *litis pendentia*** — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) **splitting of causes of action** — filing multiple cases based on the same cause of action but with different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*.

3. ID.; ID.; ID.; THE CONSEQUENCES OF FORUM SHOPPING DEPEND ON WHETHER THE ACT WAS WILLFUL AND DELIBERATE OR NOT.— Dator's petition for injunction and the petition for review sought similar reliefs – which essentially constitute the review and eventual reversal of the said decision finding him guilty of simple misconduct. A resolution of the petition for injunction, which substantially questions the assailed decision, would result in *res judicata* to the petition for review, which likewise questions the same decision. A finding of forum shopping, however, does not automatically render both cases dismissible. The disquisition in the case of *Yamson vs. Castro* can similarly apply in this case, thus: x x x. The consequences of forum shopping depend on whether the act was wilful and deliberate or not. If it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata.*

4. ID.; PROVISIONAL REMEDIES; PETITION FOR INJUNCTION; REQUISITES.— Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A temporary restraining order (TRO) issues only if the matter is of such extreme urgency

that grave injustice and irreparable injury would arise unless it is issued immediately. "Under Section 5, Rule 58 of the Rules of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard." Thus, to be entitled to the injunctive writ, petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTIVE OFFICIAL; CONDONATION PRINCIPLE; DOCTRINE ALREADY ABANDONED IN THE CASE OF *CONCHITA CARPIO-MORALES VS. CA AND JEJOMAR ERWIN S. BINAY, JR.*— The case of the *Office of the Ombudsman vs. Mayor Julius Cesar Vergara* made a succinct discussion on the condonation principle and its prospective application, thus: In November 10, 2015, this Court, in *Conchita Carpio Morales v. CA and Jejomar Binay, Jr.*, extensively discussed the doctrine of condonation and ruled that such doctrine has no legal authority in this jurisdiction. As held in the said the (sic) decision: x x x **the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is folly absolved of any administrative liability arising from an offense done during a prior term.** x x x **The above ruling, however, was explicit in its pronouncement that the abandonment of the doctrine of condonation is prospective in application,** x x x [T]he case against Dator was instituted on May 2, 2016, or AFTER the ruling of this Court in the seminal case of *Conchita Carpio Morales vs. CA and Jejomar Erwin S. Binay, Jr.* Clearly then, the condonation principle is no longer applicable to him.

6. ID.; ID.; SIMPLE MISCONDUCT; ACT OF ISSUING SPECIAL ORDER NO. 2, SERIES OF 2014 AND JOB ORDER THAT HIRED PETITIONER'S SISTER AS CHIEF ADMINISTRATIVE OFFICER WAS IRREGULAR.— The OMB was correct in ruling that Dator's act of issuing the Special Order No. 2, Series of 2014 and Job Order that hired his sister, Macandile, as Chief Administrative Officer, was irregular. A reading of the Special Order No. 2, Series of 2014 appointing Macandile would reveal that she was to undertake the functions of a municipal administrator, x x x as set out in Sec. 480 of the Local Government Code: x x x As correctly noted by the Ombudsman, the position of a Municipal Administrator is unique, because, while it is coterminous with the appointing authority and highly confidential in character, it is required that the appointee must meet the qualifications enumerated under Sec. 480 of the LGC. x x x [Further,] Sec. 443 of the LGC provides the process by which a municipal administrator ought to be appointed: x x x Here, it is admitted that there was no confirmation of the appointment of Macandile by the Sangguniang Bayan precisely because there was no existing plantilla for the position of municipal administrator or chief administrative officer in the local government of Lucban, Quezon. The lack of plantilla, however, cannot be used as a justification for one to be appointed to assume the exact functions and duties of a municipal administrator, sans the fulfillment of requisites set out in the law. What cannot be legally done directly cannot be done indirectly. x x x Furthermore, the Civil Service Commission (CSC) came out with CSC Resolution No. 020790 (Policy Guidelines for Contract of Services) as it has been made aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service, [as in the situation in this case].

7. ID.; CIVIL SERVICE COMMISSION; CSC RESOLUTION NO. 020790 ON THE PROHIBITION OF HIRING THOSE COVERED UNDER THE RULES ON NEPOTISM THROUGH A CONTRACT OF SERVICE AND JOB ORDER.— CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order: x x x Nepotism is defined as an appointment issued in favor of a relative within

the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee. Macandile, being the sister of Dator, is clearly within the scope of the prohibition from being hired under a contract of services and job order.

8. ID.; ADMINISTRATIVE LAW; GRAVE MISCONDUCT AND SIMPLE MISCONDUCT, EXPLAINED.— Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifested x x x. Otherwise, the misconduct is only **simple**. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct.

9. ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE MISCONDUCT; PENALTY; MINIMUM OF THE PENALTY IMPOSED WHERE ONLY MITIGATING CIRCUMSTANCES ARE PRESENT.— Section 52(B)(2), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense. Section 54 of the same rules sets out the manner of imposition of penalty, to wit: Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below: **a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.** x x x We note that Dator has shown that the previous local government administration had repeatedly appointed a Dr. Salvacion as Chief Administrative Officer through job orders. We therefore appreciate the mitigating circumstance of good faith in this case that Dator alleged in the performance of his actions. The same repeated appointment by Dr. Salvacion also negates the finding that Dator's appointment of Macandile was

tainted with malice. That being said, only the minimum penalty of one month and one day suspension is appropriate.

APPEARANCES OF COUNSEL

Percival D. Brigola for petitioner.
Arturo M. De Castro, collaborating counsel for petitioner.
The Solicitor General for respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Resolution dated February 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 154524, denying petitioner's Petition for Injunction, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

The Antecedents

The case stemmed from a complaint[2] filed on May 2, 2016 by complainant Moises B. Villasenor (Villasenor) against the incumbent Mayor of Lucban, Quezon, petitioner Celso Olivier T. Dator (Dator), and Maria Lyncelle D. Macandile (Macandile), also of Lucban, Quezon for grave misconduct, grave abuse of authority and nepotism.

It was alleged that in his immediately preceding term, Dator hired his sister, Macandile, as Chief Administrative Officer through a Job Order[3] and designated her as Municipal Administrator through Special Order (S.O.) No. 2, Series of 2014,[4] dated March 1, 2014. There was no appointment paper that was

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[1] *Rollo*, pp. 8-31.

[2] *Id.* at 34-39.

[3] *Id.* at 46.

[4] *Id.* at 32-33.

submitted to the Sangguniang Bayan for the required confirmation pursuant to Sec. 443(d)[5] of the Local Government Code (LGC).[6]

It was also alleged that Macandile lacked the qualifications of a Municipal Administrator and her Job Order stated that "*the above-named hereby attests that he/she is not related within the third degree (fourth degree in case of LGUs) of consanguinity or affinity to the 1) hiring authority and/or 2) representatives of the hiring agency*",[7] when in truth and in fact, she is the sister of Dator.

In the Joint Counter-Affidavit of Dator and Macandile,[8] they denied the charges and stated that Macandile was merely granted an authority to perform the duties and functions of an administrator in the exigency and best interest of public service. They stated that Macandile's credentials showed her competence as she worked as a Head Nurse in Ginebra San Miguel, Inc. from 1994 to 2005.[9] They further alleged that the position of Municipal Administrator did not exist in the municipality's plantilla of personnel, hence, there was no appointment paper submitted to the Sangguniang Bayan for confirmation.[10]

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[5] SEC. 443. *Officials of the Municipal Government.*

x x x x x x x x x

(d) Unless otherwise provided herein, heads of departments and offices shall be appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations. The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

x x x x x x x x x

[6] *Rollo*, p. 10.

[7] *Id*. at 46.

[8] *Id*. at 47-54.

[9] *Id*. at 56.

[10] *Id*. at 50-51.

They also countered that the position of Municipal Administrator is primarily confidential, non-career and coterminous with the appointing authority and that the Job Order was executed for payroll purposes only. They pointed out that complainant was a former mayor of Lucban, Quezon and the said practice was done even during the complainant's administration. They submitted copies of the Job Order forms[11] issued during the administration of the complainant, where a Dr. Palermo C. Salvacion (Dr. Salvacion) was designated as Chief Administrative Officer from 2007 to 2010.

The OMB Ruling

The Ombudsman (OMB) rendered a Decision dated March 20, 2017,[12] dismissing the charges against Macandile, but finding Dator administratively liable for Simple Misconduct.

The OMB found that Dator's act of hiring his sister without observing the regular process of appointment, and merely issuing a Job Order was irregular. It noted that since the position of Municipal Administrator was not in the plantilla, Dator should have requested the Sangguniang Bayan to create the said position through an ordinance.

It also noted that though the position of Municipal Administrator was coterminous and highly confidential in character, it was required that the appointee meet the qualifications enumerated in Section 480, Article X of the LGC.[13]

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[11] *Id*. at 63-66.

[12] *Id*. at 78-86.

[13] Article Ten. — The Administrator

SEC. 480. *Qualifications, Terms, Powers and Duties.* — (a) No person shall be appointed administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator. The term of administrator is coterminous

It also ruled that the position did not fall within the confidential/ personal staff contemplated under Section 1(e), Rule X of CSC MC No. 40, s. 1998[14] which dispenses with the eligibility and professional experience requirements.

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with that of his appointing authority. The appointment of an administrator shall be mandatory for the provincial and city governments, and optional for the municipal government.

(b) The administrator shall take charge of the office of the administrator and shall:

(1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(2) In addition to the foregoing duties and functions, the administrator shall:

(i) Assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;

(ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;

(iii) Conduct a continuing organizational development of the local government unit with the end in view of instituting effective administrative reforms;

(3) Be in the frontline of the delivery of administrative support services, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;

(4) Recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit; and

(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or by ordinance.

[14] Rule X: *Qualification Standards*

Section 1. The appointee must meet the approved qualification standards for the position for which he is being appointed. The HRMOs must be guided with the common requirements of the approved qualification standards:

x x x x x x x x x

The OMB ruled that in the issuance of the Job Order and S.O. No. 2, Series of 2014, Dator exhibited reprehensible conduct. It also found Dator's act of affixing his signature in the Job Order, which contained an attestation that Macandile is not related within the fourth degree of consanguinity to the hiring authority, despite knowledge of its falsity, is a clear transgression of the norms and standards expected of him as a government official.[15]

It disposed, thus:

> WHEREFORE, finding substantial evidence, respondent CELSO OLIVIER T. DATOR is hereby found administratively liable for Simple Misconduct and is meted the penalty of SIX (6) MONTHS SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.
>
> In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to his salary for 6 months payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.
>
> The Honorable Secretary, the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 series of 2006 dated April 11, 2006 and to promptly inform this Office of the action taken hereon.
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> SO ORDERED.[16]

(e) Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC MC 1, s. 1997. The civil service eligibility, experience, training and other requirements are dispensed with.

[15] *Rollo*, p. 83.

[16] *Id*. at 84.

The same was approved by Hon. Ombudsman Conchita Carpio Morales on October 11, 2017 with the footnote prescribing a shorter penalty, *viz*:

> WHEREFORE, finding substantial evidence, respondent CELSO OLIVIER T. DATOR is hereby found administratively liable for Simple Misconduct and is meted the penalty of ONE (1) MONTH AND ONE (1) DAY SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.
>
> In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to respondent's salary for 1 month payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.
>
> The Honorable Secretary of the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 series of 2006 dated April 11, 2006 and to promptly inform this Office of the action taken hereon.
>
> SO ORDERED.[17]

A Motion for Reconsideration[18] was filed by Dator. A Supplement to the Motion for Reconsideration dated November 6, 2017[19] was likewise filed by his new counsel, in collaboration with the counsel of record, reiterating, among others, that Villasenor granted authority through similar job orders to a Dr. Salvacion as Chief Administrative Officer to perform the functions and duties appurtenant to an Administrator from 2007 to 2010. It was further pointed out that the administrative case was extinguished by the re-election of Dator in 2016 under the

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[17] *Id*. at 85.

[18] *Id*. at 87-96.

[19] *Id*. at 98-127.

Aguinaldo (or condonation) Doctrine which was only abandoned in 2015 by the Supreme Court in the *Ombudsman Carpio Morales vs. CA, et al*,[20] case.

Dator also filed a Motion for Clarification,[21] seeking clarification as to the correct penalty imposed – whether it is six (6) months suspension or one (1) month and one (1) day suspension.

Dator filed before the CA a Petition for Injunction with Prayer for Issuance of Preliminary Injunction and/or Temporary Restraining Order[22] (petition for injunction), praying for respondents to desist and refrain from implementing the OMB's March 20, 2017 Decision.

The CA Ruling

In the assailed February 23, 2018 Resolution, the CA[23] denied the petition outright in this wise:

> The Petition for Injunction, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, is DISMISSED on the following grounds:
>
> 1. an original action for injunction (under Rule 58 of the 1997 Rules of Civil Procedure) is outside the jurisdiction of the Court of Appeals (Allgemeine Bau-Chemie Phils. Inc. vs. Metropolitan Bank, 482 SCRA 247)
>
> 2. the correct mode to impugn the Decision of the Ombudsman in administrative disciplinary cases is to appeal to the Court of Appeals under Rule 43 (Gupilan-Aguilar vs. Office of the Ombudsman, 717 SCRA 503)

Dator then filed with Us a Petition for Review on *Certiorari* raising the following issues:

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[20] 772 Phil. 672 (2015).

[21] *Rollo*, pp. 145-149.

[22] *Id*. at 150-161.

[23] Special Sixteenth Division comprised of Associate Justice Priscilla J. Baltazar-Padilla as Chairperson, and Associate Justices Nina G. Antonio-Valenzuela and Germano Francisco D. Legaspi as members. *Id*. at 175.

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE AGUINALDO DOCTRINE OTHERWISE KNOWN AS THE CONDONATION DOCTRINE STILL APPLIES IN THIS CASE AT BAR.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE CONFLICTING PENALTIES METERED (sic) OUT BY THE OFFICE OF THE OMBUDSMAN WARRANTS THE ISSUANCE OF AN INJUNCTIVE WRIT.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING DUE COURSE TO THE PETITION.

Subsequently, the OMB denied Dator's motion for reconsideration in a February 27, 2018 Order.[24] It also clarified that the seeming conflict in the proper penalty imposable on Dator was due to an honest oversight in the footnote of the OMB decision, and clarified that the penalty imposed on Dator is six months suspension without pay.

In its Comment, the Office of the Solicitor General (OSG) pointed out that Dator filed a Petition for Review with Extremely Urgent Application for Temporary Restraining Order/Status Quo Ante Order and/or Writ of Preliminary Injunction (petition for review) dated June 19, 2018[25] before the CA, assailing the March 20, 2017 Decision and February 27, 2018 Order of the OMB. It ascribed forum shopping upon Dator for filing the instant petition dated February 9, 2018 and the said petition for review dated June 19, 2018 before the CA. It highlighted that the CA was correct in dismissing the Petition for Injunction case before it, and that Dator is not entitled to any injunctive relief.

The Court's Ruling

The petition is partly meritorious.

The CA erred in not giving due course to the petition

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[24] *Id*. at 285-291.

[25] *Id*. at 255-280.

Indeed, appeals from decisions in administrative disciplinary cases of the OMB should be taken to the CA via a Petition for Review under Rule 43 of the Rules of Court. Rule 43 prescribes the manner of appeal from quasi-judicial agencies, such as the OMB, and was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies.[26]

Although Dator filed a petition for injunction, a close scrutiny of the petition, its allegations and discussion would clearly disclose that it questioned the decision in its entirety. The CA should not have been quick to dismiss the said petition on procedural grounds alone. Given the peculiar circumstances of the case, where Dator is unsure of whether the suspension that is immediately executory is one month and one day or six months, and the resolution of his motion for clarification is still forthcoming, Dator understandably sought relief. Without further belaboring the point, We find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioner is justified in straightforwardly seeking the intervention of this Court.[27]

While the Rules of Procedure must be faithfully followed, the same Rules may be relaxed for persuasive and weighty reasons to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[28] Again, as We repeatedly held in prior cases, the provisions of the Rules should be applied with reason and liberality to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.[29]

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[26] *Hon. Casimiro, et al. v. Rigor*, 749 Phil. 917, 927 (2014).

[27] *Gov. Garcia, Jr., et al. v. Court of Appeals 12th Division, et al.*, 604 Phil. 677, 693 (2009).

[28] *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*, 492 Phil. 698, 703 (2005).

[29] *Gov. Garcia, Jr., et al. v. Court of Appeals 12th Division, et al.*, *supra* note 27.

The petition for injunction set out circumstances that merited the relaxation of the rules. It cannot be emphasized enough that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.[30]

Forum shopping

The case of *Yamson, et al. vs. Castro, et al.*,[31] discusses the rule on forum shopping succinctly:

> The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping may be committed in three ways: (1) **through *litis pendentia*** — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) **splitting of causes of action** — filing multiple cases based on the same cause of action but with different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*.[32]

A review of the petition for injunction, from which this petition for review on *certiorari* is rooted from, and the petition for review dated June 19, 2018 would reveal that the parties in both petitions are essentially the same, save for the addition of complainant Villasenor, and Sec. Eduardo M. Año, in the petition for review. Indeed, both petitions assail the March 20, 2017 Decision of the OMB finding Dator guilty of simple misconduct.

In the petition for injunction, Dator pointed out the condonation doctrine's applicability to his case and insisted that an injunctive writ should be issued primarily due to the seemingly conflicting penalty meted out in the March 20, 2017 Decision. Dator prayed

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[30] *Id*. at 692.

[31] 790 Phil. 667 (2016).

[32] *Id*. at 692-693.

for an order to immediately and completely desist and refrain from implementing the said decision.

In the petition for review, Dator questioned the immediate implementation of the suspension and insisted the application of the condonation doctrine in his case. Dator also ascribed error on the part of the OMB in finding him guilty of simple misconduct. Dator prayed for the issuance of an injunction and the reversal, annulment, and setting aside of the March 20, 2017 Decision and Order dated February 27, 2018, and prayed for the dismissal of the administrative complaint against him.

Ultimately, Dator's petition for injunction and the petition for review sought similar reliefs – which essentially constitute the review and eventual reversal of the said decision finding him guilty of simple misconduct. A resolution of the petition for injunction, which as discussed above, substantially questions the assailed decision, would result in *res judicata* to the petition for review, which likewise questions the same decision.

A finding of forum shopping, however, does not automatically render both cases dismissible. The disquisition in the case of *Yamson vs. Castro*[33] can similarly apply in this case, thus:

> Xxx. The consequences of forum shopping depend on whether the act was wilful and deliberate or not. If it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata.* In this case, the Court cannot grant the petitioners' prayer for the dismissal of the two administrative cases as there is no clear showing that the respondents' act of filing these was deliberate and wilful. Records show that these cases were premised on the two criminal complaints for Violation of Section 3(e) of R.A. No. 3019, which were separately filed and entertained by the Ombudsman. At the most, **OMB-M-A-05-104-C** (VES 15 Project), which was filed subsequent to **OMB-M-A-05-093-C** (VES 21 Project), should be, and is hereby, dismissed.[34]

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[33] *Yamson, et al. v. Castro, et al.*, *supra* note 31.

[34] *Id*. at 696-697.

Contrary to the OSG's submission, We find Dator's acts neither willful nor deliberate. As can be gleaned from the sequence of events, Dator was constrained to file an action to question the immediately executory suspension because of the seemingly conflicting penalties set out in the March 20, 201 7 Decision, and the Order resolving his motion for clarification and motion for reconsideration, was only received by him on June 4, 2018. We cannot fault Dator for doing the same considering the extreme urgency of the situation, and the public interest aspect of the case. We note that Dator did not hide the fact that he had a pending petition for review on *certiorari* before this court when he filed the petition for review under Rule 43 dated June 19, 2018 with the CA.[35] Given the foregoing, We are hard-pressed to conclude that there was willful and deliberate forum shopping on the part of Dator. Be that as it may, the subsequent petition for review before the CA should be, and is hereby, dismissed.

Dator is not entitled to an injunctive writ

Dator insists that the disparity between the length of period on the penalty of suspension in the decision of the OMB penned by the Graft Investigation and Prosecution Officer II Christine Carol A. Casela-Doctor (six months suspension) and the footnoted portion of the decision below Hon. Ombudsman Conchita Carpio-Morales' name (one month and one day suspension) results in his great disadvantage. He opines that the decision is impossible to implement because of the apparently conflicting periods which gave the implementing officers the power to arbitrarily choose between the two conflicting penalties to implement. He stresses that the difference of five months in the period of suspension is a serious length of time to consider and can put a halt on the on-going operations, projects, and programs of the petitioner as incumbent Mayor.

Dator insists that he has shown that: 1) he has a clear and unmistakable right to be informed of the correct penalty imposed

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[35] See *Rollo*, pp. 281-282.

against him; 2) there is a decision by the honorable respondent Office of the Ombudsman that is now immediately executory; 3) there is an urgent and paramount necessity for the issuance of the writ on the ground that the implementation of the decision would not only violate or defeat his right to be informed of the correct penalty imposed, but worse, he would be denied due process should the same be imposed now, thus, would cause him serious and irreparable damage and grave injustice; and 4) petitioner is entitled to relief because as a public officer, he has a right to be protected in his office pending the resolution of his case with the OMB.

Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A temporary restraining order (TRO) issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately. "Under Section 5, Rule 58 of the Rules of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard."[36]

Thus, to be entitled to the injunctive writ, petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[37]

We find that Dator was unable to satisfy the said requirements as regards the showing of a clear and unmistakable right to be protected and that there is an urgent need to prevent a serious and irreparable damage.

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[36] *Australian Professional Realty, Inc., et al. v. Municipality of Padre Garcia, Batangas Province*, 684 Phil. 283, 292 (2012).

[37] *Supra* note 36.

Contrary to Dator's allegation, there is no clear and unmistakable right to be protected. There is no vested right to public office.

The case of *P/S Insp. Belmonte, et al. vs. Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices, etc.*,[38] is instructive on the matter:

> **The nature of appealable decisions of the Ombudsman was, in fact, settled in Ombudsman v. Samaniego, where it was held that such are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.**
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> x x x x x x x x x
>
> **Thus, petitioner Villaseñor's filing of a motion for reconsideration does not stay the immediate implementation of the Ombudsman's order of dismissal, considering that "a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course" under Section 7.**
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> x x x x x x x x x

The Ombudsman did not, therefore, err in implementing the orders of suspension of one year and dismissal from the service against the petitioners.

This may be so because, as the Court further explained, **the immediate implementation of an order of dismissal does not violate any vested right for petitioners are considered preventively suspended during their appeal**, *viz.*:

> The Rules of Procedure of the Office of the Ombudsman are procedural in nature and, therefore, may be applied retroactively to petitioners' cases which were pending and unresolved at the time of the passing of A.O. No. 17. **No vested right is violated by the application of Section 7 because the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of**

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[38] 778 Phil. 221 (2016).

> **the suspension or removal. It is important to note that there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.**
>
> In view of the foregoing, therefore, the Court cannot give credence to petitioners' assertion that given the immediate effectivity of the assailed Decision a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction must be issued to stay the implementation thereof. As clearly held by the Court, they have no vested right which stands to be violated by the execution of the subject decision.[39] (Underscoring Ours)

There is likewise no proof of great or irreparable injury because, as held in the above-cited case, supposing that Dator wins on appeal, he shall be paid the salary and other emoluments that he did not receive by reason of the said suspension, regardless of whether it is the one-month suspension or the six-months suspension. The damage then is quantifiable. Damages are irreparable where there is no standard by which their amount can be measured with reasonable accuracy.[40]

The condonation principle is not applicable to Dator

Contrary to the position of Dator, the condonation principle is not applicable to him.

The case of the *Office of the Ombudsman vs. Mayor Julius Cesar Vergara*[41] made a succinct discussion on the said principle and its prospective application, thus:

> In November 10, 2015, this Court, in *Conchita Carpio Morales v. CA and Jejomar Binay, Jr.*, extensively discussed the doctrine of

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[39] *Id*. at 232-233.

[40] *Supra* note 36, at 294.

[41] G.R. No. 216871, December 6, 2017.

condonation and ruled that such doctrine has no legal authority in this jurisdiction. As held in the said the (sic) decision:

x x x x x x x x x

Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

To begin with, **the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is folly absolved of any administrative liability arising from an offense done during a prior term.** In this jurisdiction, liability arising from administrative offenses may be condoned by the President in light of Section 19, Article VII of the 1987 Constitution which was interpreted in *Llamas v. Orbos* to apply to administrative offenses:

x x x x x x x x x

Also, it cannot be inferred from Section 60 of the LGC that the grounds for discipline enumerated therein cannot anymore be invoked against an elective local official to hold him administratively liable once he is re-elected to office. In fact, Section 40 (b) of the LGC precludes condonation since in the first place, an elective local official who is meted with the penalty of removal could not be re-elected to an elective local position due to a direct disqualification from running for such post. In similar regard, Section 52 (a) of the RRACCS imposes a penalty of perpetual disqualification from holding public office as an accessory to the penalty of dismissal from service.

To compare, some of the cases adopted in Pascual were decided by US State jurisdictions wherein the doctrine of

condonation of administrative liability was supported by either a constitutional or statutory provision stating, in effect, that an officer cannot be removed by a misconduct committed during a previous term, or that the disqualification to hold the office does not extend beyond the term in which the official's delinquency occurred. In one case, the absence of a provision against the re-election of an officer removed — unlike Section 40 (b) of the LGC — was the justification behind condonation. In another case, it was deemed that condonation through re-election was a policy under their constitution — which adoption in this jurisdiction runs counter to our present Constitution's requirements on public accountability. There was even one case where the doctrine of condonation was not adjudicated upon but only invoked by a party as a ground; while in another case, which was not reported in full in the official series, the crux of the disposition was that the evidence of a prior irregularity in no way pertained to the charge at issue and therefore, was deemed to be incompetent. Hence, owing to either their variance or inapplicability, none of these cases can be used as basis for the continued adoption of the condonation doctrine under our existing laws.

At best, Section 66 (b) of the LGC prohibits the enforcement of the penalty of suspension beyond the unexpired portion of the elective local official's prior term, and likewise allows said official to still run for reelection This treatment is similar to *People ex rel Bagshaw v. Thompson* and *Montgomery v. Novell* both cited in Pascual, wherein it was ruled that an officer cannot be suspended for a misconduct committed during a prior term. However, as previously stated, **nothing in Section 66 (b) states that the elective local official's administrative liability is extinguished by the fact of re-election. Thus, at all events, no legal provision actually supports the theory that the liability is condoned.**

Relatedly it should be clarified that there is no truth in Pascual's postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say

that every democratic and republican state has an inherent regime of condonation. **If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of Pascual or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.**

Equally infirm is Pascual's proposition that the electorate, when reelecting a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule. Besides, **it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown.** As observed in *Walsh v. City Council of Trenton* decided by the New Jersey Supreme Court:

> Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes knowledge and in the absence of knowledge there can be no condonation. One cannot forgive something of which one has no knowledge.

That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from — and now rendered obsolete by — the current

legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from Pascual, and affirmed in the cases following the same, such as Aguinaldo, Salalima, Mayor Garcia, and Governor Garcia, Jr. which were all relied upon by the CA.

The above ruling, however, was explicit in its pronouncement that the abandonment of the doctrine of condonation is prospective in application, hence, the same doctrine is still applicable in cases that transpired prior to the ruling of this Court in *Carpio Morales v. CA and Jejomar Binay, Jr.* thus:

> **It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.** Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council.*
>
> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.
>
> Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:
>
> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.
>
> Later, in *Spouses Benzonan v. CA*, it was further elaborated:
>
> [Pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject

> to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim lex prospicit, non respicit, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.
>
> Indeed, the lessons of history teach us that institutions can greatly benefit from hindsight and rectify its ensuing course. Thus, while it is truly perplexing to think that a doctrine which is barren of legal anchorage was able to endure in our jurisprudence for a considerable length of time, this Court, under a new membership, takes up the cudgels and now abandons the condonation doctrine.
>
> **Considering that the present case was instituted prior to the abovecited ruling of this Court, the doctrine of condonation may still be applied.** (Emphasis Ours)

Unlike in the said case, however, the case against Dator was instituted on May 2, 2016, or AFTER the ruling of this Court in the seminal case of *Conchita Carpio Morales vs. CA and Jejomar Erwin S. Binay, Jr.*[42] Clearly then, the condonation principle is no longer applicable to him.

The OMB was correct in ruling that Dator is liable for simple misconduct

The OMB was correct in ruling that Dator's act of issuing the Special Order No.2, Series of 2014 and Job Order that hired his sister, Macandile, as Chief Administrative Officer, was irregular.

A reading of the Special Order No. 2, Series of 2014 appointing Macandile would reveal that she was to undertake the functions of a municipal administrator, to wit:

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[42] 772 Phil. 672 (2015).

In the exigency and best interest of public service, you are hereby given a special order to perform the functions and duties appurtenant to an Administrator based on the Local Government Code of 1991, to wit:

1. Develop plans and strategies and upon approval thereof by the Mayor, implement the same particularly those which have to do with the management and administration-related programs and projects which the Mayor is empowered to provide under the Local Government Code;

2. In addition t(sic) the foregoing duties and functions, the administration (sic) shall:

(i) Assist in coordination of the work of all the officials of the Local Government Unit, under the supervision, direction, and control (sic) Mayor, and for this purpose, may convene the chiefs of offices and other officials of the Local Government Unit;
(ii) Establish and maintain a sound personnel program for the Local Government Unit designed to promote career development and uphold the merit principle in the Local Government Service;
(iii) Conduct a continuing organizational development of the Local Government Unit with the end in view of instituting effective administrative reforms;

3. Be in frontline of the delivery of administrative support services, particularly those related to the situations during and in aftermath of man-made and natural disasters and calamities;

4. Recommend to the Sanggunian and advise (sic) Mayor, on all other matters relative to the management and administration of the Local Government Unit; and

5. Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

It is understood that your performance of duties in this special order is accompanied by an appointment which is co-terminus in nature, thus you are entitled to receive a daily wage of One Thousand Four Hundred Eight Pesos (₱ 1,408.00).

This special order shall take effect immediately until sooner revoked with provision that this order can be renewed as per authority by the Municipal Chief Executive.

For information, guidance and compliance.[43]

The exact same functions are indeed to be carried out by a municipal administrator, as set out in Sec. 480 of the Local Government Code:

The Administrator

Section 480. *Qualifications, Terms, Powers and Duties.*

x x x x x x x x x

(b) The administrator shall take charge of the office of the administrator and shall:

(1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(2) In addition to the foregoing duties and functions, the administrator shall:

(i) Assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;

(ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;

(iii) Conduct a continuing organizational development of the local government unit with the end in view of the instituting effective administrative reforms;

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[43] *Rollo*, pp. 57-58.

> (3) Be in the frontline of the delivery of administrative support services, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;
>
> (4) Recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit; and
>
> (5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or by ordinance.

As correctly noted by the Ombudsman, the position of a Municipal Administrator is unique, because, while it is coterminous with the appointing authority and highly confidential in character, it is required that the appointee must meet the qualifications enumerated under Sec. 480[44] of the LGC. The position does not fall within the confidential/personal staff contemplated under Section 1(e)[45] Rule X of CSC MC No. 40, series of 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions which dispenses with the eligibility and experience requirements.[46]

Further, apart from the requirements set out in Sec. 480, Sec. 443 of the LGC provides the process by which a municipal administrator ought to be appointed:

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[44] **Section 480.** *Qualifications, Terms, Powers and Duties.*

(a) No person shall be appointed administrator unless he is a **citizen of the Philippines,** a **resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent.** He must have **acquired experience in management and administration work** for at least five (5) years in the case of the provincial or city administrator, and **three (3) years in the case of the municipal administrator**.

[45] Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC MC 1, s. 1997. The civil service eligibility, experience, training and other requirements are dispensed with.

[46] CSC Resolution No. 030128, January 28, 2003.

CHAPTER 2 — *MUNICIPAL OFFICIALS IN GENERAL*

SEC. 443. *Officials of the Municipal Government.* — (a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, sangguniang bayan members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.

(b) In addition thereto, **the mayor may appoint a municipal administrator**, a municipal legal officer, a municipal agriculturist, a municipal environment and natural resources officer, a municipal social welfare and development officer, a municipal architect, and a municipal information officer.

(c) The sangguniang bayan may:

(1) Maintain existing offices not mentioned in subsections (a) and (b) hereof;

(2) Create such other offices as may be necessary to carry out the purposes of the municipal government; or

(3) Consolidate the functions of any office with those of another in the interest of efficiency and economy.

(d) Unless otherwise provided herein, heads of departments and offices shall be **appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations.** The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

(e) Elective and appointive municipal officials shall receive such compensation, allowances and other emoluments as may be determined by law or ordinance, subject to the budgetary limitations on personal services as prescribed in Title Five, Book Two of this Code: Provided, That no increase in compensation of the mayor, vice-mayor, and sangguniang bayan members shall take effect until after the expiration of the full term of all the elective local officials approving such increase.

Here, it is admitted that there was no confirmation of the appointment of Macandile by the Sangguniang Bayan precisely

because there was no existing plantilla[47] for the position of municipal administrator or chief administrative officer in the local government of Lucban, Quezon. The lack of plantilla, however, cannot be used as a justification for one to be appointed to assume the exact functions and duties of a municipal administrator, sans the fulfillment of requisites set out in the law. What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.[48]

Furthermore, the Civil Service Commission (CSC) came out with CSC Resolution No. 020790 (Policy Guidelines for Contract of Services) as it has been made aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service.[49]

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[47] *Rollo*, p. 61.

[48] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 398 (2011).

[49] RESOLUTION NO. 020790

WHEREAS, Section 2 (1), Article IX-B of the 1987 Constitution provides that the Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters;

WHEREAS, Section 12 (3), Chapter 3, Title I (A), Book V of the Administrative Code of 1987 provides that the Commission shall promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

WHEREAS, Section 12 (14), Chapter 3, Title I (A), Book V of the Administrative Code of 1987 provides that the Commission shall take appropriate action on all appointments and other personnel matters in the Civil Service;

WHEREAS, Section 1, Rule XI of the Revised Omnibus Rules on Appointments and other Personnel Actions, CSC Memorandum Circular No. 40, series of 1998, as amended by CSC Memorandum Circular No. 15, series of 1999, provides that contracts of services need not be submitted to

The situation in this case is precisely what is being prevented by the said resolution where the appointing authority effectively creates a short-cut or circumvents the law as regards the determination of fitness or eligibility to a position, by merely hiring one who would otherwise have to go through the rigorous process mandated by the law, through a contract of service or job order.

CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order:

Section 4. Prohibitions- The following are prohibited from being hired under a contract of services and job order.

a. Those who have been previously dismissed from the service due to commission of an administrative offense;

b. Those who are covered under the rules on nepotism;
c. Those who are being hired to perform functions pertaining to vacant regular plantilla positions;

d. Those who have reached the compulsory retirement age except as to consultancy services.

Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee.[50] Macandile, being the sister of Dator, is clearly within the scope of the prohibition from being hired under a contract of services and job order.

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the Commission as services rendered thereunder are not considered government service;

WHEREAS, the Commission has been made aware that the practice of hiring personnel under contracts of services and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service.

[50] *Civil Service Commission v. Cortes*, 734 Phil. 295, 298 (2014).

A reading of the Job Order, that was approved and signed by Dator, would reveal that these prohibitions are actually written on it as well:

> The said job order shall automatically cease upon expiration as stipulated above, unless renewed. However, services of any or all of the above-named can be terminated prior to the expiration of this Job Order for lack of funds or when their services are no longer needed. The above-named hereby attests that he/she is not related within the third degree (fourth degree in case of LGUs) of consanguinity or affinity to the: 1) hiring authority and/or 2) representatives of the hiring agency; that he/she has not been previously dismissed from government service by reason of an administrative offense; that he/she has not already reached the compulsory retirement age of sixty-five (65). Furthermore, the service rendered hereunder is not considered or will never be accredited as government service.[51]

Given the foregoing, We agree with the OMB that Macandile's designation as Chief Administrative Officer was irregular as it was in clear violation of CSC Resolution No. 020790. Dator was thus properly held liable for simple misconduct.

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifested x x x.[52] Otherwise, the misconduct is only **simple**. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct.[53] In this case, We find that none of the elements of grave misconduct were present and adequately proven.

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[51] *Rollo*, p. 62.

[52] *Office of the Ombudsman v. Miedes, Sr.,* 570 Phil. 464, 472-473 (2008).

[53] *Santos v. Rasalan*, 544 Phil. 35, 43 (2007).

Section 52(B)(2), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense.[54]

Section 54 of the same rules sets out the manner of imposition of penalty, to wit:

> Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:
>
> **a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.**
>
> **b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.**
>
> c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
>
> d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances. [55] (Emphasis Ours)

We note that Dator has shown that the previous local government administration had repeatedly appointed a Dr. Salvacion as Chief Administrative Officer through job orders. We therefore appreciate the mitigating circumstance of good faith in this case that Dator alleged in the performance of his actions. The same repeated appointment by Dr. Salvacion also negates the finding that Dator's appointment of Macandile was tainted with malice. That being said, only the minimum penalty of one month and one day suspension is appropriate.

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[54] *Judge Buenaventura v. Mabalot*, 716 Phil. 476, 497 (2013).

[55] *Supra*, *id*.

WHEREFORE, the petition is **PARTLY GRANTED**. The Resolution dated February 23, 2018 of the Court of Appeals in CA-G.R. SP No. 154524 is hereby **REVERSED** and **SET ASIDE**. The Ombudsman's Decision dated March 20, 2017 is hereby **AFFIRMED** in so far as it finds petitioner Celso Olivier T. Dator **GUILTY** of **SIMPLE MISCONDUCT**, with modification that the petitioner is meted with the penalty of **ONE MONTH and ONE DAY SUSPENSION**. Petitioner Dator shall be entitled to his salary and such other emoluments, which he would otherwise have been entitled to, beyond the meted penalty of one month and one day suspension.

The Petition for Review assailing the Ombudsman's Decision dated March 20, 2017 and Order dated February 27, 2018 is hereby **DISMISSED** on the ground of forum shopping.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, and *Jardeleza, JJ.*, concur.

Bersamin, J., on official business.

EN BANC

[A.M. No. P-18-3865. October 9, 2018]
(Formerly OCA I.P.I. No. 11-3735-P)

ANTONIO K. LITONJUA, *complainant, vs.* **JERRY R. MARCELINO, Sheriff III, Metropolitan Trial Court, Branch 71, Pasig City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL;

SHERIFFS; SHOULD NOT ACCEPT VOLUNTARY PAYMENTS FROM PARTIES IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES.— Regardless of the amount actually received by Marcelino and the purpose for which it was paid, whether as sheriff's fees or as a gratuitous payment, the commission of an act that was prohibited from him as a sheriff was patent. Time and again, the Court has ruled against the acceptance by sheriff's of voluntary payments from parties in the course of the performance of their duties. Doing so would be inimical to the best interests of the service, as it might create the suspicion that the payments were made for less than noble purposes. Clearly, in this case, the purpose for which Marcelino allegedly received the money was not sanctioned under the rules. He might have thought that his claim of voluntary payment was sufficient defense for his failure to remit the amount to the court. Such voluntary payments or gratuities, however, are proscribed under the rules and covered by settled jurisprudence. "A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps otherwise, it would amount to dishonesty and extortion. And any amount received in violation of Section 10, Rule 141 of the Rules of Court constitutes unauthorized fees." Even as the Rules of Court allows payments to sheriff's, it limits the amounts they could receive from parties in relation to the execution of writs, and likewise prescribes the manner by which the sums should be handled x x x.

2. **ID.; ID.; ID.; ID.; ID.; DISHONESTY AND DERELICTION OF DUTY; THE FAILURE OF A SHERIFF TO TURN OVER SUMS OF MONEY RECEIVED FROM A PARTY IN HIS OFFICIAL CAPACITY AMOUNTS TO DISHONESTY AND HIS FAILURE TO OBSERVE PROCEDURAL RULES CONSTITUTES DERELICTION OF DUTY.—** A sheriff's failure to turn over amounts received from a party in his official capacity constitutes an act of misappropriation of funds amounting to dishonesty. Marcelino's failure to observe the procedural rules further classifies as dereliction of duty. "The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing

Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit." This procedure was not observed in this case.

3. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; ADMINISTRATIVE CHARGES; PENALTIES; WHEN THE RESPONDENT IS FOUND GUILTY OF TWO OR MORE CHARGES OR COUNTS, THE PENALTY TO BE IMPOSED SHOULD BE THAT CORRESPONDING TO THE MOST SERIOUS CHARGE AND THE REST SHALL BE CONSIDERED AS AGGRAVATING CIRCUMSTANCES.—** Section 50 of the Revised Rules on Administrative Cases in the Civil Service provides that "(i)f the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." This particularly applies in this case because under the Code of Conduct for Court Personnel, "(a)ll provisions of law, Civil Service rules, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into (the) Code." Marcelino's dismissal from the service is thus correct because it is the appropriate penalty in cases of serious dishonesty. Given the circumstances of the case, with Marcelino receiving a total of ₱100,000.00 without any intention to remit the same to the court or to apply to expenses in relation to the execution, he committed serious dishonesty, a grave offense that is punishable by dismissal on the first offense. There was also a patent grave abuse of his authority that allowed him to commit the dishonest act. It is likewise material that per records, this is not the first time that he is found guilty of an offense as an employee of the court. x x x The repeated infractions of Marcelino clearly demonstrate that he has lost the character of a person worthy to proceed with the demands of his office. The function held by Marcelino demanded high standards, both as to his character and repute, and the manner by which he should discharge his functions.

D E C I S I O N

***PER CURIAM*:**

This administrative case stems from a letter[1] dated June 29, 2009 that was sent by complainant Antonio K. Litonjua (Antonio), as president of Fruehauf Electronics Phil. Corp. (Fruehauf), to the Clerk of Court of the Metropolitan Trial Court (MeTC) of Pasig City, a copy of which letter was furnished the Office of the Court Administrator (OCA).

It was alleged in Antonio's letter that Fruehauf was the winning party in Civil Case No. 10652, an ejectment case entitled "*Fruehauf Electronic Phil. Corp v. Capitol Publishing House, Inc.*" that was resolved by the MeTC of Pasig City, Branch 71. Upon execution of the trial court's judgment, respondent Jerry R. Marcelino (Marcelino), Sheriff III of MeTC, Branch 71, Pasig City, charged Fruehauf the amount of ₱100,000.000 as sheriff's fees. To prove that the amount was actually paid to Marcelino, attached to Antonio's letter were two vouchers dated May 13, 2005[2] and July 14, 2005,[3] each for the amount of ₱50,000.00 and indicated to be for the payment of sheriff's fees. Both vouchers bore the name and signature of Marcelino as payee.

When the trial court's decision in Fruehauf's favor was eventually declared null and void by the Court of Appeals, Fruehauf was ordered to return all funds and property that were earlier subjects of execution, plus pay lawful fees for sheriff's services. This prompted Fruehauf to also demand from Marcelino the sheriff's fees that it had previously paid in 2005.[4] As Marcelino continuously failed to refund the fees or to at least present official receipts covering the payments made, Fruehauf was prompted to write the letter dated June 29, 2009 to the

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[1] *Rollo*, p. 20.

[2] *Id*. at 21.

[3] *Id*. at 22.

[4] *Id*. at 20.

Clerk of Court of MeTC, Pasig City to request for a certification on the applicable lawful fees for sheriff services, and copies of official receipts for the fees already paid.[5]

Atty. Reynaldo V. Bautista (Atty. Bautista), Clerk of Court of the MeTC of Pasig City replied to Fruehauf *via* a letter[6] dated August 18, 2009, and explained that per Sheriff's Return[7] issued by Marcelino, the following incidents in relation to the execution in Fruehauf's favor transpired:

i. On May 12, 2005[,] proceed[ed] with the auction sale of the levied property with [Fruehauf] as the highest bidder with a bid of Php7,100,000.00;

x x x x x x x x x

p. On June 3, 2005[,] received the replacem[e]nt check from Malayan Insurance Co., Inc. in the amount of Php17,416,666.00;

x x x x x x x x x

s. On June 20, 2005[,] received the check in the amount of Php 63,225.64 from Bank of the Philippine Islands and turned-over the same to [Fruefauf].[8]

Citing Amended Administrative Circular No. 35-2004,[9] Atty. Bautista declared Fruehauf liable for the following fees:

As to the amount of Php 7,100,000.00 Sale price of levied property (machiner[y])

JDF		SAJ	
Php	160.00	Php	60.00
+	141,920.00	+	70,920.00
Php	142,080.00	Php	71,020.00

[5] *Id*.

[6] *Id.* at 13.

[7] *Id*. at 5-6.

[8] *Id*. at 13.

[9] Section 10. Sheriffs, Process Servers and other persons serving processes.

As to the amount of Php 17,416,666.00 Money collected from Supersedeas bond

JDF	SAJ
Php 160.00	Php 60.00
+ 348,253.32	+ 174,126.66
Php 348,413.32	Php 174,186.66

As to the amount of Php 63,225.64 Amount garnished from BPI.

JDF	SAJ
Php 160.00	Php 60.00
+ 348,253.32	+ 174,126.66
Php 348,413.32	Php 174,186.66[10]

As to Antonio's request for official receipts covering portions of the sheriff's fees that Fruehauf had already paid, Atty. Bautista explained that his office had not received any amount as payment, including the amount of ₱100,000.00 that was allegedly paid by the company directly to Marcelino.[11]

The OCA directed Marcelino to comment on Fruehauf's letter.[12] In his Comment[13] dated August 17, 2009, Marcelino

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x x x x x x x x x

(l) For money collected by him ACTUAL OR CONSTRUCTIVE (WHEN HIGHEST BIDDER IS THE MORTGAGEE AND THERE IS NO ACTUAL COLLECTION OF MONEY), by order, execution, attachment, or any other process, judicial or extrajudicial, which shall immediately be turned over to the Clerk of Court, the following sums shall be paid to the clerk of court to wit:

(1) On the first FOUR THOUSAND (₱4,000.00) PESOS, FIVE AND A HALF (5.5%) per centum; 4% for the Judiciary Development Fund (JDF), 1 ½% for the Special Allowance for the Judiciary (SAJ) Fund;

(2) On all sums in excess of FOUR THOUSAND (₱4,000.00) PESOS, THREE (3%) per centum; 2% of the JDF, 1% for the SAJ.

x x x x x x x x x

[10] *Rollo*, pp. 13-14.

[11] *Id*. at 14.

[12] *Id*. at 18.

[13] *Id*. at 23.

denied having received the ₱50,000.00 covered by the voucher dated May 13, 2005. He nonetheless admitted receiving the ₱50,000.00 that was covered by the July 14, 2005 voucher. The check for it was allegedly voluntarily handed to him by Atty. Benedict Litonjua (Benedict), son of Antonio and a lawyer of Fruehauf, who even escorted him to iBank, Mandaluyong Branch for its encashment. Specifically, Marcelino declared:

> 3. For the voucher dated July 14, 2005, said check was received by the undersigned from [Benedict], son of [Antonio] and lawyer of [Fruehauf] who even escorted me to iBank, Mandaluyong Branch to encash the same;
>
> 4. Said amount/check was voluntarily given by [Benedict] as a token of appreciation, having been satisfied by the proceedings made by the undersigned sheriff.[14]

The foregoing claims of Marcelino prompted Antonio to file with the OCA an Affidavit[15] by which he accused the sheriff of deception and dishonesty in the exercise of official functions. Marcelino allegedly misrepresented in the collection of the sheriff's fees, as Antonio averred in his affidavit:

> 5. After [Marcelino] conducted the auction of the machiner[y] on May 12, 2005 amounting to Seven Million One Hundred Thousand Pesos (PhP7,100,000.00), he immediately demanded for the partial payment for sheriff fees. The undersigned personally disbursed cash from his own funds to the sheriff on May 13, 2005 to satisfy this demand, the amount to be reimbursed later by [Fruehauf]. This disbursement is evidenced by the corresponding personal Cash Voucher of [**Antonio],** duly signed by [Marcelino] specifically for the purpose stated therein, of a **"Partial payment of sheriff fees for pesos ₱50,000.00"**. x x x.
>
> 6. On June 3, 2005[,] Malayan Insurance paid the bond in the amount of Seventeen Million Four Hundred Sixteen Thousand Six Hundred Sixty Six Pesos (PhP17,416[,]666.00). On June 20, 2005[,] the amount of Sixty Three Thousand Pesos and Sixty Four Centavos

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[14] *Id*.

[15] *Id*. at 8-9.

(Php63,223.64) was collected from the Bank of Philippine Islands. For the completion of the above, a second demand was made by [Marcelino] for the sheriff's fees and on July 14, 2005[,] [Fruehauf] issued a check for the **"payment of sheriff fees for Pesos 50,000.00"** duly acknowledged in the accompanying Check Voucher of [Fruehauf], x x x and a copy of the [Fruehauf's] returned check (with the dorsal portion with [Marcelino's] signature) x x x.[16]

Attached to the affidavit were the two vouchers and the encashed check. Also attached was an affidavit[17] executed by Benedict in which he explained that the money given to Marcelino was from Fruehauf and/or Antonio, and intended as sheriff's fees for the execution of the judgment in the corporation's favor. It was not meant to be a mere token of appreciation.

After an evaluation of the respective accounts of Antonio and Marcelino, the OCA submitted to the Court its reports dated February 5, 2013[18] and May 11, 2018.[19] In both reports, the OCA found Marcelino guilty of dishonesty and dereliction of duty and then recommended that he be "DISMISSED from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations."[20]

The Court agrees with the OCA's evaluation and recommendations, both as to the guilt of Marcelino and the appropriate penalty for his wrongful acts.

Marcelino himself admitted that he received the amount of ₱50,000.00 from Fruehauf through the latter's counsel, Benedict. To his mind, the amount was a voluntary payment of the winning litigant and thus, he did not turn over the money to the court

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[16] *Id*. at 8.

[17] *Id*. at 15.

[18] *Id*. at 28-33.

[19] *Id*. at 35-41.

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

and instead appropriated the amount for himself. For its part, on the other hand, Fruehauf believed that the total amount of ₱100,000.00 that was directly paid to Marcelino would be applied as partial payments for the required sheriff's fees, and would then be remitted to the office of the Clerk of Court in accordance with applicable rules. Regardless of the amount actually received by Marcelino and the purpose for which it was paid, whether as sheriff's fees or as a gratuitous payment, the commission of an act that was prohibited from him as a sheriff was patent.

Time and again, the Court has ruled against the acceptance by sheriffs of voluntary payments from parties in the course of the performance of their duties.[21] Doing so would be inimical to the best interests of the service, as it might create the suspicion that the payments were made for less than noble purposes.[22]

Clearly, in this case, the purpose for which Marcelino allegedly received the money was not sanctioned under the rules. He might have thought that his claim of voluntary payment was sufficient defense for his failure to remit the amount to the court. Such voluntary payments or gratuities, however, are proscribed under the rules and covered by settled jurisprudence. "A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps otherwise, it would amount to dishonesty and extortion. And any amount received in violation of Section 10, Rule 141 of the Rules of Court constitutes unauthorized fees."[23] Even as the Rules of Court allows payments to sheriffs, it limits the amounts they could receive from parties in relation to the execution of writs, and likewise prescribes the manner by which the sums should be handled, particularly:

Sec. 10. Sheriffs, process servers and other persons serving processes.

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[21] *Atty. Gonzalez, et al. v. Calo*, 685 Phil. 352, 363 (2012).

[22] See *Francia v. Esguerra*, 746 Phil. 423, 429 (2014).

[23] *Id*. See also *Santos v. Leano, Jr.*, 781 Phil. 342, 351 (2016).

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

The Court also reiterated in *Garcia v. Alejo*:[24]

Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interest of the service because even assuming arguendo such payments were indeed given in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Sheriffs cannot receive gratuities or voluntary payments from parties they are ordered to assist. Court personnel shall not accept any fee or remuneration beyond what they are entitled to in their official capacity.[25]

The claim of gratuity or mere appreciation for the efforts Marcelino undertook during execution was also inconsistent with the fact that proceedings were still ongoing at the time the payments were made to him.[26]

There is greater merit in Antonio's claim that the two payments of ₱50,000.00 each were made upon Marcelino's demands, and

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[24] 655 Phil. 482 (2011).

[25] *Id*. at 489.

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

believed by the payor to be part of the sheriff's fees that were required from them under the rules. Such purpose was particularly indicated in the vouchers covering the amounts. Marcelino acted wrongly by the mere act of personally and directly receiving the money, and even more by his failure to comply with the processes required for the handling of the fees or expenses.

"The rules on sheriff's expenses are clear-cut and do not provide procedural shortcuts."[27] The OCA correctly observed that having been a sheriff for over 17 years at the time of his receipt of the payments, Marcelino should have known fully well the bounds of his authority when it came to demands for, receipt and handling of fees.[28] A sheriff's failure to turn over amounts received from a party in his official capacity constitutes an act of misappropriation of funds amounting to dishonesty.[29]

Marcelino's failure to observe the procedural rules further classifies as dereliction of duty. "The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit."[30] This procedure was not observed in this case.

On the matter of the appropriate penalty to be meted out for the foregoing infractions, the OCA's recommendation on Marcelino's dismissal from the service is justified.

Section 50 of the Revised Rules on Administrative Cases in the Civil Service provides that "(i)f the respondent is found guilty of two (2) or more charges or counts, the penalty to be

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[27] *Francia v. Esguerra, supra* note 22.

[28] *Rollo*, p. 38.

[29] See *Anico v. Pilipiña,* 670 Phil. 460, 470 (2011).

[30] *Id*. at 468.

imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." This particularly applies in this case because under the Code of Conduct for Court Personnel,[31] "(a)ll provisions of law, Civil Service rules, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into (the) Code."[32] Marcelino's dismissal from the service is thus correct because it is the appropriate penalty in cases of serious dishonesty.[33] Given the circumstances of the case, with Marcelino receiving a total of ₱100,000.00 without any intention to remit the same to the court or to apply to expenses in relation to the execution, he committed serious dishonesty, a grave offense that is punishable by dismissal on the first offense.[34] There was also a patent grave abuse of his authority that allowed him to commit the dishonest act.

It is likewise material that per records, this is not the first time that he is found guilty of an offense as an employee of the court. On September 18, 2003, the Court rendered its Resolution in *Paredes v. Marcelino*,[35] docketed as A.M. No. P-00-1370, wherein he was found guilty of abuse of authority and fined ₱1,000.00, with a stern warning from the Court that a repetition of the same or similar acts in the future would be dealt with more severely. Marcelino, then the acting clerk-in-charge of criminal cases, took it upon himself to exclude without any justifiable reason a particular case from the court calendar in two hearing dates. For the Court, he "arrogated unto himself in the absence of any authority from the judge to exclude Crim.

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[31] A.M. No. 03-06-13-SC, April 23, 2004.

[32] Section 1. Incorporation of Other Rules.

[33] *Anico v. Pilipiña*, *supra* note 29, at 471.

[34] Revised Rules on Administrative Cases in the Civil Service, Rule IV, Sec. 46(A)(1); see also *Anico v. Pilipiña, id.*

[35] 458 Phil. 54 (2003).

Case No. 23663 in the court calendar," and thus, clearly "overstepped the boundaries of his assigned task."[36]

Further, in another case docketed as A.M. No. P-15-3323 and entitled *Judge Marina Gaerlan Mejorada v. Jerry Marcelino*, Marcelino was found to have failed to deposit garnished money and to observe the proper procedure in the handling of a money judgment. In a Minute Resolution dated June 22, 2015, he was then declared guilty of less serious dishonesty and simple neglect of duty and accordingly, was suspended for six (6) months.[37]

The repeated infractions of Marcelino clearly demonstrate that he has lost the character of a person worthy to proceed with the demands of his office. The function held by Marcelino demanded high standards, both as to his character and repute, and the manner by which he should discharge his functions. As the Court declared in *Spouses Cailipan v. Castañeda*:[38]

> [I]t cannot be over-emphasized that sheriffs are ranking officers of the court. They play an important part in the administration of justice – execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the faith, their conduct should be geared towards maintaining the prestige and integrity of the court. x x x.[39]

Further, the following is the oft-repeated jurisprudence tackling the standards by which sheriffs are especially estimated when their actions and demeanor become subjects of inquiry, as in this case:

> At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored

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[36] *Id*. at 59.

[37] *Rollo*, p. 40.

[38] 780 Phil. 479 (2016).

[39] *Id*. at 488.

in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.[40] (Citation omitted)

WHEREFORE, the Court finds respondent Jerry R. Marcelino, Sheriff III, Metropolitan Trial Court, Branch 71, Pasig City, **GUILTY** of serious dishonesty and dereliction of duty. He is ordered **DISMISSED** from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, and *Reyes, A. Jr., JJ.,* concur.

Bersamin and *Gesmundo, JJ.,* on official business.

Reyes, J. Jr., J., on wellness leave.

EN BANC

[A.M. No. RTJ-18-2520. October 9, 2018]
(Formerly OCA IPI No. 14-4296-RTJ)

BOSTON FINANCE AND INVESTMENT CORPORATION, *complainant, vs.* **CANDELARIO V. GONZALEZ**, **Presiding Judge of Regional Trial Court of Bais City, Negros Oriental**, *respondent.*

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[40] *Geronca v. Magalona*, 568 Phil. 564, 570-571 (2008).

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; FAILURE TO OBSERVE THE RULES AND RESTRICTIONS REGARDING THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER (TRO); CANNOT BE EXCUSED BY GOOD FAITH.—[R]espondent's "cease and desist" Order issued on November 19, 2010 was, as the OCA had correctly pointed out, in the nature of a TRO. However, the aforesaid order failed to justify the necessity for its issuance, as it merely issued the directive to the Clerk of Court, acting as *Ex-Officio* Sheriff, and the Deputy Sheriff without stating the reasons therefor. Likewise, it did not specify any period for its effectivity, in essence making the same indefinite. These omissions on respondent's part are contrary to the provisions of Section 5, Rule 58 of the Rules of Court x x x In issuing an indefinite cease and desist order, respondent clearly failed to observe the rules and restrictions regarding the issuance of a TRO, which are basic tenets of procedure, and hence, renders him administratively liable for gross ignorance of the law. Case law states that "when a law or a rule is basic, judges owe it to their office to simply apply the law." It is of no moment that he was motivated by good faith or acted without malice, as these affect his competency and conduct as a judge in the discharge of his official functions. According to jurisprudence, gross ignorance of the law or incompetence cannot be excused by a claim of good faith.

2. ID.; ID.; ID.; UNDUE DELAY IN RENDERING AN ORDER.— [T]he Court finds respondent guilty of undue delay in rendering an order for his failure to expeditiously resolve the pending incidents in Civil Case No. 10-27-MY despite complainant's repeated motions for early resolution. In fact, it was only when the case was transferred to another judge that it was finally acted upon. Likewise, his explanation for archiving the case on the ground that the parties were in the process of entering into an amicable settlement does not justify the prolonged inaction thereon, in light of the provisions of Administrative Circular No. 7-A-92 or the "Guidelines in the Archiving of Cases," which provides that a case may be archived only for a period not exceeding ninety (90) days, after which, it shall

be immediately included in the trial calendar after the lapse thereof. Respondent's failure to perform his judicial duty with reasonable promptness in this respect clearly contravenes the provisions of Sections 3 and 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.

3. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW AND UNDUE DELAY IN RENDERING A DECISION OR ORDER; PENALTIES.— Under Rule 140 of the Revised Rules of Court, as amended, *gross ignorance of the law or procedure* is a serious charge punishable by either: (*a*) dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation; or (*b*) suspension from office without salary and other benefits for more than three (3) months, but not exceeding six (6) months; or (*c*) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. On the other hand, *undue delay in rendering a decision or order* is a less serious charge punishable by either: (*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. Considering that this is the first time that respondent has been found administratively liable for both offenses, and in light of relevant jurisprudence where separate penalties had been imposed on a respondent judge who is found guilty of two (2) or more offenses, the Court metes upon respondent in this case the penalty of a fine in the amount of ₱30,000.00 for gross ignorance of the law, as well as a fine of ₱11,000.00 for undue delay in resolving pending incidents in Civil Case No. 10-27-MY. Further, respondent is sternly warned that a repetition of the same or similar acts shall be dealt with more severely.

4. ID.; ID.; ID.; IN ADMINISTRATIVE CASES INVOLVING JUDGES AND JUSTICES OF THE LOWER COURTS, THE RESPONDENT SHALL BE CHARGED AND PENALIZED UNDER RULE 140 OF THE RULES OF COURT, AND ACCORDINGLY, SEPARATE PENALTIES SHALL BE IMPOSED FOR EVERY OFFENSE.— [I]n administrative cases involving judges and justices of the lower courts, the respondent shall be charged and penalized under Rule 140 of the Rules of Court, and accordingly, separate penalties

shall be imposed for every offense. The penalty provisions under the RRACCS shall not apply in such cases. x x x In its present form, Rule 140 of the Rules of Court is entitled "Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the *Sandiganbayan*." As its titular heading denotes, Rule 140 was crafted to specifically govern the discipline of judges and justices of the lower courts, providing therein not only a distinct classification of charges but also the applicable sanctions. A perusal of the offenses listed therein shows that they are broad enough to cover all kinds of administrative charges related to judicial functions, as they even **include violations of the codes of conduct for judges, as well as of Supreme Court directives**. It is likewise apparent that the list of offenses therein includes even violations of the civil service rules, such as acts of dishonesty, gambling in public, and engaging in partisan political activities. The Court therefore holds that violations of civil service laws and rules are subsumed under the charges enumerated in Rule 140 of the Rules of Court.

5. ID.; ID.; COURT PERSONNEL; CODE OF CONDUCT FOR COURT PERSONNEL; PENALTIES UNDER THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS) ADOPTED.— [For] court personnel who are not judges or justices, the Code of Conduct for Court Personnel (CCCP) governs the Court's exercise of disciplinary authority over them. It must be pointed out that the CCCP explicitly incorporates civil service rules, x x x Hence, offenses under civil service laws and rules committed by court personnel constitute violations of the CCCP, for which the offender will be held administratively liable. However, considering that the CCCP does not specify the sanctions for those violations, the Court has, **in the exercise of its discretion**, adopted the penalty provisions under existing civil service rules, such as the RRACCS, including Section 50 thereof. Accordingly, x x x the Court resolves that in administrative cases wherein the **respondent court personnel commits multiple administrative infractions, the Court, adopting Section 50 of the RRACCS, shall impose the penalty corresponding to the most serious charge, and consider the rest as aggravating circumstances**.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case arose from a verified complaint[1] for undue delay in rendering an order amounting to gross dereliction of duty and violation of Administrative Matter (A.M.) No. 99-10-05-0[2] relative to Civil Case No. 10-27-MY, entitled "*Estate of Danilo Y. Uy (deceased) and Thelma D. Uy and Heirs v. Boston Finance and Investment Corporation*," filed by Boston Finance and Investment Corporation (complainant) against Presiding Judge Candelario V. Gonzalez (respondent) of the Regional Trial Court of Bais City, Negros Occidental, Branch 45 (RTC).

The Facts

Complainant alleged that on November 19, 2010, the plaintiffs in Civil Case No. 10-27-MY, the Estate of Danilo Y. Uy and Thelma D. Uy, *et al.* (plaintiffs), filed a Petition with Application for Preliminary Injunction and/or Temporary Restraining Order (TRO)[3]before the RTC, praying for the issuance of a writ of preliminary injunction/TRO to enjoin the sale at public auction of the properties that served as collateral for the loans they obtained from complainant. Respondent issued an Order[4] of even date directing complainant to show cause why an injunctive writ should not be issued. In the same order, however, respondent also directed the Clerk of Court, as *Ex-Officio* Sheriff, and her Deputy Sheriff "*to cease and desist from conducting the scheduled public auction on November 19, 2010 pending the*

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[1] Dated July 21, 2014. *Rollo*, pp. 1-6.

[2] Otherwise known as the "PROCEDURE IN EXTRAJUDICIAL OR JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGES," as amended (March 10, 2007). See also Office of the Court Administrator (OCA) Circular No. 25-07 dated March 5, 2007.

[3] Dated November 17, 2010. *Id*. at 7-9.

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

resolution of the instant petition"[5] without, however, specifying the duration of its effectivity.

On December 2, 2010, complainant filed its Compliance,[6] maintaining that no injunctive writ should issue in favor of the plaintiffs, and that the petition should be dismissed on the grounds of forum shopping and *litis pendentia*. It appears that the plaintiffs had instituted a similar case before the Municipal Trial Court in Cities (MTCC) of Bacolod City seeking the enjoinment of the foreclosure sale.[7] Subsequently, complainant also filed its Answer,[8] praying for the dismissal of the petition and reiterating the affirmative defenses in its Compliance. Furthermore, in a Manifestation with Motion[9] dated June 14, 2011, complainant alleged that there were other pending incidents in the case that respondent needed to resolve.

Unfortunately, respondent failed to resolve all pending incidents in connection with the case for a relatively long time. The scheduled hearings were also postponed several times for various reasons, one of which was the information given to the court by plaintiffs' counsel that the parties were in the process of negotiations for a final settlement.[10]

Thereafter, or on March 18, 2013, complainant again moved[11] for the prompt resolution of all pending incidents in the case. Although it denied that the parties were currently undergoing amicable settlement,[12] complainant nonetheless expressed its willingness to enter into a compromise agreement with

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[5] *Id*. at 11; italics supplied.

[6] Dated November 26, 2010. *Id*. at 12-16.

[7] See *id*. at 13-14.

[8] Dated December 10, 2010. *Id*. at 17-22.

[9] *Id*. at 26-27.

[10] See Order dated December 3, 2012; *id*. at 34. See also *id*. at 63.

[11] See Manifestation with Motion dated March 12, 2013; *id*. at 35-37.

[12] *Id*. at 35.

plaintiffs.[13] However, no compromise agreement was reached for failure of the plaintiffs to cooperate with complainant. Finally, in an Order[14] dated July 24, 2013, respondent suspended the proceedings in and archived Civil Case No. 10-27-MY "pending resolution of the other related case in Bacolod City."[15]

In his defense,[16] respondent claimed that he issued the July 24, 2013 Order in the honest belief that the parties were in the process of finalizing an amicable settlement, especially since complainant's counsel did not object thereto.[17] He explained that the suspension of the proceedings was not intended to delay the resolution of the case, but to facilitate the parties' negotiations preparatory to a compromise agreement.[18]

In rebuttal,[19] complainant maintained that respondent's failure to promptly resolve all pending incidents in the case, *i.e.*, the motion to lift the cease and desist order and the motion to dismiss Civil Case No. 10-27-MY, despite repeated pleas for their immediate resolution, constituted gross dereliction of duty and violation of A.M. No. 99-10-05-0.[20] Likewise, complainant pointed out that its several manifestations and motions praying for the early resolution of the pending incidents should have been sufficient to apprise respondent that it was no longer willing to enter into a compromise agreement with plaintiffs. As such, respondent had no basis to assume that the parties were close to having an amicable settlement.[21]

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[13] See Manifestation with Motion dated July 1, 2013; *id*. at 40-41.

[14] *Id*. at 42.

[15] *Id*.

[16] See Compliance with a Motion to Dismiss dated October 9, 2014; *id*. at 44-48.

[17] See *id*. at 46.

[18] See *id*. at 47.

[19] See Manifestation dated July 13, 2015; *id*. at 58-61.

[20] See *id*. at 58.

[21] See *id*. at 60.

Finally, although respondent admitted[22] that there were several incidents which remained unacted upon, he insisted that it was because the preliminary hearing on complainant's affirmative defenses has not yet been terminated due to the latter's failure to appear. He claimed that complainant actively participated in the similar case pending before the MTCC in Bacolod City, where the parties were allegedly negotiating for an amicable settlement.[23]

The OCA's Report and Recommendation

In a Memorandum[24] dated June 28, 2017, the Office of the Court Administrator (OCA) recommended, *inter alia,* that respondent be found guilty of:(*a*) gross ignorance of the law and be fined in the amount of ₱30,000.00;and (*b*) undue delay in resolving pending incidents in Civil Case No. 10-27-MY and violation of Sections 3 and 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary,[25] and additionally be fined in the amount of ₱11,000.00.[26]

Citing the provisions of Section 5,[27] Rule 58 of the Rules of Court on the issuance of a preliminary injunction, the OCA

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[22] See Counter Manifestation dated August 3, 2015; *id.* at 49-51.

[23] See *id*. at 49-50.

[24] *Id*. at 62-70. Issued by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[25] Entitled "ADOPTING THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY," A.M. No. 03-05-01-SC (June 1, 2004).

[26] *Rollo*, p. 70.

[27] Section 5.*Preliminary injunction not granted without notice*; *exception*. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place,

found that since respondent issued the "cease and desist" Order dated November 19, 2010 – which was in the nature of a TRO – without any justification or any indication of its effectivity, and that he also failed to conduct a summary hearing within seventy-two (72) hours from its issuance to determine whether the same should be extended, he should therefore be found guilty of gross ignorance of the law and procedure.[28] The OCA held that while there was no finding of malice or bad faith against respondent, the rules that the latter violated were so basic that all magistrates are presumed to know.[29]

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why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order. (See Resolution dated February 17, 1998 in Bar Matter No. 803 entitled "RE: CORRECTION OF CLERICAL ERRORS IN THE 1997 RULES OF CIVIL PROCEDURE WHICH WERE APPROVED ON APRIL 8, 1997, EFFECTIVE JULY 1, 1997.)

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-*sala* court or the presiding judge of a single *sala* court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed, automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined.

[28] See *rollo*, pp. 65-66.

[29] *Id*. at 67.

Gross ignorance of the law is a serious charge punishable by either dismissal from service, suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months, or a fine of more than ₱20,000.00, but not exceeding ₱40,000.00. Considering that this is respondent's first offense, the OCA recommended that he be meted the penalty of a fine in the amount of ₱30,000.00.[30]

Similarly, the OCA observed that respondent's failure to expeditiously resolve the pending incidents in the case resulted in the undue and inordinate delay in the resolution thereof. Moreover, although a judge may order that a civil case be archived under several circumstances,[31] the prescribed period should not exceed ninety (90) days after which, the case should immediately be included in the trial calendar. In this case, a period of two (2) years had already lapsed, displaying respondent's lackadaisical treatment of the case.[32]

Under Item No. 1, Section 9,[33] Rule 140 of the Rules of Court, undue delay in rendering an order is a less serious charge punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00. Citing jurisprudence, the OCA recommended that respondent be fined in the amount of ₱11,000.00 for this particular offense.[34]

The Issue Before the Court

The sole issue for the Court's determination is whether or not respondent should be held administratively liable.

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[30] See *id*. at 67.

[31] See Administrative Circular No. 7-A-92, entitled "Re: GUIDELINES IN THE ARCHIVING OF CASES," issued on June 21, 1993.

[32] See *rollo*, pp. 67-68.

[33] Section. 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[.]

[34] See *rollo*, pp. 69-70.

The Court's Ruling

After a punctilious review of this case, the Court finds respondent guilty of gross ignorance of the law and undue delay in rendering an order.

"To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity[,] and independence. Judges are also expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith. Judges are likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith."[35]

In this case, respondent's "cease and desist" Order issued on November 19, 2010 was, as the OCA had correctly pointed out, in the nature of a TRO. However, the aforesaid order failed to justify the necessity for its issuance, as it merely issued the directive to the Clerk of Court, acting as *Ex-Officio* Sheriff, and the Deputy Sheriff without stating the reasons therefor. Likewise, it did not specify any period for its effectivity, in essence making the same indefinite. These omissions on respondent's part are contrary to the provisions of Section 5, Rule 58 of the Rules of Court, which provides:

Section 5.*Preliminary injunction not granted without notice*; *exception*. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that **great or irreparable injury would result to the applicant before the matter can be heard on notice**, the court to which the application for preliminary injunction was made, **may issue a temporary restraining order to be effective only for a period of twenty (20) days from service** on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted,

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[35] *Re: Anonymous Letter dated August 12, 2010, Complaining Against Judge Pinto*, 696 Phil. 21, 26 (2012), citations omitted.

determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order. (See Resolution dated February 17, 1998 in Bar Matter No. 803 entitled "RE: CORRECTION OF CLERICAL ERRORS IN THE 1997 RULES OF CIVIL PROCEDURE WHICH WERE APPROVED ON APRIL 8, 1997, EFFECTIVE JULY 1, 1997.)

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-*sala* court or the presiding judge of a single *sala* court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. **In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.**

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed, automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining, order issued by the Supreme Court or a member thereof shall be effective until further orders. (Emphases supplied)

In issuing an indefinite cease and desist order, respondent clearly failed to observe the rules and restrictions regarding the issuance of a TRO, which are basic tenets of procedure, and hence, renders him administratively liable for gross ignorance of the law. Case law states that "when a law or a rule is basic, judges owe it to their office to simply apply the law."[36] It is of

[36] *Id*. at 28; citing *Conquilla v. Bernardo*, 657 Phil. 289, 299 (2011).

no moment that he was motivated by good faith or acted without malice, as these affect his competency and conduct as a judge in the discharge of his official functions. According to jurisprudence, gross ignorance of the law or incompetence cannot be excused by a claim of good faith.[37]

Similarly, the Court finds respondent guilty of undue delay in rendering an order for his failure to expeditiously resolve the pending incidents in Civil Case No. 10-27-MY despite complainant's repeated motions for early resolution. In fact, it was only when the case was transferred to another judge that it was finally acted upon.[38] Likewise, his explanation for archiving the case on the ground that the parties were in the process of entering into an amicable settlement does not justify the prolonged inaction thereon, in light of the provisions of Administrative Circular No. 7-A-92 or the "Guidelines in the Archiving of Cases,"which provides that a case may be archived only for a period not exceeding ninety (90) days, after which, it shall be immediately included in the trial calendar after the lapse thereof. Respondent's failure to perform his judicial duty with reasonable promptness in this respect clearly contravenes the provisions of Sections 3 and 5,Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary, to wit:

> Section 3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
>
> Section 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

Under Rule 140 of the Revised Rules of Court, as amended, *gross ignorance of the law or procedure* is a serious charge[39]

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[37] *Id*., citing *De los Santos-Reyes v. Montesa, Jr.*, 317 Phil. 101, 112-113 (1995).

[38] See *rollo*, p. 67.

[39] See Item No. 9, Section 8, Rule 140 of the Rules of Court.

punishable by either: (*a*) dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation; or (*b*) suspension from office without salary and other benefits for more than three(3) months,but not exceeding six (6) months; or (*c*) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[40]On the other hand,*undue delay in rendering a decision or order* is a less serious charge[41] punishable by either: (*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.[42]

Considering that this is the first time that respondent has been found administratively liable for both offenses, and in light of relevant jurisprudence[43] where separate penalties had been imposed on a respondent judge who is found guilty of two (2) or more offenses, the Court metes upon respondent in this case the penalty of a fine in the amount of ₱30,000.00 for gross ignorance of the law, as well as a fine of ₱11,000.00 for undue delay in resolving pending incidents in Civil Case No. 10-27-MY. Further, respondent is sternly warned that a repetition of the same or similar acts shall be dealt with more severely.

At this juncture, it may be ruminated: *is not Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service* (RRACCS)[44] — which provides that "[i]f the respondent

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[40] See Item Nos. 1, 2, and 3, Section 11 (A), Rule 140 of the Rules of Court.

[41] See Item No. 1, Section 9, Rule 140 of the Rules of Court.

[42] See Item Nos. 1 and 2, Section 11 (B), Rule 140 of the Rules of Court.

[43] See *Re: Evaluation of Administrative Liability of Lubao*, A.M. No. 15-09-314-RTC, April 19, 2016, 790 SCRA 188; *Medina v. Canoy*, 682 Phil. 397 (2012); and *Reyes v. Paderanga*, 572 Phil. 27 (2008), the particulars of which shall be briefly discussed below.

[44] CSC Resolution No. 1101502, promulgated on November 8, 2011.

is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances" – *applicable in meting out the penalties on herein respondent*?

The Court is aware that in previous cases,[45] it had indeed applied Section 50, Rule 10 of the RRACCS in imposing penalties on erring judges who were found guilty of multiple administrative charges or counts. In *Hipe v. Literato*,[46] the Court found Judge Rolando T. Literato liable for two (2) offenses, particularly gross ignorance of the law and undue delay in rendering a decision. Applying Section 50, Rule 10 of the RRACCS, it imposed a penalty of fine in the amount of ₱30,000.00, which corresponds to the penalty for the most serious charge, while undue delay in deciding a case was considered only as an aggravating circumstance.[47] In *Spouses Crisologo v. Omelio*,[48] respondent judge was found guilty of four (4) counts of gross ignorance of the law, for which the Court imposed the penalty for the offense "in its maximum, due to the presence of aggravating circumstances."[49] In *Re: Anonymous Complaints Against Bandong*,[50] retired Judge Dinah Evangeline B. Bandong was found liable for gross misconduct, conduct prejudicial to the best interest of service, and violation of Supreme Court rules but the penalty imposed on her was a single fine of ₱40,000.00, based on her most serious charge of gross misconduct, while the rest were only considered as aggravating circumstances.

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[45] See *Re: Anonymous Complaints Against Bandong*, A.M. No. RTJ-17-2507, October 9, 2017*; Spouses Crisologo v. Omelio*, 696 Phil. 30 (2012); and *Hipe v. Literato*, 686 Phil. 723 (2012).

[46] See *Hipe v. Literato*, *id*.

[47] See *id*. at 735.

[48] See *Spouses Crisologo v. Omelio*, *supra* note 45.

[49] *Id*. at 68.

[50] See *Re: Anonymous Complaints Against Bandong*, *supra* note 45.

In contrast,in another set of cases (which were above-cited and applied herein),[51]the Courthad imposed separate penalties on respondent judges who were found guilty of two (2) or more offenses. In *Re: Evaluation of Administrative Liability of Lubao*,[52] the Court found Judge Antonio C. Lubao guilty of various offenses[53] under Rule 140 of the Rules of Court and separately penalized the judge for each violation. In *Medina v. Canoy*,[54] Judge Victor A. Canoy was found guilty of gross ignorance of the law and undue delay in rendering a decision under Rule 140 of the Rules of Court, and accordingly, was meted separate fines for each offense.[55] Similarly, in *Reyes v. Paderanga*,[56] Judge Rustico D. Paderanga was found guilty of two (2) offenses under Rule 140 of the Rules of Court and was separately fined for each offense.[57]

Recognizing these diverging strands of jurisprudence, the Court finds it opportune to herein settle the conflict by resolving that henceforth, **in administrative cases involving judges and justices of the lower courts, the respondent shall be charged and penalized under Rule 140 of the Rules of Court, and accordingly, separate penalties shall be imposed for every offense**.The penalty provisions under the RRACCS shall not apply in such cases.To avoid any confusion, the underlying considerations therefor shall be explicated below.

Fundamentally, the setting of parameters pertaining to the discipline of all court personnel, including judges and justices,

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[51] See *supra* note 43.

[52] See *Re: Evaluation of Administrative Liability of Lubao*, *supra* note 43.

[53] *I.e*., gross misconduct, undue delay in rendering decisions and submission of monthly reports, violation of Supreme Court rules, directives, and circulars. (*Id*. at 203-204.)

[54] See *Medina v. Canoy*, *supra* note 43.

[55] See *id*. at 410.

[56] See *Reyes v. Paderanga*, *supra* note 43.

[57] See *id*. at 44.

clearly fall within the sole prerogative of the Court. The Supreme Court's exclusive authority to set these parameters is based on no other than the 1987 Constitution, which provides:

ARTICLE VIII

Section 6. The Supreme Court shall have **administrative supervision** over **all courts and the personnel** thereof. (Emphases supplied)

In this relation, Section 11, Article VIII of the Constitution particularly states that "[t]he Supreme Court *en banc* shall have the **power to discipline judges of lower courts**, or order their dismissal x x x."[58]

Anchored on these constitutional mandates, the Court issued two (2) separate body of rules to govern judicial discipline cases, to wit: (*a*) **Rule 140 of the Rules of Court to apply to judges and justices of lower courts**; and (*b*) **the Code of Conduct for Court Personnel (CCCP)**,[59] which incorporates the RRACCS,**to apply to all judiciary personnel** "**who are not justices or judges**."[60] Each shall be discussed in turn.

In its present form, Rule 140[61] of the Rules of Court is entitled "Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the *Sandiganbayan*." As its titular heading denotes, Rule 140 was crafted to specifically govern the discipline of judges and justices of the lower courts, providing therein not only a distinct classification of charges but also the applicable sanctions.[62]A perusal of the offenses listed therein

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[58] Emphasis and underscoring supplied.

[59] A.M. No. 03-06-13-SC (June 1, 2004).

[60] CCCP, Section 1, Scope; emphasis supplied.

[61] See Rule 140 of the Rules of Court, as amended by A.M. No.01-8-10-SC, entitled "RE: PROPOSED AMENDMENT TO RULE 140 OF THE RULES OF COURT RE DISCIPLINE OF JUSTICES AND JUDGES"(October 1, 2001). Section 11, Article VIII of the CONSTITUTION further stresses the Court's disciplinary power over them.

[62] See Sections 7-11, Rule 140 of the Rules of Court, as amended.

shows that they are broad enough to cover all kinds of administrative charges related to judicial functions, as they even **include violations of the codes of conduct for judges, as well as of Supreme Court directives**.[63] It is likewise apparent that the list of offenses therein includes even violations of the civil service rules, such as acts of dishonesty,[64] gambling in public,[65] and engaging in partisan political activities.[66] The Court therefore holds that violations of civil service laws and rules are subsumed under the charges enumerated in Rule 140 of the Rules of Court. On this score, it is highly-instructive to echo the observations of retired Associate Justice Presbitero J. Velasco, Jr. in his Separate Opinion in the case of *OCA v. Chavez*,[67] explaining the "non-application of administrative offenses under the ordinary

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[63] Rule 140 of the Rules of Court incorporates violations of the Code of Judicial Conduct as serious charges (see Item No. 3, Section 8) and violations of Supreme Court rules, directives, and circulars as less serious charges (see Item No. 4, Section 9). The New Code of Judicial Conduct for the Philippine Judiciary states that it "supersedes the Canons of Judicial Ethics and the Code of Judicial Conduct" but "in case of deficiency or absence of specific provisions in [the] New Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall" apply suppletorily.

[64] This is listed as a serious charge under Item No. 2, Section 8, Rule 140 of the Rules of Court and is likewise prohibited under Section 46(b)(1), Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987,'" also known as the "ADMINISTRATIVE CODE OF 1987"(August 3, 1988), as well as Section 50(A)(1) and (B)(1), Rule 10 of the "2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS)," CSC Resolution No. 1701077, approved on July 3, 2017.

[65] This is a light charge under Item No. 2, Section 10, Rule 140 of the Rules of Court, and is also a light offense under Section 50(F)(5), Rule 10 of the 2017 RACCS. This is likewise prohibited under Section 46 (b) (16) Chapter 7, Subtitle A, Title I, Book V of the ADMINISTRATIVE CODE OF 1987.

[66] This is listed as a serious charge under Item No. 10, Section 8, Rule 140 of the Rules of Court, and is likewise prohibited under Section 46(b)(26) of the ADMINISTRATIVE CODE OF 1987. This is also listed as a less grave offense under Section 50 (D) (10), Rule 10 of the 2017 RACCS.

[67] See A.M. No. RTJ-10-2219 and A.M. No. 12-7-130-RTC, August 1, 2017.

civil service rules with respect to judges by reason of them being covered by another set of rules or law that specially deals with the grounds for their discipline," *viz.*:

1. The RRACCS is intended to govern administrative proceedings in the entire civil service, in general. **Rule 140 of the Rules of the Court, on the other hand, is specifically meant to govern the disciplinary proceedings against members of the judiciary**. Since the RRACCS could not possibly have repealed Rule 140, the latter rule ought to be considered as an exception to the former rule. In other words, the RRACCS must yield to Rule 140 with respect to matters specifically treated in the latter.

   Among those specifically treated under Rule 140 of the Rules of Court are the different administrative offenses that a member of the judiciary may be charged with and held liable under. Viewed thusly, the administrative offenses under RRACCS can have no application to members of the judiciary.

2. The above conclusion is supported by the 1982 case of *Macariola v. Asuncion*[199 Phil. 295 (1982)].

   In *Macariola*, a judge, who associated himself with a private corporation as an officer and a stockholder during his incumbency, was administratively charged of, among others, violating a provision of the Civil Service Rules which was promulgated by the CSC pursuant to Republic Act (RA) No. 2260 or the Civil Service Act of 1959. The issue then was whether the judge may be held administratively liable under such a charge.

   Macariola answered the issue in the negative and dismissed the said charge. It ruled that administrative charges under the Civil Service Act of 1959 and the rules that were promulgated thereunder do not apply to judges, they being members of the judiciary and thus covered by the Judiciary Act of 1948 as to matters pertaining to grounds for their discipline.

3. While the rules and laws referred to in *Macariola* had since been superseded by more recent issuances and enactments, the doctrine established therein, ***i.e.*, the non-application of administrative offenses under the ordinary civil service**

rules with respect to judges by reason of them being covered by another set of rules or law that specially deals with the grounds for their discipline, remains valid. Like it was during the time of *Macariola*, the grounds for the discipline of members of the judiciary are still provided for under a special set of rules distinct from the ordinary civil service rules promulgated by the CSC.

Rule 140 of the Rules of Court are the set of rules especially promulgated by the Court to govern disciplinary proceedings against members of the judiciary. Sections 8, 9[,] and 10 of the said rule, in turn, provide the specific administrative charges that can be applied against a member of the judiciary. These provisions are completely separate from the administrative offenses under Section 46 of the RRACCS.

4. There is also practical value in maintaining the *Macariola* doctrine. A contrary rule, *i.e*., allowing the administrative offenses under the RRACCS to be concurrently applied with those under Rule 140, will only lead to confusion and even compromise the court's ability, in administrative proceedings against members of the judiciary, to impose uniform sanctions in cases that bear similar sets of facts. A couple of examples quickly comes to mind:

    a. A judge who fails to render a decision within the reglementary period under the Constitution is liable for the less serious charge of Undue Delay in Rendering Decision under Rule 140 of the Rules of Court. However, if the offenses under the RRACCS are rendered applicable, then another judge who commits the same fault may instead find himself charged with the grave offense of Gross Neglect of Duty under the said rule.

    b. A judge who is an alcoholic and a habitual drunk is liable for a serious charge under Rule 140 of the Rules of Court. However, should the RRACCS be made applicable, a second judge who is every bit as alcoholic and drunk as the first may instead be held accountable only for a lessgrave offense under the said rule.

> The above examples, needless to state, are merely the proverbial tip of the iceberg of confusion that may follow should we allow the administrative offenses under the RRACCS to be applied against members of the judiciary.[68] (Emphases supplied)

Hence, in resolving administrative cases against judges or justices of the lower courts, reference need only be made to Rule 140 of the Rules of Court as regards the charges, as well as the imposable penalties. **If the respondent judge or justice is found liable for two (2) or more charges, separate penalties shall be imposed on him/her** such that Section 50 of the RRACCS shall have no application in imposing sanctions.

On the other hand, as regards other court personnel who are not judges or justices, the CCCP governs the Court's exercise of disciplinary authority over them. It must be pointed out that the CCCP explicitly incorporates civil service rules, *viz.*:

> INCORPORATION OF OTHER RULES
>
> Section 1. All provisions of law, **Civil Service rules**, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary **are deemed incorporated** into this Code. (Emphases supplied)

Hence, offenses under civil service laws and rules committed by court personnel constitute violations of the CCCP, for which the offender will be held administratively liable. However, considering that the CCCP does not specify the sanctions for those violations, the Court has, **in the exercise of its discretion**, adopted the penalty provisions under existing civil service rules, such as the RRACCS, including Section 50 thereof.

Accordingly, in cases where a respondent court personnel had committed multiple infractions, the Court has applied Section 50 of the RRACCS.To illustrate, in the recent case of *Paduga v. Dimson*,[69] a sheriff was found guilty of three (3) offenses

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[68] See *id*.; citations omitted.

[69] See A.M. No. P-18-3833, April 16, 2018.

amounting to conduct prejudicial to the best interest of the service, less serious dishonesty, and simple neglect of duty under the RRACCS. Since there were multiple violations, the Court applied Section 50 of the RRACCS in imposing the penalty of suspension for one (1) year. Similarly, in *Anonymous Complaint Against Camay, Jr.*,[70] a utility worker of the Judiciary was found guilty of various serious offenses, and applying Section 50 of the RRACCS, the Court dismissed him from service.

Consistent with these cases, the Court resolves that in administrative cases wherein the **respondent court personnel commits multiple administrative infractions, the Court, adopting Section 50 of the RRACCS, shall impose the penalty corresponding to the most serious charge, and consider the rest as aggravating circumstances**.

Thus, to summarize the foregoing discussion, thefollowing **guidelines** shallbe observed:

(a) Rule 140 of the Rules of Court shall exclusively govern administrative cases involving **judges or justices of the lower courts**.If the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose **separate penalties for each violation**; and

(b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. If the respondent **court personnel** is found guilty of multiple administrative offenses, the Court shall **impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances**.

The multiplicity of penalties to be imposed on judges and justices is consistent with the higher level of decorum expected from them. Nevertheless, it must be pointed out that the guidelines

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[70] See A.M. No. P-17-3659, March 20, 2018.

herein set forth are based on the prevailing legal framework in judicial discipline cases, which the Court may, in its discretion, eventually revise through the proper administrative issuance. After all, the power of supervision over all judiciary personnel is exclusively vested in the Court.[71]

WHEREFORE, respondent Candelario V. Gonzalez, Presiding Judge of the Regional Trial Court of Bais City, Negros Oriental, Branch 45 is hereby found **GUILTY** of Gross Ignorance of the Law and accordingly, meted the penalty of **FINE** in the amount of ₱30,000.00. Likewise, he is found **GUILTY** of Undue Delay in Rendering an Order and accordingly, meted the penalty of **FINE** in the amount of ₱11,000.00. He is **STERNLY WARNED** that a repetition of the same or similar offenses shall be dealt with more severely.

Furthermore, the Court hereby **RESOLVES** that the aforestated guidelines shall be observed. These guidelines shall **APPLY** to all pending and future administrative cases involving court employees, subject to revision by the Court through the pertinent issuance therefor.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Senior Associate Justice, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, and *Reyes, A. Jr., JJ.,* concur.

Bersamin and *Gesmundo, JJ.,* on official business.

Reyes, J. Jr., J., on official leave.

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[71] See *Maceda v. Vasquez,* G.R. No. 102781, April 22, 1993, 221 SCRA 464, 466-467.

EN BANC

[G.R. No. 216930. October 9, 2018]

COUNCIL OF TEACHERS AND STAFF OF COLLEGES AND UNIVERSITIES OF THE PHILIPPINES (CoTeSCUP), SENTRO NG MGA NAGKAKAISANG PROGRESIBONG MGA MANGGAGAWA (SENTRO), FEDERATION OF FREE WORKERS (FFW), NATIONAL CONFEDERATION OF LABOR (NCL), PUBLIC SERVICES LABOR INDEPENDENT CONFEDERATION (PSLINK), PARTIDO MANGGAGAWA (PM), ADAMSON UNIVERSITY FACULTY AND EMPLOYEES ASSOCIATION, FACULTY ALLIED AND WORKER UNION OF CENTRO ESCOLAR UNIVERSITY, FACULTY ASSOCIATION MAPUA INSTITUTE OF TECHNOLOGY, FAR EASTERN UNIVERSITY FACULTY ASSOCIATION, HOLY ANGEL UNIVERSITY TEACHERS AND EMPLOYEES UNION, LYCEUM FACULTY ASSOCIATION, SAN BEDA COLLEGE ALABANG EMPLOYEES ASSOCIATION, SILIMAN UNIVERSITY FACULTY ASSOCIATION, UNIVERSITY OF THE EAST RAMON MAGSAYSAY EMPLOYEES ASSOCIATION-FFW (UERMEA-FFW), UNION OF FACULTY AND EMPLOYEES OF ST. LOUIS UNIVERSITY, UNIVERSITY OF SANTO TOMAS FACULTY UNION, PROF. FLORDELIZ ABANTO (in her capacity as Vice President of St. Scholastica's College Faculty Association), PROF. REBECCA T. AÑONUEVO (in her capacity as President of Miriam College Faculty Association), PROF. MARIA RITA REYES CUCIO (in her capacity as faculty of San Beda College), and MR. JOMEL B. GENERAL (in his capacity as employee of Philippine School of Business Administration and Officer of the FFW), *petitioners, vs.* **SECRETARY OF EDUCATION, SECRETARY OF LABOR AND EMPLOYMENT, CHAIRPERSON OF THE COMMISSION ON HIGHER EDUCATION,**

SECRETARY OF THE TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY, SECRETARY GENERAL OF THE HOUSE OF REPRESENTATIVES, and MIRIAM COLLEGE, *respondents.*

[G.R. No. 217451. October 9, 2018]

DR. BIENVENIDO LUMBERA (Pambansang Alagad ng Sining at Professor Emeritus, University of the Philippines/UP); CONG. ANTONIO TINIO (ACT Teachers' Partylist); CONG. FERNANDO "KA PANDO" HICAP (Anakpawis Partylist at tagapangulo ng PAMALAKAYA); CONG. JAMES MARK TERRY RIDON (Kabataan Partylist); DR. RHODERICK NUNCIO (Vice-Dean, ng Kolehiyo ng Malalayang Sining, De La Salle University/DLSU); PROP. AURA ABIERA (Tagapangulo ng Departamento ng Filipino at Panitikan ng Pilipinas sa University of the Philippines-Diliman); DR. ERNESTO CARANDANG II (Tagapangulo ng Departamento ng Filipino, De La Salle University-Manila); DR. ROBERTO AMPIL (Tagapangulo ng Departamento ng Filipino ng University of Santo Tomas); PROP. MARVIN LAI (Tagapangulo ng Departamento ng Filipinolohiya ng Polytechnic University of the Philippines/PUP); PROP. NELSON RAMIREZ (Tagapangulo ng Departamento ng Filipino, University of the East/UE-Manila); DR. ESTER RADA (Tagapangulo ng Kagawaran ng Filipino, San Beda College-Manila); PROP. JORGE PACIFICO CUIBILLAS (Tagapangulo ng Departamento ng Filipino, Far Eastern University-Manila); PROP. ANDREW PADERNAL (Tagapangulo ng Kagawaran ng Filipino, Pamantasan ng Lungsod ng Pasig/PLP); PROP. MICHAEL DOMINGO PANTE (Faculty Member sa History Department, Ateneo de Manila University); BENJAMIN VALBUENA (Tagapangulo ng Alliance of Concerned Teachers/ACT-Philippines); DR. PRISCILLA AMPUAN (Pangulo ng Quezon City

Public School Teachers' Association/QCPSTA); PROP. CARL MARC RAMOTA (Pangulo ng Alliance of Concerned Teachers-State Universities and Colleges/ ACT-SUC); DR. ROWELL MADULA (Pangulo ng Alliance of Concerned Teachers-Private Schools/ACT-Private); DR. AURORA BATNAG (Pangulo ng Pambansang Samahan sa Linggwistika at Literaturang Filipino/PSLLF); DR. JUDY TAGUIWALO (Full Professor sa College of Social Work and Community Development, UP Diliman); DR. DANILO ARAO (Associate Professor sa Department of Journalism, College of Mass Communication, UP Diliman); DR. DAVID MICHAEL SAN JUAN (Executive Council Member ng National Commission for Culture and the Arts-National Committee on Language and Translation/ NCCA-NCLT); RONNEL B. AGONCILLO JR., (Pangulo ng Philippine Normal University/PNU-Student Government);DR. REUEL MOLINA AGUILA (Palanca Hall of Famer at Tagapayo ng KATAGA-Samahan ng mga Manunulat sa Pilipinas); ERICSON ACOSTA (manunulat at dating bilanggong politikal, at kasapi ng Anakpawis Partylist); PROP. ADRIAN BALAGOT (Direktor ng Center for Continuing Education, Pamantasan ng Lungsod ng Marikina/PLMar); PROP. PENAFRANCIA RANIELA BARBAZA (Associate Professor, Departamento ng Filipino at Panitikan ng Pilipinas, University of the Philippines-Diliman); PROP. HERMAN MANALO BOGNOT (Faculty Member sa Department of European Languages, University of the Philippines); PROP. LAURENCE MARVIN CASTILLO (Instructor sa Department of Humanities, University of the Philippines-Los Baños); DR. ANTONIO CONTRERAS (Full Professor sa Political Science Department, De La Salle University/DLSU); PROP. RAMILITO CORREA (Pangulo ng Sanggunian sa Filipino/SANGFIL); GEROME NICOLAS DE LA PEÑA (Pangulo ng Samahan ng mga Mag-aaral sa Asignaturang Filipino, SamFil-Pamantasan ng Lungsod

ng Pasig/PLP); PROP. WENNIELYN FAJILAN (Faculty Member ng Departamento ng Filipino, University of Santo Tomas); FLODY FERNANDEZ (Pangulo ng Ramon Magsaysay High School (Cubao) Faculty Club); PROP. SANTIAGO FLORA (Vice-President for Operations ng Quezon City Polytechnic University); PROP. MELANIA FLORES (National PRO ng All UP Academic Employees' Union, University of the Philippines/UP); DR. LAKANDUPIL GARCIA (Full Professor ng Departamento ng Filipino, De La Salle University-Dasmariñas); DR. FANNY GARCIA (Palanca Awardee at Faculty Member ng Departamento ng Filipino, De La Salle University/DLSU); PROP. JONATHAN GERONIMO (Coordinator ng KATAGA-Manila at Faculty Member ng Departamento ng Filipino ng University of Santo Tomas/UST); PROP. VLADIMEIR GONZALES (Assistant Professor sa Departamento ng Filipino at Panitikan ng Pilipinas-University of the Philippines-Diliman); PROP. FERDINAND PISIGAN JARIN (Palanca Awardee at Pangulo ng KATAGA-Samahan ng mga Manunulat sa Pilipinas); JOHN ROBERT MAGSOMBOL (Pangulo ng University of Santo Tomas-Panulat); PROP. JOEL MALABANAN (Tagapayo ng Kapisanang Diwa at Panitik/KADIPAN sa Philippine Normal University/ PNU); PROP. DENNIS MANGUBAT (Faculty Member ng Departamento ng Filipino ng San Beda College-Manila); PROP. JOANNE MANZANO (Faculty Member ng Departamento ng Filipino at Panitikan ng Pilipinas-University of the Philippines-Diliman); PROP. BERNADETTE NERI (Assistant Professor sa Departamento ng Filipino at Panitikan ng Pilipinas, University of the Philippines-Diliman); RAYMOND PALATINO (Tagapangulo ng Bagong Alyansang Makabayan/BAYAN-National Capital Region); PROP. APRIL PEREZ (Assistant Professor sa Departamento ng Filipino at Panitikan ng Pilipinas, University of the Philippines-Diliman); PROP. JAYSON PETRAS

(Deputy Director ng Institute of Creative Writing, University of the Philippines-Diliman); PROP. CRIZEL SICAT-DE LAZA (Katuwang ng Kalihim ng Sanggunian ng Filipino/SANGFIL at Faculty Member sa Departamento ng Filipino ng University of Santo Tomas/UST); PROP. DENNIS JOSEPH RAYMUNDO (Faculty Member ng Kalayaan College); DR. BEVERLY SARZA (Faculty Member ng Philosophy Department, De La Salle University-Manila); DR. RAQUEL SISON-BUBAN (AssociateProfessor sa Departamento ng Filipino ng De La Salle University-Manila); PROP. VIVENCIO M. TALEGON, JR. (Full-Time Faculty sa University of Asia and the Pacific, Ortigas Center, Pasig); ISAAC ALI TAPAR (Pangulo ng Manila Science High SchoolFaculty Association); DR. DOLORES TAYLAN (Associate Professor sa Departamento ng Filipino, De La Salle University-Manila); DR. ALITA TEPACE (Propesor sa Philippine Normal University-Manila); PROP. OM NARAYAN VELASCO (Instructor sa University of the Philippines-Los Baños); ANDREA JEAN YASOÑA (Pangulo ng Kapisanang Diwa at Panitik-PNU); PROP. REYNELE BREN ZAFRA (Faculty Member ng Departamento ng Filipino ng University of Santo Tomas); DR. RUBY ALUNEN (Faculty Member ng Departamento ng Filipino ng De La Salle University-Manila); PROP. BAYANI SANTOS, JR. (Faculty Member ng Departamento ng Filipino ng Manuel Luis Quezon University/MLQU); PROP. CHRISTO REY ALBASON (Guro sa Sining ng Bayan/ GUSI); PROP. LILIBETH OBLENA-QUIORE (Faculty Member ng Departamento ng Filipino ng De La Salle University-Manila); PROP. DANIM MAJERANO (Direktor ng Pananaliksik at Edukasyon, Samahang Saliksik Pasig, Inc.); RUSTUM CASIA (KM 64 Poetry Collective); CHARISSE BERNADINE BAÑEZ (Tagapagsalita ng League of Filipino Students/LFS); DR. JENNIFOR AGUILAR (Chairperson ng Department of Elementary and Secondary Education ng Polytechnic University of the Philippines/PUP);

PROP. MOREAL NAGARIT CAMBA (Tagapangulo ng Departamento ng Filipino, University of Asia and the Pacific – Pasig); PROP. CLEVE ARGUELLES (Chairperson ng Political Science Program, Department of Social Sciences, University of the Philippines-Manila); DR. MARIA LUCILLE ROXAS (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); PROP. VOLTAIRE VILLANUEVA (Faculty Member sa Philippine Normal University); DR. JOSEFINA MANGAHIS (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); PROP. EMMA SISON (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); AYLEEN ORTIZ (manununulat); PROP. EFREN DOMINGO (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); PROP. LESLIE ANNE LIWANAG (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); DR. LAKANGITING GARCIA (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila);PROP. MIRYLLE CALINDRO (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); DR. LAKANDUPIL GARCIA (Faculty Member sa Departamento ng Filipino ng De La Salle University-Dasmariñas); DR. DEXTER CAYANES (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); DR. TERESITA FORTUNATO (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); DR. MA. RITA ARANDA (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila); DR. EMMA BASCO (Faculty Member sa Departamento ng Filipino ng De La Salle University-Manila), *petitioners, vs.* **PANGULONG BENIGNO SIMEON "NOYNOY" C. AQUINO III, at PUNONG KOMISYUNER NG KOMISYON SA LALONG MATAAS NA EDUKASYON/ COMMISSION ON HIGHER EDUCATION (CHED) DR. PATRICIA LICUANAN,** *respondents.*

[G.R. No. 217752. October 9, 2018]

ANTONIO "SONNY" F. TRILLANES IV, GARY C. ALEJANO and FRANCISCO ASHLEY L. ACEDILLO, *petitioners, vs.* **HON. PAQUITO N. OCHOA, JR., in his capacity as Executive Secretary, HON. ARMIN A. LUISTRO, in his capacity as Secretary of Education and the DEPARTMENT OF EDUCATION,** *respondents.*

[G.R. No. 218045. October 9, 2018]

EDUARDO R. ALICIAS, JR. and AURELIO P. RAMOS, JR., *petitioners, vs.* **DEPARTMENT OF EDUCATION (DepEd) and The SECRETARY OF THE DepEd,** *respondents.*

[G.R. No. 218098. October 9, 2018]

RICHARD TROY A. COLMENARES, RENE LUIS M. TADLE, ERLINDA C. PALAGANAS, RUTH THELMA P. TINGDA, RONALD TAGGAOA, JOSEPH PORFIRIO ANDAYA, FLORANTE DULACA, FROILAN A. ALIPAO; KATHLEA FRANCYNN GAWANI D. YAÑGOT, MIEL ALEXANDRE A. TAGGAOA, AGATHA ZITA DISTOR, ISABELLE C. UMINGA, ALDWIN GABRIEL M. PINAS, ATREENA MARIE DULAY, ZION GABRIEL SANTOS, SIBLINGS BRENNAN KEANE, BREN KIMI, and BASLEY KICH, all surnamed DELA CRUZ, JASSEL ANGELO ENRIQUEZ, siblings GYRO MATTHEW and MARGA RAUXIELLE AGLAIA, both surnamed GUEVARRA, siblings ALTHEA, ALEXA, and AMANDA, all surnamed ABEJO, AND ELEANNIE JERECE S. CAWIS, represented by their parents LEANDRO B. YAÑGOT, JR., JENNIFER A. TAGGAOA, MILO DISTOR, JOSE MARI UMINGA, GABRIEL PAUL PINAS, SOFRONIO DULAY, LUZ A. SANTOS, BARBY M. DELA CRUZ, RUBY G.

ENRIQUEZ, ROWENA C. GUEVARRA, MARISEL P. ABEJO, and VITTORIO JERICO L. CAWIS, respectively, for themselves and the class they represent; REVENENDO R. VARGAS, ANNIELA R. YU-SOLIVEN, VILMA C. BENIGNO, MARIA CRISTINA F. DUNGCA, LIZA DAOANIS, ROMMEL M. FRANCISCO, FELIZA G. AGUSTIN, EMELITA C. VIDAL, ROMMEL D. RAMISCAL, JOCELYN ELEAZAR DE GUZMAN, ANDREA P. VILLALON, and JOYCE FE T. ALMENARIO, for themselves and the class they represent, *Petitioners, vs.* **DEPARTMENT OF EDUCATION SECRETARY ARMIN A. LUISTRO, COMMISSION ON HIGHER EDUCATION CHAIRPERSON PATRICIA B. LICUANAN, TECHNICAL SKILLS AND DEVELOPMENT AUTHORITY DIRECTOR-GENERAL JOEL J. VILLANUEVA, DEPARTMENT OF LABOR AND EMPLOYMENT SECRETARY ROSALINDA D. BALDOZ, DEPARTMENT OF FINANCE SECRETARY CESAR V. PURISIMA, SENATE PRESIDENT FRANKLIN M. DRILON, and HOUSE OF REPRESENTATIVES SPEAKER FELICIANO R. BELMONTE,** *respondents.*

[G.R. No. 218123. October 9, 2018]

CONG. ANTONIO TINIO (Representative, ACT Teachers Party-List); CONG. NERI COLMENARES (Representative, Bayan Muna Party-List); DR. BIENVENIDO LUMBERA (National Artist for Literature and Professor Emeritus, UP); CONG. CARLOS ZARATE (Representative, Bayan Muna Party-List); CONG. FERNANDO "KA PANDO" HICAP (Representative, Anakpawis Party-List; Chairperson, PAMALAKAYA); CONG. LUZVIMINDA ILAGAN (Representative, Gabriela Women's Party); CONG. EMMI DE JESUS (Representative, Gabriela Party-List); CONG. TERRY RIDON (Representative,

Kabataan Party-List); RENATO REYES, JR. (Secretary-General, Bagong Alyansang Makabayan/ BAYAN and parent of an elementary student); BENJAMIN VALBUENA (Chairperson, Alliance of Concerned Teachers-Philippines); MARTIN DIÑO (Chairperson of the Volunteers Against Crime and Corruption); JOVITA MONTES (Spokesperson, Parents' Movement Against K to 12); KHARLO FELIPE MANANO (Secretary-General, Salinlahi Alliance for Children's Concerns); GERTRUDES LIBANG (National Vice-Chairperson, Gabriela); RONEL AGONCILLO (Student Regent, PNU); VENCER MARIE CRISOSTOMO (National Chairperson, Anakbayan); CHARISSE BERNADINE BAÑEZ (National Spokesperson, League of Filipino Students/LFS); EINSTEIN RECEDES (National Chairperson Student Christian Movement of the Philippines); MICHAEL BELTRAN (National Spokesperson, Kabataang Artista para sa Tunay na Kalayaan); SARAH JANE ELAGO (National President, National Union of Students of the Philippines); MARC LINO ABILA (National President, College Editors Guild of the Philippines); VANESSA FAYE BOLIBOL (Convenor, STOP K to 12); DR. ROLANDO TOLENTINO (Dean, College of Mass Communication, UP); DR. FEDELIZ TUY (Associate Vice Dean, College of Arts and Sciences, SBC Manila); DR. ERNESTO CARANDANG II (Chairperson, Filipino Department, DLSU Manila); PROF. MARIA LOURDES AGUSTIN (Chairperson, Institute of Teaching and Learning, PNU); PROF. ROWENA RIVERO (Chair, English, Foreign Languages and Literature Department, SBC Manila); PROF. CLEVE ARGUELLES (Chairperson, Political Science Program, DLSU Manila); DR. ANNABEL QUILON (Chair, Psychology Department, SBC Manila); DR. BAYANI MATITU (Chair, Human Kinetics Department, SBC Manila); PROF. MARVIN LAI (Chairperson, Departamento ng Filipinolohiya,

PUP Manila); PROF. MERDEKA C. MORALES (Chief, PUP Center for Creative Writing); DR. ROBERTO AMPIL (Chairperson, Filipino Department, UST); PROF. NELSON RAMIREZ (Chairperson, Filipino Department, University of the East Manila); DR. JENNIFOR AGUILAR (Chairperson, MA Filipino Program, Graduate School, PUP); DR. LIWAYWAY ACERO (Chairperson, Human Biology and Sciences Department, SBC Manila); DR. ESTER RADA (Chairperson, Filipino Department, SBC Manila); DR. MARVIN REYES (Prefect of Student Activities, College of Arts and Sciences, SBC Manila); PROF. NEILIA BALANON-RAMIREZ (Assistant Prefect of Student Discipline, College of Arts and Sciences, SBC Manila); PROF. LUISITO MACAPAGAL (Chairperson, Mathematics Department, SBC Manila); DR. NOEL SANTANDER (Chairperson, Theology Department, SBC Manila); PROF. GERARD SANTOS (Assistant Prefect of Student Discipline, College of Arts and Sciences, SBC Manila); PROF. ALBERT OASAN (Assistant Prefect of Student Discipline, College of Arts and Sciences, SBC Manila); PROF. JULIUS TUTOR (Assistant Prefect of Student Activities, College of Arts and Sciences, SBC Manila); PROF. SYBIL AGREDA (Assistant Prefect of Student Activities, College of Arts and Sciences, SBC Manila); PROF. LEOMAR REQUEJO (Chief, Music Section, PUP); DR. AURORA BATNAG (Pangulo, Pambansang Samahan sa Linggwistika at Literaturang Filipino); PROF. RAMILITO CORREA (President, Sanggunian sa Filipino/SANGFIL); PROF. CHRISTO RAY ALBAZON (PRO, Guro sa Sining ng Bayan, PUP); DR. RAMON GUILLERMO (President, All UP Academic Employees' Union); PROF. MELANIA FLORES (National PRO, All UP Academic Employees' Union); PROF. ORESTES DE LOS REYES (President, Adamson University Faculty and Employees); PROF. JAMES PLATON (Vice President for Labor Education,

UST Faculty Union); MR. FELIX PARINAS, JR., (Public Relations Officer, All UP Workers' Union); PROF. MICHAEL PANTE (Faculty, History Department, Ateneo de Manila University); PROF. VLADIMEIR B. GONZALES (Faculty, UP-Diliman); PROF. LAURENCE MARVIN S. CASTILLO (Faculty, UP-Los Baños); DR. ROMMEL RODRIGUEZ (Associate Professor, UP-Diliman); DR. DOLORES TAYLAN (Faculty Member, Filipino Department, DLSU Manila); DR. TERESITA FORTUNATO (Faculty Member, Filipino Department, DLSU Manila); DR. RAQUEL SISON-BUBAN (Faculty Member, Filipino Department, DLSU Manila); PROF. LILIBETH QUIORE (Faculty Member, Filipino Department, DLSU Manila); DR. MA. RITA ARANDA (Faculty Member, Filipino Department, DLSU Manila); PROF. PORTIA PLACINO (Faculty Member, UP Diliman); PROF. JOEL MALABANAN (Faculty Member, College of Language andLiterature, PNU); DR. LUCIA B. DELA CRUZ (Registered Guidance Counselor; Professor, University of Makati); PROF. GERARDO LANUZA (Professor, Department of Sociology, UP Diliman); PROF. SARAH JANE S. RAYMUNDO (Assistant Professor, Center for International Studies, UP Diliman); PROF. FERDINAND JARIN (Faculty Member, Philippine Normal University); PROF. EMELITO SARMAGO (Faculty Member, UST); PROF. MARY ANNE MALLARI (Faculty Member, UST); PROF. WENNIELYN FAJILAN (Faculty Member, UST); PROF. REYNELE BREN ZAFRA (Faculty Member, UST); PROF. JOHN KELVIN BRIONES (Faculty Member, English Department, College of Arts and Letters, Bulacan State University); PROF. DENNIS MANGUBAT (Faculty Member, Filipino Department, SBC Manila); PROF. MINERVA SERRANO (Faculty Member, Mathematics Department, SBC Manila); PROF. MARIE JOCELYN BENGCO (Faculty Member,

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(Kitchen Helper, SLU Ladies' Residence Halls); ROLLY L. MARANES (Laboratory Technician, School of Engineering, SLU); CAROL ANN F. BALAUS (Accounting Clerk, UFESLU SLU Employees Union); MICHELLE B. BRAGAS (Accounting Clerk, UFESLU SLU Employees Union); ERNESTO JOEY F. CHOMAWIN (Special Services Department, Saint Louis University); GIAN CARLO C. GEGUIERA (Faculty, Religion Department, Saint Louis University); MON KARLO MANGARAN (Barangay Councilor, Caniogan, Malolos, Bulacan); MARY ANGELICA H. REGINALDO (Student, M.A. Malikhaing Pagsulat, DFPP-KAL, UP Diliman); RUSTUM CASIA (KM64 Poetry Collective); ELIZABETH ANTHONY (President, UST Panulat); ARIES GUPIT (League of Filipino Students); BRIX JUSTINE PAGTALUNAN (Partido-Pagkakaisa ng Demokratikong Mag-aaral/ PDM-Bulacan State University); FRANCIS JAMES PAGDANGANAN (Partido-Pagkakaisa ng Demokratikong Mag-aaral-BulSU); ANGELO SUALIBIO (Students for the Advancement of Democratic Rights in Bulacan State University/STAND BulSU); MARK JOSEPH DOMASIG (Students for the Advancement of Democratic Rights in BulSU); JOHN RAVEN BALDOVINO (Students for the Advancement of Democratic Rights in STAND BulSU); CEDRIQ CLEMENTE (Students for the Advancement of Democratic Rights in STAND BulSU); MARIE ANTONETTE VALENCIA (Students for the Advancement of Democratic Rights in STAND BulSU); REINARD SANCHEZ (STAND BulSU); RICHARD PATRIARCA (Students for the Advancement of Democratic Rights in Bulacan State University/STAND BulSU); JOEL A. CAPULONG (Tontongan ti Umili, Baguio City); JEANETTE R. CAWIDING (Tontongan ti Umili); MILAGROS K. AO-WAT (Tontongan ti Umili); HILDRINE L. ALVAREZ (Tontongan ti Umili); VICENTE R. TOCA III (Tontongan ti Umili); TRACY

ANNE D. DUMALO (Tontongan ti Umili); KING CRIS P. PULMANO (Tontongan ti Umili); MARBEN M. PANLASIGUI (Tontongan ti Umili); LUKE T. BAGANGAN(Tontongan ti Umili); NINO JOSEPH Q. OCONER (Tontongan ti Umili); DR. PRISCILLA AMPUAN (President, Quezon City Public School Teachers' Association/QCPSTA); JACKSON BACABAC (Treasurer, QCPSTA); RAYMOND PALATINO (Chairperson, BAYAN-National Capital Region); LOUIE ZABALA (President, Manila Public School Teachers' Association); PROF. CARL MARC RAMOTA (President, ACT SUC); DR. ROWELL MADULA (President, ACT Private); PROF. JONATHAN GERONIMO(Secretary General, ACT Private Schools); MICHAEL ESPOSO (Auditor, ACT Private Schools); DR. DAVID MICHAEL SAN JUAN (Public Information Officer, ACT Private Schools); MR. ISAAC ALI TAPAR (President, Manila Science High School Faculty Association); PROF. RAMIR M. CRUZ (President, Faculty Association, College of Engineering, PUP), *petitioners*, vs. **PRESIDENT BENIGNO SIMEON "NOYNOY" C. AQUINO,COMMISSION ON HIGHER EDUCATION (CHED) CHAIRPERSON DR. PATRICIA LICUANAN, DEPARTMENT OF EDUCATION (DEPED) SECRETARY BR. ARMIN LUISTRO, TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA) DIRECTOR JOEL VILLANUEVA,** *respondents.*

[G.R. No. 218465. October 9, 2018]

MA. DOLORES M. BRILLANTES, SEVERO L. BRILLANTES, EMELITA C. VIDAL, FELIZA G. AGUSTIN, EVELYN G. ASTILLA, BRENDA P. BASCOS, ENRICO C. PUNO, MERIAM N. CHAMACKALAYIL, MA LINDA T. FERNANDO, MARIBEL R. LORENZO, CARMELO A. YAMBAO, JOSEPHINE M. DE GUZMAN, ELENA B.

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JOHANSSON EDWARD DE GUZMAN, RANIER B. CABARLES, JAELA MARIE TALISIC, JANUS ROMELL N. MARQUEZ, RYAN DAVID G. SADAC, SHANAYAH R. LORENZO, PAUL ORALLO, EMILSON RYAN ANTES, GRACE ANN ERICKA LUI, SOFIA MARIYA KYSHA CAMACHO, BEATRICE COLLEEN LIBERATO, CHLOE SOFIA SUN, GELAH PANTALEON, JUSTINE ELIZA N. ROCHA, EDRIN CLYDE T. SANTOS, CONSTANCIO P. OROLFO III, RONIN RIC GANALON, SOFIA KAYLE LAZARO, DJ SALAZAR, DAN PRECIOSO G. CRUZ, JULIE ANNE LOI P. SONCUYA, RICCI PAULINE CATHERINE J. CAPISTRANO, PAUL ED JEREMY M. ALVINEZ, JOSEPH C. RODELAS, RONALD M. ANOS, JASON F. ESPEJO, LAURA CHRISTINE C. KATAPANG, KEITH GABRIEL BADULIS, RON EDRICH RAMIREZ, TOMMIE DANIEL DV. CRUZ, DENISE ANN A. CALORACAN, ELLA MAE B. ESPIQUE, ROSEMARY KEITHLEY A. OBNIAL, RONALDO B. REYES, JR. & ANNA LETICIA B. REYES, CARYLLE ALEX E. BALLELOS, JACKLORENZ A. RIVERA, KARL ADRIAN TABIOS, BREN CHRISTIAN B. CUSTODIO, SHANIA CHIER ANDRADE, CARL JUSTINE MIRANDA, ERIN MARIANO, DENISE NICOLE CUARTERO, GRANT PAUL LAURETA, MA. PATRICIA ANN P. ANISTA, MARDI LOUISE ABAINZA, JAYLORD MOSES C. DE VERA, HANNAH MARIE MIRALLES, SANREE M. ESTABILLO, GIO ANN TRINIDAD BINGCO, ARFEL DOMINICK B. CATIPAY, KITH CEAZAR MIRHAN, JEAN RYAN A. BERNAL, SAMANTHA NICOLE EGUIA; OFFICERS OF THE MANILA SCIENCE HIGH SCHOOL FACULTY AND EMPLOYEES CLUB, represented by: ISAAC ALI TAPAR, RUTH DAYRIT, RAYMOND APOSTOL, GINAROSE HABAL, CYNTHIA LYNNE CAUZON, ANABELLE BAYSIC, CRISTINA RICO, KRISTIN MACARANAS,

ROMEO BINAMIRA, and the class herein represented, *petitioners, vs.* **PRESIDENT BENIGNO SIMEON C. AQUINO III, DEPT. OF EDUCATION SECRETARY BR. ARMIN LUISTRO, NCR REGIONAL DIRECTOR LUZ S. ALMEDA, MANILA SCHOOLS DIVISION SUPERINTENDENT PRISCILA C. DE SAGUN, MANILA SCIENCE HIGH SCHOOL PRINCIPAL MARIA EVA S. NACION, SENATE PRESIDENT FRANKLIN M. DRILON and HOUSE OF REPRESENTATIVES SPEAKER FELICIANO R. BELMONTE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; APPROPRIATE REMEDIES AND REQUISITES.— Section 1, Article VIII authorizes courts of justice not only "to settle actual case controversies involving rights which are legally demandable and enforceable" but also "to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." x x x [U]nder the Court's expanded jurisdiction, the writs of certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, on the ground of grave abuse of discretion, any act of any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. x x x The following requisites must first be complied with before the Court may exercise its power of judicial review, namely: (1) there is an actual case or controversy calling for the exercise of judicial power; (2) the petitioner has standing to question the validity of the subject act or issuance, i.e., he has a personal and substantial interest in the case that he has sustained, or will sustain, direct injury as a result of the enforcement of the act or issuance; (3) the question of constitutionality is raised at the earliest opportunity; and (4) the constitutional question is the very lis mota of the case. Of these four, the most important are the first two requisites.

2. ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; THE ASSAILED LAWS AND EXECUTIVE ISSUANCES HAVE ALREADY TAKEN EFFECT AND PETITIONERS WERE DIRECTLY AND CONSIDERABLY AFFECTED BY THEIR IMPLEMENTATION.— An actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions. Related to the requirement of an actual case or controversy is the requirement of "ripeness," and a question is ripe when the act being challenged has a direct effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that an act had been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. x x x [The] consolidated cases present an actual case or controversy that is ripe for adjudication. The assailed laws and executive issuances have already taken effect and petitioners herein, who are faculty members, students and parents, are individuals directly and considerably affected by their implementation.

3. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING; THE INSTANT CASES INVOLVE ISSUES ON EDUCATION AND PETITIONERS ARE CONCERNED CITIZENS ASSERTING A PUBLIC RIGHT.— Legal standing refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. In constitutional cases, which are often brought through public actions and the relief prayed for is likely to affect other persons, non-traditional plaintiffs have been given standing by this Court provided specific requirements have been met. x x x Under the circumstances alleged in their respective petitions, the Court finds that petitioners have sufficient legal interest in the outcome of the controversy. And, considering that the instant cases involve issues on education, which under the Constitution the State is mandated to promote and protect, the stringent requirement of direct and substantial interest may be dispensed with, and the

mere fact that petitioners are concerned citizens asserting a public right, sufficiently clothes them with legal standing to initiate the instant petition.

4. ID.; STATUTORY CONSTRUCTION; K TO 12 LAW WAS DULY ENACTED; THERE WERE PRIOR CONSULTATIONS, THE ENROLLED BILL DOCTRINE WAS APPLIED AND THERE WAS NO UNDUE DELEGATION OF LEGISLATIVE POWER IN ITS ENACTMENT.— [T]he K to 12 Law was validly enacted. First, petitioners' claim of lack of prior consultations is belied by the nationwide regional consultations conducted by DepEd pursuant DepEd Memorandum Nos. 38 and 98, series of 2011. x x x The Philippine Congress, in the course of drafting the K to 12 Law, also conducted regional public hearings between March 2011 to February 2012, x x x Second, the enrolled bill doctrine applies in this case. x x x Third, there is no undue delegation of legislative power in the enactment of the K to 12 Law.

5. ID.; ID.; ID.; ID.; UNDER THE ENROLLED BILL DOCTRINE, THE SIGNING OF A BILL BY THE SPEAKER OF THE HOUSE AND THE SENATE PRESIDENT AND THE CERTIFICATION OF THE SECRETARIES OF BOTH HOUSES OF CONGRESS THAT IT WAS PASSED IS CONCLUSIVE AS TO ITS PROVISIONS AND DUE ENACTMENT.— Under the "enrolled bill doctrine," the signing of a bill by the Speaker of the House and the Senate President and the certification of the Secretaries of both Houses of Congress that it was passed is conclusive not only as to its provisions but also as to its due enactment. The rationale behind the enrolled bill doctrine rests on the consideration that "[t]he respect due to coequal and independent departments requires the [Judiciary] to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the court to determine, when the question properly arises, [as in the instant consolidated cases], whether the Act, so authenticated, is in conformity with the Constitution." Jurisprudence will show that the Court has consistently adhered to the enrolled bill doctrine. x x x The K to 12 Law was passed by the Senate and House of Representatives on January 20, 2013, approved by the President on May 15, 2013, and, after publication, took effect on June 8, 2013. Thus, there is no doubt as to the formal validity of the K to 12 Law.

6. ID.; ID.; ID.; ID.; ON THE ABSENCE OF UNDUE DELEGATION OF LEGISLATIVE POWER; DETERMINING TESTS ARE THE COMPLETENESS TEST AND THE SUFFICIENT STANDARD TEST; COMPLIANCE IN CASE AT BAR.— In determining whether or not a statute constitutes an undue delegation of legislative power, the Court has adopted two tests: the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The policy to be executed, carried out or implemented by the delegate must be set forth therein. The sufficient standard test, on the other hand, mandates adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented. The K to 12 Law adequately provides the legislative policy that it seeks to implement. x x x Moreover, scattered throughout the K to 12 Law are the standards to guide the DepEd, CHED and TESDA in carrying out the provisions of the law, from the development of the K to 12 BEC, to the hiring and training of teaching personnel and to the formulation of appropriate strategies in order to address the changes during the transition period. x x x [U]nder the two tests, the K to 12 Law, read and appreciated in its entirety, is complete in all essential terms and conditions and contains sufficient parameters on the power delegated to the DepEd, CHED and TESDA. The fact that the K to 12 Law did not have any provision on labor does not make said law incomplete. The purpose of permissible delegation to administrative agencies is for the latter to "implement the broad policies laid down in a statute by 'filling in' the details which the Congress may not have the opportunity or competence to provide." With the proliferation of specialized activities and their attendant peculiar problems, the legislature has found it necessary to entrust to administrative agencies, who are supposed to be experts in the particular fields assigned to them, the authority to provide direct and efficacious solutions to these problems. This is effected by the promulgation of supplementary regulations, such as the K to 12 IRR jointly issued

by the DepEd, CHED and TESDA and the Joint Guidelines issued in coordination with DOLE, to address in detail labor and management rights relevant to implementation of the K to 12 Law.

7. **ID.; ID.; DepEd ORDER NO. 31 IS VALID AND ENFORCEABLE; ISSUED IN ACCORDANCE WITH THE DepEd's MANDATE TO ENHANCE EDUCATION AND WITHIN THE SECRETARY'S AUTHORITY.—** [In assailing DO No. 31,] petitioners' arguments lack factual and legal bases. DO No. 31 did not add two (2) years to basic education nor did it impose additional obligations to parents and children. DO No. 31 is an administrative regulation addressed to DepEd personnel providing for general guidelines on the implementation of a new curriculum for Grades 1 to 10 in preparation for the K to 12 basic education. DO No. 31 was issued in accordance with the DepEd's mandate to [enhance education] x x x and pursuant to the Secretary's authority to formulate and promulgate national educational policies, under existing laws. Moreover, more than a year prior to adoption of DO No. 31, and contrary to petitioners' assertions, DepEd conducted regional consultations and focus group discussions, participated in by students, parents, teachers and administrators, government representatives, and representatives from private schools and private sector, to elicit opinions, thoughts and suggestions about the K to 12 basic education. There is also no merit in petitioners' claim that publication is necessary for DO No. 31 to be effective. Interpretative regulations and those merely internal in nature, including the rules and guidelines to be followed by subordinates in the performance of their duties are not required to be published. At any rate, the Court notes that DO No. 31 was already forwarded to the University of the Philippines Law Center for filing in accordance with Sections 3 and 4 of the Administrative Code of 1987 and took effect pursuant to said provisions.

8. **POLITICAL LAW; POLICE POWER OF THE STATE; THE KINDERGARTEN EDUCATION ACT, THE K TO 12 LAW AND ITS RELATED ISSUANCES CANNOT BE NULLIFIED BASED SOLELY ON BARE ALLEGATIONS THAT THEY VIOLATE THE GENERAL PROVISIONS OF THE CONSTITUTION.—** x x x [P]etitioners essentially assail the State's exercise of police power to regulate education through the adoption of the K to 12 Basic Education Program,

because the K to 12 Law and its related issuances purportedly violate the Constitutional provisions as enumerated in the outline of issues above. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The grounds for nullity must be clear beyond reasonable doubt. Hence, for the Court to nullify the assailed laws, petitioners must clearly establish that the constitutional provisions they cite bestow upon them demandable and enforceable rights and that such rights clash against the State's exercise of its police power under the K to 12 Law. To be sure, the Court's role is to balance the State's exercise of its police power as against the rights of petitioners. x x x [O]nly self-executing provisions of the Constitution embody judicially enforceable rights and therefore give rise to causes of action in court. Accordingly, it is necessary to determine first whether the constitutional provisions invoked by petitioners are self-executing; and if they are, is there a conflict between these rights and the State's police power to regulate education? If a conflict does exist, do the rights of petitioners yield to the police power of the State? x x x As defined, "a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action. x x x [T]he Kindergarten Education Act, the K to 12 Law and its related issuances cannot be nullified based solely on petitioners' bare allegations that they violate general provisions of the Constitution which are mere directives addressed to the executive and legislative departments. If these directives are unheeded, the remedy does not lie with the courts, but with the power of the electorate in casting their votes.

9. ID.; STATUTORY CONSTRUCTION; K TO 12 LAW AND RELATED ISSUANCES; THERE IS NO CONFLICT WITH THE CONSTITUTION WHEN IT MADE KINDERGARTEN AND SENIOR HIGH SCHOOL COMPULSORY.— There is no conflict between the K to 12 Law and related issuances and the Constitution when it made kindergarten and senior high school compulsory. The Constitution is clear in making elementary education compulsory; and the K to 12 Law and related issuances did not change this as, in fact, they affirmed

it. As may be gleaned from the outlined history of education laws in the Philippines, the definition of basic education was expanded by the legislature through the enactment of different laws, consistent with the State's exercise of police power. In BP Blg. 232, the elementary and secondary education were considered to be the stage where basic education is provided. Subsequently, in RA No. 9155, the inclusion of elementary and high school education as part of basic education was affirmed. The legislature, through the Kindergarten Education Act, further amended the definition of basic education to include kindergarten. Thereafter, the legislature expanded basic education to include an additional two (2) years of senior high school. Thus, by then, basic education comprised of thirteen (13) years, divided into one (1) year of kindergarten, six (6) years of elementary education, and six (6) years of secondary education — which was divided into four (4) years of junior high school and two (2) years of senior high school. The Constitution did not curtail the legislature's power to determine the extent of basic education. It only provided a minimum standard: that elementary education be compulsory. By no means did the Constitution foreclose the possibility that the legislature provides beyond the minimum set by the Constitution. x x x Absent any showing of a violation of any Constitutional self-executing right or any international law, the Court cannot question the desirability, wisdom, or utility of the K to 12 Law as this is best addressed by the wisdom of Congress.

10. ID.; ID.; ID.; THE K TO 12 BASIC EDUCATION PROGRAM IS NOT BEING RETROACTIVELY APPLIED AND B.P. BLG. 232 (EDUCATION ACT OF 1982) DOES NOT CONFER ANY VESTED RIGHT TO FOUR (4) YEARS OF HIGH SCHOOL EDUCATION.— The K to 12 Basic Education Program is not being retroactively applied because only those currently enrolled at the time the K to 12 Law took effect and future students will be subject to the K to 12 BEC and the additional two (2) years of senior high school. Students who already graduated from high school under the old curriculum are not required by the K to 12 Law to complete the additional two (2) years of senior high school. More importantly, BP Blg. 232 does not confer any vested right to four (4) years of high

school education. Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right. Contrary to petitioners' assertion, the rights of students under Section 9 of BP Blg. 232 are not absolute. These are subject to limitations prescribed by law and regulations. In fact, while Section 9(2) of BP Blg. 232 states that students have the right to continue their course up to graduation, Section 20 of the same law does not restrict elementary and high school education to only six (6) and four (4) years. x x x In adding two (2) years of secondary education to students who have not yet graduated from high school, Congress was merely exercising its police power and legislative wisdom in imposing reasonable regulations for the control and duration of basic education, in compliance with its constitutional duty to promote quality education for all.

11. ID.; ID.; ID.; THERE IS NO CONFLICT BETWEEN THE K TO 12 LAW AND ITS IRR AND THE RIGHT OF THE SENIOR HIGH SCHOOL STUDENTS TO CHOOSE THEIR PROFESSION OR COURSE OF STUDY.— There is no conflict between the K to 12 Law and its IRR and the right of the senior high school students to choose their profession or course of study. The senior high school curriculum is designed in such a way that students have core subjects and thereafter, they may choose among four strands: 1) Accountancy, Business and Management (ABM) Strand; 2) Science, Technology, Engineering and Mathematics (STEM) Strand; 3) Humanities and Social Sciences (HUMSS) Strand; and 4) General Academic (GA) Strand. Petitioners have failed to show that the State has imposed unfair and inequitable conditions for senior high schools to enroll in their chosen path. The K to 12 Program is precisely designed in such a way that students may choose to enroll in public or private senior high schools which offer the strands of their choice. For eligible students, the voucher program also allows indigent senior high school students to enroll in private institutions that offer the strands of their choice.

12. ID.; ID.; ID.; THERE IS NO CONFLICT BETWEEN THE USE OF THE MOTHER TONGUE (MT) AS PRIMARY MEDIUM OF INSTRUCTION AND THE PROVISION ON LANGUAGE UNDER SECTION 7, ARTICLE XVI OF THE 1987 PHILIPPINE CONSTITUTION.— [T]here is no conflict between the use of the MT as a primary medium of instruction and Section 7, Article XIV of the 1987 Philippine Constitution. Sections 6 and 7, Article XIV of the 1987 Philippine Constitution. x x x The deliberations of the Constitutional Commission also confirm that MT or regional languages may be used as a medium of instruction x x x [W]hen the government, through the k to 12 Law and the DepEd issuances, determined that the use of MT as primary medium of instruction until Grade 3 constitutes a better curriculum, it was working towards discharging its constitutional duty to provide its citizens with quality education. The Court, even in the exercise of its jurisdiction to check if another branch of the government committed grave abuse of discretion, will not supplant such determination as it pertains to the wisdom of the policy.

13. ID.; ID.; ID.; THERE IS NO CONFLICT BETWEEN THE USE OF MOTHER TONGUE AS A PRIMARY MEDIUM OF INSTRUCTION AND THE RIGHT OF PARENTS IN REARING THEIR CHILDREN UNDER SECTION 12 OF ARTICLE II OF THE PHILIPPINE CONSTITUTION.— [T]here is no conflict between the use of MT as a primary medium of instruction and the right of parents in rearing their children. While Section 12, Article II [of the 1987 Philippine Constitution] grants parents the primary right to rear and educate their children, the State, as parens patriae, has the inherent right and duty to support parents in the exercise of this constitutional right. In other words, parents' authority and the State's duty are not mutually exclusive but complement each other. x x x The inclusion in the K to 12 Program of the MT as a medium of instruction and a subject in the early years of learning is, therefore, not intended to curtail the parents' right but to complement and enhance the same. Moreover, despite the provision on the use of MT as primary medium of instruction for kindergarten and Grades 1 to 3, Filipino and English remain as subjects in the curriculum during the earlier stages of schooling and will later on be used as primary medium of instruction from Grade 4 onwards.

14. ID.; ID.; ID.; THE TRANSFER OF PETITIONERS WHO ARE FACULTY MEMBERS IN HIGHER EDUCATION INSTITUTION (HEIs) TO THE SECONDARY LEVEL WAS NOT A VIOLATION OF THEIR ACADEMIC FREEDOM.— This Court, in its previous decisions, has defined academic freedom for the individual member of the academe as "the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments." However, the Court does not agree with petitioners (faculty members in Higher Education Institutions) that their transfer to the secondary level, as provided by the K to 12 Law and the assailed issuances, constitutes a violation of their academic freedom. While the Court agrees, in principle, that security of tenure is an important aspect of academic freedom — that the freedom is only meaningful if the faculty members are assured that they are free to pursue their academic endeavors without fear of reprisals — it is likewise equally true that convergence of security of tenure and academic freedom does not preclude the termination of a faculty member for a valid cause. Civil servants, like petitioners, may be removed from service for a valid cause, such as when there is a bona fide reorganization, or a position has been abolished or rendered redundant, or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service. Hence, petitioners' contention that the law is unconstitutional based on this ground is specious.

15. ID.; ID.; ID.; APPLICATION OF THE SENIOR HIGH SCHOOL VOUCHER PROGRAM IS VALID.— [T]he Senior High School Voucher program (subsidy given to those who will enroll in non-DepEd schools) does not force students to enroll in private SHS. It simply offers a viable alternative to both student and government — to the student, a subsidized private education; and to the government, decongested public schools. x x x Petitioners' argument that the establishment of the voucher system will result in the de facto privatization of senior high school is not only speculative, it is also without any basis. The voucher system is one of the mechanisms established by the State through RA No. 6728, otherwise known

as the Government Assistance to Students and Teachers in Private Education Act. In Mariño, Jr. v. Gamilla, the Court recognized that RA No. 6728 was enacted in view of the declared policy of the State, in conformity with the mandate of the Constitution, to promote and make quality education accessible to all Filipino citizens, as well as the recognition of the State of the complementary roles of public and private educational institutions in the educational system and the invaluable contribution that the private schools have made and will make to education." Through the law, the State provided "the mechanisms to improve quality in private education by maximizing the use of existing resources of private education x x x." One of these is the voucher system where underprivileged high school students become eligible for full or partial scholarship for degree or vocational/technical courses. The program was later expanded through RA No. 8545. In the K to 12 Law, the benefits under RA No. 8545, including the voucher system, were made applicable to qualified students under the enhanced basic education, specifically to the qualified students enrolled in senior high school. The establishment and expansion of the voucher system is the State's way of tapping the resources of the private educational system in order to give Filipinos equal access to quality education. The Court finds that this manner of implementing the grant of equal access to education is not constitutionally infirm.

16. **ID.; ID.; ID.; CHED MEMORANDUM ORDER (CMO) NO. 20 WHERE THE STUDY OF FILIPINO, PANITIKAN AND THE PHILIPPINE CONSTITUTION WERE NOT INCLUDED AS CORE SUBJECTS, DID NOT VIOLATE THE CONSTITUTION AS THEY ARE ACTUALLY FOUND IN THE BASIC EDUCATION CURRICULUM FROM GRADE 1 TO 10 AND SENIOR HIGH SCHOOL, AND CAN BE ADDED BY THE HEIs**.— Petitioners assert that CMO No. 20 is violative of the Constitution because the study of Filipino, Panitikan and the Philippine Constitution are not included as core subjects. x x x [I]t is misleading for petitioners to allege that there is a violation of the constitutional provisions for the simple reason that the study of Filipino, Panitikan and the Constitution are actually found in the basic education curriculum from Grade 1 to 10 and senior high school. To be sure, the changes in the GE curriculum were implemented

to ensure that there would be no duplication of subjects in Grade 1 to 10, senior high school and college. x x x [I]t must be emphasized that CMO No. 20 only provides for the minimum standards for the GE component of all degree programs. x x x [The] HEIs are given the freedom to require additional Filipino or Panitikan courses to these minimum requirements if they wish to.

17. ID.; ID.; ID.; THERE IS NO CONFLICT BETWEEN THE K TO 12 LAW AND RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE STUDENTS.— [T]he K to 12 Law does not offend the substantive due process of petitioners. The assailed law's declaration of policy itself reveals that, contrary to the claims of petitioners, the objectives of the law serve the interest of the public and not only of a particular class: x x x All students are intended to benefit from the law. Without ruling on the effectiveness of the revised curriculum, it is erroneous to view the K to 12 Law and the DepEd Orders in question extending basic education by two (2) years simply to comply with international standards; rather, the basic education curriculum was restructured according to what the political departments believed is the best approach to learning, or what they call as the "spiral approach." x x x Furthermore, the means employed by the assailed law are commensurate with its objectives. x x x Petitioners ought to be reminded, that the objectives of the law are two-pronged. It was meant not only to (1) improve the basic education in the country, but also to (2) make it at par with international standards. It is in this second purpose that the means employed by the assailed law is justified. Thus, having established that the interest of the public in general is at the heart of the law, and that the means employed are commensurate to its objectives, the Court holds that the K to 12 Law is not violative of the due process clause. x x x [Also, to] assure that the general welfare is promoted, which is the end of the law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common goal, was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason. [This, petitioners failed to show.]

18. ID.; ID.; ID.; POLICY ISSUES INVOLVED ARE NOT THE CONCERN OF THE COURT.— In an attempt to bolster their case against the K to 12 Law, petitioners also raised policy issues: x x x [However] [p]olicy matters are not the concern of the Court. To reiterate, government policy is within the exclusive dominion of the political branches of the government. It is not for the Court to look into the wisdom or propriety of legislative determination. Stated otherwise, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. x x x When the validity of a statute is challenged on constitutional grounds, the sole function of the court is to determine whether it transcends constitutional limitations or the limits of legislative power. x x x Further, the courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution, but also because the judiciary, in the determination of actual cases and controversies, must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government. The Court, despite its vast powers, will not review the wisdom, merits, or propriety of governmental policies, but will strike them down only on either of two grounds: (1) unconstitutionality or illegality and/or (2) grave abuse of discretion.

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

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; REQUISITES; THE EXERCISE OF JUDICIAL POWER INVOLVES THE SETTLING OF ACTUAL CONTROVERSIES THAT INVOLVE LEGALLY DEMANDABLE AND ENFORCEABLE RIGHTS.— Article VIII, Section 1 of the 1987 Constitution states that the exercise of judicial power involves the settling of actual controversies that involve legally demandable and enforceable rights: x x x An actual case or controversy means that there is a "conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution." There is said to be a justiciable case or controversy if there is a definite and concrete conflict involving the legal relations of parties who have clashing legal interests. If the conflict is merely conjectural or anticipatory, the case is not ripe for judicial determination. x x x Thus, allegations of

abuse or violations of constitutional or legal rights must be anchored on real acts, as opposed to possible, hypothetical, conjectural ones. There must first be an act against another, which the latter claims is violative of a particular right or is injurious to it, while the other claims that the act is done within the limitations of the law. If an act is not yet performed, there is no actual case or controversy. x x x The rationale for requiring an actual case or controversy is partly to respect the principle of separation of powers. The courts must avoid delving into the wisdom, justice, or expediency of executive acts and legislative enactment. x x x The other rationale for requiring an actual case or controversy is to avoid rendering merely advisory opinions on legislative or executive acts. Article 8 of the Civil Code states that judicial decisions interpreting the laws and the Constitution are part of the legal system. It is the courts' duty "to make a final and binding construction of law." Absent an actual case or controversy, courts merely answer legal questions with no actual effect on any person, place, or thing affecting the import of its issuances.

2. ID.; ID.; ID.; ID.; *LOCUS STANDI* TO FILE THE SUIT; THIRD-PARTY STANDING; ASSOCIATIONS ARE ALLOWED TO SUE IN BEHALF OF THEIR MEMBERS IF IT IS SUFFICIENTLY ESTABLISHED WHO THEIR MEMBERS ARE, THAT THEIR MEMBERS AUTHORIZED THEM TO SUE ON THEIR BEHALF, AND THAT THEY WOULD BE DIRECTLY INJURED BY THE CHALLENGED GOVERNMENTAL ACTS.— The second requisite for this Court to exercise its power of judicial review is that the party filing must have locus standi or legal standing to file the suit. x x x Generally, to be considered to have standing, the petitioner must be directly affected by the governmental act. However, this Court has taken cognizance of petitions even though the petitioners do not have the required personal or substantial interest because they raised "constitutional issue[s] of critical significance." x x x This Court also allows third-party suit—cases where a party files a petition on behalf of another. However, the following requisites must be present: first, [T]he litigant must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute; [second,] the litigant must have a close relation to the third party; and [third,] there must exist some

> hindrance to the third party's ability to protect his or her own interest. x x x [A]ssociations are allowed to sue on behalf of their members if it is sufficiently established who their members are, that their members authorized them to sue on their behalf, and that they would be directly injured by the challenged governmental acts. In the present Petitions, petitioners' legal standing should be determined by considering the enumerated requisites. Petitioners associations and organizations should prove that they were authorized by their members to file the present cases through board resolutions or through their articles of incorporation. They should explain their own injury that is caused or will be caused by the questioned laws and issuances. They should state why their members are prevented from protecting their own interests. Alleging he transcendental importance of issues is not enough. x x x [T]here must be a showing of a "clear or imminent threat to fundamental rights" and of "proper parties suffering real, actual or more imminent injury."

APPEARANCES OF COUNSEL

Jonathan P. Sale for petitioners in G.R. No. 216930.

Gregorio T. Fabros for petitioners in G.R. Nos. 217451 and 218123.

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The National Union of People's Lawyers for petitioners in G.R. No. 218098.

Severo L. Brillantes for petitioners in G.R. No. 218465.

Maneeka Asistal Sarza for petitioners Alliance of Concerned Teachers.

Kristian Vicente T. Gargantiel, et al. for respondent Miriam College in G.R. No. 216930.

Estrada and Aquino Law Office for respondent Miriam College in G.R. No. 216930.

The Solicitor General for public respondents.

D E C I S I O N

CAGUIOA, *J.*:

Doon sa ang trono'y ginawa ng dunong, bagong kabataa'y sadyang umuusbong, mga kamalia'y kanyang natutunton, at dangal ng diwa ang pinayayabong; ang liig ng bisyo'y kanyang napuputol; sala'y namumutla kung nasasalubong: sinusupil niya ang bansang ulupong, at hangal mang tao'y kanyang inaampon.

- Jose Rizal[1]

Before the Court are consolidated petitions under Rule 65, assailing the constitutionality of Republic Act (RA) No. 10533[2] (*K to 12 Law*), RA No. 10157[3] (*Kindergarten Education Act*), and related issuances of the Department of Education (DepEd), Commission on Higher Education (CHED), Department of Labor and Employment (DOLE) and Technical Education and Skills Development Authority (TESDA) implementing the K to 12 Basic Education Program.

History of the Philippines' Basic Education System

On January 21, 1901, the Philippine Commission created the Department of Public Instruction[4] through Act No. 74.[5] All

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[1] Translation from Spanish into Filipino of Jose Rizal's poem *Por la Educacion Recibe Lustre la Patria* (*Dahil sa Karununga'y Nagkakaroon ng Kinang ang Bayan*) written in April 1876 originally published by the Jose Rizal Centennial Commission in 1961 (Rizal's Centennial) and reprinted by the National Historical Commission of the Philippines in 1995 and 2008 respectively.

[2] AN ACT ENHANCING THE PHILIPPINE BASIC EDUCATION SYSTEM BY STRENGTHENING ITS CURRICULUM AND INCREASING THE NUMBER OF YEARS FOR BASIC EDUCATION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, May 15, 2013.

[3] AN ACT INSTITUTIONALIZING THE KINDERGARTEN EDUCATION INTO THE BASIC EDUCATION SYSTEM AND APPROPRIATING FUNDS THEREFOR, January 20, 2012.

[4] Act No. 74, Sec. 1.

[5] AN ACT ESTABLISHING A DEPARTMENT OF PUBLIC INSTRUCTION IN THE PHILIPPINE ISLANDS AND APPROPRIATING FORTY THOUSAND DOLLARS FOR THE ORGANIZATION AND MAINTENANCE OF A NORMAL AND A TRADE SCHOOL IN MANILA,

schools established under the auspices of the Military Government were made under the control of the officers of the Department of Public Instruction[6] and as early as this law, the primary education established through it was considered free.[7] Act No. 74 also made English language as the basis of all public school instruction[8] and allowed optional religious instruction in all schools.[9]

On March 10, 1917, Act No. 2706[10] was passed mandating the recognition and inspection of private schools and colleges by the Secretary of Public Instruction in order to maintain a general standard of efficiency in all private schools and colleges.[11] The authority of the Secretary over private schools and colleges was later on expanded under Commonwealth Act (CA) No. 180.[12] The Secretary was vested with the power "to supervise, inspect and regulate said schools and colleges in order to determine the efficiency of instruction given in the same."[13]

The concept of free public primary instruction was also enshrined in the 1935 Philippine Constitution. Specifically, the State's interest in a complete and adequate system of public education was stated in Section 5, Article XIV:

AND FIFTEEN THOUSAND DOLLARS FOR THE ORGANIZATION AND MAINTENANCE OF AN AGRICULTURAL SCHOOL IN THE ISLAND OF NEGROS FOR THE YEAR NINETEEN HUNDRED AND ONE, January 21, 1901.

[6] Act No. 74, Sec. 2.

[7] *Id.*

[8] *Id.*, Sec. 14.

[9] *Id.*, Sec. 16.

[10] AN ACT MAKING THE INSPECTION AND RECOGNITION OF PRIVATE SCHOOLS AND COLLEGES OBLIGATORY FOR THE SECRETARY OF PUBLIC INSTRUCTION, AND FOR OTHER PURPOSES, March 10, 1917.

[11] Act No. 2706, Sec. 1.

[12] AN ACT TO AMEND SECTIONS 1, 2, 3, 5, 6 AND 12 OF ACT NO. 2706, AS AMENDED BY ACT NO. 3075, November 13, 1936.

[13] CA No. 180, Sec. 1.

SEC. 5. All educational institutions shall be under the supervision of and subject to regulation by the State. **The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens.** All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens. (Emphasis supplied)

On August 7, 1940, CA No. 586,[14] otherwise known as the *Educational Act of 1940*, was enacted to comply with the constitutional mandate on free public primary education. This resulted in the revision of the public elementary system,[15] which had the following objectives:

x x x (a) to simplify, shorten, and render more practical and economical both the primary and intermediate courses of instruction so as to place the same within the reach of the largest possible number of school children; (b) to afford every child of school age adequate facilities to commence and complete at least the primary course of instruction; (c) to give every child completing the primary course an adequate working knowledge of reading and writing, the fundamentals of arithmetic, geography, Philippine history and government, and character and civic training; and (d) to insure that all children attending the elementary schools shall remain literate and become useful, upright and patriotic citizens.[16]

To give effect to the foregoing objectives, the Department of Public Instructions was authorized to revise the elementary school curriculum, to be approved by the President, and adjust the academic school calendar to coincide with the working season

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[14] AN ACT TO PROVIDE FOR THE REVISION OF THE SYSTEM OF PUBLIC ELEMENTARY EDUCATION IN THE PHILIPPINES INCLUDING THE FINANCING THEREOF, August 7, 1940.

[15] COM. ACT NO. 586, Sec. 2.

[16] *Id.*

in the Philippines.[17] In addition, Section 4 set standards for the age of admission to public elementary schools and the minimum length of time for the completion of primary and intermediate courses, to wit:

> SEC. 4. With the approval of the President of the Philippines, the required age for admission to the public elementary schools may be raised to not more than nine years and the length of time required for the completion of the elementary instruction comprising both the primary and intermediate courses reduced to not less than five years. Any increase that may be approved in accordance with this section regarding the minimum age of school children shall not affect those already enrolled before the school year 1940-1941.

The law also made compulsory the attendance and completion of elementary education, except when the child was mentally or physically incapable of attending school or when it was inconvenient to do so considering the means of transportation available or on account of economic condition of the parents the child could not afford to continue in school.[18] The parents or guardians or those having control of children therein required to attend school without justification were liable to a fine of not less than twenty nor more than fifty pesos.[19]

In 1947, Executive Order (EO) No. 94[20] was issued renaming the Department of Instructions to the Department of Education.

In 1953, RA No. 896[21] or the *Elementary Education Act of 1953* was passed, again revising the elementary school system

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[17] *Id*., Section 3.

[18] *Id*., Sec. 5.

[19] *Id.*

[20] REORGANIZING THE DIFFERENT EXECUTIVE DEPARTMENTS, BUREAUS, OFFICES, AND AGENCIES OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, MAKING CERTAIN READJUSTMENTS OF PERSONNEL AND REALLOTMENTS OF FUNDS IN CONNECTION THEREWITH, AND FOR OTHER PURPOSES, October 4, 1947.

[21] AN ACT TO DECLARE THE POLICY ON ELEMENTARY EDUCATION IN THE PHILIPPINES, June 20, 1953.

and instituting a primary course composed of Grades I to IV, and an intermediate course composed of Grades V to VII, thus:

> SEC. 3. To put into effect the educational policy established by this Act, the Department of Education is hereby authorized to revise the elementary-school system on the following basis: The primary course shall be composed of four grades (Grades I to IV) and the intermediate course of three grades (Grade V to VII). Pupils who are in the sixth grade of the time this Act goes into effect will not be required to complete the seventh grade before being eligible to enroll in the first year of the secondary school: *Provided*, That they shall be allowed to elect to enroll in Grade VII if they so desire.

This law also made the enrollment and completion of elementary education mandatory.[22] Every parent or guardian or other person having custody of any child was required to enroll such child in a public school upon attaining seven years of age except when: (*1*) the child enrolled in or transferred in a private school, (*2*) the distance from the home of the child to the nearest public school exceeded three kilometers or the said public school was not safely or conveniently accessible, (*3*) on account of indigence, the child could not afford to be in school, (*4*) child could not be accommodated because of excess enrollment, and (*5*) child was being homeschooled, under the conditions prescribed by the Secretary of Education.[23]

The revision of the elementary school system was guided by the policy stated in Section 5, Article XIV of the 1935 Philippine Constitution and with the consideration that it was "the main function of the elementary school to develop healthy citizens of good moral character, equipped with the knowledge, habits, and ideals needed for a happy and useful home and community life."[24]

In 1972, the Department of Education was again renamed to Department of Education and Culture, through Proclamation

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[22] RA No. 896, Sec. 5.

[23] *Id.*

[24] RA No. 896, Sec. 2.

No. 1081;[25] and was later on converted to Ministry of Education and Culture in 1978.[26]

The 1973 Philippine Constitution maintained the State's interest in a free public elementary education. This concept of free education was, however, expanded to the secondary level, if the finances of the State permitted it, thus:

Article XV

SEC. 8. (1) All educational institutions shall be under the supervision of, and subject to regulation by, the State. **The State shall establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development.**

x x x x x x x x x

(5) The State shall maintain a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education at least up to the secondary level. (Emphasis supplied)

Legislations under the 1973 Philippine Constitution implemented the foregoing policies. In Batas Pambansa(BP) Blg. 232,[27] or the *Education Act of 1982*, it was declared as a policy of the State "to establish and maintain a complete, adequate and integrated system of education relevant to the goals of national development."[28] And under BP Blg. 232, "Formal Education" was defined as the hierarchically structured andchronologically graded learnings organized and provided by the formal school system and for which certification was required in order for the learner to progress through the grades or move to higher levels."[29] It corresponded to (*1*) elementary

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[25] Historical Perspective of the Philippine Educational System, <http://www.deped.gov.ph/history> (last accessed on September 28, 2018).

[26] CONVERSION OF DEPARTMENTS INTO MINISTRIES, Presidential Decree No. 1397, June 2, 1978.

[27] AN ACT PROVIDING FOR THE ESTABLISHMENT AND MAINTENANCE OF AN INTEGRATED SYSTEM OF EDUCATION, September 11, 1982.

[28] B.P. 232, Section 3.

[29] *Id*., Sec. 20.

education, which was primarily concerned with providing basic education and usually corresponds to six or seven years, including the preschool programs;[30] and (*2*) secondary education as "the state of formal education following the elementary level **concerned primarily with continuing basic education** and expanding it to include the learning of employable gainful skills, usually corresponding to four years of high school."[31] This law also created the Ministry of Education, Culture and Sports,[32] which later on became the Department of Education Culture and Sports by virtue of EO No. 117.[33]

As shown above, both the 1935 and 1973 Philippine Constitution did not state that education at any level was compulsory. This changed in the 1987 Philippine Constitution, which made elementary education mandatory, thus:

> Article XIV
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> SEC. 1. The State shall protect and promote the right of all citizens to **quality education at all levels and shall take appropriate steps to make such education accessible to all**.
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> SEC. 2. The State shall:
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> x x x x x x x x x
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> (2) **Establish and maintain a system of free public education in the elementary and high school levels.** Without limiting the natural right of parents to rear their children, **elementary education is compulsory for all children of school age**[.] (Emphasis supplied)

Subsequent legislations implemented the policies stated in the 1987 Philippine Constitution. Thus, secondary education was provided for free in RA No. 6655,[34] otherwise known as

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[30] *Id*., Sec. 20(1).

[31] *Id*., Sec. 20(2). Emphasis supplied.

[32] Title IV, Chapter 1, Section 54, B.P. 232.

[33] REORGANIZATION ACT OF THE MINISTRY OF EDUCATION, CULTURE AND SPORTS, January 30, 1987.

[34] AN ACT ESTABLISHING AND PROVIDING FOR A FREE PUBLIC SECONDARY EDUCATION AND FOR OTHER PURPOSES, May 26, 1988.

the *Free Public Secondary Education Act of 1988*. Under RA No. 6655, students in public high schools were free from payment of tuition and other school fees.[35] And in response to the mandate of the Constitution to promote and make quality education accessible to all Filipino citizens, RA No. 6728,[36] otherwise known as *Government Assistance To Students and Teachers In Private Education Act*,was enacted in 1989 where the voucher system under the Private Education Student Financial Assistance Program (PESFA)[37] was implemented as follows:

SEC. 5. *Tuition Fee Supplement for Student in Private High School.* — (1) Financial assistance for tuition for students in private high schools shall be provided by the government through a voucher system in the following manner:

(a) For students enrolled in schools charging less than one thousand five hundred pesos (₱1,500) per year in tuition and other fees during school year 1988-1989 or such amount in subsequent years as may be determined from time to time by the State Assistance Council: The Government shall provide them with a voucher equal to two hundred ninety pesos (₱290.00): *Provided*, That the student pays in the 1989-1990 school year, tuition and other fees equal to the tuition and other fees paid during the preceding academic year: *Provided, further*, That the Government shall reimburse the vouchers from the schools concerned within sixty (60) days from the close of the registration period: *Provided, furthermore*, That the student's family resides in the same city or province in which the high school is located unless the student has been enrolled in that school during the previous academic year.

(b) For students enrolled in schools charging above one thousand five hundred pesos (₱1,500) per year in tuition and other fees during the school year 1988-1989 or such amount in subsequent years as may be determined from time to time

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[35] RA No. 6655, Sec. 4.

[36] AN ACT PROVIDING GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION, AND APPROPRIATING FUNDS THEREFOR, June 10, 1989.

[37] RA No. 6728, Sec. 4(4).

by the State Assistance Council, no assistance for tuition fees shall be granted by the Government: *Provided, however*, That the schools concerned may raise their tuition fees subject to Section 10 hereof.

(2) Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: *Provided*, That government subsidies are not used directly for salaries of teachers of non-secular subjects. At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and to the payment of other costs of operation. For this purpose, school shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection as may be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school concerned, the Department of Education, Culture and Sports and other concerned government agencies.

The voucher system was expanded in RA No. 8545,[38] or the *Expanded Government Assistance to Students and Teachers in Private Education Act*, as follows:

SEC. 5. *Tuition Fee Supplements for Students in Private High Schools*. — (1) Financial Assistance for tuition for students in private high schools shall be provided by the government through a voucher system in the following manner:

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[38] AN ACT AMENDING REPUBLIC ACT NO. 6728, OTHERWISE KNOWN AS "AN ACT PROVIDING GOVERNMENT ASSISTANCE TO STUDENTS AND TEACHERS IN PRIVATE EDUCATION AND APPROPRIATING FUNDS THEREFOR," ESTABLISHING A FUND FOR THE PURPOSE OF SUBSIDIZING SALARIES OF PRIVATE SCHOOL TEACHERS, AND APPROPRIATING FUNDS THEREFOR, February 24, 1998.

(a) For students enrolled in schools charging an amount as may be determined by the State Assistance Council, the government shall provide them with a voucher in such an amount as may be determined by the council: *Provided*, That the government shall reimburse the vouchers from the schools concerned within one hundred twenty (120) days from the close of the registration period.

(2) Assistance under paragraph (1), subparagraph (a) shall be guaranteed to all private high schools participating in the program for a number of slots as of the effectivity of this Act as the total number of students who availed of tuition fee supplements for school year 1997-1998: *Provided*, That the State Assistance Council may in subsequent years determine additional slots and/or additional participating high schools as may be deemed necessary.

In the same law, elementary and secondary education were redefined. Elementary education was the first six (6) years of basic education, excluding pre-school and grade seven;[39] while secondary education was the next four (4) years after completion of basic education.[40]

In 2001, RA No. 8980[41] or the *Early Childhood Care and Development (ECCD) Act* was implemented. This law established a national ECCD system which "refers to the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six (6), to promote their optimum growth and development."[42] These programs include, among others, optional center-based and home-based early childhood education.[43]

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[39] RA No. 8545, Sec. 2.

[40] *Id*.

[41] AN ACT PROMULGATING A COMPREHENSIVE POLICY AND A NATIONAL SYSTEM FOR EARLY CHILDHOOD CARE AND DEVELOPMENT (ECCD), PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES, December 5, 2000.

[42] RA No. 8980, Sec. 4(a).

[43] *Id*., Sec. 4(a)(1) and (2).

In the same year, RA No. 9155[44] or the *Governance of Basic Education Act of 2001* was enacted. Section 2 thereof declared it as a State policy "to protect and promote the right of all citizens to quality basic education and to make such education accessible to all by providing all Filipino children a free and compulsory education in the elementary level and free education in the high school level."[45] Basic education was defined in this law as "the education intended to meet basic learning needs which lays the foundation on which subsequent learning can be based. It encompasses early childhood, elementary and high school education as well as alternative learning systems for out-of-school youth and adult learners and includes education for those with special needs."[46] It was also in this law where the then Department of Education Culture and Sports was renamed the DepEd.[47]

Education for All 2015 and the Kindergarten Education Act

In 2000, at the World Education Forum in Dakar, Senegal, one hundred sixty four (164) governments, including the Philippines, pledged to achieve, by 2015, the following six (6) Education for All (EFA) goals: (1) expansion and improvement of early childhood care and education; (2) universal access to complete free and compulsory primary education of good quality; (3) equitable access to appropriate learning and life skills program for youth and adult; (4) improvement of levels of adult literacy, especially for women; (5) gender parity

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[44] AN ACT INSTITUTING A FRAMEWORK OF GOVERNANCE FOR BASIC EDUCATION, ESTABLISHING AUTHORITY AND ACCOUNTABILITY, RENAMING THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS AS THE DEPARTMENT OF EDUCATION, AND FOR OTHER PURPOSES, August 11, 2001.

[45] RA No. 9155, Sec. 2.

[46] *Id*., Sec. 4(b).

[47] *Id*., Sec. 6.

and equality in education; and (6) improvement of all aspects of the quality of education and ensuring their excellence.[48]

In consonance with the country's agreement to achieve these goals, the DepEd, in 2002, undertook the preparation of the Philippine EFA 2015 Plan of Action, in collaboration with various stakeholders at the national and field levels, including relevant government agencies and civil society groups.[49] The primary goal of the Philippine EFA 2015 Plan of Action, which the government officially adopted in 2006,[50] is to provide "basic competencies for all that will bring about functional literacy."[51] The Philippine EFA 2015 Plan of Action translated the sic (6) Dakar goals into four (4) objectives and nine (9) critical tasks, to wit:

Universal Goals and Objectives of Philippine EFA 2015

1. Universal Coverage of out of school youth and adults in providing learning needs;
2. Universal school participation and total elimination of dropouts and repeaters in grades 1-3;
3. Universal completion of the full basic education cycle with satisfactory annual achievement levels; and
4. Total community commitment to attain basic education competencies for all.

Nine Urgent and Critical Tasks

1. Make every school continuously improve its performance.

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[48] Education for All 2000-2015: Achievements and Challenges, UNESCO (2015), pp. xii-xiv, <http://unesdoc.unesco.org/images/0023/002322/232205e.pdf>(last accessed on September 28, 2018).

[49] See DepEd Order No. 36, s. 2002, Education for All (EFA) 2015 Plan Preparation.

[50] Rodriguez, Carolyn, *Towards Achieving EFA Goals by 2015: The Philippine Scenario,* available at <http://home.hiroshima-u.ac.jp/cice/wp-content/uploads/2014/07/JEF-E7-12.pdf.>(last accessed on September 28, 2018).

[51] *Id.*

2. Expand early childhood care and development coverage to yield more EFA benefits.
3. Transform existing non-formal and informal learning options into a truly viable alternative learning system yielding more EFA benefits;
4. Get all teachers to continuously improve their teaching practices.
5. Increase the cycle of schooling to reach 12 years of formal basic education.
6. Continue enrichment of curriculum development in the context of pillars of new functional literacy;
7. Provide adequate and stable public funding for country-wide attainment of EFA goals;
8. Create network of community- based groups for local attainment of EFA goals; Monitor progress in effort towards attainment of EFA goals.[52]

On January 20, 2012, the Philippine Congress took a pivotal step towards the realization of the country's EFA goals with the enactment of the *Kindergarten Education Act.* Section 2 thereof declared it the policy of the State "to provide equal opportunities for all children to avail of accessible mandatory and compulsory kindergarten education that effectively promotes physical, social, intellectual, emotional and skills stimulation and values formation to sufficiently prepare them for formal elementary schooling" and "to make education learner-oriented and responsive to the needs, cognitive and cultural capacity, the circumstances and diversity of learners, schools and communities through the appropriate languages of teaching and learning."

The *Kindergarten Education Act* institutionalized kindergarten education, which is one (1) year of preparatory education for

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[52] Education for All, Coalition for Better Education, available at<http://www.cbephils.net/efa.html>(last accessed on September 28, 2018).

children at least five years old,[53] as part of basic education, and is made mandatory and compulsory for entrance to Grade 1.[54] It also mandated the use of the learner's mother tongue, or the language first learned by a child,[55] as the primary medium of instruction in the kindergarten level in public schools, except for the following cases wherein the primary medium of instruction would be determined by the DepEd:

a. When the pupils in the kindergarten classroom have different mother tongues or when some of them speak another mother tongue;

b. When the teacher does not speak the mother tongue of the learners;

c. When resources, in line with the use of the mother tongue, are not yet available; and

d. When teachers are not yet trained how to use the Mother Tongue-Based Multilingual Education (MTB-MLE) program.[56]

On April 17, 2012, DepEd, in consultation with the Department of Budget and Management, issued DepEd Order(DO) No. 32,[57] the Kindergarten Education Act's implementing rules and regulations. DO No. 32 provides that the Kindergarten Education General Curriculum (KEGC) shall focus on the child's total development according to his/her individual needs and socio-cultural background. The KEGC shall be executed in a play-based manner and shall address the unique needs of diverse learners, including gifted children, children with disabilities, and children belonging to indigenous groups.[58]

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[53] RA No. 10157, Sec. 3(c).

[54] *Id*., Sec. 4.

[55] *Id*., Sec. 3(d).

[56] *Id*., Sec. 5.

[57] IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT (RA) NO. 10157 OTHERWISE KNOWN AS "THE KINDERGARTEN EDUCATION ACT", April 17, 2012.

[58] DO No. 32, Sec. 8.

The K to 12 Law and related issuances.

Before the enactment of the *K to 12 Law*, the Philippines was the only country in Asia and among the three remaining countries in the world that had a 10-year basic education program.[59] The expansion of the basic education program, however, is an old proposal dating to 1925. The studies are as follows: (*a*) the Monroe Survey (1925) stated that secondary education did not prepare for life and recommended training in agriculture, commerce, and industry;(*b*) the Prosser Survey (1930) recommended to improve phases of vocational education such as 7th grade shopwork, provincial schools, practical arts training in the regular high schools, home economics, placement work, gardening, and agricultural education; (*c*) the UNESCO Mission Survey (1949) recommended the restoration of Grade 7; (*d*) the *Education Act of 1953* mandated that the primary course be composed of four grades (Grades I to IV) and the intermediate course of three grades (Grade V to VII); (*e*) the Swanson Survey (1960) recommended the restoration of Grade 7; (*f*) Presidential Commission to Survey Philippine Education (PCSPE) (1970) gave high priority to the implementation of an 11-year program, consisting of six years of compulsory elementary education and five years of secondary education; (*g*) Congressional Commission on Education (EDCOM) Report (1991), recommended that if one year was to be added, it might either be seven years of elementary education or five years of secondary education; (*h*) Presidential Commission on Educational Reforms (2000) proposed to include the establishment of a one-year pre-baccalaureate system that would also bring the Philippines at par with other countries; and (*i*) Presidential Task Force on Education (2008) emphasized that in a 12-year pre-university program, it was important "to specify the content of the 11th and the 12th years and benchmark these with programs abroad."[60]

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[59] Discussion Paper on the Enhanced K+12 Basic Education Program (DepEd discussion paper), October 5, 2010, p.4.

[60] *Id*. at 5-6.

Despite these proposals, the 10-year basic education cycle remained in force. Thus, prior to the enactment of the *K to 12 Law*, the Philippines, joined only by Djibouti and Angola, were the only countries in the world with a 10-year basic education system.[61]

To be at par with international standards and in line with the country's commitment in EFA 2015, the Philippine Congress, on May 15, 2013, passed the *K to 12 Law*, which took effect on June 8, 2013. The *K to 12 Law* seeks to achieve, among others, the following objectives: (1) decongest the curriculum; (2) prepare the students for higher education; (3) prepare the students for the labor market; and (4) comply with global standards.[62]

One of the salient features of the *K to 12 Law* is the expansion of basic education from ten (10) years to thirteen (13) years, encompassing "at least one (1) year of kindergarten education, six (6) years of elementary education, and six (6) years of secondary education x x x. Secondary education includes four (4) years of junior high school and two (2) years of senior high school education."[63]

The *K to 12 Law* also adopts the following key changes in the Basic Education Curriculum (BEC): (*1*) Mother Tongue (MT) will be used as a primary medium of instruction from Kindergarten to Grade 3 and an additional learning area in Grades 1 to 3;[64] (*2*) the time allotted per learning area in elementary will generally be reduced to allow off-school learning experiences

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[61] Senate Economic Planning Office, K to 12: The Key to Quality Education (A Policy Brief), p. 1, <https://www.senate.gov.ph/publications/PB%202011-02% 20%20K%20to%2012%20The%20Key%20to%20Quality. pdf> (last accessed on September 28, 2018).

[62] *Id*. at 4.

[63] RA No. 10533, Sec. 4.

[64] K to 12 Toolkit: Reference Guide for Teacher Educators, School Administrators and Teachers (K to 12 Toolkit), 2012, pp. 20-21, <http://www.seameo-innotech.org/eNews/Kto12Toolkit_ao17july2012.pdf>(last accessed on September 28, 2018).

at home or in the community; while the time allotment in secondary level will generally increase in view of the additional two (2) years in Senior High School;[65] (*3*) the spiral progression approach will be used in Science, Mathematics, Araling Panlipunan, MAPEH and Edukasyon sa Pagpapakatao, wherein the learning process is built upon previously learned knowledge for students to master their desired competencies by revisiting the subject several times and relating new knowledge or skills with the previous one;[66] and (*4*) specialization courses will be offered to prepare students for employment or engage in profitable enterprise after high school.[67]

Apart from mastering core subjects, the additional two (2) years of Senior High School will allow students to choose among academic, technical-vocational, or sports and arts, as specialization, based on aptitude, interest and school capacity.[68] Hence, graduates of Senior High School under the K to 12 BEC are envisioned to already be prepared for employment, entrepreneurship, or middle-level skills development should they opt not to pursue college education.[69]

Furthermore, the *K to 12 Law* extends the benefits provided under RA No. 8545 to qualified students.[70] DepEd is mandated to engage the services of private education institutions and non-DepEd schools offering Senior High School through the programs under RA No. 8545 and other financial arrangements based on the principle of public-private partnership.

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[65] *Id*. at 23 and 33.

[66] *Id*. at 26.

[67] *Id*. at 47.

[68] See *id*. at 27-32.

[69] Senate Economic Planning Office, K to 12: The Key to Quality Education (A Policy Brief), p. 5 <https://www.senate.gov.ph/publications/PB%202011-02%20-% 20K% 20 to% 2012% 20The % 20 Key % 20to % 20Quality.pdf> (last accessed on September 28, 2018).

[70] RA No. 10533, Sec. 10.

The *K to 12 Law* also imposes upon the DepEd, CHED, and TESDA, the task to promulgate the implementing rules and regulations, which shall provide, among others, appropriate strategies and mechanisms to ensure the smooth transition from the existing 10-year basic education cycle to the K to 12 cycle addressing issues such as multi-year low enrollment and displacement of faculty of Higher Education Institutions (HEIs) and Technical Vocational Institutions (TVIs).[71]

DepEd is likewise mandated to coordinate with TESDA and CHED in designing the enhanced BEC to ensure college readiness and avoid remedial and duplication of basic education subjects;[72] and to consult other national government agencies and other stakeholders in developing the K to 12 BEC, which shall adhere to the following standards:

(a) The curriculum shall be learner-centered, inclusive and developmentally appropriate;

(b) The curriculum shall be relevant, responsive and research-based;

(c) The curriculum shall be culture-sensitive;

(d) The curriculum shall be contextualized and global;

(e) The curriculum shall use pedagogical approaches that are constructivist, inquiry-based, reflective, collaborative and integrative;

(f) The curriculum shall adhere to the principles and framework of Mother Tongue-Based Multilingual Education (MTB-MLE) which starts from where the learners are and from what they already knew proceeding from the known to the unknown; instructional materials and capable teachers to implement the MTB-MLE curriculum shall be available;

(g) The curriculum shall use the spiral progression approach to ensure mastery of knowledge and skills after each level; and

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[71] *Id.*, Secs. 12 and 16.

[72] *Id.*, Sec. 5.

(h) The curriculum shall be flexible enough to enable and allow schools to localize, indigenize and enhance the same based on their respective educational and social contexts. The production and development of locally produced teaching materials shall be encouraged and approval of these materials shall devolve to the regional and division education units.[73]

On September 4, 2013, the K to 12 implementing rules and regulation (*K to 12 IRR*) were issued.[74] Rule VI of the *K to 12 IRR* covers the implementation of RA No. 8545 for qualified students enrolled in senior high school. The programs of assistance are available primarily to students who complete junior high school in public schools and taking into consideration other factors such as income background and financial needs of the students.[75] The forms of assistance that the DepEd may provide include a voucher system, "where government issues a coupon directly to students to enable them to enroll in eligible private education institutions or non-DepEd public schools of their choice under a full or partial tuition or schooling subsidy".[76]

Further, Section 31 of the *K to 12 IRR* confers upon the DepEd, in collaboration with the DOLE, CHED and TESDA, the duty to promulgate the appropriate joint administrative issuance to ensure the sustainability of the private and public educational institutions, and the promotion and protection of the rights, interests and welfare of teaching and non-teaching personnel. For this purpose, the DOLE was tasked to convene a technical panel with representatives from the DepEd, CHED, TESDA and representatives from both teaching and non-teaching personnel organizations, and administrators of educational institutions.[77]

In compliance with the foregoing mandate, DOLE organized three area-wide tripartite education fora on K to 12 in Luzon,

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[73] *Id*.

[74] DO No. 43, s. 2013.

[75] K to 12 IRR, Sec. 22.

[76] *Id*., Sec. 23.

[77] *Id*., Sec. 31.

Visayas and Mindanao. DOLE also conducted regional consultations with HEIs, teaching and non-teaching personnel.[78]

As a result of the tripartite consultations, DOLE, DepEd, TESDA and CHED issued on May 30, 2014 the *Joint Guidelines on the Implementation of the Labor and Management Component of Republic Act No. 10533* (*Joint Guidelines*). The Joint Guidelines was issued to (*a*) ensure the sustainability of private and public educational institutions; (*b*) protect the rights, interests, and welfare of teaching and non-teaching personnel; and (*c*) optimize employment retention or prevent, to the extent possible, displacement of faculty and non-academic personnel in private and public HEIs during the transition from the existing 10 years basic education cycle to the enhanced K to 12 basic education.[79]

To achieve these goals, the Joint Guidelines provides that the following, in the exercise of management prerogative, shall be observed:

a. ensure the participation of workers in decision and policy-making processes affecting their rights, duties, and welfare;

b. the DepEd and private educational institutions may hire, as may be relevant to the particular subject, graduates of science, mathematics, statistics, engineering, music and other degree courses needed to teach in their specialized subjects in elementary and secondary education, provided they passed the Licensure Examination for Teachers;

c. graduates of technical-vocational courses may teach in their specialized subjects in secondary education, provided that they possess the necessary certification from TESDA and undergo in-service training;

d. the DepEd and private educational institutions may hire practitioners, with expertise in the specialized learning

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[78] See *rollo* (G.R. No. 216930), Vol. 2, pp. 1185-1225.

[79] Joint Guidelines, Sec. 3.

areas, to teach in the secondary level, provided that they teach on part-time basis only;

e. faculty of HEIs offering secondary education shall be given priority in hiring, provided said faculty is a holder of a relevant Bachelor's degree and must have satisfactorily served as a full time HEI faculty;

f. if it is impossible for the affected HEI faculty members and academic support personnel to be placed within the institution, they shall be prioritized in hiring in other private and public senior high schools (SHS);

g. faculty of HEIs may be allowed to teach in their general education or subject specialties in secondary education, provided said faculty is a holder of a relevant Bachelor's degree and must have satisfactorily served as a full time HEI faculty;

h. without prejudice to existing collective bargaining agreements or institutional policies, HEI faculty and non-teaching personnel who may not be considered may avail of the retrenchment program pursuant to the provisions of the Labor Code; and

i. in educational institutions where there is no collective agreement or organized labor union, management may adopt policies in consultation with faculty or non-academic clubs or associations in the school consistent and in accordance with the aforementioned criteria.[80]

K to 12 Program Implementation and CHED Memorandum Order (CMO) No. 20, Series of 2013

The K to 12 basic education was implemented in parts. Universal kindergarten was offered starting School Year (SY) 2011-2012.[81] In 2012, DepEd started unclogging the BEC to

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[80] *Id.*

[81] K to 12 Toolkit, p. 14.

conform to the K to 12 Curriculum. Thus, DO No. 31 was issued setting forth policy guidelines in the implementation of the Grades 1 to 10 of the K to 12 Curriculum. DO No. 31 provides that effective SY 2012-2013, the new K to 12 BEC, which follows a spiral approach across subjects and uses the mother tongue as a medium of instruction from Grades 1 to 3, shall be first implemented in Grades 1 and 7 of all public elementary and secondary schools; and while private schools are enjoined to do the same, they may further enhance the curriculum to suit their school's vision/mission.[82]

Five (5) school years from SY 2012-2013, the implementation of the K to 12 basic education was to be completed. In 2018, the first group of Grade 6 and Grade 12 students under the K to 12 BEC are set to graduate.

Accordingly, to accommodate the changes brought about by the *K to 12 Law*,and after several public consultations with stakeholders were held,[83]CMO No. 20, entitled *General Education Curriculum: Holistic Understandings, Intellectual and Civic Competencies* was issued on June 28, 2013. CMO No. 20 provides the framework and rationale of the revised General Education (GE) curriculum. It sets the minimum standards for the GE component of all degree programs that applies to private and public HEIs in the country.[84]

Previously, there were two General Education Curricula (GECs), GEC-A and GEC-B. CMO No. 59, Series of 1996 provided for GEC-A, which required 63 units divided into 24 units of language and literature, 15 units of mathematics and natural sciences, 6 units of humanities, 12 units of social sciences, and 6 units of mandated subjects. This was taken by students majoring in the humanities, social sciences, or communication. Meanwhile, CMO No. 4, series of 1997 implemented GEC-B, which was taken by all other students. GEC-B required 51 units

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[82] See DO No. 31.

[83] *Rollo* (G.R. No. 217451), Vol.1, pp. 6-7.

[84] Background and Rationale, CHED MO No. 20, s. of 2013.

divided into 21 units of language and humanities, 15 units of mathematics, natural sciences, and information technology, 12 units of social sciences, and 3 units of mandated subjects.

Under CMO No. 20, the GE curriculum became outcome-oriented and categorized into: (*a*) Intellectual Competencies; (*b*) Personal and Civic Competencies; and (*c*) Practical Responsibilities.[85] This GE curriculum requires the completion of 36 units as compared to the previous 63/51 units requirement. These 36 units are distributed as follows: 24 units of core courses; 9 units of elective courses; and 3 units on the life and works of Rizal.[86] The required GE core courses are: (*1*) Understanding the Self; (*2*) Readings in Philippine History; (*3*) The Contemporary World; (*4*) Mathematics in the Modern World; (*5*) Purposive Communication; (*6*) Art Appreciation; (*7*) Science, Technology and Society; and (*8*) Ethics.[87] Further, the GE curriculum provided an element of choice[88] through elective courses which include the following: (*1*) Mathematics, Science and Technology; (*2*) Social Sciences and Philosophy; and (*3*) Arts and Humanities.[89]

The Petitions

Claiming that the K to 12 Basic Education Program violates various constitutional provisions, the following petitions were filed before the Court praying that the *Kindergarten Education Act*, *K to 12 Law*, *K to 12 IRR*, DO No. 31, *Joint Guidelines*, and CMO No. 20, be declared unconstitutional:

1. Petition for *Certiorari*[90] filed by Council for Teachers and Staff of Colleges and Universities of the Philippines and several other organizations duly organized under

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[85] CMO No. 20, Sec. 2.

[86] *Id.*, Sec. 3.

[87] *Id.*

[88] *Id.*, Appendix E.

[89] *Id.*, Sec. 4.

[90] *Rollo* (G.R. No. 216930), Vol. 1, pp. 7-389, including Annexes.

Philippine laws, representing faculty and staff of colleges and universities in the Philippines, docketed as G.R. No. 216930;

2. Petition to Declare Republic Act No. 10533, otherwise known as the *"Enhanced Basic Education Act of 2013,"* as Unconstitutional and/or Illegal[91] filed by petitioners Antonio "Sonny" Trillanes, Gary C. Alejano, and Francisco Ashley L. Acedillo, in their capacities as citizens, taxpayers, and members of Congress, docketed as G.R. No. 217752;

3. Petition to Declare Unconstitutional, Null, Void, and Invalid Certain Provisions of R.A. No. 10533 And Related Department of Education (DepEd) Implementing Rules and Regulations, Guidelines or Orders[92] filed by petitioners Eduardo R. Alicias, Jr. and Aurelio P. Ramos, Jr., in their capacities as citizen, taxpayer, parent and educator, docketed as G.R. No. 218045;

4. Petition for *Certiorari, Prohibition* and *Mandamus*[93] filed by petitioner Richard Troy A. Colmenares in his capacity as citizen invoking strong public interest and transcendental importance, petitioners Kathlea Francynn Gawani D. Yañgot and several others, as a class, and on behalf of others who stand to suffer direct injury as a result of the implementation of the K to 12 Basic Education Program, and petitioners Rene Luis Tadle and several others, in their capacities as taxpayers concerned that public funds are being illegally and improperly disbursed through the enforcement of the invalid or unconstitutional laws and issuances, docketed as G.R. No. 218098;

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[91] *Rollo* (G.R. No. 217752), Vol. 1, pp. 3-113, including Annexes.

[92] *Rollo* (G.R. No. 218045), Vol. 1, pp. 3-168, including Annexes.

[93] *Rollo* (G.R. No. 218098) Vol. 1, pp. 3-194, including Annexes.

5. Petition for *Certiorari* and *Prohibition*,[94] docketed as G.R. No. 218123, filed by Antonio Tinio,*et al*., suing in their capacities as taxpayers and concerned citizens;

6. Petition for *Certiorari, Prohibition* and *Mandamus*[95]filed by petitioners Spouses Ma. Dolores M. Brillantes and Severo L. Brillantes and several others, as students, parents and teachers, who stand to suffer direct injury from the K to 12 BEC and implementation of the two (2) additional years of high school, docketed as G.R. No. 218465; and

7. Petition for *Certiorari* and *Prohibition* filed by Dr. Bienvenido Lumbera and several others who are faculty and staff of colleges and universities in the Philippines who stand to suffer direct injury in the implementation of CMO No. 20 and Congressman Antonio Tinio and other party-list representatives in their capacities as members of the Congress, who are also collectively suing in their capacities as taxpayers and concerned citizens, docketed as G.R. No. 217451.[96]

The present consolidated petitions pray for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction against the implementation of the *K to 12 Law* and other administrative issuances in relation thereto.

The Solicitor General, on behalf of the public respondents, opposed these petitions.[97] Private respondent Miriam College in G.R. No. 216930 also filed its Comment/Opposition.[98]

On April 21, 2015, the Court issued a TRO in G.R. No. 217451, enjoining the implementation of CMO No. 20 insofar only as

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[94] *Rollo* (G.R. No. 218123) Vol. 1, pp. 3-477, including Annexes.

[95] *Rollo* (G.R. No. 218465) Vol. 1, pp. 3-125, including Annexes.

[96] *Rollo* (G.R. No. 217451) Vol. 1, pp. 3-343.

[97] *Rollo* (G.R. No. 216930), Vol. 1, pp. 511-607; Vol. 2, pp. 820-1272; Vol. 3, pp. 1273-1656.

[98] *Rollo* (G.R. No. 216903), Vol. 2, pp. 459-491.

it excluded from the curriculum for college the course Filipino and Panitikan as core courses.[99]

However, in G.R. Nos. 216930, 217752, 218045, 218098, 218923 and 218465, the Court denied petitioners' prayer for issuance of TRO and/or Writ of Preliminary Injunction on the implementation of the *K to 12 Law*, its implementing rules, the *Kindergarten Education Act*, and other administrative issuances in relation thereto, for lack of merit.[100]

In the Resolutions dated April 5, 2016[101] and April 12, 2016,[102] the Court directed the parties to submit their respective memoranda.

The Issues

Culled from the submissions of petitioners, public respondents, through the Office of the Solicitor General (OSG), and respondent Miriam College, the following are the issues for the Court's resolution:

A. Procedural:

1. Whether the Court may exercise its power of judicial review over the controversy;
2. Whether *certiorari*, prohibition and mandamus are proper remedies to assail the laws and issuances.

B. Substantive:

1. Whether the *K to 12 Law* was duly enacted;
2. Whether the *K to 12 Law* constitutes an undue delegation of legislative power;

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[99] *Rollo* (G.R. No. 217451), Vol. 1, pp. 350-356.

[100] See Resolution dated March 15, 2016, *rollo* (G.R. No. 216930), Vol. 3, pp. 1782-G to 1782-I.

[101] Resolution dated April 5, 2016, *id*. at 1803-A to 1803-C.

[102] Resolution dated April 12, 2016, *rollo* (G.R. No. 217451), Vol. 2, pp. 1252-1253.

3. Whether DO No. 31 is valid and enforceable;
4. Whether the *K to 12 Law*, *K to 12 IRR*, DO No. 31 and/or the Joint Guidelines contravene provisions of the Philippine Constitution on:
    a. establishing and maintaining a system of free elementary and high school education and making elementary education compulsory for all children of school age (Section 2[2], Article XIV);
    b. the right to accessible and quality education at all levels and duty of the State to make such education accessible to all (Section 1, Article XIV);
    c. the primary duty of parents to rear and prepare their children (Section 2[2], Article XIV);
    d. the right of every citizen to select a profession or course of study (Section 5[3], Article XIV);
    e. patriotism and nationalism (Sections 13 and 17, Article II, Section 3[1] and [2], Article XIV);
    f. the use of Filipino as medium of official communication and as language of instruction in the educational system (Section 6, Article XIV); and regional languages as auxiliary media of instruction (Section 7, Article XIV);
    g. academic freedom (Section 5[2], Article XIV); and
    h. the right of labor to full protection (Section 18, Article II, Section 3, Article XIII and Section 5[4], Article XIV);
5. Whether CMO No. 20 contravenes provisions of the Philippine Constitution on:
    a. the use of Filipino as medium of official communication and as language of instruction in the educational system (Section 6, Article XIV);

b. preservation, enrichment, and dynamic evolution of a Filipino national culture (Sections 14, 15, and 16, Article XIV);

c. inclusion of the study of the Philippine Constitution as part of the curriculum of all educational institutions (Section 3[1], Article XIV);

d. giving priority to education to foster patriotism and nationalism (Section 17, Article II and Sections 2 and 3, Article XIV); and

e. the protection of the rights of workers and promotion of their welfare (Section 18, Article II and Section 3, Article XIII).

6. Whether CMO No. 20 violates the following laws:

a. RA No. 7104 or the *Commission on the Filipino Language Act*;

b. BP Blg. 232 or the *Education Act of 1982*; and

c. RA No. 7356 or the *Act Creating the National Commission for Culture and the Arts, Establishing National Endowment Fund for Culture and the Arts and For Other Purposes*.

7. Whether the *K to 12 Law* violates petitioners' right to substantive due process and equal protection of the laws.

THE COURT'S RULING

Procedural Issues

Power of Judicial Review and the Remedies of Certiorari, Prohibition and Mandamus

The OSG submits that the cases filed by petitioners involve the resolution of purely political questions which go into the wisdom of the law: they raise questions that are clearly political

and non-justiciable and outside the power of judicial review.[103] The OSG further asserts that the remedies of certiorari and prohibition sought by petitioners are unwarranted because Congress, DepEd and CHED did not exercise judicial, quasi-judicial or ministerial function, nor did they unlawfully neglect the performance of an act which the law specifically enjoins as a duty, with regard to the assailed issuances.[104]

The Court disagrees.

The political question doctrine is "no longer the insurmountable obstacle to the exercise of judicial power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review"[105] under the expanded definition of judicial power of the 1987 Philippine Constitution. Section 1, Article VIII thereof authorizes courts of justice not only "to settle actual case controversies involving rights which are legally demandable and enforceable" but also "to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

In determining whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the government, the Court is guided primarily, by the Constitution, and secondarily, by existing domestic and international law, which set limits or conditions to the powers and functions conferred upon these political bodies.[106] Thus, when a case is brought before the Court with serious allegations that a law or executive issuance infringes upon the Constitution, as in these consolidated cases, it becomes not only the right but in fact the duty of the Court to settle the

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[103] *Rollo* (G.R. No. 216930), Vol. 4, pp. 1953-1962.

[104] *Id*. at 1943-1952.

[105] *Saguisag v. Ochoa, Jr.*, 777 Phil. 280, 347-348 (2016), citing *Oposa v. Factoran*, 296 Phil. 694, 718 (1993).

[106] See *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 904 (2003).

dispute.[107] In doing so, the Court is "not judging the wisdom of an act of a coequal department, but is merely ensuring that the Constitution is upheld."[108] And, if after said review, the Court does not find any constitutional infringement, then, it has no more authority to proscribe the actions under review.[109]

Moreover, that the assailed laws and executive issuances did not involve the exercise of judicial or quasi-judicial function is of no moment. Contrary to the Solicitor General's assertion, it has long been judicially settled that under the Court's expanded jurisdiction, the writs of *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, on the ground of grave abuse of discretion,any act of any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[110]

That said, the Court's power is not unbridled authority to review just any claim of constitutional violation or grave abuse of discretion. The following requisites must first be complied with before the Court may exercise its power of judicial review, namely: (*1*) there is an actual case or controversy calling for the exercise of judicial power; (*2*) the petitioner has standing to question the validity of the subject act or issuance, *i.e.*, he has a personal and substantial interest in the case that he has sustained, or will sustain, direct injury as a result of the enforcement of the act or issuance; (*3*) the question of

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[107] See *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan v. Executive Secretary*, 685 Phil. 295, 307 (2012)*; Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 589 Phil. 387, 486 (2008)*; Tañada v. Angara*, 338 Phil. 546, 574 (1997).

[108] See *J.* Panganiban, Separate Concurring Opinion in *Francisco, Jr. v. House of Representatives, supra* note 106, at 975.

[109] *Sps. Imbong v. Ochoa, Jr.*, 732 Phil. 1, 121 (2014).

[110] *Jardeleza v. Sereno*, 741 Phil. 460, 491 (2014), citing *Araullo v. Aquino*, 737 Phil. 457, 531 (2014); *Villanueva v. Judicial and Bar Council*, 757 Phil. 534, 544 (2015).

constitutionality is raised at the earliest opportunity; and (*4*) the constitutional question is the very *lis mota* of the case.[111] Of these four, the most important are the first two requisites, and thus will be the focus of the following discussion.

Actual case or controversy

An actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.[112] Related to the requirement of an actual case or controversy is the requirement of "ripeness," and a question is ripe when the act being challenged has a direct effect on the individual challenging it.[113] For a case to be considered ripe for adjudication, it is a prerequisite that an act had been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.[114]

Relevantly, in *Sps. Imbong v. Ochoa, Jr.,*[115] (*Imbong*) where the constitutionality of the Reproductive Health Law was challenged, the Court found that an actual case or controversy existed and that the same was ripe for judicial determination considering that the RH Law and its implementing rules had

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[111] *Roy III v. Herbosa,* G.R. No. 207246, November 22, 2016, 810 SCRA 1, 31.

[112] *Roy III v. Herbosa, id.* at 32, citing *Belgica v. Ochoa, Jr.*,721 Phil. 416, 519-520 (2013).

[113] *Belgica v. Ochoa, Jr., id.* at 519*; Philippine Constitution Association v. Philippine Government,* G.R. Nos. 218406, 218761, 204355, 218407 & 204354, November 29, 2016, 811 SCRA 284, 297.

[114] *Belgica v. Ochoa, Jr., id.* at 519-520*; Philippine Constitution Association v. Philippine Government, id.*

[115] *Supra* note 109.

already taken effect and that budgetary measures to carry out the law had already been passed. Moreover, the petitioners therein had sufficiently shown that they were in danger of sustaining some direct injury as a result of the act complained of.[116]

Similar to *Imbong*, these consolidated cases present an actual case or controversy that is ripe for adjudication. The assailed laws and executive issuances have already taken effect and petitioners herein, who are faculty members, students and parents, are individuals directly and considerably affected by their implementation.

Legal Standing

Legal standing refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act.[117] In constitutional cases, which are often brought through public actions and the relief prayed for is likely to affect other persons,[118] non-traditional plaintiffs have been given standing by this Court provided specific requirements have been met.[119]

When suing as a concerned citizen, the person complaining must allege that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[120]

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[116] *Id*. at 124-125.

[117] *Galicto v. Aquino III*, 683 Phil. 141, 170 (2012).

[118] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *supra* note 107, at 486, citing Vicente V. Mendoza, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS 137 (2004); *Osmeña III v. Abaya,* 778 Phil. 395, 417 (2016).

[119] See *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *id*. at 486-489; see also *Osmeña III v. Abaya*, *id*. at 417-421.

[120] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, *id*. at 486, citing *Francisco, Jr. v. House of Representatives*, *supra* note 106, at 895-896; *Osmeña III v. Abaya*, *id*. at 419.

In the case of taxpayers, they are allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.[121]

On the other hand, legislators have standing to maintain inviolate the prerogatives, powers, and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which infringe upon their legislative prerogatives.[122]

An organization, asserting the rights of its members, may also be granted standing by the Court.[123]

Petitioners in G.R. Nos. 216930 and 218465 include organizations/federations duly organized under the laws of the Philippines, representing the interest of the faculty and staff of their respective colleges and universities, who allegedly are threatened to be demoted or removed from employment with the implementation of the *K to 12 Law*. Petitioners in G.R. Nos. 217752 and 218045 are suing as citizens, taxpayers and in their personal capacities as parents whose children would be directly affected by the law in question. Petitioners in G.R. Nos. 218123 and 217451 are suing in their capacities as teachers who allegedly are or will be negatively affected by the implementation of the *K to 12 Law* and CMO No. 20, respectively, through job displacement and diminution of benefits; and as taxpayers who have the right to challenge the *K to 12 Law* and CMO No. 20 as public funds are spent and will be spent for its implementation.

Under the circumstances alleged in their respective petitions, the Court finds that petitioners have sufficient legal interest in

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[121] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 196 (2012); *Osmeña III v. Abaya, id*.

[122] *Osmena III v. Power Sector Assets and Liabilities Management Corp.*, 770 Phil. 409, 427 (2015).

[123] *Osmeña III v. Abaya*, *supra* note 118, at 419-420.

the outcome of the controversy. And, considering that the instant cases involve issues on education, which under the Constitution the State is mandated to promote and protect, the stringent requirement of direct and substantial interest may be dispensed with, and the mere fact that petitioners are concerned citizens asserting a public right, sufficiently clothes them with legal standing to initiate the instant petition.[124]

Substantive Issues

I.

K to 12 Law was duly enacted

Petitioners question the validity of the enactment of the *K to 12 Law* claiming that: (*1*) sectors which would be directly affected by the K to 12 Basic Education Program were deprived of their right, under Section 16, Article XIII of the 1987 Constitution, to be consulted or participate in matters which involved their interest prior to the passage of the law;[125] (*2*) the enrolled bill which the President signed into law varies significantly from the reconciled version of the bill as approved by Congress and reported in the Senate Journal on January 30, 2013,[126] and that the Court, pursuant to its ruling in *Astorga v. Villegas,*[127] (*Astorga*) should look into the entries in the Journal to determine whether the *K to 12 Law* was duly enacted;[128] and (*3*) the *K to 12 Law* was incomplete because it failed to provide sufficient standards by which the DepEd, CHED and TESDA, might be guided in addressing the possible impact of the implementation of the *K to 12 Law* on labor; thus, Section 31 of the *K to 12 IRR* and the Joint Guidelines, which spring forth

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[124] See *Francisco, Jr. v. House of Representatives*, *supra* note 106, at 896.

[125] *Rollo* (G.R. No. 217752), Vol. 2, p. 1082.

[126] *Rollo* (G.R. No. 218098), Vol. 2, pp. 1115-1137.

[127] 155 Phil. 656 (1974).

[128] *Rollo* (G.R. No. 218098), Vol. 2, pp. 1131-1137.

from such undue delegation of legislative power, are invalid and unconstitutional.[129]

For its part, the OSG contends that the *K to 12 Law* was enacted in accordance with the procedure prescribed in the Constitution and that contrary to petitioners' assertion, the text of the enrolled bill which was eventually signed into law is not different from the consolidated bill drafted by the Bicameral Conference Committee and approved by the Senate and House of Representatives.[130] Further, the OSG argues that there is no undue delegation of legislative power because the *K to 12 Law* provides a sufficient standard on the impact on labor due to its implementation.[131]

Private respondent Miriam College shares the same view that the *K to 12 Law* sufficiently provided standards to guide the relevant administrative agencies and the private educational institutions in the implementation of the *K to 12 Law* and address all issues on labor.[132]

The Court holds that, contrary to petitioners' contention, the *K to 12 Law* was validly enacted.

First, petitioners' claim of lack of prior consultations is belied by the nationwide regional consultations conducted by DepEd pursuant DepEd Memorandum Nos. 38[133] and 98,[134]series of 2011. The regional consultations, which aimed "to inform the public [and] to elicit their opinions, thoughts, and suggestions about the K to 12 program,"[135] ran from February to March

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[129] *Rollo* (G.R. No. 217752), Vol. 2, pp. 1083-1088; *rollo* (G.R. No. 216930), Vol. 3, pp. 1866-1882.

[130] *Rollo* (G.R. No. 216930), Vol. 4, pp. 1963-1973.

[131] *Rollo* (G.R. No. 216930), Vol.1, pp. 533-535.

[132] *Rollo* (G.R. No. 216930), Vol. 4, pp. 2107-2114.

[133] Regional Consultations on the Enhanced K+12 Basic Education Program, February 4, 2011; *rollo* (G.R. No. 216930), Vol. 2, pp. 957-969.

[134] Consultation Workshops on the K to 12 Curriculum Mapping Outputs, April 25, 2011; *id*. at 970-977.

[135] K to 12 Consultations Report Executive Summary; *id*. at 978.

2011 and were participated in by students, parents, teachers and administrators, government representatives, and representatives from private schools and private sectors.[136]

The Philippine Congress, in the course of drafting the *K to 12 Law*, also conducted regional public hearings between March 2011 to February 2012, wherein representatives from parents-teachers' organizations, business, public/private school heads, civil society groups/non-government organizations/private organizations and local government officials and staffs were among the participants.[137] And even assuming that no consultations had been made prior to the adoption of the K to 12, it has been held that the "[p]enalty for failure on the part of the government to consult could only be reflected in the ballot box and would not nullify government action."[138]

Second, the enrolled bill doctrine applies in this case. Under the "enrolled bill doctrine," the signing of a bill by the Speaker of the House and the Senate President and the certification of the Secretaries of both Houses of Congress that it was passed is conclusive not only as to its provisions but also as to its due enactment.[139] The rationale behind the enrolled bill doctrine rests on the consideration that "[t]he respect due to coequal and independent departments requires the [Judiciary] to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the court to determine, when the question properly arises, [as in the instant consolidated cases], whether the Act, so authenticated, is in conformity with the Constitution."[140]

Jurisprudence will show that the Court has consistently adhered to the enrolled bill doctrine. Claims that the required three-

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[136] *Id*.

[137] See *id*. at 997-1040.

[138] *Anak Mindanao Party-List Group v. Ermita*, 558 Phil. 338, 363 (2007).

[139] *Arroyo v. De Venecia*, 343 Phil. 42, 71 (1997); see *Tolentino v. Secretary of Finance*, 305 Phil. 686, 752 (1994).

[140] *Arroyo v. De Venecia*, *id*. at 72-73.

fourths vote for constitutional amendment has not been obtained,[141] that irregularities attended the passage of the law,[142] that the tenor of the bill approved in Congress was different from that signed by the President,[143]that an amendment was made upon the last reading of the bill,[144]and even claims that the enrolled copy of the bill sent to the President contained provisions which had been "surreptitiously" inserted by the conference committee,[145] had all failed to convince the Court to look beyond the four corners of the enrolled copy of the bill.

As correctly pointed out by private respondent Miriam College, petitioners' reliance on *Astorga* is quite misplaced. They overlooked that in *Astorga*, the Senate President himself, who authenticated the bill, admitted a mistake and withdrew his signature, so that in effect there was no longer an enrolled bill to consider.[146] Without such attestation, and consequently there being no enrolled bill to speak of, the Court was constrained to consult the entries in the journal to determine whether the text of the bill signed by the Chief Executive was the same text passed by both Houses of Congress.[147]

In stark contrast to *Astorga,* this case presents no exceptional circumstance to justify the departure from the salutary rule. The *K to 12 Law* was passed by the Senate and House of Representatives on January 20, 2013, approved by the President on May 15, 2013, and, after publication, took effect on June 8, 2013. Thus, there is no doubt as to the formal validity of the *K to 12 Law*.

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[141] *Mabanag v. Vito*, 78 Phil. 1 (1947).

[142] *Arroyo v. De Venecia*, *supra* note 139, at 72; *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 88-89 (2005).

[143] *Casco Phil. Chemical Co., Inc. v. Gimenez*, 117 Phil. 363 (1963).

[144] *The Philippine Judges Association v. Prado*, 298 Phil. 502, 511 (1993).

[145] *Tolentino v. Secretary of Finance, supra* note 139, at 753.

[146] *Tolentino v. Secretary of Finance, id.*

[147] *Astorga v. Villegas, supra* note 127, at 666-667.

Third, there is no undue delegation of legislative power in the enactment of the *K to 12 Law*.

In determining whether or not a statute constitutes an undue delegation of legislative power, the Court has adopted two tests: the completeness test and the sufficient standard test. Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it.[148] The policy to be executed, carried out or implemented by the delegate must be set forth therein.[149] The sufficient standard test, on the other hand, mandates adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.[150]

The *K to 12 Law* adequately provides the legislative policy that it seeks to implement. Section 2 of the *K to 12 Law* provides:

> SEC. 2. *Declaration of Policy.* – The State shall establish, maintain and support a complete, adequate, and integrated system of education relevant to the needs of the people, the country and society-at-large.
>
> Likewise, it is hereby declared the policy of the State that every graduate of basic education shall be an empowered individual who has learned, through a program that is rooted on sound educational principles and geared towards excellence, the foundations for learning throughout life, the competence to engage in work and be productive, the ability to coexist in fruitful harmony with local and global communities, the capability to engage in autonomous, creative, and critical thinking, and the capacity and willingness to transform others and one's self.

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[148] *Disini, Jr. v. The Secretary of Justice*, 727 Phil. 28, 144(2014), citing *Gerochi v. Department of Energy*, 554 Phil. 563, 585 (2007).

[149] *Abakada Guro Party List v. Purisima*, 584 Phil. 246, 272 (2008).

[150] *Id*.

For this purpose, the State shall create a functional basic education system that will develop productive and responsible citizens equipped with the essential competencies, skills and values for both life-long learning and employment. In order to achieve this, the State shall:

(a) Give every student an opportunity to receive quality education that is globally competitive based on a pedagogically sound curriculum; that is at par with international standards;

(b) Broaden the goals of high school education for college preparation, vocational and technical career opportunities as well as creative arts, sports and entrepreneurial employment in a rapidly changing and increasingly globalized environment; and

(c) Make education learner-oriented and responsive to the needs, cognitive and cultural capacity, the circumstances and diversity of learners, schools and communities through the appropriate languages of teaching and learning, including mother tongue as a learning resource.

Moreover, scattered throughout the *K to 12 Law* are the standards to guide the DepEd, CHED and TESDA in carrying out the provisions of the law, from the development of the K to 12 BEC, to the hiring and training of teaching personnel and to the formulation of appropriate strategies in order to address the changes during the transition period.

SEC. 5. *Curriculum Development*. — The DepEd shall formulate the design and details of the enhanced basic education curriculum. It shall work with the Commission on Higher Education (CHED) to craft harmonized basic and tertiary curricula for the global competitiveness of Filipino graduates. To ensure college readiness and to avoid remedial and duplication of basic education subjects, the DepED shall coordinate with the CHED and the Technical Education and Skills Development Authority (TESDA).

To achieve an effective enhanced basic education curriculum, the DepED shall undertake consultations with other national government agencies and other stakeholders including, but not limited to, the Department of Labor and Employment (DOLE), the Professional Regulation Commission (PRC), the private and public schools associations, the national student organizations, the national teacher organizations, the parents-teachers associations and the chambers of commerce on matters affecting the concerned stakeholders.

The DepED shall adhere to the following standards and principles in developing the enhanced basic education curriculum:

(a) The curriculum shall be learner-centered, inclusive and developmentally appropriate;

(b) The curriculum shall be relevant, responsive and research-based;

(c) The curriculum shall be culture-sensitive;

(d) The curriculum shall be contextualized and global;

(e) The curriculum shall use pedagogical approaches that are constructivist, inquiry-based, reflective, collaborative and integrative;

(f) The curriculum shall adhere to the principles and framework of Mother Tongue-Based Multilingual Education (MTB-MLE) which starts from where the learners are and from what they already knew proceeding from the known to the unknown; instructional materials and capable teachers to implement the MTB-MLE curriculum shall be available;

(g) The curriculum shall use the spiral progression approach to ensure mastery of knowledge and skills after each level; and

(h) The curriculum shall be flexible enough to enable and allow schools to localize, indigenize and enhance the same based on their respective educational and social contexts. The production and development of locally produced teaching materials shall be encouraged and approval of these materials shall devolve to the regional and division education units.

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SEC. 7. *Teacher Education and Training*. — To ensure that the enhanced basic education program meets the demand for quality teachers and school leaders, the DepED and the CHED, in collaboration with relevant partners in government, academe, industry, and nongovernmental organizations, shall conduct teacher education and training programs, as specified:

(a) In-service Training on Content and Pedagogy. — Current DepED teachers shall be retrained to meet the content and performance standards of the new K to 12 curriculum.

The DepED shall ensure that private education institutions shall be given the opportunity to avail of such training.

(b) Training of New Teachers. — New graduates of the current Teacher Education curriculum shall undergo additional training, upon hiring, to upgrade their skills to the content standards of the new curriculum. Furthermore, the CHED, in coordination with the DepED and relevant stakeholders, shall ensure that the Teacher Education curriculum offered in these Teacher Education Institutes (TEIs) will meet the necessary quality standards for new teachers. Duly recognized organizations acting as TEIs, in coordination with the DepED, the CHED, and other relevant stakeholders, shall ensure that the curriculum of these organizations meet the necessary quality standards for trained teachers.

(c) Training of School Leadership. — Superintendents, principals, subject area coordinators and other instructional school leaders shall likewise undergo workshops and training to enhance their skills on their role as academic, administrative and community leaders.

Henceforth, such professional development programs as those stated above shall be initiated and conducted regularly throughout the school year to ensure constant upgrading of teacher skills.

SEC. 8. *Hiring of Graduates of Science, Mathematics, Statistics, Engineering and Other Specialists in Subjects with a Shortage of Qualified Applicants, Technical-Vocational Courses and Higher Education Institution Faculty*. — Notwithstanding the provisions of Sections 26, 27 and 28 of Republic Act No. 7836, otherwise known as the "Philippine Teachers Professionalization Act of 1994", the DepED and private education institutions shall hire, as may be relevant to the particular subject:

(a) Graduates of science, mathematics, statistics, engineering, music and other degree courses with shortages in qualified Licensure Examination for Teachers (LET) applicants to teach in their specialized subjects in the elementary and secondary education. Qualified LET applicants shall also include graduates admitted by foundations duly recognized for their expertise in the education sector and who satisfactorily complete the requirements set by these organizations: *Provided*, That they pass the LET within five (5) years after their date of hiring: *Provided, further*, That if such graduates are willing to teach on part-time basis, the provisions of LET shall no longer be required;

(b) Graduates of technical-vocational courses to teach in their specialized subjects in the secondary education: *Provided*, That these

graduates possess the necessary certification issued by the TESDA: *Provided, further*, That they undergo appropriate in-service training to be administered by the DepED or higher education institutions (HEIs) at the expense of the DepED;

(c) Faculty of HEIs be allowed to teach in their general education or subject specialties in the secondary education: *Provided*, That the faculty must be a holder of a relevant Bachelor's degree, and must have satisfactorily served as a full-time HEI faculty;

(d) The DepED and private education institutions may hire practitioners, with expertise in the specialized learning areas offered by the Basic Education Curriculum, to teach in the secondary level: *Provided*, That they teach on part-time basis only. For this purpose, the DepED, in coordination with the appropriate government agencies, shall determine the necessary qualification standards in hiring these experts.

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SEC. 12. *Transitory Provisions*. — The DepED, the CHED and the TESDA shall formulate the appropriate strategies and mechanisms needed to ensure smooth transition from the existing ten (10) years basic education cycle to the enhanced basic education (K to 12) cycle. The strategies may cover changes in physical infrastructure, manpower, organizational and structural concerns, bridging models linking grade 10 competencies and the entry requirements of new tertiary curricula, and partnerships between the government and other entities. Modeling for senior high school may be implemented in selected schools to simulate the transition process and provide concrete data for the transition plan.

To manage the initial implementation of the enhanced basic education program and mitigate the expected multi-year low enrolment turnout for HEIs and Technical Vocational Institutions (TVIs) starting School Year 2016-2017, the DepED shall engage in partnerships with HEIs and TVIs for the utilization of the latter's human and physical resources. Moreover, the DepED, the CHED, the TESDA, the TVIs and the HEIs shall coordinate closely with one another to implement strategies that ensure the academic, physical, financial, and human resource capabilities of HEIs and TVIs to provide educational and training services for graduates of the enhanced basic education program to ensure that they are not adversely affected. The faculty of HEIs and TVIs allowed to teach students of secondary

education under Section 8 hereof, shall be given priority in hiring for the duration of the transition period. For this purpose, the transition period shall be provided for in the implementing rules and regulations (IRR).[151]

Clearly, under the two tests, the *K to 12 Law*, read and appreciated in its entirety, is complete in all essential terms and conditions and contains sufficient parameters on the power delegated to the DepEd, CHED and TESDA. The fact that the *K to 12 Law* did not have any provision on labor does not make said law incomplete. The purpose of permissible delegation to administrative agencies is for the latter to "implement the broad policies laid down in a statute by 'filling in' the details which the Congress may not have the opportunity or competence to provide."[152] With the proliferation of specialized activities and their attendant peculiar problems, the legislature has found it necessary to entrust to administrative agencies, who are supposed to be experts in the particular fields assigned to them, the authority to provide direct and efficacious solutions to these problems.[153] This is effected by the promulgation of supplementary regulations, such as the *K to 12 IRR* jointly issued by the DepEd, CHED and TESDA and the Joint Guidelines issued in coordination with DOLE, to address in detail labor and management rights relevant to implementation of the *K to 12 Law*.

DO No. 31 is valid and enforceable

Petitioners also claim that DO No. 31 is a usurpation of legislative authority as it creates a law without delegation of power.[154] According to petitioners, DO No. 31, which changed

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[151] K to 12 Law.

[152] *Quezon City PTCA Federation, Inc. v. Department of Education*, 781 Phil. 399, 423 (2016), citing *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 248 Phil. 762, 773 (1988).

[153] See *id*. at 422-423.

[154] *Rollo* (G.R. No. 218098), Vol. 2, pp. 1137-1144.

the curriculum and added two (2) more years to basic education, has no statutory basis. It also violates the constitutional right of parents to participate in planning programs that affect them and the right to information on matters of public concern.[155] Petitioners further contend that since DO No. 31 imposes additional obligations to parents and children, public consultations should have been conducted prior to its adoption and that the assailed DO should have been published and registered first with the Office of the National Administrative Register before it can take effect.[156]

Again, petitioners' arguments lack factual and legal bases. DO No. 31 did not add two (2) years to basic education nor did it impose additional obligations to parents and children. DO No. 31 is an administrative regulation addressed to DepEd personnel providing for general guidelines on the implementation of a new curriculum for Grades 1 to 10 in preparation for the K to 12 basic education. DO No. 31 was issued in accordance with the DepEd's mandate to establish and maintain a complete, adequate and integrated system of education relevant to the goals of national development,[157] formulate, plan, implement, and coordinate and ensure access to, promote equity in, and improve the quality of basic education;[158] and pursuant to the Secretary's authority to formulate and promulgate national educational policies,[159] under existing laws.

Moreover, more than a year prior to adoption of DO No. 31, and contrary to petitioners' assertions, DepEd conducted regional consultations and focus group discussions, participated in by students, parents, teachers and administrators, government representatives, and representatives from private schools and

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[155] *Id*. at 1141-1143.

[156] *Id*. at 1140-1145.

[157] ADMINISTRATIVE CODE OF 1987, Executive Order No. 292, Title VI, Chapter I, Sec. 2.

[158] RA No. 9155, Sec. 6.

[159] *Id*., Sec. 7.

private sector,[160] to elicit opinions, thoughts and suggestions about the K to 12 basic education.[161]

There is also no merit in petitioners' claim that publication is necessary for DO No. 31 to be effective. Interpretative regulations and those merely internal in nature, including the rules and guidelines to be followed by subordinates in the performance of their duties are not required to be published.[162] At any rate, the Court notes that DO No. 31 was already forwarded to the University of the Philippines Law Center for filing in accordance with Sections 3 and 4 of the *Administrative Code of 1987* and took effect pursuant to said provisions.[163]

Having established that the *K to 12 Law* and its related issuances were duly enacted and/or validly issued, the Court now discusses whether they contravene provisions of the Constitution.

II.

Police power of the State

Police power is defined broadly as the State's authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. This all-comprehensive definition provides ample room for the State to meet the exigencies of the times depending on the conditions and circumstances. As the Court eruditely explained in *Basco v. Philippine Amusements and Gaming Corp*.[164] (*Basco*):

> The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote

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[160] *Rollo* (G.R. No. 216930), Vol. 2, pp. 955-996.

[161] See *id*. at 978-996.

[162] *Villanueva v. Judicial and Bar Council*, *supra* note 110, at 553, citing *Tañada v. Tuvera,* 230 Phil. 528, 535 (1986).

[163] *Rollo* (G.R. No. 216930), Vol. 4, p. 1967.

[164] 274 Phil. 323 (1991).

the general welfare." (Edu *v*. Ericta, 35 SCRA 481, 487) As defined, it consists of (1) an imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace. (Philippine Association of Service Exporters, Inc. *v*. Drilon, 163 SCRA 386).

Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuming the greatest benefits. (Edu v. Ericta, *supra*).

It finds no specific Constitutional grant for the plain reason that it does not owe its origin to the charter. Along with the taxing power and eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has enabled it to perform the most vital functions of governance. Marshall, to whom the expression has been credited, refers to it succinctly as the plenary power of the state "to govern its citizens". (Tribe, American Constitutional Law, 323, 1978). The police power of the State is a power co-extensive with self-protection and is most aptly termed the "law of overwhelming necessity." (Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 708) It is "the most essential, insistent, and illimitable of powers." (Smith Bell & Co. v. National, 40 Phil. 136) It is a dynamic force that enables the state to meet the exigencies of the winds of change.[165]

From the legislative history of the Philippine education system as detailed above, one can easily discern that the enactment of education laws, including the *K to 12 Law* and the Kindergarten Education Act, their respective implementing rules and regulations and the issuances of the government agencies, are an exercise of the State's police power. The State has an interest in prescribing regulations to promote the education and the general welfare of the people. In *Wisconsin v. Yoder,*[166] the U.S. Supreme Court ruled that "[t]here is no doubt as to the power of a State, having a high responsibility for education of

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[165] *Id*. at 336-337.

[166] 406 US 205 (1972).

its citizens, to impose reasonable regulations for the **control and duration** of basic education."[167]

Here, petitioners essentially assail the State's exercise of police power to regulate education through the adoption of the K to 12 Basic Education Program, because the *K to 12 Law* and its related issuances purportedly violate the Constitutional provisions as enumerated in the outline of issues above.

Every law has in its favor the presumption of constitutionality.[168] For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution.[169] The grounds for nullity must be clear beyond reasonable doubt.[170] Hence, for the Court to nullify the assailed laws, petitioners must clearly establish that the constitutional provisions they cite bestow upon them demandable and enforceable rights and that such rights clash against the State's exercise of its police power under the *K to 12 Law*.

To be sure, the Court's role is to balance the State's exercise of its police power as against the rights of petitioners. The Court's pronouncement in *Secretary of Justice v. Lantion*[171] (*Lantion*) instructs:

> x x x The clash of rights demands a delicate balancing of interests approach which is a "fundamental postulate of constitutional law." The approach requires that we "take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation." These interests usually consist in the exercise by an individual of his basic freedoms on the one hand, and the government's promotion of fundamental public interest or policy objectives on the other.[172]

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[167] *Id*. at 213. Emphasis and underscoring supplied.

[168] *Basco v. Philippine Amusements and Gaming Corp., supra* note 163, at 343.

[169] *Id*. at 343-344.

[170] *Id*. at 344.

[171] 397 Phil. 423 (2000).

[172] *Id*. at 437.

In fact, in *Wisconsin v. Yoder*,[173] where the question was the validity of a statute criminalizing the failure of parents to allow their children to attend compulsory high school education, the U.S. Supreme Court ruled that although the State's interest in universal education is highly ranked in terms of State functions, this does not free this exercise of State function from the balancing process when it impinges on fundamental rights and interests, specifically the Free Exercise Clause, thus:

> There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. See, e.g., Pierce v Society of Sisters, 268 US 510, 534,69 L Ed 1070, 1077, 45 S Ct 571, 39 ALR 468(1925). Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility was, in Pierce, made to yield to the right of parents to provide an equivalent education in a privately operated system. There the Court held that Oregon's statute compelling attendance in a public school from age eight to age 16 unreasonably interfered with the interest of parents in directing the rearing of their offspring, including their education in church-operated schools. As that case suggests, the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society. See also Ginsberg v New York, 390 US 629, 639 20 L Ed 2d 195, 203, 88 S Ct 1274 (1968); Meyer v Nebraska, 262 US 390, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446 (1923); cf. Rowan v Post Office Dept., 397 US 728, 25 L Ed 2d 736, 90 S Ct 1484 (1970). **Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, "prepare [them] for additional obligations."** 268 US at 535, 69 L Ed AT 1078.[174]

As quoted above, this balancing of interest approach has been applied in this jurisdiction in *Lantion* in determining whether

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[173] *Supra* note 165.

[174] *Id.* at 213-214.

there was a violation of the private respondent's right to due process when he was not furnished a copy of the request for his extradition. This right was balanced against the country's commitment under the RP-US Extradition Treaty to extradite to the United States of America persons who were charged with the violation of some of its laws.[175]

The Court held in *Lantion* that at the stage of the extradition, it was only at an evaluation stage; thus there was yet no requirement that he be given notice of the proceedings. At that stage, the balance was tilted in favor of the interest of the State in helping suppress crime by facilitating the extradition of persons covered by treaties entered into by the government.[176]

It is with these standards and framework that the Court examines whether the enactments of the Kindergarten Education Act, the *K to 12 Law* and their implementing rules and regulations,were valid exercises of the State's police power to regulate education.

In this regard, and to digress, only self-executing provisions of the Constitution embody judicially enforceable rights and therefore give rise to causes of action in court.[177] Accordingly, it is necessary to determine first whether the constitutional provisions invoked by petitioners are self-executing; and if they are, is there a conflict between these rights and the State's police power to regulate education? If a conflict does exist, do the rights of petitioners yield to the police power of the State?

Non-self-executing constitutional provisions

As defined, "a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms,

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[175] See *Secretary of Justice v. Lantion*, *supra* note 171, at 437-438.

[176] *Id*. at 438-439.

[177] See *Kilosbayan, Inc. v. Morato*, 316 Phil. 652, 697-698 (1995).

and there is no language indicating that the subject is referred to the legislature for action."[178]

In *Manila Prince Hotel v. Government Service Insurance System*,[179] it was ruled that all provisions of the Constitution are presumed self-executing,[180]because to treat them as requiring legislation would result in giving the legislature "the power to ignore and practically nullify the mandate of the fundamental law."[181] And this could result in a cataclysm.[182]

This pronouncement notwithstanding, however, the Court has, in several cases, had occasion to already declare several Constitutional provisions as not self-executory.

In *Tanada v. Angara*,[183]it was settled that the sections found under Article II of the 1987 Philippine Constitution are not self-executing provisions. In fact, in the cases of *Basco,*[184] *Kilosbayan, Inc. v. Morato,*[185] and *Tondo Medical Center Employees Association v. Court of Appeals*,[186] the Court categorically ruled that Sections 11, 12, 13, 17 and 18 of Article II, Section 13 of Article XIII, and Section 2 of Article XIV, of the 1987 Philippine Constitution, respectively, are non-self-executing. The very terms of these provisions show that they are not judicially enforceable constitutional rights but merely guidelines for legislation.[187] And the failure of the legislature

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[178] *Manila Prince Hotel v. Government Service Insurance System,* 335 Phil. 82, 102 (1997).

[179] *Id*.

[180] *Id*. at 102.

[181] *Id*.

[182] *Id*.

[183] *Supra* note 107.

[184] *Supra* note 163.

[185] *Supra* note 176.

[186] 554 Phil. 609, 625-626 (2007).

[187] *Manila Prince Hotel v. Government Service Insurance System*, *supra* note 178, at 106-107.

to pursue the policies embodied therein does not give rise to a cause of action in the courts.[188]

In specific application to the present petitions, in *Tolentino v. Secretary of Finance*,[189] the Court also ruled that Section 1, Article XIV on the right of all citizens to quality education is also not self-executory. The provision "for the promotion of the right to 'quality education' x x x [was] put in the Constitution as moral incentives to legislation, not as judicially enforceable rights."[190]

Further, Section 6, Article XIV on the use of the Filipino language as a medium of instruction is also not self-executory. The deliberations of the Constitutional Commission confirm this:

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Just a matter of clarification. On the first sentence, we use Filipino as an official medium of communication in all branches of government. Is that correct?

MR. VILLACORTA. Yes.

MR. DE CASTRO. And when we speak of Filipino, can it be a combination of Tagalog and the local dialect, and, therefore, can be "Taglish"? Is that right?

MR. VILLACORTA. Not really "Taglish," Madam President.

MR. BENNAGEN. It can be standard.

MR. DE CASTRO. Or the combination of the local language and Tagalog?

MR. VILLACORTA. As it naturally evolves.

MR. DE CASTRO. Suppose I am a Muslim official from Sulu and I will use Filipino in my communication. So I will write: "Di makadiari ang iniisip mo." It is a combination of Tausog — "di

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[188] *Espina v. Zamora, Jr.*, 645 Phil. 269 (2010).

[189] *Supra* note 139.

[190] *Id*. at 766.

makadiari" and Tagalog — "ang iniisip mo." The one receiving in the main office may not understand the whole thing. I am just clarifying because when we use Filipino as a medium of official communication, there is a possibility that the message may not be understood when it reaches the central office or when it goes to another area.

MR. VILLACORTA. That is why the wording is, "The government shall take steps to initiate and sustain the use of Filipino." And in Section 1, it says: "as it evolves, it shall be further developed and enriched," the implication being that it will be standardized as a national language.

MR. DE CASTRO. Yes, but then in Section 2, we come out with Filipino as a medium of official communication. I am just giving an example that as an official communication, it may not be understood by the one at the receiving end, especially if one comes from the South and whose message is received in the North or in the center. As I said, "Di makadiari ang iniisip mo," is half Tausog and half Tagalog.

MR. VILLACORTA. Commissioner Bennagen, who is an expert on culture and minorities, will answer the question of the Gentleman.

MR. BENNAGEN. I think what we envision to happen would be for government agencies, as well as other nongovernmental agencies involving this, to start immediately the work of standardization — expanding the vocabularies, standardizing the spelling and all appropriate measures that have to do with propagating Filipino.

MR. DE CASTRO. In short?

MR. BENNAGEN. The work will codify this national *lingua franca* as it is taking place and will be subjected to other developmental activities.

MR. OPLE. Madam President, may I say a word?

MR. DE CASTRO. **In short, does the committee want us to understand that Section 2, even if ratified, will not as yet be effective because it is still subject to the provisions of law and as Congress may deem appropriate? So the medium of official communication among branches of government cannot as yet be Filipino until subject to provisions of law and as Congress may deem appropriate. Is that correct?**

MR. OPLE. Madam President.

MR. DE CASTRO. No, I am asking the committee, please.

THE PRESIDENT. **What is the answer of the committee?**

MR. VILLACORTA. **That is correct, Madam President.**

MR. DE CASTRO. Thank you.

MR. OPLE. I just wanted to point out that when the words "official communication" is used, this must satisfy the standards of accuracy, precision and, perhaps, clarity or lack of ambiguity; otherwise, it will not be communication. One can lose a war through imprecise communication in government and, therefore, I think the word "communication" should be understood in its correct light — that when one writes from Sulu, as in the example given by Commissioner de Castro, he has to consider the following: Is his communication clear? Is it unambiguous? Is it precise? I just want to point out that when we speak of official communication, these normal standards of good communication ought to be recognized as controlling, otherwise, the interest of public administration will be vitally affected.

Thank you, Madam President.

THE PRESIDENT. Shall we vote now on the first sentence?

MR. RODRIGO. I think it should be on the first two sentences.

THE PRESIDENT. There was a suggestion, and that was accepted by the committee, to vote on the first sentence.

MR. RODRIGO. Only on the first sentence? But there are two sentences.

THE PRESIDENT. No, that was already approved.

MR. VILLACORTA. Madam President, may I ask for a vote now because this has been extensively discussed.

THE PRESIDENT. Will the chairman read what is to be voted upon?

MR. VILLACORTA. Madam President, the first sentence reads: "SUBJECT TO PROVISIONS OF LAW AND AS CONGRESS MAY DEEM APPROPRIATE, THE GOVERNMENT SHALL TAKE STEPS TO INITIATE AND SUSTAIN THE USE OF FILIPINO AS MEDIUM OF OFFICIAL COMMUNICATION AND AS

LANGUAGE OF INSTRUCTION IN THE EDUCATIONAL SYSTEM."

VOTING

THE PRESIDENT. As many as are in favor of the first sentence, please raise their hand. (*Several Members raised their hand*.)

As many as are against, please raise their hand. (*No Member raised his hand*.)

The results show 37 votes in favor and none against; the first sentence is approved.[191]

Section 3, Article XIII, on the protection of labor and security of tenure, was also declared by the Court in *Agabon v. National Labor Relations Commission,*[192] (*Agabon*)as not self-executory. Reiterating *Agabon,* the Court explained in *Serrano v. Gallant Maritime Services, Inc.*,[193] that Section 3, Article XIII, does not automatically confer judicially demandable and enforceable rights and cannot, on its own, be a basis for a declaration of unconstitutionality, to wit:

While all the provisions of the 1987 Constitution are presumed self-executing, there are some which this Court has declared not ***judicially enforceable***, Article XIII being one, particularly Section 3 thereof, the nature of which, this Court, in *Agabon v. National Labor Relations Commission*, has described to be not self-actuating:

> Thus, the constitutional mandates of protection to labor and security of tenure may be deemed as self-executing in the sense that these are automatically acknowledged and observed without need for any enabling legislation. However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the dangerous tendency of being overbroad and exaggerated. The guarantees of "full protection

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[191] IV RECORD OF THE CONSTITUTIONAL COMMISSION 498-499.

[192] 485 Phil. 248 (2004).

[193] 601 Phil. 245 (2009).

> to labor" and "security of tenure", when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment — a utopian notion, doubtless — but still hardly within the contemplation of the framers. Subsequent legislation is still needed to define the parameters of these guaranteed rights to ensure the protection and promotion, not only the rights of the labor sector, but of the employers' as well. Without specific and pertinent legislation, judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution.
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> ***Ultimately, therefore, Section 3 of Article XIII cannot, on its own, be a source of a positive enforceable right*** to stave off the dismissal of an employee for just cause owing to the failure to serve proper notice or hearing. As manifested by several framers of the 1987 Constitution, the provisions on social justice require legislative enactments for their enforceability. (Emphasis added)

Thus, Section 3, Article XIII cannot be treated as a principal source of direct enforceable rights, for the violation of which the questioned clause may be declared unconstitutional. It may unwittingly risk opening the floodgates of litigation to every worker or union over every conceivable violation of so broad a concept as social justice for labor.

It must be stressed that Section 3, Article XIII does not directly bestow on the working class any actual enforceable right, but merely clothes it with the status of a sector for whom the Constitution urges protection through executive or legislative action and ***judicial recognition***. Its utility is best limited to being an impetus not just for the executive and legislative departments, but for the judiciary as well, to protect the welfare of the working class. And it was in fact consistent with that constitutional agenda that the Court in *Central Bank (now Bangko Sentral ng Pilipinas) Employee Association, Inc. v. Bangko Sentral ng Pilipinas*, penned by then Associate Justice now Chief Justice Reynato S. Puno, formulated the judicial precept that when the challenge to a statute is premised on the perpetuation of prejudice against persons favored by the Constitution with special protection — such as the working class or a section thereof — the Court may recognize the existence of a suspect classification and subject the same to strict judicial scrutiny.

The view that the concepts of suspect classification and strict judicial scrutiny formulated in *Central Bank Employee Association* exaggerate the significance of Section 3, Article XIII is a groundless apprehension. *Central Bank* applied Article XIII in conjunction with the equal protection clause. Article XIII, by itself, without the application of the equal protection clause, has no life or force of its own as elucidated in *Agabon*.[194]

Here, apart from bare allegations that the *K to 12 Law* does not provide mechanisms to protect labor, which, as discussed, have no legal bases, petitioners have not proffered other bases in claiming that the right to protect labor and/or security of tenure was violated with the implementation of the *K to 12 Law*. To be sure, the protection of labor from illegal dismissal has already been set in stone with the enactment of the Labor Code and the Civil Service Law.

Given the foregoing, petitioners cannot claim that the *K to 12 Law* and/or any of its related issuances contravene or violate any of their rights under the foregoing constitutional provisions because these provisions simply state a policy that may be "used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws."[195] They do not embody judicially enforceable constitutional rights.[196] In other words, the *Kindergarten Education Act*, the *K to 12 Law* and its related issuances cannot be nullified based solely on petitioners' bare allegations that they violate general provisions of the Constitution which are mere directives addressed to the executive and legislative departments. If these directives are unheeded, the remedy does not lie with the courts, but with the power of the electorate in casting their votes.[197] As held in *Tañada v. Angara*:[198] "The

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[194] *Serrano v. Gallant Maritime Services, Inc., id*. at 302-304.

[195] *Tañada v. Angara, supra* note 107, at 580-581.

[196] *Id*. at 581.

[197] *Id*.

[198] *Supra* note 107.

reasons for denying a cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and the lack of judicial authority to wade 'into the uncharted ocean of social and economic policy-making.'"[199]

In view of the foregoing, the Court shall now proceed to discuss the remaining constitutional provisions, international treaties, and other special laws invoked by petitioners, which have allegedly been violated by the implementation of the *K to 12 Law*. For the constitutional provisions, the Court shall determine whether these constitutional provisions are in conflict with the police power of the State in enacting and implementing the *K to 12 Law*, and if so, whether these constitutional provisions yield to the police power of the State.

Compulsory Elementary and High School Education

Petitioners argue that the legislature violated the Constitution when they made kindergarten and senior high school compulsory. For petitioners, compulsory kindergarten and senior high school expanded the constitutional definition of elementary education and that the Congress violated the rule of constitutional supremacy when it made kindergarten and senior high school compulsory.[200]

On the other hand, the OSG contends that while Section 2, Article XIV states that elementary education shall be compulsory, it did not preclude Congress from making kindergarten and secondary education mandatory (based on the clear wording of the law and deliberations of the Constitutional Commission).[201] Further, the laws advance the right of child to education, and they do not violate any international agreement (Universal Declaration of Human Rights [UDHR], the International

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[199] *Id*. at 581.

[200] *Rollo* (G.R. No. 218098), Vol. 2, pp. 1145-1148.

[201] *Rollo* (G.R. No. 216930), Vol. 4, pp. 1991-2002.

Covenant of Economic, Social and Cultural Rights [ICESCR] and the Convention on the Rights of the Child [CRC]) to which the Philippines is a signatory.[202]

The State's policy in implementing the K to 12 Program is stated as follows:

> x x x [I]t is hereby declared the policy of the State that every graduate of basic education shall be an empowered individual who has learned, through a program that is rooted on sound educational principles and geared towards excellence, the foundations for learning throughout life, the competence to engage in work and be productive, the ability to coexist in fruitful harmony with local and global communities, the capability to engage in autonomous, creative, and critical thinking, and the capacity and willingness to transform others and one's self.
>
> For this purpose, the State shall create a functional basic education system that will develop productive and responsible citizens equipped with the essential competencies, skills and values for both life-long learning and employment. In order to achieve this, the State shall:
>
> (a) Give every student an opportunity to receive quality education that is globally competitive based on a pedagogically sound curriculum that is at par with international standards;
>
> (b) Broaden the goals of high school education for college preparation, vocational and technical career opportunities as well as creative arts, sports and entrepreneurial employment in a rapidly changing and increasingly globalized environment; and
>
> (c) Make education learner-oriented and responsive to the needs, cognitive and cultural capacity, the circumstances and diversity of learners, schools and communities through the appropriate languages of teaching and learning, including mother tongue as a learning resource.[203]

There is no conflict between the *K to 12 Law* and related issuances and the Constitution when it made kindergarten and

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[202] *Id*. at 2009-2011.

[203] RA No. 10533, Sec. 2.

senior high school compulsory. The Constitution is clear in making elementary education compulsory; and the *K to 12 Law* and related issuances did not change this as, in fact, they affirmed it.

As may be gleaned from the outlined history of education laws in the Philippines, the definition of basic education was expanded by the legislature through the enactment of different laws, consistent with the State's exercise of police power. In BP Blg. 232, the elementary and secondary education were considered to be the stage where basic education is provided.[204] Subsequently, in RA No. 9155, the inclusion of elementary and high school education as part of basic education was affirmed.[205]

The legislature, through the *Kindergarten Education Act*, further amended the definition of basic education to include kindergarten. Thereafter, the legislature expanded basic education to include an additional two (2) years of senior high school. Thus, by then, basic education comprised of thirteen (13) years, divided into one (1) year of kindergarten, six (6) years of elementary education, and six (6) years of secondary education—which was divided into four (4) years of junior high school and two (2) years of senior high school.

The Constitution did not curtail the legislature's power to determine the extent of basic education. It only provided a minimum standard: that elementary education be compulsory. By no means did the Constitution foreclose the possibility that the legislature provides beyond the minimum set by the Constitution.

Petitioners also contend that the expansion of compulsory education to include kindergarten and secondary education violates the UDHR, the ICESCR and the CRC.[206]

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[204] BP Blg. 232, Sec. 20.

[205] RA No. 9155, Sec. 4(b).

[206] *Rollo* (G.R. No. 218098), Vol. 2, pp. 1145-1146.

Petitioners' argument is misleading.

There is nothing in the UDHR, ICESCR and CRC which proscribes the expansion of compulsory education beyond elementary education.

Article 26 of the UDHR states:

1. Everyone has the right to education. **Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.** Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children. (Emphasis and underscoring supplied)

There is absolutely nothing inArticle 26 that would show that the State is prohibited from making kindergarten and high school compulsory. The UDHR provided a minimum standard for States to follow. Congress complied with this minimum standard; as, in fact, it went beyond the minimum by making kindergarten and high school compulsory. This action of Congress is, in turn, consistent with Article 41 of the CRC which provides that "[n]othing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) [t]he law of a State party; or (b) [i]nternational law in force for that State."

The enactment of the *K to 12 Law* was the manner by which the Congress sought to realize the right to education of its citizens. It is indeed laudable that Congress went beyond the minimum standards and provided mechanisms so that its citizens are able

to obtain not just elementary education but also kindergarten and high school. Absent any showing of a violation of any Constitutional self-executing right or any international law, the Court cannot question the desirability, wisdom, or utility of the *K to 12 Law* as this is best addressed by the wisdom of Congress. As the Court held in *Tablarin v. Gutierrez*[207]:

> x x x The petitioners also urge that the NMAT prescribed in MECS Order No. 52, s. 1985, is an "unfair, unreasonable and inequitable requirement," which results in a denial of due process. Again, petitioners have failed to specify just what factors or features of the NMAT render it "unfair" and "unreasonable" or "inequitable." They appear to suggest that passing the NMAT is an unnecessary requirement when added on top of the admission requirements set out in Section 7 of the Medical Act of 1959, and other admission requirements established by internal regulations of the various medical schools, public or private. Petitioners' arguments thus appear to relate to utility and wisdom or desirability of the NMAT requirement. But constitutionality is essentially a question of power or authority: this Court has neither commission nor competence to pass upon questions of the desirability or wisdom or utility of legislation or administrative regulation. Those questions must be addressed to the political departments of the government not to the courts.
>
> There is another reason why the petitioners' arguments must fail: the legislative and administrative provisions impugned by them constitute, to the mind of the Court, a valid exercise of the police power of the state. The police power, it is commonplace learning, is the pervasive and non-waivable power and authority of the sovereign to secure and promote all the important interests and needs — in a word, the public order — of the general community. An important component of that public order is the health and physical safety and wellbeing of the population, the securing of which no one can deny is a legitimate objective of governmental effort and regulation.[208]

Petitioners also claim that the K to 12 basic education and the two (2) additional years in high school should not have been applied retroactively in violation of Article 4 of the Civil

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[207] 236 Phil. 768 (1987).

[208] *Id*. at 781-782.

Code.[209] Petitioners assert that students who had already began schooling prior to 2013 or upon the passage of the *K to 12 Law* already acquired a "vested right" to graduate after the completion of four (4) years of high school, pursuant to Sections 9(2) and 20 of BP Blg. 232; thus, the K to 12 BEC cannot be applied to them.[210]

Again, petitioners' contentions are without merit.

The K to 12 Basic Education Program is not being retroactively applied because only those currently enrolled at the time the *K to 12 Law* took effect and future students will be subject to the K to 12 BEC and the additional two (2) years of senior high school. Students who already graduated from high school under the old curriculum are not required by the *K to 12 Law* to complete the additional two (2) years of senior high school.

More importantly, BP Blg. 232 does not confer any vested right to four (4) years of high school education. Rights are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right.[211] Contrary to petitioners' assertion, the rights of students under Section 9 of BP Blg. 232 are not absolute. These are subject to limitations prescribed by law and regulations. In fact, while Section 9(2) of BP Blg. 232 states that students have the right to continue their course up to graduation, Section 20 of the same law does not restrict elementary and high school education to only six (6) and four (4) years. Even RA No. 9155 or the *Governance of Basic Education Act of 2001*, which was enacted under the 1987

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[209] *Rollo* (G.R. No. 218465), Vol. 3, pp. 1508-1509.

[210] *Id*. at 1508-1510.

[211] *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711, 722 (1956), citing 16 C.J.S. 214-215.

Philippine Constitution, does not specify the number of years in elementary and high school. In other words, BP Blg. 232 or RA No. 9155 does not preclude any amendment or repeal on the duration of elementary and high school education. In adding two (2) years of secondary education to students who have not yet graduated from high school, Congress was merely exercising its police power and legislative wisdom in imposing reasonable regulations for the control and duration of basic education, in compliance with its constitutional duty to promote quality education for all.

Right to select a profession or course of study

Petitioners in G.R. No. 218123 insist that the implementation of the *K to 12 Law* is a limitation on the right of senior high school students to choose their professions.[212] For petitioners, a number of prospective senior high school students will be unable to choose their profession or vocation because of the limit on what senior high schools can offer and the availability of the different strands. This lacks basis.

There is no conflict between the *K to 12 Law* and its IRR and the right of the senior high school students to choose their profession or course of study. The senior high school curriculum is designed in such a way that students have core subjects and thereafter, they may choose among four strands: 1) Accountancy, Business and Management (ABM) Strand; 2) Science, Technology, Engineering and Mathematics (STEM) Strand; 3) Humanities and Social Sciences (HUMSS) Strand; and 4) General Academic (GA) Strand.[213]

Petitioners have failed to show that the State has imposed unfair and inequitable conditions for senior high schools to enroll in their chosen path. The K to 12 Program is precisely designed in such a way that students may choose to enroll in public or private senior high schools which offer the strands of

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[212] *Rollo* (G.R. No. 218123), Vol. 2, pp. 1267-1268.

[213] DO No. 11, series of 2015; *rollo* (G.R. No. 216930), Vol 3, p. 1416.

their choice. For eligible students, the voucher program also allows indigent senior high school students to enroll in private institutions that offer the strands of their choice.

Mother Tongue as medium of instruction

Petitioners argue that the use of the MT or the regional or native language as primary medium of instruction for kindergarten and the first three (3) years of elementary education contravenes Section 7, Article XIV of the 1987 Philippine Constitution, which expressly limits and constrains regional languages simply as auxiliary media of instruction.[214] This is an argument of first blush. A closer look at the pertinent provisions of the Constitution and the deliberations of the Constitutional Commission reveal the contrary. In fine, there is no conflict between the use of the MT as a primary medium of instruction and Section 7, Article XIV of the 1987 Philippine Constitution.

Sections 6 and 7, Article XIV of the 1987 Philippine Constitution provides:

> SEC. 6. The national language of the Philippines is Filipino. As it evolves, it shall be further developed and enriched on the basis of existing Philippine and other languages.
>
> Subject to provisions of law and as the Congress may deem appropriate, the Government shall take steps to initiate and sustain the use of Filipino as a medium of official communication and as language of instruction in the educational system.
>
> SEC. 7. For purposes of communication and instruction, the official languages of the Philippines are Filipino and, until otherwise provided by law, English.
>
> The regional languages are the auxiliary official languages in the regions and shall serve as auxiliary media of instruction therein.

The deliberations of the Constitutional Commission also confirm that MT or regional languages may be used as a medium of instruction:

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[214] *Rollo* (G.R. No. 218045) Vol 1, pp. 563-571.

MR. SUAREZ. Thank you, Madam President. When the Commissioner speaks of auxiliary official languages in their respective regions, what exactly does he have in mind?

MR. BENNAGEN.**In addition to Filipino and English, they can be accepted also as official languages, even** in government and **in education.**

MR. SUAREZ.**So that not only will they be a medium of instruction or communication but they can be considered also as official languages.**

MR. BENNAGEN. That is the intention of the committee. We should respect also the regional languages. x x x[215] (Emphasis and underscoring supplied)

x x x x x x x x x

MR. DAVIDE. May I be enlightened on some of the aspects of this proposed substitute amendment? The first is, does it follow from the wording that the regional languages shall serve as an auxiliary media of instruction and no law can prohibit their use as such? This means that subject to provisions of law and as Congress may deem appropriate, it would refer only to what are included in the first sentence. It will not apply to the second sentence relating to regional languages as auxiliary media of instruction.

MR. TREÑAS. That is correct. Precisely, there is a period after "educational system" and that is a new sentence.

MR. DAVIDE.**As an auxiliary medium of instruction, it can actually be the primary medium, until Congress shall provide otherwise.**

MR. TREÑAS. It shall be auxiliary.

MR. DAVIDE. But in the meantime that Congress shall not have deemed appropriate or that there is no provision of law relating to the use of Filipino as the medium of instruction, **it can itself be the primary medium of instruction in the regions.**

MR. TREÑAS. That is correct because of the provision of the first sentence.

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[215] IV RECORD OF THE CONSTITUTIONAL COMMISSION 160-161.

MR. DAVIDE. On the supposition that there is already a law that Congress had deemed it appropriate, the regional language shall go hand in hand with Filipino as a medium of instruction. It cannot be supplanted in any way by Filipino as the only medium of instruction in the regional level.

x x x x x x x x x

VOTING

x x x x x x x x x

MR. VILLACORTA. Shall we vote now on the next sentence, Madam President?

THE PRESIDENT. Will the chairman please read the next sentence.

MR. VILLACORTA. The next sentence, Madam President, reads: "THE REGIONAL LANGUAGES SHALL SERVE AS AUXILIARY MEDIA OF INSTRUCTION IN THE RESPECTIVE REGIONS."

THE PRESIDENT. Commissioner Padilla is recognized before we proceed to vote.

MR. PADILLA. Section 2 of the committee report states:

> The official languages of the Philippines are Filipino and English, until otherwise provided by law. The regional languages are the auxiliary official languages in their respective regions.

That second sentence in Section 2 of the committee report may be amended by that second sentence which says: "THE REGIONAL LANGUAGES SHALL SERVE AS AUXILIARY MEDIA OF INSTRUCTION IN THE RESPECTIVE REGIONS." I believe we should consider the first sentence of Section 2 and then say: "THE REGIONAL LANGUAGESS HALL SERVE AS AUXILIARY MEDIA OF INSTRUCTION IN THE RESPECTIVE REGIONS." That is my proposal.

THE PRESIDENT. In other words, the Commissioner's point is that this particular second sentence here should be transposed to Section 2 of the other committee report.

MR. PADILLA. Yes, Madam President.

THE PRESIDENT. What does the committee say?

REV. RIGOS. Madam President, perhaps if we approve the second sentence, we can delete the second sentence in Section 2. Is that the idea?

MR. PADILLA. That is correct.

REV. RIGOS. Sinceweare talking about medium of instruction here, we would rather retain it in the first section.

MR. PADILLA. Madam President, but if no mention is made of English, it might be the impression contrary to what has already been agreed upon — that English may not be used as a medium of instruction. **And it shall be clear that the first preference is Filipino, the national language, without prejudice to the use of English and also the regional languages.**

REV. RIGOS. Madam President,do we understand the Commissioner correctly that he would rather delete that in the first section and amend the second sentence in Section 2?

MR. PADILLA. Yes, Madam President. That is the reason I suggested that the proposal be divided into two sentences. We approved the first sentence. The second sentence should be corrected to Section 2 of the committee report.

MR. VILLACORTA. Madam President, the committee is divided; therefore, we would like the floor to decide on this matter.

MR. PADILLA. **The only reason I am saying this is to make clear in the Constitution that the medium of communication and the language of instruction are not only Filipino as a national language, and that the medium of instruction is the regional languages, otherwise, there would be no mention of English. I believe that we are all agreed that the first preference is the national language, Filipino, but it does not prevent the use of English and also of the regional languages.**[216] (Emphasis and underscoring supplied)

It is thus clear from the deliberations that it was never the intent of the framers of the Constitution to use only Filipino and English as the exclusive media of instruction. It is evident that Congress has the power to enact a law that designates Filipino

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[216] IV RECORD OF THE CONSTITUTIONAL COMMISSION 495-496, 499-500.

as the primary medium of instruction even in the regions but, in the absence of such law, the regional languages may be used as primary media of instruction. The Congress, however, opted not to enact such law. On the contrary, the Congress, in the exercise of its wisdom, provided that the regional languages shall be the primary media of instruction in the early stages of schooling. Verily, this act of Congress was not only Constitutionally permissible, but was likewise an exercise of an exclusive prerogative to which the Court cannot interfere with.

Petitioners further contend that the MTB-MLE is counter-productive, anti-developmental and does not serve the people's right to quality of education, which the State, under the Constitution, is mandated to promote.[217] Moreover, in contrast to the benefits of the MTB-MLE that respondents assert, petitioners claim that comparative international and domestic data have shown MT monolingualism to be inferior; while high literacy and proficiency in English indicates human development, makes people more globally competitive and relatively happier.[218]

Petitioners' arguments are again misplaced. While the Constitution indeed mandates the State to provide quality education, the determination of what constitutes quality education is best left with the political departments who have the necessary knowledge, expertise, and resources to determine the same. The deliberations of the Constitutional Commission again are very instructive:

> Now, Madam President, **we have added the word "quality" before "education" to send appropriate signals to the government** that, in the exercise of its supervisory and regulatory powers, it **should first set satisfactory minimum requirements in all areas: curriculum**, faculty, internal administration, library, laboratory class and other facilities, et cetera, and it should see to it that satisfactory minimum requirements are met by all educational institutions, both public and private.

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[217] *Rollo* (G.R. No. 218045), Vol. 1, pp. 572-577.

[218] *Id*. at 554, 579-581.

When we speak of quality education we have in mind such matters, among others, as curriculum development, development of learning resources and instructional materials, upgrading of library and laboratory facilities, innovations in educational technology and teaching methodologies, improvement of research quality, and others. Here and in many other provisions on education, the principal focus of attention and concern is the students. I would like to say that in my view there is a slogan when we speak of quality of education that I feel we should be aware of, which is, "Better than ever is not enough." In other words, even if the quality of education is good now, we should attempt to keep on improving it.[219] (Emphasis supplied)

Clearly, when the government, through the *K to 12 Law* and the DepEd issuances, determined that the use of MT as primary medium of instruction until Grade 3 constitutes a better curriculum, it was working towards discharging its constitutional duty to provide its citizens with quality education. The Court, even in the exercise of its jurisdiction to check if another branch of the government committed grave abuse of discretion, will not supplant such determination as it pertains to the wisdom of the policy.

Petitioners in G.R. No. 218045 also claim that the provision on the use of MT violates the natural and primary right and duty of parents in the rearing of the youth, recognized under Section 12, Article II of the 1987 Philippine Constitution. Petitioners aver that by using the MT in teaching the students, it compels parents to do something utterly redundant, inefficient, and wasteful, as the students are presumably already fluent in speaking their MT.[220] In other words, they no longer need to be taught their native language.

Petitioners are once again incorrect as there is no conflict between the use of MT as a primary medium of instruction and the right of parents in rearing their children.

While Section 12, Article II grants parents the primary right to rear and educate their children, the State, as *parens patriae,*

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[219] IV RECORD OF THE CONSTITUTIONAL COMMISSION 57.

[220] *Rollo* (G.R. No. 218045), Vol. 1, p. 560.

has the inherent right and duty to support parents in the exercise of this constitutional right. In other words, parents' authority and the State's duty are not mutually exclusive but complement each other.[221] In the matter of education, a parent is always the first teacher. The language first learned by the child or his "mother tongue", which the child understands best and hence, an effective tool for further learning, is first and foremost taught by the parent. The inclusion in the K to 12 Program of the MT as a medium of instruction and a subject in the early years of learning is, therefore, not intended to curtail the parents' right but to complement and enhance the same.

Moreover, despite the provision on the use of MT as primary medium of instruction for kindergarten and Grades 1 to 3, Filipino and English remain as subjects in the curriculum during the earlier stages of schooling and will later on be used as primary medium of instruction from Grade 4 onwards. In other words, in addition to the MT, the basics of Filipino and English will still be taught at the early stages of formal schooling; and should the parents, in the exercise of their primary right and duty to rear their children, so desire to give additional Filipino and English lessons to their children, they have the absolute right to do so. Nothing in the *K to 12 Law* prohibits the parents from doing so.

Academic freedom

Petitioners in G.R. No. 216930 also allege that faculty from HEI stand to lose their academic freedom when they are transferred to senior high school level as provided in the *K to 12 Law*, the *K to 12 Law IRR* and the Joint Guidelines.[222]

Without question, petitioners, who are faculty members in HEIs, indeed possess the academic freedom granted by Constitution. This Court, in its previous decisions, has defined academic freedom for the individual member of the academe

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[221] See *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350, 429.

[222] *Rollo* (G.R. No. 216930), Vol. 3, pp. 1872-1873.

as "the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments."[223]

However, the Court does not agree with petitioners that their transfer to the secondary level, as provided by the *K to 12 Law* and the assailed issuances, constitutes a violation of their academic freedom. While the Court agrees, in principle, that security of tenure is an important aspect of academic freedom — that the freedom is only meaningful if the faculty members are assured that they are free to pursue their academic endeavors without fear of reprisals — it is likewise equally true that convergence of security of tenure and academic freedom does not preclude the termination of a faculty member for a valid cause.[224] Civil servants, like petitioners, may be removed from service for a valid cause, such as when there is a *bona fide* reorganization, or a position has been abolished or rendered redundant, or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service.[225] Hence, petitioners' contention that the law is unconstitutional based on this ground is specious.

Free public education in the elementary and high school levels

Petitioners claim that making kindergarten compulsory limits access to education;[226] that 400,000 to 500,000 Grade 11 students

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[223] *Garcia v. The Faculty Admission Committee, Loyola School of Theology,* 160-A Phil. 929, 942 (1975).

[224] See *Montemayor v. Araneta University Foundation,* 167 Phil. 667, 668 (1977).

[225] Sec. 2, RA No. 6656, AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, June 10, 1988.

[226] *Rollo* (G.R. No. 218123), Vol. 2, pp. 1256-1267.

will be forced to enroll in private schools, pushed by government towards a more expensive, not free education;[227] and that there will be a *de facto* privatization of senior high school education (through the voucher system) and that this is a violation of the constitutional provision mandating free high school education.[228]

The OSG counters that the Senior High School Voucher program (subsidy given to those who will enroll in non-DepEd schools) does not force students to enroll in private SHS. It simply offers a viable alternative to both student and government — to the student, a subsidized private education; and to the government, decongested public schools.[229]

The Court fully agrees with the OSG.

Petitioners' argument that the establishment of the voucher system will result in the *de facto* privatization of senior high school is not only speculative, it is also without any basis. The voucher system is one of the mechanisms established by the State through RA No. 6728, otherwise known as the *Government Assistance to Students and Teachers in Private Education Act*. In *Mariño, Jr. v. Gamilla*,[230] the Court recognized that RA No. 6728 was enacted in view of the declared policy of the State, in conformity with the mandate of the Constitution, to promote and make quality education accessible to all Filipino citizens, as well as the recognition of the State of the complementary roles of public and private educational institutions in the educational system and the invaluable contribution that the private schools have made and will make to education."[231] Through the law, the State provided "the mechanisms to improve quality in private education by maximizing the use of existing resources of private education x x x."[232] One of these is the

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[227] *Id*. at 1258.

[228] *Id*. at 1256-1260.

[229] *Rollo* (G.R. No. 216930), Vol. 4, pp. 1976-1980.

[230] 609 Phil. 549 (2009).

[231] *Id*. at 576.

[232] RA No. 6728, Sec. 2.

voucher system where underprivileged high school students become eligible for full or partial scholarship for degree or vocational/technical courses.

The program was later expanded through RA No. 8545. In the *K to 12 Law*, the benefits under RA No. 8545, including the voucher system, were made applicable to qualified students under the enhanced basic education, specifically to the qualified students enrolled in senior high school.[233]

The establishment and expansion of the voucher system is the State's way of tapping the resources of the private educational system in order to give Filipinos equal access to quality education. The Court finds that this manner of implementing the grant of equal access to education is not constitutionally infirm.

CMO No. 20 is constitutional

Petitioners assert that CMO No. 20 is violative of the Constitution because the study of Filipino, *Panitikan* and the Philippine Constitution are not included as core subjects.

The Court disagrees.

First, the constitutional provisions alleged by petitioners to be violated are non-self-executing provisions. As discussed above, the framers of the Constitution, in discussing Section 6 of Article XIV, explained that the use of Filipino as a medium of official communication is still subject to provisions of law.[234]

In *Knights of Rizal v. DMCI Homes, Inc.*,[235] the Court held that Section 15 on arts and culture of Article XIV is not self-executory because Congress passed laws dealing with the preservation and conservation of our cultural heritage.[236]The Court was of the view that all sections in Article XIV pertaining to arts and culture are all non-self-executing, which includes

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[233] K to 12 IRR, Sec. 21.

[234] IV RECORD OF THE CONSTITUTIONAL COMMISSION 495.

[235] G.R. No. 213948, April 25, 2017, 824 SCRA 327.

[236] *Id*. at 393.

Section 14 on Filipino national culture and Section 18 on access to cultural opportunities. The Court in *Basco*[237]also ruled that Section 17, Article II on giving priority to education, science and technology, arts, culture, and sports, and Section 2, Article XIV on educational values, are non-self-executing.

Thus, the Court reiterates that these constitutional provisions are only policies that may be "used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws."[238]The Court reiterates that they do not embody judicially enforceable constitutional rights.[239]

Second, it is misleading for petitioners to allege that there is a violation of the constitutional provisions for the simple reason that the study of Filipino, *Panitikan* and the Constitution are actually found in the basic education curriculum from Grade 1 to 10 and senior high school. To be sure, the changes in the GE curriculum were implemented to ensure that there would be no duplication of subjects in Grade 1 to 10, senior high school and college. Thus, the allegation of petitioners that CMO No. 20 "removed" the study of Filipino, *Panitikan* and the Constitution in the GE curriculum is incorrect.

As regards Section 3(1), Article XIV on the requirement that all educational institutions shall include the study of the Constitution as part of the curricula, the deliberations of the Constitutional Commission confirm that the intention was for it to be constitutionally mandated. The Court agrees that there is indeed a constitutional mandate that the study of the Constitution should be part of the curriculum of educational institutions. However, the mandate was general and did not specify the educational level in which it must be taught. Hence, the inclusion of the study of the Constitution in the basic education curriculum satisfies the constitutional requirement.

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[237] *Supra* note 163.

[238] *Tañada v. Angara, supra* note 107, at 580-581.

[239] *Id*. at 581.

In this regard, it must be emphasized that CMO No. 20 only provides for the **minimum standards** for the GE component of all degree programs. Under Section 13 of RA No. 7722 or the *Higher Education Act of 1994*, the CHED is authorized to determine the (*a*) minimum unit requirements for specific academic programs; (*b*) **general education distribution requirements as may be determined by the Commission**; and (*c*) specific professional subjects as may be stipulated by the various licensing entities. The provision further provides that this authority shall not be construed as limiting the academic freedom of universities and colleges. Therefore, HEIs are given the freedom to require additional Filipino or *Panitikan* courses to these minimum requirements if they wish to.

Third, petitioners aver that non-inclusion of these subjects in the GE curriculum will result to job displacement of teachers and professors, which contravenes the constitutional provisions on protection of labor and security of tenure. Once more, Section 3, Article XIII and Section 18, Article II do not automatically confer judicially demandable and enforceable rights and cannot, on their own, be a basis for a declaration of unconstitutionality. Further, the Court finds that, in fact, teachers and professors were given the opportunity to participate in the various consultations and decision–making processes affecting their rights as workers.[240]

CMO No. 20 does not contravene any other laws

As claimed by petitioners, CMO No. 20 violated Section 14 of RA No. 7104 or the *Commission on the Filipino Language Act* because it interfered with the authority of the Commission on the Filipino Language (CFL) on matters of language. Petitioners reiterate that it is the CFL who has the authority to *formulate policies, plans and programs to ensure the further development, enrichment, propagation and preservation of Filipino and other Philippine language*[241] and thus, CMO No.

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[240] *Rollo* (G.R. No. 217451), Vol. 2, pp. 1348-1351.

[241] RA No. 7104, Sec. 14(a).

20 should have retained the nine (9) units of Filipino in the GE curriculum, as proposed by the CFL.

Petitioners also aver that CMO No. 20 violates RA No. 7356 or the *Law Creating the National Commission for Culture and the Arts* because the non-inclusion of Filipino and *Panitikan* as subjects in the GE curriculum is a violation of our "duty x x x to preserve and conserve the Filipino historical and cultural heritage and resources."[242]

Lastly, petitioners allege that CMO No. 20 violates BP Blg. 232 or the *Education Act of 1982,* specifically, Section 3 on the role of the educational community to promote the social and economic status of all school personnel and Section 23 on the objectives of tertiary education which includes a general education program that will promote national identity and cultural consciousness.

Again, the Court disagrees.

It must be noted that nothing in these laws requires that *Filipino* and *Panitikan* must be included as subjects in the tertiary level. Further, as already established, it is within the authority of the CHED to determine the GE distribution requirements. The Court also reiterates that the study of *Filipino* and *Panitikan* can easily be included as courses in the tertiary level, if the HEIs wish to. Thus, petitioners' arguments that CMO No. 20 violates the aforementioned laws must fail.

III.

The K to 12 Law does not violate substantive due process and equal protection of the laws.

Petitioners also assert that the *K to 12 Law* is unconstitutional for violating the due process clause, as the means employed is allegedly not proportional to the end to be achieved, and that there is supposedly an alternative and less intrusive way of accomplishing the avowed objectives of the law. They point to

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[242] RA No. 7356, Sec. 7.

studies which showed that lengthening the time did not necessarily lead to better student performance. They further assert that "[g]iven adequate instruction, armed with sufficient books, and a conducive learning environment, the Filipino student does not need at all two (2) additional years of senior high school"and hence the imposition of additional years in senior high school is "unduly oppressive an unwarranted intrusion into the right to education of all Filipino students, thus violating their right to substantive due process."[243] In addition, they claim that the assailed law is violative of the due process clause because, allegedly, the law served the interests of only a select few. According to them, majority of the Filipinos will never apply for graduate school admission to a foreign university or for professional work in a foreign corporation, and these are the only people who supposedly need the additional two years of basic education. They point to the fact that Filipinos are being currently employed as caregivers, seafarers, house helpers, etc. despite the fact that they have undergone only ten (10) years of basic education. Hence, the assailed law is unconstitutional for serving the interests of only a select few.[244]

Again, the Court disagrees. There is no conflict between the *K to 12 Law* and right of due process of the students.

It is established that due process is comprised of two components, namely, substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.[245]

Substantive due process, the aspect of due process invoked in this case, requires an inquiry on the intrinsic validity of the

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[243] *Rollo* (G.R. No. 218645), Vol. 3, p. 1519.

[244] *Id*. at 1520.

[245] *Secretary of Justice v. Lantion*, 379 Phil. 165, 202-203 (2000).

law in interfering with the rights of the person to his property. In *Abakada Guro Party List vs. Ermita,*[246] the Court held:

> x x x The inquiry in this regard is not whether or not the law is being enforced in accordance with the prescribed manner but ***whether or not, to begin with, it is a proper exercise of legislative power***.
>
> To be so, the law must have a ***valid governmental objective***,i.e., the interest of the public as distinguished from those of a particular class, requires the intervention of the State. This objective must be pursued in a ***lawful manner***, or in other words, the means employed must be reasonably related to the accomplishment of the purpose and ***not unduly oppressive***.[247] (Emphasis supplied)

Hence, two things must concur: (1) the interest of the public, in general, as distinguished from those of a particular class, requires the intervention of the State; and (2) the means employed are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals.

Here, the *K to 12 Law* does not offend the substantive due process of petitioners. The assailed law's declaration of policy itself reveals that, contrary to the claims of petitioners, the objectives of the law serve the interest of the public and not only of a particular class:[248]

> SEC. 2. *Declaration of Policy.* — The State shall establish, maintain and support a complete, adequate, and integrated system of education relevant to the needs of the people, the country and society-at-large.
>
> Likewise, it is hereby declared the policy of the State that every graduate of basic education shall be an empowered individual who has learned, through a **program that is rooted on sound educational principles and geared towards excellence, the foundations for learning throughout life, the competence to engage in work and be productive, the ability to coexist in fruitful harmony with local**

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[246] *Supra* note 142.

[247] *J.* Sandoval-Gutierrez, Concurring and Dissenting Opinion, *id*. at 224.

[248] RA No. 10533, Sec. 2.

and global communities, the capability to engage in autonomous, creative, and critical thinking, and the capacity and willingness to transform others and one's self.

For this purpose, the State shall create a **functional basic education system that will develop productive and responsible citizens equipped with the essential competencies, skills and values for both life-long learning and employment**. In order to achieve this, the State shall:

(a) Give every student an opportunity to receive quality education that is globally competitive based on a pedagogically sound curriculum that is at par with international standards;

(b) Broaden the goals of high school education for college preparation, vocational and technical career opportunities as well as creative arts, sports and entrepreneurial employment in a rapidly changing and increasingly globalized environment; and

(c) Make education learner-oriented and responsive to the needs, cognitive and cultural capacity, the circumstances and diversity of learners, schools and communities through the appropriate languages of teaching and learning, including mother tongue as a learning resource. (Emphasis supplied)

All students are intended to benefit from the law. Without ruling on the effectiveness of the revised curriculum, it is erroneous to view the *K to 12 Law* and the DepEd Orders in question extending basic education by two (2) years simply to comply with international standards; rather, the basic education curriculum was restructured according to what the political departments believed is the best approach to learning, or what they call as the "spiral approach." This approach, according to respondent, will yield the following benefits for all students: (*1*) it is decongested and offers a more balanced approach to learning; (*2*) it would help in freeing parents of the burden of having to spend for college just to make their children employable; (*3*) it would prepare students with life skills that they learn while schooling; (*4*) it is seamless; (*5*) it is relevant and responsive, age-appropriate, and focused on making learners succeed in the 21st century; and (*6*) it is enriched and learner-

centered.[249] Thus, contrary to the claims of petitioners, the assailed law caters to the interest of the public in general, as opposed to only a particular group of people.

Furthermore, the means employed by the assailed law are commensurate with its objectives. Again, the restructuring of the curriculum with the corresponding additional years in senior high school were meant to improve the quality of basic education and to make the country's graduates more competitive in the international arena.

Respondents proffer, and petitioners concede, that the Philippines is the last country to adopt a 12-year basic education curriculum. However, petitioners submit that adding two (2) years in the basic education curriculum is not the answer to achieve these objectives, and that there is supposedly a less intrusive way to achieve these goals, namely, to increase the salaries of the teachers, invest in better and more resource materials, and building of more classrooms to achieve the goal of improving the quality of education in the Philippines. Petitioners ought to be reminded, however, that the objectives of the law are two-pronged. It was meant not only to (*1*) improve the basic education in the country, but also to (*2*) make it at par with international standards. It is in this second purpose that the means employed by the assailed law is justified. Thus, having established that the interest of the public in general is at the heart of the law, and that the means employed are commensurate to its objectives, the Court holds that the *K to 12 Law* is not violative of the due process clause.

The students of Manila Science High School (MSHS), petitioners in G.R. No. 218465, aver,in particular, that the decongestion of the originally existing basic education curriculum and the lengthening of the basic education cycle do not, and should not, be made to apply to them as their curriculum is supposedly congested on purpose.[250] It supposedly should not

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[249] *Rollo* (G.R. No. 216930), Vol. 2, p. 829.

[250] *Rollo* (G.R. No. 218465), Vol. 3, pp. 1514-1517.

apply to them because "[they] are gifted and thus are advanced for their age, with the capability to learn better and faster compared to other high school students. Because of their higher mental capabilities, they neither need decongesting nor a longer period of time or any spiral approach, for them to in fact master their heavier in scope and more advanced math and science subjects."[251] They are supposedly "not being trained for immediate employment after high school but for them to pursue tertiary education, particularly career paths either as mathematicians, scientists or engineers, which the country needs most for its development."[252] This, these petitioners asseverate, makes the means employed by the *K to 12 Law* not reasonably necessary for the accomplishment of its intended purpose. Thus, as applied to MSHS students, the *K to 12 Law* is arbitrary, unfair, oppressive, discriminatory and unreasonable and thus violative of their substantive due process.[253] They further allege that the law is violative of the equal protection clause for treating them in the same way as all other high school students when they are supposed to be treated differently for not being similarly situated with the rest.[254]

In essence, what these petitioners are saying is that the *K to 12 Law* did not make a substantial distinction between MSHS students and the rest of the high school students in the country when it, in fact, should have done so.

This contention is without merit.

To assure that the general welfare is promoted, which is the end of the law, a regulatory measure may cut into the rights to liberty and property.[255] Those adversely affected may invoke the equal protection clause only if they can show that the

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[251] *Id*. at 1514-1515.

[252] *Id*. at 1515.

[253] *Id*.

[254] *Id*. at 1515-1516.

[255] *Bautista v. Juinio,* 212 Phil. 307, 317 (1984).

governmental act assailed, far from being inspired by the attainment of the common goal, was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason.[256] This, petitioners' failed to sufficiently show. For this reason, the Court holds that the *K to 12 Law* did not violate petitioners' right to due process nor did it violate the equal protection clause. In *JMM Promotion and Management, Inc. v. Court of Appeals,*[257] the Court explained the object and purpose of the equal protection clause in this wise:

> **The equal protection clause is directed principally against undue favor and individual or class privilege**. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that **all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed**. We have held, time and again, that the equal protection clause of the Constitution does not forbid classification for so long as such classification is based on real and substantial differences having a reasonable relation to the subject of the particular legislation. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee.[258] (Emphasis supplied)

To emphasize, valid classifications require *real* and *substantial* differences to justify the variance of treatment between the classes. The MSHS students did not offer any substantial basis for the Court to create a valid classification between them and the rest of the high school students in the Philippines. Otherwise stated, the equal protection clause would, in fact, be violated if the assailed law treated the MSHS students differently from the rest of the high school students in the country.

To be clear, the Court is not saying that petitioners are not gifted, contrary to their claims. The Court is merely saying

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[256] *Id*. at 317.

[257] 329 Phil. 87 (1996).

[258] *Id*. at 102.

that the *K to 12 Law* was not infirm in treating all high school students equally. The MSHS students are, after all, high school students just like all the other students who are, and will be, subjected to the revised curriculum.

The Court agrees with these petitioners to the extent of their claim that they have the right granted by Article 3(3) and (6) of Presidential Decree No. 603, or the *Child and Youth Welfare Code*, to education commensurate with their abilities.[259] However, the Court disagrees that the said right granted by the *Child and Youth Welfare Code* was violated when the revised curriculum under the *K to 12 Law* was applied to them. It bears repeating that the law is being merely applied to the whole segment of the population to which petitioners belong. Further, the basic education under the K to 12 was intended to meet the basic learning needs of the students and it is broad enough to cover alternative learning systems for out-of-school learners and those with special needs.[260]

This is not to say that they shall be continually subjected strictly to the K to 12 curriculum which they describe as "inferior," "diluted," and "anemic."[261] The *K to 12 Law* explicitly recognized the right of schools to modify their curricula subject, of course, to the minimum subjects prescribed by the DepEd:[262]

> SEC. 5. *Curriculum Development.* — The DepED shall formulate the design and details of the enhanced basic education curriculum. It shall work with the Commission on Higher Education (CHED) to craft harmonized basic and tertiary curricula for the global competitiveness of Filipino graduates. To ensure college readiness and to avoid remedial and duplication of basic education subjects, the DepED shall coordinate with the CHED and the Technical Education and Skills Development Authority (TESDA).

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[259] *Rollo* (G.R. No. 218465), Vol. 3, pp. 1512-1513.

[260] RA No. 10533, Sec. 3.

[261] *Rollo* (G.R. No. 218465), Vol. 3, pp. 1495, 1497, 1516-1517.

[262] RA No. 10533, Sec. 5.

To achieve an effective enhanced basic education curriculum, the DepED shall undertake consultations with other national government agencies and other stakeholders including, but not limited to, the Department of Labor and Employment (DOLE), the Professional Regulation Commission (PRC), the private and public schools associations, the national student organizations, the national teacher organizations, the parents-teachers associations and the chambers of commerce on matters affecting the concerned stakeholders.

The DepED shall adhere to the following standards and principles in developing the enhanced basic education curriculum:

(a) The curriculum shall be learner-centered, inclusive and developmentally appropriate;

(b) The curriculum shall be relevant, responsive and research-based;

(c) The curriculum shall be culture-sensitive;

(d) The curriculum shall be contextualized and global;

(e) The curriculum shall use pedagogical approaches that are constructivist, inquiry-based, reflective, collaborative and integrative;

(f) The curriculum shall adhere to the principles and framework of Mother Tongue-Based Multilingual Education (MTB-MLE) which starts from where the learners are and from what they already knew proceeding from the known to the unknown; instructional materials and capable teachers to implement the MTB-MLE curriculum shall be available;

(g) The curriculum shall use the spiral progression approach to ensure mastery of knowledge and skills after each level; and

(h) **The curriculum shall be flexible enough to enable and allow schools to** localize, indigenize and **enhance the same based on their respective educational and social contexts.** The production and development of locally produced teaching materials shall be encouraged and approval of these materials shall devolve to the regional and division education units. (Emphasis supplied)

In fact, the *K to 12 IRR* confirms the inclusiveness of the design of the Enhanced Basic Education in mandating that the enhanced basic education programs should be able to address the physical, intellectual, psychosocial, and cultural needs of

learners.[263] The IRR mandates that the Basic Education Program should include programs for the gifted and talented, those with disabilities, the Madrasah Program for Muslim learners, Indigenous Peoples Programs, and Programs for Learners under Difficult Circumstances.[264] The *K to 12 IRR* also allows the acceleration of learners in public and private educational institutions.[265]Therefore, the remedy of petitioner students is with MSHS and/or DepEd, and not with this Court.

Petitioners in G.R. No. 218045 also challenge the *K to 12 Law* on the ground of violation of the equal protection clause by arguing that private schools are allowed to offer extra and optional curriculum subjects in addition to those required by the *K to 12 Law* and DepEd Orders, and thus, rich families will tend to enroll their children in private schools while poor families will be constrained to enroll their children in English starved public schools.[266]

The argument is untenable.

The Court, no matter how vast its powers are, cannot trample on the previously discussed right of schools to enhance their curricula and the primary right of parents to rear their children, which includes the right to determine which schools are best suited for their children's needs. Even before the passage of the *K to 12 Law*, private educational institutions had already been allowed to enhance the prescribed curriculum, considering the State's recognition of the complementary roles of public and private institutions in the educational system.[267] Hence, the Court cannot sustain petitioners' submission that the assailed law is invalid based on this ground.

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[263] K to 12 IRR, Sec. 8.

[264] *Id*.

[265] K to 12 IRR, Sec. 9.

[266] *Rollo* (G.R. No. 218045), Vol. 1, p. 555.

[267] 1987 CONSTITUTION, Art. XIV, Sec. 4(1).

Other arguments against the constitutionality of the K to 12 Law

Petitioners in G.R. No. 217752 argue that DepEd's use of global competitiveness as justification in the policy shift to K to 12 is not relevant to the needs of the people and society, as not everyone will be working abroad.[268] Essentially, they are assailing the validity of the law for allegedly violating Section 2(1), Article XIV of the 1987 Philippine Constitution, which states that:

> SEC. 2. The State shall:
>
> (1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society[.]

As previously discussed, however, Section 2, Article XIV of the 1987 Philippine Constitution is a non-self-executing provision of the Constitution. Again, as the Court already held in *Basco*, "Section 2 (Educational Values) of Article XIV of the 1987 [Philippine] Constitution x x x are merely statements of principles and policies. As such, they are basically not self-executing, meaning a law should be passed by Congress to clearly define and effectuate such principles."[269] The *K to 12 Law* is one such law passed by the Legislature to bring the said guiding principle to life. The question of what is 'relevant to the needs of the people and society' is, in turn, within the sole purview of legislative wisdom in which the Court cannot intervene.

Another assertion against the constitutionality of the *K to 12 Law* is that it allegedly violates the constitutional State duty to exercise reasonable supervision and regulation of educational institutions mandated by Section 4, Article XIV of the 1987 Constitution. Petitioners in G.R. No. 218123 allege that DepEd's Basic Education Sector Transformation Program (BEST) is supported by Australian Aid and managed by CardNo, a foreign

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[268] *Rollo* (G.R. No. 217752), Vol. 1, p. 31.

[269] *Supra* note 163, at 343.

corporation listed in the Australian Securities Exchange. CardNo allegedly hires specialists for the implementation of the K to 12 curriculum.[270] This partnership between CardNo and DepEd is allegedly violative of the above Constitutional provision, which reads:

> SEC. 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and **shall exercise reasonable supervision and regulation of all educational institutions.**
>
> (2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.
>
> **The control and administration of educational institutions shall be vested in the citizens of the Philippines.**
>
> No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.
>
> (3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.
>
> Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment.
>
> (4) Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax. (Emphasis supplied)

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[270] *Rollo* (G.R. No. 218123), Vol. 1, pp. 41-42.

Petitioners point to Section 4(1) and Section 4(2), paragraph 2, as legal basis for the supposed unconstitutionality of the partnership between DepEd and CardNo in the implementation of the K to 12 curriculum.

Petitioners' reading of the above Constitutional provisions is erroneous. Sections 4(1) and 4(2) deal with two separate matters that the Framers of the Constitution sought to address. Section 4(1) was a provision added by the Framers to crystallize the State's recognition of the importance of the role that the private sector plays in the quality of the Philippine education system. Despite this recognition, the Framers added the second portion of Section 4(2) to emphasize that the State, in the exercise of its police power, still possesses the power of supervision over private schools. The Framers were explicit, however, that this supervision refers to *external governance,* as opposed to *internal governance* which was reserved to the respective school boards, thus:

> Madam President, Section 2(b) introduces four changes: one, the addition of the word "reasonable" before the phrase "supervision and regulation"; two, the addition of the word "quality" before the word "education"; three, the change of the wordings in the 1973 Constitution referring to a system of education, requiring the same to be relevant to the goals of national development, to the present expression of "relevant to the needs of the people and society"; and four, the explanation of the meaning of the expression "integrated system of education" by defining the same as the **recognition and strengthening of the complementary roles of public and private educational institutions as separate but integral parts of the total Philippine educational system.**
>
> **When we speak of State supervision and regulation, we refer to the external governance of educational institutions**, particularly private educational institutions as distinguished from the internal governance by their respective boards of directors or trustees and their administrative officials. Even without a provision on external governance, the State would still have the inherent right to regulate educational institutions through the exercise of its police power. We have thought it advisable to restate the supervisory and regulatory functions of the State provided in the 1935 and 1973 Constitutions with the addition of the word "reasonable." We found it necessary

to add the word "reasonable" because of an *obiter dictum* of our Supreme Court in a decision in the case of *Philippine Association of Colleges and Universities vs. The Secretary of Education and the Board of Textbooks* in 1955. In that case, the court said, and I quote:

> It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.
>
> The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was intended by organic law.

The addition, therefore, of the word "reasonable" is meant to underscore the sense of the committee, that when the Constitution speaks of State supervision and regulation, it does not in any way mean control. We refer only to the power of the State to provide regulations and to see to it that these regulations are duly followed and implemented. It does not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate.[271] (Emphasis supplied)

In stark contrast, Section 4(2), Article XIV, which was copied from the 1973 Philippine Constitution, refers to *ownership* and *administration* of individual schools. This interpretation is clear both from a plain reading of the provision itself, and from the deliberations of the Framers of the Constitution:

> MR. GUINGONA. The committee refers to both ownership and administration. If I may be allowed to continue, may I refer the Commissioner to the same section that I have specified in the 1973 Constitution. The Commissioner will notice that this particular provision does not only refer to administration because it speaks also of educational institution which should be owned solely by citizens or corporations of the Philippines.
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> MR. REGALADO. Yes.
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> MR. GUINGONA. In other words, even in the 1973 Constitution, the contemplation or the intention of the fundamental law was to include both ownership and administration.

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[271] IV RECORD OF THE CONSTITUTIONAL COMMISSION 56-57.

MR. REGALADO. They are not merely these, because otherwise there is an error of language in the Constitution then. Paragraph 7 of Section 8 states: "Educational institutions, other than those established by religious orders, mission boards, or charitable organizations."

MR. GUINGONA. Yes.

MR. REGALADO. In other words, with the exception of educational institutions established by religious orders, mission boards, or charitable organizations, then all educational institutions shall be owned solely by citizens of the Philippines and at the time, of course, by corporations or associations 60 *per centum* of the capital of which is owned by citizens. In other words, educational institutions of religious orders were exempted from that requirement by the very constitutional provision which was further implemented and ramified with clarity in P.D. No. 176.[272]

Thus, petitioners are mistaken in applying Section 4(2), Article XIV to Section 4(1), Article XIV as they deal with completely different matters. The restrictions expressed in Section 4(2), Article XIV only refer to *ownership, control,* and *administration* of individual schools, and these do not apply to the State's exercise of reasonable supervision and regulation of educational institutions under Section 4(1), Article XIV. Hence, there is nothing under the provisions of the Constitution which prohibits the State to forge a partnership with a foreign entity, like CardNo, in the exercise of this supervision and regulation of educational institutions.

Further, it is asserted that the *K to 12 Law* violates the constitutional duty of the State to provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills as commanded by Section 2, Article XIV of the 1987 Philippine Constitution. Petitioners decry the supposed lack of mechanisms in the *K to 12 Law* to accommodate groups with special needs.[273] As previously discussed, Section 2, Article XIV of the 1987 Philippine

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[272] *Id*. at 366.

[273] *Rollo* (G.R. No. 218123), Vol. 1, pp. 46-47.

Constitution is not a self-executing provision. Furthermore, petitioners' argument has no factual basis because DepEd has already put in place programs to address the needs of indigenous peoples, Muslim children, adult learners, PWDs, out of school youth and other sectors of society in keeping with the aforesaid constitutional provisions, in line with the *K to 12 Law*. The Court agrees with the following discussion by the OSG in its Comment on this point:

> The petitioners' argument has no factual basis because the DepEd has already put in place programs to address the needs of the indigenous peoples, Muslim schoolchildren, adult learners, and persons with disabilities (PWDs) in line with the K-12 program. DepEd Order No. 103, s. 2011 directed the creation of the Indigenous Peoples Education Office (IPsEO), which is a mechanism for the mobilization, implementation, and coordination of all the programs and projects of DepEd pertaining to IPs education, pursuant to "The Indigenous Peoples Rights Act of 1997." This law mandates all government agencies to recognize and promote the rights of Indigenous Cultural Communities and Indigenous Peoples within the framework of national unity and development.
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> Dep[E]d Order No. 62, s. 2011 entitled "The National Indigenous Peoples Education Policy Framework," was issued to serve as an instrument in promoting shared accountability, continuous dialogue, engagement, and partnership among governments, IPs communities, civil society, and other education stakeholders in upholding the IPs Learners' education rights. In support of DepEd's commitment to strengthen its policy on Indigenous Peoples Education (IPEd), DepEd Order No. 26, s. 2013 promulgated the Implementing Guidelines on the Allocation and Utilization of the Indigenous Peoples Education (IPEd) Program Support Fund.
>
> Likewise, DepEd Order No. 46, s. 2013, entitled "Guidelines on the Madrasah Education Program and Utilization of the Support Fund," was issued to engage Muslim learners with relevant educational opportunities and processes.
>
> On the other hand, DepEd Order No. 39, s. 2013 was issued in support of DepEd's Special Education Program for learners with special needs and disabilities, including those who are gifted and talented. DepEd Memorandum No. 108, s. 2013 entitled "2013 Alternative Learning System Accreditation and Equivalency (ALS

& ALE) Test Registration and Administration" was promulgated to facilitate the ALS & ALE Test, designed to measure the competencies of those who have neither attended nor finished the elementary or secondary education in the formal school system. Passers of this test are given a certificate/diploma (which bears the seal and the signature of the Secretary of the Department of Education) certifying their competencies as comparable to graduates of the formal school system. Hence, they are qualified to enroll in the secondary and post-secondary schools.

DepEd Order No. 17, s. 2014 was also issued to provide the guidelines on the *Abot-Alam* Program, a convergence program that is being undertaken by a consortium of various national government agencies, non-government organizations, the National Youth Commission, and institutions under the leadership of DepEd to locate the out-of-school youth (OSY) nationwide who are 15-30 years old and who have not completed basic/higher education or who are unemployed, and to mobilize and harmonize programs which will address the OSY's needs and aspirations.

DepEd Order No. 77, s. 2011 organized the Advisory Council for the Education of Children and Youth with Disabilities (ACECYD) to formulate an agenda for action and the framework for collaboration between the DepEd and the disability sector and other stakeholders in providing education to children and youth with disabilities.

DepEd Order No. 64, s. 2011 directed all Schools Division and City Superintendents (SDSs) and District Supervisors to strictly implement relevant policies and best practices on the promotion and compensation of all Alternative Learning System (ALS) mobile teachers and implementers to ensure equal opportunities and standard implementation on the promotion and compensation of the ALS implementers.

Likewise, DepEd Order No. 22, s. 2010, entitled "Mainstreaming and Institutionalizing Madrasah Education Program by Transferring Its Developed Components to the Bureau of Elementary Education, Regional and Division Offices, and the Establishment of Madrasah Education Unit," was promulgated with the ultimate objective of peace building, national unity and understanding. Under this scheme, DepEd shall develop the Standard Madrasah Curriculum (SMC) for Pre-elementary and Secondary levels, along with the development of instructional and learning materials, to complete the cycle of basic education Madrasah.

These inclusion programs are continuously being implemented to respond to the needs of the education sector during the transition period. They show the resolve of the DepEd to harness the necessary systems and structures to respond to the needs of the indigenous peoples, Muslim schoolchildren, adult learners, PWDs, OSYs, and the other sectors of society, in keeping with the constitutional provisions on the rights of indigenous peoples to preserve and develop their cultures, and to provide training in civics, vocational efficiency, and other skills to adult, disabled, and out-of-school youth.[274]

In fine, the contentions of petitioners are therefore without any factual basis and utterly devoid of merit.

IV.

Policy issues

In an attempt to bolster their case against the *K to 12 Law*, petitioners also raised the following policy issues:

a) K to 12 only increases the resource gap by creating more need for resources. The solution to the problem is closing the resource gap by giving priority to education in the budget and public spending program of the government and addressing the issue of poverty and malnutrition and programs aimed at alleviating if not eradicating poverty in the long run but instead government comes up with the *K to 12 Law* which is a copycat and elitist solution.[275]

b) K to 12 is problem-ridden. Instead, what we need is to prioritize deficiencies in personnel, facilities and materials; and a nationalist-oriented curriculum relevant to the needs of the people.[276]

c) The Philippine government does not have enough funds to add two (2) more years of senior high school.[277]

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[274] *Rollo* (G.R. No. 216930), Vol. 2, pp. 877-879.

[275] *Rollo* (G.R. No. 217752), Vol. 1, pp. 28-29.

[276] *Rollo* (G.R. No. 218123) Vol. 1, pp. 50, 53.

[277] *Id.* at 49.

d) Student-teacher ratio is far from ideal.[278]

e) Teachers are paid low salaries.[279]

f) There is no assurance that senior high school results in good employment.[280]

Policy matters are not the concern of the Court. To reiterate, government policy is within the exclusive dominion of the political branches of the government. It is not for the Court to look into the wisdom or propriety of legislative determination.[281] Stated otherwise, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation.[282] Indeed, whether an enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired results, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner — all these are matters for the judgment of the legislature, and the serious conflict of opinions does not suffice to bring them within the range of judicial cognizance. When the validity of a statute is challenged on constitutional grounds, the sole function of the court is to determine whether it transcends constitutional limitations or the limits of legislative power.[283] In the case of *Tañada v. Cuenco,*[284] the Court, quoting American authorities, held:

"Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon *the policy* of legislative or executive action. Where, therefore, *discretionary* powers are granted by the Constitution or by statute, the *manner* in which those powers are exercised is not subject

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[278] *Id*.

[279] *Id*. at 50.

[280] *Id*. at 51.

[281] *Fariñas v. Executive Secretary*, 463 Phil. 179, 204 (2003).

[282] *Angara v. Electoral Commission,* 63 Phil. 139, 158 (1936).

[283] *Fariñas v. Executive Secretary*, *supra* note 281, at 212.

[284] 103 Phil. 1051 (1957).

to judicial review. The courts, therefore, concern themselves only with the question as to the *existence and extent of these discretionary powers*.

"As distinguished from the judicial, the legislative and executive departments are spoken of as the *political* departments of government because in very many cases their action is necessarily dictated by considerations of public or political policy. *These considerations of public or political policy of course will not permit the legislature to violate constitutional provisions, or the executive to exercise authority not granted him by* the Constitution *or by statute,* but, *within these limits,* they do permit the departments, separately or together, to *recognize that a certain set of facts exists or that a given status exists*, and these determinations, together with the consequences that flow therefrom, may not be traversed in the courts."[285] (Emphasis in the original)

Similarly, in *Department of Environment and Natural Resources v. DENR Region 12 Employees,*[286] the Court held that:

x x x. However, these concern issues addressed to the wisdom of the transfer rather than to its legality. It is basic in our form of government that the judiciary cannot inquire into the wisdom or expediency of the acts of the executive or the legislative department, for each department is supreme and independent of the others, and each is devoid of authority not only to encroach upon the powers or field of action assigned to any of the other department, but also to inquire into or pass upon the advisability or wisdom of the acts performed, measures taken or decisions made by the other departments.

The Supreme Court should not be thought of as having been tasked with the awesome responsibility of overseeing the entire bureaucracy. Unless there is a clear showing of constitutional infirmity or grave abuse of discretion amounting to lack or excess of jurisdiction, **the Court's exercise of the judicial power, pervasive and limitless it may seem to be, still must succumb to the paramount doctrine of separation of powers.** After a careful review of the records of the case, we find that this jurisprudential element of abuse of discretion has not been shown to exist.[287] (Emphasis supplied)

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[285] *Id*. at 1065.

[286] 456 Phil. 635 (2003).

[287] *Id*. at 648.

Further, the courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution, but also because the judiciary, in the determination of actual cases and controversies, must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[288] The Court, despite its vast powers, will not review the wisdom, merits, or propriety of governmental policies, but will strike them down only on either of two grounds: (*1*) unconstitutionality or illegality and/or (*2*) grave abuse of discretion.[289] For having failed to show any of the above in the passage of the assailed law and the department issuances, the petitioners' remedy thus lies not with the Court, but with the executive and legislative branches of the government.[290]

WHEREFORE, the consolidated petitions are hereby **DENIED**. Accordingly, the Court declares Republic Act No. 10533, Republic Act No. 10157, CHED Memorandum Order No. 20, Series of 2013, Department of Education Order No. 31, Series of 2012, and Joint Guidelines on the Implementation of the Labor and Management Component of Republic Act No. 10533,as **CONSTITUTIONAL**. The Temporary Restraining Order dated April 21, 2015 issued in G.R. No. 217451 is hereby **LIFTED**.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Senior Associate Justice, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Tijam, and *Reyes, A. Jr., JJ.,* concur.

Leonen, J., see separate concurring opinion.

Bersamin and *Gesmundo, JJ.,* on official business.

Reyes, J. Jr., J., on wellness leave.

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[288] *Angara v. Electoral Commission, supra* note 282, at 158-159.

[289] *Disomangcop v. Datumanong,* 486 Phil. 398, 424-425 (2004).

[290] See *Saguisag v. Ochoa, Jr.,* 791 Phil. 277, 299 (2016).

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

However, I reiterate my opinion that this Court is not a legislative chamber, and thus, does not strike down laws and issuances without an actual case or controversy.

In these consolidated petitions filed under Rule 65, petitioners question the constitutionality of (i) Republic Act No. 10533, otherwise known as the Enhanced Basic Education Act of 2013, (ii) Republic Act No. 10157, otherwise known as the Kindergarten Education Act, and (iii) related issuances implementing these laws issued by the Department of Education, Commission on Higher Education, Department of Labor and Employment, and Technical Education and Skills Development Authority.

The Enhanced Basic Education Act mandates a basic education program (K-12 program) that is composed of "at least one (1) year of kindergarten education, six (6) years of elementary education, and six (6) years of secondary education, in that sequence."[1]

In G.R. No. 216930, petitioner Council of Teachers and Staff of Colleges and Universities of the Philippines (COTESCUP) with several other groups and individuals filed a Petition for Certiorari[2] to represent the faculty and staff of colleges and universities in the Philippines. They allege that respondents committed grave abuse of discretion, causing them and their members serious, grave, and irreparable injury because the assailed laws and issuances will cause massive displacement of faculty and non-academic personnel of higher education institutions. They claim that exceptional and compelling circumstances are present for this Court to take cognizance of the instant case. Moreover, they argue that they did not violate

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[1] Rep. Act No. 10533, Sec. 4.

[2] *Rollo* (G.R. No. 216930), pp. 7-37.

the rule on third-party standing because they are challenging the law on its face for being overbroad and vague.[3]

In G.R. No. 218465, petitioners Spouses Ma. Dolores M. Brillantes and Severo L. Brillantes, together with the Officers of the Manila Science High School Faculty and Employees Club and several other individuals, filed a class suit through a Petition for Certiorari, Prohibition, and Mandamus.[4] This Petition was filed on behalf of students, parents, and teachers of Manila Science High School and of other students, parents, and teachers in the Philippines who are similarly situated and who share a common interest with them but are too numerous that it is impracticable to join them as parties.[5] They claim to have already suffered an injury in the implementation of Republic Act No. 10533 and Department of Education Order No. 31, series of 2012 considering that Manila Science High School has already adopted the K-12 Program beginning school year 2012-2013 and is requiring its students to attend two (2) more additional years of senior high school starting school year 2016-2017.[6] Furthermore, they contend that students have been unable to take entrance exams for colleges and universities because of the implementation of the law and Department Order.[7] They further invoke that there are exceptional and compelling reasons for this Court to take cognizance of this case, alleging that the law has far-reaching implications which must be treated with extreme urgency.[8]

In G.R. No. 218123, petitioners Congressman Antonio Tinio with several individuals filed a taxpayer's suit and a concerned citizens' suit through a Petition for Certiorari, Prohibition, and

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[3] *Id*. at 1951.

[4] *Rollo* (G.R. No. 218465), pp. 3-45.

[5] *Id*. at 1306-1358.

[6] *Id*. at 1306.

[7] *Id*. at 1308.

[8] *Id*.

Mandamus,[9] alleging that Republic Act No. 10533 is unconstitutional and that the instant case is justiciable because respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in its legislation and implementation.[10] They contend that grave injustice and irreparable violations of the Constitution and of the rights of the Filipino people were committed, and that the issues in this case are of transcendental importance.[11] They point to actual, ongoing, and foreseen damages caused to children, parents, and education workers caused by the implementation of Republic Act No. 10533.[12] Thus, they further file this case as a class action on behalf of:

> (1) all Filipino children - of the current generation and those yet to come- who will be forced to undergo a new yet unconstitutional educational structure, and choose between paying for more just to go on to senior high school or drop out of school altogether; (2) all parents who will have to spend more for just the basic education of their children; (3) tens of thousands of professors and tertiary-level non-teaching staff who will be displaced as result of a new general education curriculum (GEC) necessitated by RA 10533, and (4) all Filipino citizens who live under and abide by the 1987 Constitution, expecting of an education system that is designed to answer their aspirations and needs.[13]

In G.R. No. 218098, petitioner Richard Troy A. Colmenares (Colmenares) filed a Petition for Certiorari, Prohibition, and Mandamus[14] in his capacity as a citizen, invoking strong public interest and transcendental importance. Petitioners Kathlea Francynn Gawani D. Yañgot and several others filed the Petition as a class suit on behalf of others who stand to suffer a direct

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[9] *Rollo* (G.R. No. 218123), pp. 3-92.

[10] *Id*. at 1290.

[11] *Id*. at 1246.

[12] *Id*. at 1293.

[13] *Id*. at 1247.

[14] *Rollo* (G.R. No. 218098), pp. 3-61.

injury from the implementation of the K-12 Program. Petitioners Rene Luis Tadle and others filed the Petition in their capacities as taxpayers, concerned with illegal and improper disbursement of public funds in the implementation of the assailed law and issuances.[15] In their Memorandum, petitioners no longer discussed the issue of justiciability or standing, except to say that the question of whether the enrolled bill doctrine that applies is a justiciable one.

In G.R. No. 218045, petitioners Eduardo R. Alicias, Jr. (Alicias) and Aurelio P. Ramos, Jr. filed a Petition to Declare Unconstitutional, Null, Void and Invalid Certain Provisions of Republic Act No. 10533 and Related Department of Education Implementing Rules and Regulations, Guidelines, or Orders, in their capacities as citizens, taxpayers, parents, and educators.[16]

They primarily assail the provisions that state that the schools' medium of instruction, teaching materials, and assessment shall be in the learners' regional or native tongue for kindergarten and the first three (3) years of elementary education.[17] However, in their Memorandum, they neither discussed their standing to file their Petition nor showed the actual case or controversy from which they are basing their Petition. They simply proceeded to discuss their arguments, stating that their claims are based on undisputed scientific findings as found in Alicias' published research study entitled *The Underlying Science, the Utility of Acquiring Early English Proficiency: The Flawed Mother Tongue-based Multilingual Education Policy*.[18]

In G.R. No. 217752, petitioners Antonio "Sonny" Trillanes IV, Gary C. Alejano, and Francisco Ashley L. Acedillo filed a Petition to Declare Republic Act No. 10533 as Unconstitutional and/or Illegal, in their capacities as citizens, taxpayers, members of Congress, and as parents whose children will be directly or

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[15] *Ponencia*, p. 20.

[16] *Rollo* (G.R. No. 218045), pp. 3-22.

[17] *Id*. at 879.

[18] *Id*. at 882.

indirectly affected by Republic Act No. 10533.[19] They likewise sue in their capacities as elected representatives of the youth and urban poor, and of students, parents, teachers and non-academic personnel affected by the law, who approached them and requested them to intervene in their behalf.[20]

They raise the national interest, the sanctity of the Constitution, and the system of checks and balances in the government in asking this Court to exercise its power of judicial review.[21]

In G.R. No. 217451, petitioners Dr. Bienvenido Lumbera with several other faculty and staff of colleges and universities in the Philippines filed a Petition for Certiorari and Prohibition, alleging that they stand to suffer direct injury from the implementation of the assailed issuances. Congressman Antonio Tinio and other party-list representatives also filed the Petition in their capacities as members of the Congress, as taxpayers, and concerned citizens.[22]

To oppose these Petitions, private respondent Miriam College filed its Comment/Opposition in G.R. No. 216930, alleging that the Petitions do not involve an actual case or controversy.[23]

It claims that the Petitions raise abstract propositions or speculations not appropriate for judicial review. It argues that the massive displacement of workers is only a theory, and that the implementing agencies already provided for programs for affected faculty members including scholarships for graduate studies and Development Grants. It maintains that it is also an unsupported speculation that Republic Act No. 10533 violates the right to quality education. It likewise contends that the K-12 Program has already been implemented since 2013, and thus, declaring it as unconstitutional would greatly prejudice students

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[19] *Rollo* (G.R. No. 218123), p. 1401.

[20] *Id*. at 1401-1402.

[21] *Id*. at 1403.

[22] *Ponencia,* pp. 20-21.

[23] *Rollo* (G.R. No. 218045), p. 883.

who will finish junior high school and have been prepared for senior high school, not for college.[24]

Miriam College further points that no actual case or controversy exists on the lack of publication of the internal Department of Education Guidelines because these issuances are not required to be published to be valid.[25] They are mere internal policies that do not create new regulations or rights other than those provided by law or administrative issuances.[26] It does not restrict or regulate the public's conduct.[27]

Miriam College also argues that petitioners do not have *locus standi*.[28]

It contends that petitioners corporations and labor organizations do not have the required interest because the basis of their claims stems from the alleged violation of a constitutional right of a third party. It argues that only professors teaching in the first- and second-year levels of college would be affected by the implementation of Republic Act No. 10533.[29]

It asserts that Rebecca T. Añonuevo, Flordeliz Abanto, Maria Rita Reyes Cucio, and Jomel General also failed to show a personal and direct injury. It argued that a general interest common to their organization's members is not sufficient.[30]

It posits that students Kathlea Francynn Gawani Yañgot, Miel Alexandre Taggaoa, and Agatha Zita Distor failed to show the personal or direct injury that they would sustain in spending two (2) more years in high school.[31]

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[24] *Id*. at 884.

[25] *Id*.

[26] *Id*. at 885.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 887.

[30] *Id*.

[31] *Id*.

It claims that Colmenares' filing by way of *actio popularis* shows that he is filing based on the right of each individual citizen to initiate abstract review regardless of the latter's specific legal interest in the case. Thus, it contradicts having a real interest in the case.[32]

It alleges that Vittorio Jerico L. Cawis, representing his 7-month-old daughter Eleannie Jercece Cawis, failed to show the latter's injury in being required to enter kindergarten before entering Grade 1.[33]

It further points that petitioners corporations, namely, COTESCUP, Federation of Free Workers, Public Services Labor Independent Confederation, Far Eastern University Faculty, Adamson University Faculty and Employees Association, Faculty Allied and Worker Union of Centro Escolar University, Faculty Association Mapua Institute of Technology, Lyceum Faculty Association, San Beda College Alabang Employees Association, University of the East Ramon Magsaysay Employees Association-Federation of Free Workers, University of Santo Tomas Faculty Union, Holy Angel University Teachers and Employees Union, Silliman University Faculty Association, and Union of Faculty and Employees of St. Louis University do not have proper authority from their respective Board of Directors or Trustees to institute their Petition.[34] Thus, they have no authority to litigate on behalf of their corporations.[35]

It argues that the representatives of these corporations "cannot arrogate unto themselves the power to represent and sign on behalf of the corporation" because "corporate acts can only be realized through its board of directors/trustees."[36]

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[32] *Id*.

[33] *Id*. at 888.

[34] *Id*. at 889.

[35] *Id*. at 890.

[36] *Id*. at 889.

On the other hand, the Office of the Solicitor General argues that the Petitions do not raise justiciable issues considering that they raise purely political questions that delve into the wisdom of the law.[37] It claims that the requirement of an actual case or controversy also means that the issue must be susceptible of judicial resolution.[38] It emphasizes that the issues raised by petitioners question the wisdom of the adoption of an integrated education program, which is within the authority of the legislature.[39]

The Office of the Solicitor General further asserts that, even assuming that the Petitions do not raise purely political questions, this Court cannot supplant the acts of the other branches of the government. Its role is limited to determining whether the other branches of the government acted beyond the limits allowed by the Constitution.[40]

The ponencia states that there is an actual case or controversy in this case because the assailed laws and executive issuances have already taken effect, and that petitioners are directly and considerably affected by their implementation.[41]

It also states that petitioners have sufficient legal interests considering that they are "concerned citizens asserting a public right,"[42] and that the instant cases involve issues on education which the State is constitutionally mandated to promote and protect.

I write this opinion to stress that for this Court to exercise its power of judicial review, it is not enough that a law or regulation is enacted. There must first be an actual case or controversy, that is, an act of implementation affecting another before this Court may take cognizance of the case.

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[37] *Rollo* (G.R. No. 216930), p. 1953.

[38] *Id*. at 1954.

[39] *Id*. at 1957.

[40] *Id*. at 1958.

[41] *Ponencia*, p. 26.

[42] *Id*. at 27.

The following are the requisites for this Court to take cognizance of a petition questioning the constitutionality of a law: first, there must be an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have *locus standi*; third, the constitutionality of the law or provision in question must be raised at the earliest opportunity; and finally, resolving the constitutionality issue must be essential to the disposition of the case.[43]

I

An actual case or controversy is the first requisite.

Article VIII, Section 1 of the 1987 Constitution states that the exercise of judicial power involves the settling of *actual controversies* that involve *legally demandable and enforceable rights*:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle *actual controversies involving rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

An actual case or controversy means that there is a "conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution."[44] There is said to be a justiciable case or controversy if there is a definite and concrete conflict involving the legal relations of parties who have clashing legal interests.[45]

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[43] *Levy Macasiano v. National Housing Authority*, 296 Phil. 56, 63-64 (1993) [Per *C.J.* Davide, Jr., *En Banc*].

[44] *Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281, 304 (2005) [Per *C.J.* Panganiban, *En Banc*].

[45] *Id.*

If the conflict is merely conjectural or anticipatory, the case is not ripe for judicial determination.[46] As this Court explained in *Information Technology Foundation of the Philippines v. COMELEC*:[47]

> It is well-established in this jurisdiction that ". . . for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice .... [C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging." The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show *an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other*; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an *actual and substantial controversy admitting of specific relief through a decree conclusive in nature*, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[48] (Citations omitted)

Thus, allegations of abuse or violations of constitutional or legal rights must be anchored on *real* acts, as opposed to possible, hypothetical, conjectural ones. There must first be an act *against another*, which the latter claims is violative of a particular right or is injurious to it, while the other claims that the act is done within the limitations of the law. If an act is not yet performed, there is no actual case or controversy. In *Lozano v. Nograles*,[49] this Court explained:

> An aspect of the "case-or-controversy" requirement is the requisite of "**ripeness**". In the United States, courts are centrally concerned

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[46] *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per *J.* Carpio-Morales, *En Banc*].

[47] 499 Phil. 281 (2005) [Per *C.J.* Panganiban, *En Banc*].

[48] *Id*. at 304.

[49] 607 Phil. 334 (2009) [Per *C.J.* Puno, *En Banc*].

with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of *actual injury* to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a *direct adverse effect* on the individual challenging it. An alternative road to review similarly taken would be to determine whether an *action has already been accomplished or performed by a branch of government before the courts may step in*.[50] (Emphasis supplied, citations omitted)

The rationale for requiring an actual case or controversy is partly to respect the principle of separation of powers. The courts must avoid delving into the wisdom, justice, or expediency of executive acts and legislative enactment. In *Angara v. Electoral Commission*:[51]

[T]his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the governments.[52]

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[50] *Id*. at 341.

[51] 63 Phil. 139 (1936) [Per *J*. Laurel, *En Banc*].

[52] *Id*. at 158-159.

In *Garcia v. Executive Secretary*,[53] this Court ruled that the Judiciary must avoid ruling on questions of policy or wisdom.

The petition fails to satisfy the very first of these requirements — the existence of an actual case or controversy calling for the exercise of judicial power. An actual case or controversy is one that involves a conflict of legal rights, an assertion of opposite legal claims *susceptible of judicial resolution*; ***the case must not be*** moot or academic or *based on extra-legal or other similar considerations not cognizable by a court of justice*. Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of review; more importantly, the issue involved must be susceptible of judicial determination. Excluded from these are questions of policy or wisdom, otherwise referred to as political questions:

> As *Tañada v. Cuenco* puts it, political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which *full discretionary authority has been delegated to the legislative or executive branch of government*." Thus,*if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question*. In the classic formulation of Justice Brennan in *Baker v. Carr*, "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or *a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion*; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."
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> . . . . . .

[53] 602 Phil. 64 (2009) [Per *J.* Brion, *En Banc*].

Stripped to its core, what petitioner Garcia raises as an issue is the propriety of immediately and fully deregulating the oil industry. Such determination essentially dwells on the soundness or wisdom of the timing and manner of the deregulation Congress wants to implement through R.A. No. 8497. Quite clearly, the issue is not for us to resolve; we cannot rule on when and to what extent deregulation should take place without passing upon the wisdom of the policy of deregulation that Congress has decided upon. To use the words of *Baker v. Carr*, the ruling that petitioner Garcia asks requires "*an initial policy determination of a kind clearly for non-judicial discretion*"; the branch of government that was given by the people the full discretionary authority to formulate the policy is the legislative department.

. . . . . .

Petitioner Garcia's thesis readily reveals the political, hence, non-justiciable, nature of his petition; the choice of undertaking full or partial deregulation is not for this Court to make.[54] (Emphasis in the original citations omitted)

The other rationale for requiring an actual case or controversy is to avoid rendering merely advisory opinions on legislative or executive acts. Article 8 of the Civil Code states that judicial decisions interpreting the laws and the Constitution are part of the legal system. It is the courts' duty "to make a final and binding construction of law."[55] Absent an actual case or controversy, courts merely answer legal questions with no actual effect on any person, place, or thing affecting the import of its issuances. In my concurring opinion in *Belgica, et al. v. Ochoa*:[56]

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do

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[54] *Id*. at 73-76.

[55] Concurring Opinion of *J*. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

[56] 721 Phil. 416 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.

The requirement of an "actual case," thus, means that the case before this Court "involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice." Furthermore, "the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests." Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.

The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.[57] (Citations omitted)

Moreover, should the courts be asked to provide answers to hypothetical or conjectural situations, their discretion and scope may be unrestricted and done without any consideration of arguments of actual affected parties. If they rule on these hypothetical situations, future parties who could argue differently

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[57] *Id*. at 661-662.

would not be able to present their claims on the law being interpreted. They will simply be limited by the Court's rulings on the hypothetical cases.

In *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:[58]

An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text*.[59] (Emphasis in the original)

Similarly in *Spouses Imbong v. Ochoa, Jr.*,[60] I had the opportunity to point out:

The term justiciability refers to the dual limitation of only considering in an adversarial context the questions presented before courts, and in the process, the courts' duty to respect its co-equal branches of government's powers and prerogatives under the doctrine of separation of powers.

There is a case or controversy when there is a real conflict of rights or duties ***arising from actual facts***. These facts, properly established in court through evidence or judicial notice, provide the natural limitations upon judicial interpretation of the statute. When it is claimed that a statute is inconsistent with a provision of the Constitution, the meaning of a constitutional provision will be narrowly drawn.

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[58] G.R. No. 202275, July 17, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf > [Per *J.* Leonen, *En Banc*].

[59] *Id*. at 25.

[60] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.

Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.

The existence of a law or its implementing orders or a budget for its implementation is far from the requirement that there are acts or events where concrete rights or duties arise. The existence of rules do not substitute for real facts.[61] (Emphasis in the original, citation omitted)

This Court has consistently ruled that an actual case or controversy is necessary even in cases where the constitutionality of a law is being questioned. It is not enough that the statute has been passed. There must still be a real act. The law must have been implemented, and the party filing the case must have been affected by the act of implementation.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[62] this Court refused to take cognizance of a petition questioning the constitutionality of Republic Act No. 9372, finding that the possibility of abuse in its implementation is not enough, thus:

The Court is not unaware that a reasonable certainty of the occurrence of a *perceived threat* to any constitutional interest suffices

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[61] *Id*. at 561-562.

[62] 646 Phil. 452 (2010) [Per *J*. Carpio-Morales].

to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be **sufficient facts** to enable the Court to intelligently adjudicate the issues.

[H]owever, herein petitioners have failed to show that the challenged provisions of RA 9372 forbid **constitutionally protected** *conduct* or *activity* that they seek to do. No demonstrable threat has been established, much less a real and existing one.

Petitioners' obscure allegations of sporadic "surveillance" and supposedly being tagged as "communist fronts" in no way approximate a *credible threat of prosecution*. From these allegations, the Court is being lured to render an *advisory opinion*, which is not its function.

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are **merely theorized**, lie beyond judicial review for lack of ripeness.

The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle **actual controversies involving rights which are legally demandable and enforceable**.[63] (Emphasis in the original, citations omitted)

Similarly, in *Republic of the Philippines v. Herminio Harry Roque, et al.*,[64] this Court said that there is no actual case or controversy absent a showing that the government action was taken toward implementing the questioned statute against the filing party.

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left

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[63] *Id.* at 481-482.

[64] 718 Phil. 294 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere cases*, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, *private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them*. In other words, there was no particular, real or imminent threat to any of them.[65] (Emphasis supplied, citation omitted)

In *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[66] petitioners in that case questioned the constitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001, alleging that their implementation "may result in the diminution of the income of bus drivers and conductors,"[67] and that the payment scheme provided in the questioned issuances is "unfit to the nature of operation of public transport system or business."[68]

This Court dismissed the petition finding that no actual case or controversy existed, considering that the allegations were based on speculation. There was no showing either of how the regulations would result in lower income for bus drivers and conductors, or of how the new payment scheme is unfit to the nature of the business of public bus operators.

In *Philippine Press Institute, Inc. v. Commission on Elections*,[69] this Court ruled that there is no actual case or controversy as

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[65] *Id*. at 305-306.

[66] G.R. No. 202275, July 17, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf > [Per *J*. Leonen, *En Banc*].

[67] *Id*. at 27.

[68] *Id*.

[69] 314 Phil. 131 (1995) [Per *J*. Feliciano, *En Banc*].

Philippine Press Institute, Inc. failed to allege a specific act against it committed by the Commission on Elections in enforcing or implementing the questioned law such that it sustained an actual or imminent injury, thus:

> At all events, the Court is bound to note that PPI has failed to allege any specific affirmative action on the part of Comelec designed to enforce or implement Section 8. PPI has not claimed that it or any of its members has sustained actual or imminent injury by reason of Comelec action under Section 8. Put a little differently, the Court considers that the precise constitutional issue here sought to be raised . . . is not ripe for judicial review for lack of an actual case or controversy involving, as the very *lis mota* thereof, the constitutionality of Section 8.[70]

The same rule applies even though there is an allegation of grave abuse of discretion amounting to lack or excess of jurisdiction. Again, in *Spouses Imbong v. Ochoa, Jr.*,[71] I underscored:

> It is true that the present Constitution grants this court with the exercise of judicial review when the case involves the determination of "grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." This new feature of the 1987 Constitution affects our political question doctrine. It does not do away with the requirement of an actual case. The requirement of an actual case is fundamental to the nature of the judiciary.
>
> No less than Justice Vicente V. Mendoza implied that the rigorous requirement of an actual case or controversy is determinative of the nature of the judiciary. Thus:
>
> > [i]nsistence on the existence of a case or controversy before the judiciary undertakes a review of legislation gives it the opportunity, denied to the legislature, of seeing the actual operation of the statute as it is applied to actual facts and thus enables to it to reach sounder judgment.[72] (Citations omitted)

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[70] *Id*. at 148-149.

[71] 732 Phil. 1 (2014) [Per *J*. Mendoza, *En Banc*].

[72] *Id*. at 572-573.

Thus, in the case at bar, I am of the view that the same standard should be used in determining the existence of an actual case or controversy.

Several petitioners in this case have shown that the questioned laws and issuances have been enforced against them. Petitioners students, teachers, and parents have shown that they have been affected by the implementation of Republic Act No. 10533. There is likewise no denying that the questioned laws and issuances have already been enforced and implemented in schools across the Philippines. Schools have adjusted their curriculums so that they are compliant with the K-12 Program. The employments of several teachers have been affected. Parents have been paying tuition fees for the additional two (2) years of senior high school.

For the petitioners who are filing their Petitions not simply on the basis of the laws' enactment but on these laws' implementation and the alleged injuries that they incurred as a result, there is an actual case or controversy in the instant cases.

II

The second requisite for this Court to exercise its power of judicial review is that the party filing must have *locus standi* or legal standing to file the suit. In *The Provincial Bus Operators Association of the Philippines*:[73]

> Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that they have sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon

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[73] G.R. No. 202275, July 17, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf > [Per *J.* Leonen, *En Banc*].

which the court depends for illumination of difficult constitutional questions."

. . . . . .

Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.[74] (Citations omitted)

Generally, to be considered to have standing, the petitioner must be directly affected by the governmental act. However, this Court has taken cognizance of petitions even though the petitioners do not have the required personal or substantial interest because they raised "constitutional issue[s] of critical significance."[75]

Thus, this Court has taken cognizance of cases filed by taxpayers where there is a claim of an unconstitutional tax measure or illegal disbursement of public funds. It has allowed the review of cases filed by voters who have obvious interest in the validity of the questioned election law. The petitions of concerned citizens raising issues of transcendental importance have been heard by this Court. Likewise, legislators may file petitions if their prerogative as legislators has been infringed upon.[76]

In Rule 3, Section 12 of the Rules of Court, a class suit may be filed for numerous parties:

Section 12. Class suit. — When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

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[74] *Id*. at 27-28.

[75] *Funa v. Villar*, 686 Phil. 571, 585 (2012) [Per *J*. Velasco, Jr., *En Banc*].

[76] See *Funa v. Villar*, 686 Phil. 571 (2012) [Per *J*. Velasco, Jr., *En Banc*].

In my concurring opinion in *Segovia v. Climate Change Commission*,[77] I stated:

> A class suit is a specie of a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury. However, unlike representative suits, the persons instituting a class suit are themselves real parties in interest and are not suing merely as representatives. A class suit can prosper only:
>
> (a) when the subject matter of the controversy is of common or general interest to many persons;
>
> (b) when such persons are so numerous that it is impracticable to join them all as parties; and
>
> (c) when such persons are sufficiently numerous as to represent and protect fully the interests of all concerned.[78]

Thus, a class suit may be filed subject to these requisites.

This Court also allows third-party suits—cases where a party files a petition on behalf of another. However, the following requisites must be present: first,

> [T]he litigant must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute; [second,] the litigant must have a close relation to the third party; and [third,] there must exist some hindrance to the third party's ability to protect his or her own interests.[79]

This Court first allowed third-party standing in *White Light Corp., et al. v. City of Manila*.[80]

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[77] G.R. No. 211010, March 7, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/211010_leonen. pdf > [Per *J.* Caguioa, *En Banc*].

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

[79] *White Light Corp., et al. v. City of Manila*, 596 Phil. 444, 456 (2009) [Per *J.* Tinga, *En Banc*].

[80] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

In *White Light*, hotel and motel operators filed a case to stop the implementation of a Manila City Ordinance which, for the purpose of protecting morality, prohibited hotels, motels, inns, and other similar establishments in the City of Manila from allowing "short-time admission."[81] They argued that their clients' rights to privacy, freedom of movement, and equal protection of the laws were violated.[82]

This Court allowed them to sue on behalf of their clients on the basis of third-party standing, finding that all the requisites for third-party standing are present. It noted that if the Ordinance were enforced, their business interests as hotel and motel operators would be injured considering that they "rely on the patronage of their customers for their continued viability."[83] It also found that there was a hindrance for the clients to bring the suit because constitutional litigation was then silent on special interest groups that could bring those cases.

This Court has also allowed associations to file petitions on behalf of its members. In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,[84] the Pharmaceutical and Health Care Association of the Philippines filed a case on behalf of its members who were manufacturers of breastmilk substitutes to question the constitutionality of the rules implementing the Milk Code. This Court found that "an association has the legal personality to represent its members because the results of the case will affect their vital interests."[85] It further noted that the amended articles of incorporation of

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[81] *Id*. at 450. Under the questioned Ordinance, short-time admissions mean "admittance and charging of room rate for less than twelve (12) hours at any given time or the renting out of rooms more than twice a day or any other term that may be concocted by owners or managers of said establishments but would mean the same or would bear the same meaning."

[82] *Id*. at 454.

[83] *Id*. at 456.

[84] 561 Phil. 386 (2007) [Per *J*. Austria-Martinez, *En Banc*].

[85] *Id*. at 396.

the association stated that it was "to represent directly or through approved representatives the pharmaceutical and health care industry before the Philippine Government and any of its agencies, the medical professions and the general public."[86] Thus:

> This [modern] view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.
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> . . . . . .
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> . . . We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.[87] (Citation omitted)

In *Executive Secretary v. The Hon. Court of Appeals*,[88] Asian Recruitment Council Philippine Chapter, Inc. filed a petition for declaratory relief on behalf of its member recruitment agencies for this Court to declare certain provisions of Republic Act No. 8042 unconstitutional. This Court recognized the standing of the association, noting that it proved that its individual members authorized it to sue on their behalf through board resolutions. It held that Asian Recruitment Council Philippine Chapter, Inc. was able to show that it was the medium used by its members to effectively communicate their grievances.

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[86] *Id.*

[87] *Id.* at 395-396.

[88] 473 Phil. 27 (2004) [Per *J.* Callejo, Sr., Second Division].

However, not all associations are allowed to file a suit with third-party standing. This is still always subject to the requisites laid down in jurisprudence. In *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment,*[89] this Court did not allow the association to represent its members because it failed to establish who their members were and if their members allowed them to sue on their behalf. There was no evidence of board resolutions or articles of incorporation. This Court noted that some of the petitioners in that case even had their certificates of incorporation revoked by the Securities and Exchange Commission. It was not enough that they alleged that they were an association that represented members who would be directly injured by the implementation of a law, thus:

> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.
>
> In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.
>
> Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.
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> In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate

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[89] G.R. No. 202275, July 17, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf > [Per *J.* Leonen, *En Banc*].

reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—i.e., the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.[90] (Citation omitted)

Thus, associations are allowed to sue on behalf of their members if it is sufficiently established who their members are, that their members authorized them to sue on their behalf, and that they would be directly injured by the challenged governmental acts.

In the present Petitions, petitioners' legal standing should be determined by considering the enumerated requisites.

Petitioners associations and organizations should prove that they were authorized by their members to file the present cases through board resolutions or through their articles of incorporation. They should explain their own injury that is caused or will be caused by the questioned laws and issuances. They should state why their members are prevented from protecting their own interests.

Alleging the transcendental importance of issues is not enough. In *The Provincial Bus Operators Association of the Philippines*:[91]

In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.

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[90] *Id.* at 32-33.

[91] G.R. No. 202275, July 17, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf > [Per *J.* Leonen, *En Banc*].

Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent. For instance, in *The Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, the association was allowed to file on behalf of its members considering the importance of the issue involved, i.e., the constitutionality of agrarian reform measures, specifically, of then newly enacted Comprehensive Agrarian Reform Law.

This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.

. . . . . .

Again, the reasons cited—the "far-reaching consequences" and "wide area of coverage and extent of effect" of Department Order No. 118-12 and Memorandum Circular No. 2012-001—are reasons not transcendent considering that most administrative issuances of the national government are of wide coverage. These reasons are not special reasons for this Court to brush aside the requirement of legal standing.[92] (Citations omitted)

The following are the factors that determine if an issue is of transcendental importance.

(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[93] (Citation omitted)

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[92] *Id.* at 33-34.

[93] *Francisco v. House of Representatives*, 460 Phil. 830, 899 (2003) [Per *J.* Carpio-Morales, *En Banc*].

Moreover, there must also be a showing of a "clear or imminent threat to fundamental rights" and of "proper parties suffering real, actual or more imminent injury."[94]

Several of the petitioners in these cases are organizations representing faculty and staff of colleges and universities in the Philippines.

Thus, petitioners' legal standing should be determined by considering the abovementioned requisites.

I note that petitioners organizations and associations in G.R. No. 216930 argue that they did not violate the rule on third-party standing because they are challenging Republic Act No. 10533 and House Bill No. 5493 *on its face* for being overbroad and vague.[95]

However, in my Dissenting Opinion in *Spouses Imbong v. Ochoa, Jr.*,[96] I discussed:

> The prevailing doctrine today is that:
>
> a facial challenge only applies to cases where the free speech and its cognates are asserted before the court. While as a general rule penal statutes cannot be subjected to facial attacks, a provision in a statute can be struck down as unconstitutional when there is a clear showing that there is an imminent possibility that its broad language will allow ordinary law enforcement to cause prior restraints of speech and the value of that speech is such that its absence will be socially irreparable.
>
> Broken down into its elements, a facial review should only be allowed when:
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> First, the ground for the challenge of the provision in the statute is that it violates freedom of expression or any of its cognates;

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[94] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, 751 Phil. 30, 44-45 (2015) [Per *J.* Leonen, *En Banc*].

[95] *Rollo* (G.R. No. 218123), p. 951.

[96] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

> Second, the language in the statute is impermissibly vague;
>
> Third, the vagueness in the text of the statute in question allows for an interpretation that will allow prior restraints;
>
> Fourth, the "chilling effect" is not simply because the provision is found in a penal statute but because there can be a clear showing that there are special circumstances which show the imminence that the provision will be invoked by law enforcers;
>
> Fifth, the application of the provision in question will entail prior restraints; and
>
> Sixth, the value of the speech that will be restrained is such that its absence will be socially irreparable. This will necessarily mean balancing between the state interests protected by the regulation and the value of the speech excluded from society.

Facial challenges can only be raised on the basis of overbreadth and not on vagueness. *Southern Hemisphere* demonstrated how vagueness relates to violations of due process rights, whereas facial challenges are raised on the basis of overbreadth and limited to the realm of freedom of expression.[97]

I find that these present Petitions do not justify a facial review of the assailed laws. Petitioners organizations and associations should have complied with the requirements of third-party standing.

III

Finally, I note that several issues raised in these Petitions pertain to different constitutional matters: education, language, and labor. Several petitioners are invoking the right of citizens to quality education. Some are alleging a violation of the constitutional provisions on language. Others are raising labor issues as a result of the implementation of the assailed laws.

While these Petitions involve one (1) particular act of legislation, petitioners raise different constitutional issues, the

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[97] *Id*. at 583-584.

rulings of which involve different resolutions. Petitioners raise questions on justiciability, equal protection, police power, non-self-executing provisions, and state policies on labor, education, and language. The practice of this Court of consolidating the issues under the same law results in cases being tackled based on the subject matter, instead of based on the issues involved. This leads to a shotgun approach in addressing constitutional issues which actually warrant a more in-depth discussion by this Court so as not to compromise the interpretation of principles laid out in laws and jurisprudence.

Hence, I am of the opinion that the consolidation of Petitions should only be done in case the matter involves the same constitutional issues. Defining constitutional issues must be more narrowly tailored so that the decisions of this Court are not to be a catch-all ruling on the validity of the law, but rather an in-depth ruling on the validity of the provisions of the law. This is likewise consistent with the presumption of constitutionality of acts of legislation.

IV

I note that the ponencia cites the Constitutional Commission's deliberations on Article XIV, Section 6 on the use of the Filipino language as a medium of instruction as one of its bases for denying the Petitions.[98] It discusses that based on the deliberations, the framers did not intend to limit the primary media of instruction to only Filipino and English.[99]

It further notes the deliberations of the Constitutional Commission on Article XIV, Sections 3(1),[100] 4(1),[101] and 4(2).[102]

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[98] *Ponencia*, pp. 40 and 52.

[99] *Id*. at 54.

[100] CONST., Art. XIV, Sec. 3(1) reads:

Section 3. (1) All educational institutions shall include the study of the Constitution as part of the curricula.

[101] CONST., Art. XIV, Sec. 4(1) reads:

It finds that the framers intended that the study of the Constitution in all educational institutions be constitutionally mandated.[103] It also considers the framers' discussions on the State's power of supervision over private schools.[104]

While I concur in the result, I maintain that the discussions of the Constitutional Commission should not be considered in determining the rights and reliefs of the parties.

In *David v. Senate Electoral Tribunal,*[105] this Court discussed that looking into the intent of the framers of the Constitution allows for great inaccuracy:

> In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach.

Section 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

[102] CONST., Art. XIV, Sec. 4(2) reads:

Section 4. . . .   .

(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. The control and administration of educational institutions shall be vested in citizens of the Philippines. No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

[103] *Ponencia*, p. 59.

[104] *Id*. at 70.

[105] G.R. No. 221538, September 20, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/221538.pdf > [Per *J*. Leonen, *En Banc*].

These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.

Moreover, the original intent of the framers of the Constitution is not always uniform with the original understanding of the People who ratified it. In *Civil Liberties Union:*

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave the instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face. *The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof.*[106] (Emphasis in the original, citation omitted)

The recorded deliberations may not have covered all opinions and intents of all framers at that time. It only reveals those opinions or intents that have been vocalized. Therefore, basing decisions on what has been recorded in the deliberations may allow for misinterpretations of the constitutional text.

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

I find that it is best to presume that the intent of the framers has been expressed in the text of the Constitution itself. Had the framers intended to include in the Constitution what has been expressed in the deliberations, they would have expressly provided for it in the Constitution itself.

In any case, the deliberations do not necessarily reflect the views of all citizens who approved the Constitution. Hence, it is better to construe its text in the context of how it is understood by those who adopted it.

In my opinion in *Spouses Imbong v. Ochoa, Jr.*,[107] I expressed:

> ***The meaning of constitutional provisions should be determined from a contemporary reading of the text in relation to the other provisions of the entire document. We must assume that the authors intended the words to be read by generations who will have to live with the consequences of the provisions. The authors were not only the members of the Constitutional Commission but all those who participated in its ratification. Definitely, the ideas and opinions exchanged by a few of its commissioners should not be presumed to be the opinions of all of them. The result of the deliberations of the Commission resulted in a specific text, and it is that specific text — and only that text — which we must read and construe.***
>
> The preamble establishes that the "sovereign Filipino people" continue to "ordain and promulgate" the Constitution. The principle that "sovereignty resides in the people and all government authority emanates from them" is not hollow. Sovereign authority cannot be undermined by the ideas of a few Constitutional Commissioners participating in a forum in 1986 as against the realities that our people have to face in the present.[108] (Emphasis in the original, citation omitted)

Furthermore, the Constitutional Commissioners' factual assertions are not always correct. This was shown in their discussions on the right to life when they were formulating Article II, Section 12 of the Constitution. Not only were their

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[107] 732 Phil. 1 (2014) [Per *J*. Mendoza, *En Banc*].

[108] *Id*. at 597.

opinions and theories different, but new discoveries in science, varying studies in the field of medicine, and theories of different religions have contradicted several key points made during the deliberations.[109]

Resorting to the deliberations should be done as a last option, only when other methods to interpret the constitutional text have failed.

In the present cases, I find that the constitutional text is clear in its meaning, and consulting the deliberations of the Constitutional Commission was not necessary to rule on the Petitions.

V

I further note that the ponencia identifies several provisions of the Constitution as non-self-executing, namely: (i) Article XIV, Sections 1[110] and 2[111] on the right of all citizens to quality education, relevant to the needs of the people; (ii) Article XIV, Section 6[112] on the use of the Filipino language as a medium of

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[109] See Dissenting Opinion of *J.* Leonen in *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 554-666 [Per *J.* Mendoza, *En Banc*].

[110] CONST., Art. XIV, Sec. 1 reads:

Section 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

[111] CONST., Art. XIV, Sec. 2(1) reads:

Section 2. The State shall: (1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society[.]

[112] CONST., Art. XIV, Sec. 6 reads:

Section 6. The national language of the Philippines is Filipino. As it evolves, it shall be further developed and enriched on the basis of existing Philippine and other languages.

Subject to provisions of law and as the Congress may deem appropriate, the Government shall take steps to initiate and sustain the use of Filipino

instruction; and (iii) Article XIII, Section 3[113] on the protection of labor and security of tenure.[114]

The ponencia suggests that these are not self-executory provisions, and therefore, petitioners in these cases cannot use them as bases for claiming that Republic Act No. 10533 violated their rights. It maintains that these provisions are not a source of rights or obligations, and are mere policies which may be used as aids in the exercise of judicial review or in the enactment of laws.[115]

I reiterate my opinion in *Knights of Rizal v. DMCI Homes, Inc*.[116] and maintain that all provisions of the Constitution are self-executing:

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as a medium of official communication and as language of instruction in the educational system.

[113] CONST., Art. XIII, Sec. 3 reads:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[114] *Ponencia*, pp. 40, 43, 68, and 72.

[115] *Id*. at 45.

[116] G.R. No. 213948, April 25, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/213948.pdf > [Per *J*. Carpio, *En Banc*].

It is argued that Sections 15 and 16, Article XIV of the Constitution are not self-executing provisions and, therefore, cannot be made basis to stop the construction of Torre de Manila. The dissenting opinion considers that Sections 15 and 16 "do not create any judicially enforceable right and obligation for the preservation, protection or conservation of the "prominence, dominance, vista points, vista corridors, sightlines and setting of the Rizal Park and the Rizal Monument." It adds that Sections 15 and 16 are "mere statements of principles and policy" and that "[t]he constitutional exhortation to 'conserve, promote, and popularize the nation's historical and cultural heritage and resources' lacks 'specific, operable norms and standards' by which to guide its enforcement."

. . . .

I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.

A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation." It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected." "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action," the provision is self-executing.

On the other hand, if the provision "lays down a general principle," or an enabling legislation is needed to implement the provision, it is not self-executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

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There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non-self executing." Rather, the value of each provision is implicit in their normative content.[117] (Citations omitted)

All constitutional provisions are self-executory, imperative, and must be complied with. While statements of policies and principles are frameworks for the appropriate government branches to follow, they do not affect their fundamentality and authority as a constitutional provision. I find that the distinction between self-executing provisions and non-self-executing provisions of the Constitution should be abandoned.

In any case, I agree that these provisions are not sufficient legal bases for finding the questioned laws and issuances unconstitutional. There is nothing in the text of the questioned laws or of the related issuances that contravene the said provisions. Likewise, these provisions cover a scope of standards that are too general such that courts cannot grant a specific relief to petitioners. To attempt to grant a relief based on the provisions would encroach on the policy-making powers of the legislative and executive branches.

ACCORDINGLY, I concur with the ponencia.

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[117] Concurring Opinion of Justice M.V. F. Leonen in *Knights of Rizal v. DMCI Homes, Inc*., G.R. No. 213948, April 25, 2017 < http://sc. judiciary. gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/213948_ leonen.pdf > 11-13 [Per *J*. Carpio, *En Banc*].

SECOND DIVISION

[A.C. No. 12146. October 10, 2018]
(Formerly CBD Case No. 13-4040)

CARLOS V. LOPEZ, *complainant, vs.* **ATTY. MILAGROS ISABEL A. CRISTOBAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR A GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES; VIOLATED IN CASE AT BAR.— Atty. Cristobal's failure to file the required position paper and her failure to properly withdraw from the case reveals Atty. Cristobal's failure to live up to her duties as a lawyer in consonance with the strictures of her oath and the Code of Professional Responsibility (CPR). The acts committed by Atty. Cristobal thus fall squarely within the prohibition of Rule 18.03 and 18.04 of Canon 18 (CANON 18-A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE) and Rule 22.01 of Canon 22 (CANON 22-A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES) of the CPR x x x Canon 18 clearly mandates that a lawyer is duty-bound to competently and diligently serve his client once the former takes up the latter's cause. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Hence, his neglect of a legal matter entrusted to him amounts to inexcusable negligence for which he must be administratively liable, as in this case. The Court finds no credence to Atty. Cristobal's defense that her failure to prepare and file the required position paper was justified because of Lopez' refusal to pay her attorney's fees. Rule 22.01, Canon 22 of the CPR, on the other hand, provides that an attorney may only retire from a case either by written consent of his client or by permission of the court after due notice and hearing, in which event the attorney

should see to it that the name of the new lawyer is recorded in the case. A lawyer who desires to retire from an action without the written consent of his client must file a petition for withdrawal in court. He must serve a copy of his petition upon his client and the adverse party at least three (3) days before the date set for hearing, otherwise the court may treat the application as a "mere scrap of paper."

2. ID.; ID.; ID.; ID.; ID.; PENALTY HERE INCLUDES RETURN OF THE REMAINING BALANCE OF THE UNDISPUTED ACCEPTANCE FEE.— [T]he Court finds a six-month suspension from the practice of law appropriate as penalty for Atty. Cristobal's misconduct. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement, such as the acceptance fee. Considering that Atty. Cristobal's receipt of the ₱35,000.00 (acceptance fee) remains undisputed, the Court finds the return of the remaining balance of ₱25,000.00, to be in order.

APPEARANCES OF COUNSEL

Edona Rueda Pama & Balatbat Law Office for complainant.
Paul Jomar S. Alcudia for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an administrative complaint[1] filed before the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP) by Complainant Carlos V. Lopez (Lopez) against Respondent Atty. Milagros Isabel A. Cristobal (Atty. Cristobal).

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[1] *Rollo*, pp. 2-5.

The Factual Antecedents

Lopez alleged that sometime in May 2011, he engaged the services of respondent Atty. Cristobal as his counsel in the case of *Carlo V. Lopez v. Jesus A. Manego, Peter Blair S. Agustin, and Rosalina Joson Pascual* (subject case), docketed as Civil Case No. 09-711, pending before the Regional Trial Court Branch 148 in Makati City (RTC Branch 148).

Atty. Cristobal required the payment of an acceptance fee of Thirty-Five Thousand Pesos (₱35,000.00). Lopez deposited the said amount to Atty. Cristobal's Metrobank Account No. 007-26551-3650, as evidenced by a copy of the deposit slip[2] attached to the instant Complaint.

On September 7, 2011, the RTC Branch 148 issued an Order requiring the parties to file their respective position papers in connection with the subject case.

Lopez averred that despite knowledge of the lower court's directive, Atty. Cristobal failed to file the position paper required by the lower court. Lopez also alleged that Atty. Cristobal misrepresented to him that she already filed their position paper in court.

Lopez stated in his Complaint that Atty. Cristobal also did not attend the hearings on the subject case and that she also deliberately refused to communicate with Lopez.[3]

In a letter[4] dated March 5, 2012, Lopez informed Atty. Cristobal of his decision to stop her engagement as his counsel in the subject case and demanded that Atty. Cristobal: (1) prepare and file her withdrawal of appearance in the subject case and provide Lopez with a copy thereof; (2) return the acceptance fee of Thirty-Five Thousand Pesos (₱35,000.00).[5]

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[2] *Id*. at 8.

[3] *Id*. at 3.

[4] *Id*. at 13.

[5] See *id*. at 6 and 8. The amount as stated in the Letter dated March 5, 2012 is ₱30,000.00.

Despite the written demand made by Lopez, Atty. Cristobal did not file her withdrawal as counsel of Lopez. The Branch Clerk of Court of RTC Branch 148 confirmed, in a Certification[6] dated August 30, 2012, that Atty. Cristobal had not yet filed her withdrawal of appearance as counsel of Lopez.

On December 6, 2013, Lopez filed a Verified Complaint before the CBD-IBP praying that Atty. Cristobal be disciplined.

In her Answer[7] dated May 20, 2016, Atty. Cristobal dismissed the instant complaint as completely baseless and not truthful, to wit:

> x x x. On the contrary, respondent was actually able to act as counsel for the complainant in Civil Case No. 09-711, as in fact that case was still pending when respondent eventually left her retainer with the complainant. **Whatever delays or postponements which had occurred during respondent's handling of Civil Case No. 09-711 was just the result of the usual vicissitudes of litigation and on, some occasions, due to circumstances which are sometimes beyond respondent's control.**
>
> 2. That while respondent was initially paid her attorney's fee of Php 35,000.00, what respondent had done in handling the case was more than commensurate to that fee considering the fact that:
>
> a. Respondent had actually returned the sum of Php10,000 to the complainant, as shown by the attached copies of the checks of Five Thousand Pesos (Php 5,000.00) each issued and deposited to complainant's account, marked as Annexes "A" and ["A-1"]; and
>
> b. The balance of Php25,000.00 was a measly amount considering the stature of respondent in the legal profession and that respondent had merely accommodated the complainant when she agreed to handle the case for him, as it involved different issues in different offices;
>
> c. On top of that, complainant was not conscientious and up-to-date in the payment of the attorney's fees of the

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[6] *Id*. at 14.

[7] *Id*. at 39-41.

respondent. In fact, complainant had even issued a check to respondent which he later issued an order for the bank to stop payment because he had insisted on bargaining for the fees that respondent was asking for. Attached is a copy of the check issued by the complainant which he had issued a stop payment order for, and an email from the respondent telling the complainant that she does not want to bargain for the services she will be rendering, marked as Annex "B" and "C";

3. Due to the above considerations, the return by the respondent of the sum of Php10,000.00 was enough to compensate for whatever delays in the litigation of Civil Case No. 09-711 taking into consideration the amount of actual legal work performed by the respondent, the nature and difficulty of the case and respondent's stature in the legal profession.

4. While in the latter stage of the legal retainer of the respondent with the complainant, the former was already finding it difficult to accommodate and attend all the scheduled hearings of complainant's case because of her ever increasing legal obligations with other clients and other work commitments; however, there was no damage or prejudice caused upon the complainant at all. Actually the parting of the ways of the two was due to the irreconcilable differences between [the two].

x x x x x x x x x

6. That the case of the complainant (Civil Case No. 09-711) was not actually lost or dismissed as borne by the very documents attached to the herein complaint simply means that actually no damage or prejudice was caused upon the complainant resulting from respondent's handling of that case. Clearly, this instant disbarment complaint is just the product of an overly-complaining or overreacting litigant who himself was not blameless as to why respondent eventually left him for he was really a difficult client to deal with.[8] (Emphasis supplied)

Atty. Cristobal admitted that while she was aware of RTC Branch 148's directive to file a position paper, she did not proceed to prepare and file the said position paper on account of the

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

continued refusal of Lopez to pay her accumulated legal fees.[9] Atty. Cristobal claimed that Lopez caused payment to be stopped on a ₱27,000.00 check that he had previously issued in her favor as further payment of her legal fees. She alleged that Lopez kept insisting on bargaining for the attorney's fees that she was asking for.[10]

The IBP's Report and Recommendation

After due proceedings, Investigating Commissioner Jose Alfonso M. Gomos (Investigating Commissioner Gomos) rendered a Report and Recommendation[11] on November 25, 2016, recommending that Atty. Cristobal be suspended from the practice of law for a period of six (6) months, to wit:

> 4.7 Under the circumstances, the supposed "*continued refusal*" of the complainant "*to pay (respondent's) accumulated legal fees*" should have been a reason for her to have withdrawn from the case. The same is sanctioned under Rule 22.01 (*e*) of the Code of Professional Responsibility.
>
> 4.7.1 But Canon 22 is clear: ***A lawyer may withdraw his services only for good cause and upon notice appropriate in the circumstances.***
>
> 4.7.2 It is elementary that a lawyer who desires to retire from an action without the consent of his client must file a petition for withdrawal in court.[12] He must serve a copy of his petition for withdrawal upon his client and the adverse party.[13] He should moreover present his petition well in advance of the trial of

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[9] *Id*. at 70.

[10] *Id*. at 68.

[11] *Id*. at 100-107.

[12] See RUBEN E. AGPALO, *COMMENT ON THE CODE OF PROFESSIONAL RESPONSIBILTY AND THE CODE OF JUDICIAL CONDUCT* 376 (2004).

[13] *Id*.

the action to enable the client to secure the services of another lawyer.[14]

4.7.3 Notably, the respondent failed to observe the above procedural requirement.[15] (Emphasis and italics in the original)

Investigating Commissioner Gomos did not give credence to Atty. Cristobal's justification for her failure to prepare and file the required position paper:

4.8 Surely, the supposed refusal to pay of the complainant cannot be a justification of the respondent's failure to prepare and file the required position paper. The failure of the client to pay the agreed fees does not warrant the lawyer's abandoning his client's cause.[16] After all, once a lawyer agrees to take up the cause of the client, he owes fidelity and entire devotion to that cause.

x x x x x x x x x

4.10 Clearly, the failure of the respondent to file the required position paper of her client, and her failure to properly withdraw from the case, should render her liable.[17]

The dispositive portion of Investigating Commissioner Gomos' Report and Recommendation reads as follows:

V. RECOMMENDATION

It is, therefore, respectfully recommended that the respondent be **suspended** from the practice of law for SIX (6) months.[18] (Emphasis and italics in the original)

On June 17, 2017, the IBP Board of Governors passed a Resolution adopting and approving the findings and recommendation of Investigating Commissioner Gomos, thus:

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[14] *Id*.

[15] *Rollo*, p. 106.

[16] COMMENT ON THE CODE OF PROFESSIONAL RESPONSIBILTY AND THE CODE OF JUDICIAL CONDUCT, *supra* note 11, at 157.

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

[18] *Id*. at 107.

RESOLVED to ADOPT the findings of the fact and recommendation of the Investigating Commissioner imposing the penalty of six (6) months suspension from the practice of law.[19] (Italics in the original)

Per certification of the Office of the Bar Confidant, no motion for reconsideration or petition for review has been filed by either party as of March 20, 2018.[20]

The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court upholds the findings and recommendation of the IBP Board of Governors.

The Court agrees with the IBP Board of Governors that Atty. Cristobal's failure to file the required position paper and her failure to properly withdraw from the case reveals Atty. Cristobal's failure to live up to her duties as a lawyer in consonance with the strictures of her oath and the Code of Professional Responsibility (CPR).

The acts committed by Atty. Cristobal thus fall squarely within the prohibition of Rule 18.03 and 18.04 of Canon 18 and Rule 22.01 of Canon 22 of the CPR, which provides:

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.

x x x x x x x x x

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[19] *Id*. at 98.

[20] *Id*. at 96-A.

CANON 22— A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01.–A lawyer may withdraw his services in any of the following cases:

(a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;

(b) When the client insists the lawyer pursue conduct violative of these canons and rules;

(c) When his inability to work with co-counsel will not promote the best interest of the client;

(d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;

(e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;

(f) When the lawyer is elected or appointed to public office; and

(g) Other similar cases.

Canon 18 clearly mandates that a lawyer is duty-bound to competently and diligently serve his client once the former takes up the latter's cause. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Hence, his neglect of a legal matter entrusted to him amounts to inexcusable negligence for which he must be administratively liable,[21] as in this case. The Court finds no credence to Atty. Cristobal's defense that her failure to prepare and file the required position paper was justified because of Lopez' refusal to pay her attorney's fees.

Rule 22.01, Canon 22 of the CPR, on the other hand, provides that an attorney may only retire from a case either by written consent of his client or by permission of the court after due notice and hearing, in which event the attorney should see to it that the name of the new lawyer is recorded in the case.[22] A

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[21] *Sps. Lopez v. Atty. Limos*, 780 Phil. 113, 120 (2016).

[22] ERNESTO L. PINEDA, *LEGAL AND JUDICIAL ETHICS* 267 (1995).

lawyer who desires to retire from an action without the written consent of his client must file a petition for withdrawal in court.[23] He must serve a copy of his petition upon his client and the adverse party at least three (3) days before the date set for hearing, otherwise the court may treat the application as a "mere scrap of paper."[24]

The circumstances of the case show that Atty. Cristobal made no such move. The Court agrees with the findings of the Investigating Commissioner that Atty. Cristobal's defense of discharge as self-serving. Atty. Cristobal claimed that her return of the case records to Lopez as well as the latter's acceptance of ₱10,000.00 effectively discharged her from her obligations as counsel for complainant. The Court does not agree.

Atty. Cristobal clearly disregarded the mandate of Rule 22.01, Canon 22 of the CPR. Atty. Cristobal never sought the written consent of Lopez, his client or the permission of the court. Atty. Cristobal also did not file a petition for withdrawal in court.

Here, the circumstances of this case indubitably show that after receiving the amount of ₱35,000.00 as acceptance fee, Atty. Cristobal failed to render any legal service in relation to the case of Lopez.

The appropriate penalty on an errant lawyer requires sound judicial discretion based on the surrounding facts. In similar cases where lawyers neglected their clients' affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court meted out the penalty of suspension from the practice of law.[25]

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[23] RUBEN E. AGPALO, *LEGAL AND JUDICIAL ETHICS* 359 (7th ed., 2002), citing *In re Montagne & Dominguez*, 3 Phil. 577 (1904); see *Alcantara, Jr. v. Judge Veloso*, 159-A Phil. 988 (1975); *Intestate Estate of the Deceased Domingo, Sr. v. Aquino*, 148 Phil. 486 (1971); RULES OF COURT, Rule 138, Sec. 26.

[24] *Visitacion v. Manit*, 137 Phil. 348, 356 (1969); *G.A. Machineries, Inc. v. Januto*, 151-A Phil. 5 (1973).

[25] *Maglente v. Atty. Agcaoili, Jr.*, 756 Phil. 116 (2015).

From the foregoing, the Court finds a six-month suspension from the practice of law appropriate as penalty for Atty. Cristobal's misconduct.

While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement, such as the acceptance fee.[26] Considering that Atty. Cristobal's receipt of the ₱35,000.00 remains undisputed, the Court finds the return of the remaining balance of ₱25,000.00, to be in order.

WHEREFORE, the Court finds Atty. Milagros Isabel A. Cristobal **LIABLE** for violation of Canons 18 and 22 and Rules 18.03, 18.04 and 22.01 of the Code of Professional Responsibility and she is hereby **SUSPENDED from the practice of law for six (6) months** effective immediately upon receipt of this Decision. She is also ORDERED to RETURN to complainant Carlos V. Lopez the remaining balance of ₱25,000.00 from the ₱35,000.00 she received from the latter within ninety (90) days from receipt of this Decision. Respondent shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let all the courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

*Carpio, Senior Associate Justice (Chairperson), Perlas-Bernab*e, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr., J., on wellness leave.

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[26] *Pitcher v. Atty. Gagate*, 719 Phil. 82, 94 (2013).

SECOND DIVISION

[A.M. No. RTJ-18-2536. October 10, 2018]
(Formerly OCA IPI No. 15-4396-RTJ)

GOV. EDGARDO A. TALLADO, *complainant, vs.* **HON. WINSTON S. RACOMA, Presiding Judge, Branch 39, Regional Trial Court (RTC), Daet, Camarines Norte,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; IN THE ABSENCE OF FRAUD, DISHONESTY OR CORRUPTION, THE ACTS OF A JUDGE IN HIS JUDICIAL CAPACITY ARE NOT SUBJECT TO DISCIPLINARY ACTION.— Not every error or mistake by a judge in the performance of his official duties renders him administratively liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. The Court has ruled that "*no judge can be held administratively liable for gross misconduct, ignorance of the law, or incompetence in the adjudication of cases unless his acts constituted fraud, dishonesty or corruption; or were imbued with malice or ill-will, bad faith, or deliberate intent to do an injustice*." Additionally, the Court held in the case of *Romero v. Judge Luna*, thus: As a matter of policy[,] "an administrative case is not the [proper] remedy for every act of a judge deemed aberrant or irregular." **The administrative case cannot be used as a remedy to challenge the assailed order or decision rendered by the respondent judge nor cannot be used as a substitute for other judicial remedies. Errors committed by a judge in the exercise of adjudicative functions cannot be corrected through administrative proceedings, but should be assailed through judicial remedies.** It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened and closed.

2. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE COURT'S ORDERS TO SUBMIT THE REQUIRED COMMENT IS

A LESS SERIOUS OFFENSE; PROPER PENALTY IN CASE AT BAR AFTER CONSIDERING PREVIOUS INFRACTIONS.— The Court agrees with the OCA that Judge Racoma's failure to submit the required Comment reveals a failure to live up to the standards required of a government employee for failing to comply with the Court's orders. Section 9, Rule 140 of the Rules of Court provides that violation of Supreme Court's rules, directives and circulars is considered as a less serious offense. Since Judge Racoma has been previously found guilty of Undue Delay in the Rendition of Judgment in A.M. No. RTJ-14-2373 (formerly OCA IPI No. 10-3533-RTJ) and A.M. No. RTJ-10-2233 and has been fined in the amount of Five Thousand Pesos (₱5,000.00) in each case, the Court agrees with the OCA that a fine in the amount of Eleven Thousand Pesos (₱11,000.00) is warranted under the circumstances.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a Complaint Affidavit[1] filed before the Office of the Court Administrator (OCA) by Complainant Governor Edgardo A. Tallado (Tallado) against Respondent Judge Winston S. Racoma (Judge Racoma), Presiding Judge of the Regional Trial Court (RTC), Branch 39 in Daet, Camarines Norte, for Gross Ignorance of the Law and Procedure and violation of the Code of Judicial Conduct.

The Factual Antecedents

The instant complaint arose from the Temporary Restraining Order[2] (TRO) dated April 23, 2015 issued by Judge Racoma in favor of Mayor Agnes D. Ang (Ang), the respondent, in Civil Case No. 8080, in connection with Administrative Case No. 04-2014 entitled "*Jose T. Segundo vs. Hon. Agnes D. Ang*,"[3] for Dishonesty, Misconduct in Office, Grave Abuse of Authority

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[1] *Rollo*, pp. 1-15.

[2] *Id.* at 128-132.

[3] *Id.* at 16.

and violation of Republic Act No. (R.A.) 9184[4] and its Implementing Rules and Regulations.

On October 15, 2014, Punong Barangay Jose T. Segundo (Segundo), of Barangay Sabang, Vinzons, Camarines Norte, filed before the *Sangguniang Panlalawigan* of Camarines Norte a Verified Complaint[5] against Ang, then Municipal Mayor of Vinzons, Camarines Norte, for Dishonesty, Misconduct in Office, Grave Abuse of Authority and violation of R.A. 9184 and its Implementing Rules and Regulations. Segundo accused Ang of implementing the third phase of the rehabilitation of the seawall of Barangay Sula in Vinzons, Camarines Norte, without first complying with the requirements set forth under R.A. No. 9184 and its Implementing Rules and Regulations.

On April 14, 2015, the *Sangguniang Panlalawigan* issued Resolution No. 159-2015,[6] "*A Resolution Recommending to Honorable Governor Edgardo A. Tallado to place Mayor Agnes D. Ang under Preventive Suspension for a period not exceeding sixty (60) days from service of the Preventive Suspension Order*."[7]

On the same day, Tallado, upon receipt of a copy of the above-mentioned *Sangguniang Panlalawigan* Resolution, issued a Notice of Preventive Suspension[8] and directed Acting Provincial Warden Reynaldo N. Pajarillo to serve the same on Ang.[9] After the service of the subject Notice of Preventive Suspension on Ang, then Vice-Mayor Radames Herrera took his oath of office as Municipal Mayor of Vinzons, Camarines Norte.

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[4] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.

[5] *Rollo*, pp. 16-24.

[6] *Id*. at 75-77.

[7] *Id*.

[8] *Id*. at 78.

[9] *Id*. at 78-81.

On April 15, 2015, Ang filed before the RTC a Petition[10] for Certiorari and Prohibition under Rule 65, with Prayer for TRO/ Preliminary Injunction, entitled, "*Mayor Agnes D. Ang vs. Governor Edgardo A. Tallado, Sangguniang Panlalawigan of Camarines Norte, rep. by Vice Governor Jonah Pimentel, Jose T. Segundo and Vice Mayor Radames F. Herrera*,"[11] docketed as Civil Case No. 8080. The case was filed before the Office of the Executive Judge, Hon. Arniel A. Dating (Judge Dating), the Presiding Judge of Branch 41, RTC, Daet, Camarines Norte.

Judge Dating simultaneously issued an Order[12] denying Ang's application for a seventy-two (72) hour TRO on the ground that no factual matters were shown to prove that the preventive suspension order issued by Tallado would result in irreparable injury on the part of Ang. Judge Dating then directed that Civil Case No. 8080 be included in the regular raffle of cases.[13] Civil Case No. 8080 was thereafter raffled to Judge Racoma, who immediately issued a Notice of Hearing[14] setting the hearing on the application for TRO on April 20, 2015.

During the hearing on April 20, 2015, Tallado manifested before Judge Racoma that the respondents in Civil Case No. 8080 already performed what Ang was seeking to enjoin by way of a TRO, to wit: (a) on the part of the *Sangguniang Panlalawigan*, it had already issued Resolution No. 159-2015; (b) on the part of Tallado, the issuance of the Preventive Suspension Order against Ang; and (c) on the part of Herrera, he had already taken his oath of office as Municipal Mayor of Vinzons, Camarines Norte on April 15, 2015 and has been performing his functions as such.

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[10] *Id*. at 92-116.

[11] *Id*. at 92.

[12] *Id*. at 91.

[13] *Id*.

[14] *Id*. at 117.

On April 23, 2015, Judge Racoma issued a TRO against the respondents in Civil Case No. 8080. Judge Racoma ruled in this wise:

> x x x. Given the gravity of the charges and the complexity of the antecedent events in this case, this Court has taken a stance to maintain the status quo prior to the occurrence of the act sought to be stopped— the preventive suspension— in order to avert possible material injury on the petitioner. This preservation of status quo is deemed essential while the Court is in the process of hearing and examining more closely the issues of the case.
>
> Furthermore, **after taking into consideration the evidence so far presented by the petitioner, the Court is convinced that there is exists sufficient showing that said petitioner is bound to suffer grave irreparable injury from the implementation of the assailed preventive suspension**. Section 3 of Rule 58 of the Rules of Court states that injunctive relief may be granted if the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant. **Suspended from office, petitioner Ang is then effectively stripped of her obligation and right to carry out her mandated duty to her constituents as their elective leader, even as basis of the preventive suspension does not rest on firm grounds. What is more, the most imperative factor in this milieu is the constituents themselves.** Thus, as the Supreme Court held in the *Garcia*[15] case, "at this point **we must emphasize that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office[,]" so must this Court be guided by the same consideration in arriving at its conclusion**.[16] (Emphasis supplied)

On May 5, 2015, Tallado filed the instant Complaint against Judge Racoma, praying that Judge Racoma be disciplined. Tallado alleged that Judge Racoma violated the Judicial Affidavit Rule when he admitted in evidence the judicial affidavit[17]

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[15] 604 Phil. 677, 692 (2009).

[16] *Rollo*, p. 130.

[17] *Id*. at 118-126.

executed by Ang because the subject judicial affidavit did not have the required sworn attestation by the lawyer who assisted Ang in preparing her judicial affidavit.[18]

Tallado further averred that Judge Racoma grossly violated Section 4 (d) of Rule 58 of the Rules of Court when the latter did not allow Tallado and his co-respondents in Civil Case No. 8080 to present their evidence, despite the requests of respondents' counsels to allow them to present evidence.[19]

In addition, Tallado also claimed that Judge Racoma issued the questioned TRO without discussing the basis of its issuance. Tallado further asserted that the issuance of the subject TRO was tainted with grave abuse of discretion as it was issued capriciously, whimsically, arbitrarily, despotically and by reason of passion and prejudice towards him and the provincial government of Camarines Norte.[20]

The OCA issued 1st Indorsement[21] dated May 19, 2015, directing Judge Racoma to submit a Comment on the Complaint filed by Tallado within ten (10) days from receipt of the subject Indorsement.

On July 29, 2015, Judge Racoma filed a Motion for Extension of Time to file his Comment,[22] requesting for an additional period of twenty (20) days within which to file his Comment. The Office of the Court Administrator granted Judge Racoma's subject Motion in a Letter[23] dated August 4, 2015.

On October 20, 2015, Tallado filed a Notice of Withdrawal of Complaint[24] in view of the conciliatory efforts to bridge and

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[18] *Id*. at 7-8.

[19] *Id*. at 143.

[20] *Id*. at 9.

[21] *Id*. at 133.

[22] *Id*. at 134-135.

[23] *Id*. at 136.

[24] *Id*. at 137-138.

establish good relations with Ang for the benefit of the institutions and constituents they represent.

In a Letter[25] dated October 26, 2015, the OCA informed Tallado that his Notice of Withdrawal of Complaint cannot be given due course because "*in administrative complaints, the complainant is not given the option to withdraw once the matter has been raised before this office and/or the Court*."[26]

In view of the failure of Judge Racoma to file his Comment despite the lapse of period granted to him, the OCA issued a 1st Tracer[27] dated January 18, 2016, reiterating its directive for Judge Racoma to file his Comment within ten (10) days from receipt thereof.

As of date, Judge Racoma has yet to file his Comment on the instant Complaint.

OCA Report and Recommendation

In a Report[28] dated November 16, 2017, the OCA recommended that the administrative complaint filed by Tallado against Judge Racoma be dismissed for lack of merit. The OCA however recommended that Judge Racoma be found guilty of Insubordination, and accordingly be fined in the amount of Eleven Thousand Pesos (₱11,000.00).

The OCA found that contrary to Tallado's allegations, Judge Racoma followed the standard procedure in hearing the injunction case filed by Ang. Judge Racoma issued a Notice of Hearing[29] dated April 23, 2015, which was received by Tallado. On the scheduled hearing, Tallado was able to manifest in open court that the application for TRO filed by Ang was already overtaken

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[25] *Id*. at 139.

[26] *Id*.; italics supplied.

[27] *Id*. at 140.

[28] *Id*. at 141-147.

[29] *Id*. at 127.

by events. The OCA held that contrary to his assertions, Tallado was given the opportunity to present his evidence in court.[30]

While Tallado claimed that Judge Racoma issued the questioned TRO without any discussion on the basis of its issuance, the OCA observed that Judge Racoma gave his reasons for granting the TRO and cited jurisprudence to support his decision.[31]

In view of Tallado's failure to establish the factual and legal basis for the charges against Judge Racoma, the OCA recommended that the instant complaint be dismissed.[32]

The OCA however recommended that Judge Racoma be fined for his failure to file the required Comment as directed by the OCA, despite several opportunities given him.[33]

The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court upholds the findings and recommendation of the OCA.

The OCA correctly observed that the records of the case readily show that Judge Racoma followed the standard procedure in hearing the injunction case filed by Ang. Judge Racoma also aptly explained his legal basis for granting the TRO in his Order dated April 23, 2015. Tallado claimed that Judge Racoma misapplied the jurisprudence he cited in the subject Order.[34]

Not every error or mistake by a judge in the performance of his official duties however renders him administratively liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action.[35]

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[30] *Id*. at 143-144.

[31] *Id*. at 144.

[32] *Id*.

[33] *Id*. at 145.

[34] *Id*. at 144.

[35] *Fortune Life Insurance Co., Inc. v. Judge Luczon, Jr*., 538 Phil. 561, 570 (2006).

The Court has ruled that "*no judge can be held administratively liable for gross misconduct, ignorance of the law, or incompetence in the adjudication of cases unless his acts constituted fraud, dishonesty or corruption; or were imbued with malice or ill-will, bad faith, or deliberate intent to do an injustice*."[36]

Additionally, the Court held in the case of *Romero v. Judge Luna*,[37] thus:

> As a matter of policy[,] "an administrative case is not the [proper] remedy for every act of a judge deemed aberrant or irregular." **The administrative case cannot be used as a remedy to challenge the assailed order or decision rendered by the respondent judge nor cannot be used as a substitute for other judicial remedies. Errors committed by a judge in the exercise of adjudicative functions cannot be corrected through administrative proceedings, but should be assailed through judicial remedies.** It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened and closed.[38] (Emphasis supplied)

In this case, there was no evidence to show that Judge Racoma was motivated by bad faith, fraud, or corruption when he granted the prayer for the issuance of a TRO.

Considering the circumstances of this case and the lack of malice and bad faith on the part of Judge Racoma, the administrative complaint against Judge Racoma is dismissed for lack of merit.

The Court however agrees with the OCA that Judge Racoma's failure to submit the required Comment reveals a failure to

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[36] *Chua v. Judge Madrona*, 742 Phil. 98, 112 (2014); italics supplied, citing *Andrada v. Hon. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

[37] A.M. No. RTJ-11-2303 (Formerly A.M. OCA IPI No. 10-3416-RTJ), March 12, 2012 (Unsigned Resolution).

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

live up to the standards required of a government employee for failing to comply with the Court's orders.

Section 9, Rule 140 of the Rules of Court provides that violation of Supreme Court's rules, directives and circulars is considered as a less serious offense. Since Judge Racoma has been previously found guilty of Undue Delay in the Rendition of Judgment in A.M. No. RTJ-14-2373 (formerly OCA IPI No. 10-3533-RTJ)[39] and A.M. No. RTJ-10-2233[40] and has been fined in the amount of Five Thousand Pesos (₱5,000.00) in each case, the Court agrees with the OCA that a fine in the amount of Eleven Thousand Pesos (₱11,000.00) is warranted under the circumstances.

WHEREFORE, the administrative complaint filed by Governor Edgardo A. Tallado against respondent Judge Winston S. Racoma is hereby **DISMISSED** for lack of merit.

The Court however finds respondent Judge Winston S. Racoma **GUILTY** of Insubordination under Section 9, Rule 140 of the Rules of Court, and is hereby directed to pay a **fine of Eleven Thousand Pesos (₱11,000.00)**, with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severity by the Court.

SO ORDERED.

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

Reyes, J. Jr.,[*] *J.*, on wellness leave.

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[39] *Tee v. Judge Racoma*, April 7, 2014, p. 4 (Unsigned Resolution).

[40] *Brinas v. Judge Racoma*, April 28, 2010 (Unsigned Resolution).

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SPECIAL THIRD DIVISION

[G.R. No. 176549. October 10, 2018]

DEPARTMENT OF AGRARIAN REFORM, QUEZON CITY & PABLO MENDOZA, *petitioners, vs.* **ROMEO C. CARRIEDO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); DEPARTMENT OF AGRARIAN REFORM (DAR); ADMINISTRATIVE RULES AND REGULATIONS ORDINARILY DESERVE TO BE GIVEN WEIGHT AND RESPECT BY THE COURTS IN VIEW OF THE RULE-MAKING AUTHORITY GIVEN TO THOSE WHO FORMULATE THEM AND THEIR SPECIFIC EXPERTISE IN THEIR RESPECTIVE FIELDS; THE DAR's POSITION ON THE ISSUES INVOLVING THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CAR) DESERVES COGENT CONSIDERATION.— Being the government agency legally mandated to implement the Comprehensive Agrarian Reform Law of 1988 (CARL) and the primary agency vested with the expertise on the technicalities of the CARL, the DAR's position on the issues raised before us deserves cogent consideration. In fact, the CARL specifically empowers the DAR to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of the law. Administrative rules and regulations ordinarily deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields. In this case, it cannot be denied that the DAR possesses the special knowledge and acquired expertise on the implementation of the agrarian reform program. To pay no heed to its position on the issues raised before us ignores the basic precepts of due process.

2. ID.; ID.; ID.; ADMINISTRATIVE ORDER NO. 5, SERIES OF 2006 (AO 05-06); PREVIOUS SALES OF LANDHOLDING WITHOUT DAR CLEARANCE SHOULD BE TREATED AS THE EXERCISE OF RETENTION RIGHTS OF THE

LANDOWNER, FOR BY SELLING HIS LANDHOLDINGS, IT IS REASONABLY PRESUMED THAT THE LANDOWNER ALREADY RECEIVED AN AMOUNT AS PURCHASE PRICE COMMENSURATE TO THE JUST COMPENSATION CONFORMABLE WITH THE CONSTITUTIONAL AND STATUTORY REQUIREMENT. — Both the Constitution and CARL underscore the underlying principle of the agrarian reform program, that is, *to endeavor a more equitable and just distribution of agricultural lands taking into account, among others, equity considerations.* We find merit in the DAR's contention that the objective of AO 05-06 is equitable—that in order to ensure the effective implementation of the CARL, previous sales of landholding (without DAR clearance) should be treated as the exercise of retention rights of the landowner, as embodied in Item No. 4 of the said administrative order. The equity in this policy of AO 05-06 is apparent and easily discernible. By selling his landholdings, it is reasonably presumed that the landowner already received an amount (as purchase price) commensurate to the just compensation conformable with the constitutional and statutory requirement. At this point, equity dictates that he cannot claim anymore, either in the guise of his retention area or otherwise, that which he already received in the previous sale of his land.

3. ID.; ID.; ID.; ID.; ITEM NO. 4 OF AO 05-06 WHICH TREATS THE SALE OF THE FIRST FIVE HECTARES AS THE EXERCISE OF THE LANDOWNER'S RETENTION RIGHTS DECLARED VALID.— AO 05-06 is in consonance with the Stewardship Doctrine, which has been held to be the property concept in Section 6, Article II of the 1973 Constitution. Under this concept, private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners. As a mere steward, the individual must exercise his rights to the property not for his own exclusive and selfish benefit but for the good of the entire community or nation. Property use must not only be for the benefit of the owner but of society as well. The State, in the promotion of social justice, may regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits. It has been held that Presidential Decree No. 27, one of the precursors of the CARL, embodies this policy and concept. This

interpretation is consistent with the objective of the agrarian reform program, which is, of course, land distribution to the landless farmers and farmworkers. The objective is carried out by Item No. 4 of AO 05-06 as it provides for the consequences in situations where a landowner had sold portions of his/her land with an area more than the statutory limitation of five hectares. In this scenario, Item No. 4 of AO 05-06 treats the sale of the first five hectares as the exercise of the landowner's retention rights. The reason is that, effectively, the landowner has already chosen, and in fact has already disposed of, and has been duly compensated for, the area he is entitled to retain under the law. Further, Item No. 4 of AO 05-06 is consistent with Section 70 of the CARL as the former likewise treats the sale of the first five hectares (in case of multiple/series of transactions) as valid, such that the same already constitutes the retained area of the landowner. This legal consequence arising from the previous sale of land therefore eliminates the prejudice, in terms of equitable land distribution, that may befall the landless farmers and farmworkers. x x x. [W]e hold that Item No. 4 of AO 05-06 is valid.

4. ID.; ID.; ID.; ID.; ID.; THE RIGHT OF RETENTION SERVES TO MITIGATE THE EFFECTS OF COMPULSORY LAND ACQUISITION BY BALANCING THE RIGHTS OF THE LANDOWNER AND THE TENANT, AND BY IMPLEMENTING THE DOCTRINE THAT SOCIAL JUSTICE WAS NOT MEANT TO PERPETRATE AN INJUSTICE AGAINST THE LANDOWNER.— We note that records also bear that the previous sale of Carriedo's landholdings was made in violation of the law, being made without the clearance of the DAR. To rule that Carriedo is still entitled to retain the subject landholding will, in effect, reward the violation, which this Court cannot allow. We emphasize that the right of retention serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant, and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. In this case, however, Carriedo claims his right over the subject landholding ***not*** because he was "deprived" of a portion of his land as a consequence of compulsory land coverage, but precisely because he already previously sold his landholdings, so that the subject landholding is the only portion left for him. Although constitutionally guaranteed, the exercise of a landowner's right

of retention should not be done without due regard to other considerations which may affect the implementation of the agrarian reform program. This is especially true when such exercise pays no heed to the intent of the law, or worse, when such exercise amounts to its circumvention

5. ID.; ID.; ID.; THE EMANCIPATION PATENTS (EPs) AND THE CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAs), ARE CONFERRED WITH THE SAME INDEFEASIBILITY AND SECURITY AFFORDED TO A TORRENS CERTIFICATE OF TITLE.— A Certificate of Land Ownership Award or CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and contains the restrictions and conditions provided for in the CARL and other applicable laws. Section 24 of the CARL, as amended, reads: Sec. 24. Award to Beneficiaries. x x x. **The emancipation patents or the certificates of land ownership award being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732.** x x x Further, in *Estribillo v. Department of Agrarian Reform*, we held that: x x x. The EPs themselves, like the Certificates of Land Ownership Award (CLOAs) in Republic Act No. 6657 (the Comprehensive Agrarian Reform Law of 1988), are enrolled in the Torrens system of registration. The Property Registration Decree in fact devotes Chapter IX on the subject of EPs. Indeed, such EPs and CLOAs are, in themselves, entitled to be as indefeasible as certificates of title issued in registration proceedings.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance and *DAR Legal Service-Legal Affairs Office* for petitioner Department of Agrarian Reform.

The Law Firm of Ross B. Bautista and *Atienza and Atienza Law Office* for respondent.

R E S O L U T I O N

JARDELEZA, *J.*:

We resolve the motion for reconsideration[1] filed by the Department of Agrarian Reform (DAR) of the Decision[2] dated January 20, 2016.

At the onset, we note that the DAR was not given the opportunity to participate in the proceedings before the Court of Appeals and before this Court, until it filed its motion for reconsideration of this Court's Decision. In its motion for reconsideration, the DAR contends that the agency had been denied due process when it was not afforded the opportunity to refute the allegations against the validity of DAR Administrative Order No. 5, Series of 2006[3] (AO 05-06) before the Court of Appeals and before this Court.[4] It argues that the basic requirement of due process has not been accorded to the agency because it was not even notified of the petition filed before the Court of Appeals; nor did the Court of Appeals notify the DAR of the proceedings and its Decision.[5] The DAR, therefore, insists that the Decision dated January 20, 2016 be reconsidered by this Court especially so that the issues involve the enforcement and validity of its regulations.[6]

We agree with the DAR. Being the government agency legally mandated to implement the Comprehensive Agrarian Reform Law of 1988[7] (CARL) and the primary agency vested with the

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[1] Dated March 22, 2016. *Rollo*, pp. 297-330.

[2] 781 SCRA 301.

[3] Guidelines on the Acquisition and Distribution of Agricultural Lands Subject of Conveyance Under Sections 6, 70 and 73(a) of R.A. No. 6657.

[4] *Rollo*, p. 323.

[5] *Id.* at 324.

[6] *Id.* at 333-334.

[7] Republic Act No. 6657.

expertise on the technicalities of the CARL,[8] the DAR's position on the issues raised before us deserves cogent consideration. In fact, the CARL specifically empowers the DAR to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of the law.[9] Administrative rules and regulations ordinarily deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.[10] In this case, it cannot be denied that the DAR possesses the special knowledge and acquired expertise on the implementation of the agrarian reform program. To pay no heed to its position on the issues raised before us ignores the basic precepts of due process. Therefore, under these circumstances, we are impelled to revisit our Decision, this time taking into account the arguments and position of the DAR.

To reiterate, the core issue before us is whether Romeo C. Carriedo's (Carriedo) previous sale of his landholdings to Peoples' Livelihood Foundation, Inc. (PLFI) can be treated as the exercise of his retention rights, such that he cannot lawfully claim the subject landholding as his retained area anymore.[11] The issue necessarily touches on the validity of Item No. 4 of AO 05-06 and the relevant provisions of the CARL. Further,

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[8] See *Rom v. Roxas & Company, Inc.*, G.R. No. 169331, September 5, 2011, 656 SCRA 691,707, citing *Roxas & Co., Inc. v. Court of Appeals*, G.R. No. 127876, December 17, 1999, 321 SCRA 106, 153-154, 164; *San Miguel Properties, Inc. v. Perez*, G.R. No. 166836, September 4, 2013, 705 SCRA 38, 59-60; and *Alfonso v. Land Bank of the Philippines*, G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27, 122.

[9] Republic Act No. 6657, Sec. 49. *Rules and Regulations*. — The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

[10] *Chamber of Real Estate and Builders' Associations, Inc. v. Romulo*, G.R. No. 160756, March 9, 2010, 614 SCRA 605, 639-640.

[11] *Department of Agrarian Reform, Quezon City v. Carriedo, supra* note 2 at 306, 316-317.

the issue of whether Certificates of Land Ownership Awards (CLOAs) possess the indefeasibility accorded to a Torrens certificate of title is likewise raised before this Court.

We will discuss the issues *in seriatim*.

On the validity of Item No. 4, AO 05-06

The Decision adjudged Item No. 4 of AO 05-06 as *ultra vires* for providing terms which appear to expand or modify some provisions of the CARL.[12] The DAR argues that this ruling sets back the Comprehensive Agrarian Reform Program by upsetting its established substantive and procedural components. Particularly, the DAR contends that the nullification of Item No. 4 of AO 05-06 disregarded the long-standing procedure where the DAR treats a sale (without its clearance) as valid based on the doctrine of estoppel, and that the sold portion is treated as the landowner's retained area.[13]

Applying Item No. 4 of AO 05-06 to the facts of this case, the DAR submits that the subject landholding cannot be considered as the retained area of Carriedo anymore because he has already exercised his right of retention when he previously sold his landholdings without DAR clearance.[14] The DAR specifies that sometime in June 1990, Carriedo unilaterally sold to PLFI his agricultural landholdings with approximately 58.3723 hectares. The DAR, therefore, argues that Carriedo's act of disposing his landholdings is tantamount to the exercise of his right of retention under the law.[15]

Item No. 4 of AO 05-06, provides:

II. STATEMENT OF POLICIES

x x x x x x x x x

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[12] *Department of Agrarian Reform, Quezon City v. Carriedo, supra* note 2 at 328-330.

[13] *Rollo*, pp. 297-298.

[14] *Id.* at 304.

[15] *Id.* at 307-308.

4. Where the transfer/sale involves more than the five (5) hectare retention area, the transfer is considered violative of Sec. 6 of R.A. No. 6657.

In case of multiple or series of transfers/sales, the first five (5) hectares sold/conveyed without DAR clearance and the corresponding titles issued by the Register of Deeds (ROD) in the name of the transferee shall, under the principle of estoppel, be considered valid and shall be treated as the transferor/s' retained area but in no case shall the transferee exceed the five-hectare landholding ceiling pursuant to Sections 6, 70 and 73(a) of R.A. No. 6657. Insofar as the excess area is concerned, the same shall likewise be covered considering that the transferor has no right of disposition since CARP coverage has been vested as of 15 June 1988. Any landholding still registered in the name of the landowner after earlier dispositions totaling an aggregate of five (5) hectares can no longer be part of his retention area and therefore shall be covered under CARP.

The DAR's argument has merit.

The Constitution mandates for an agrarian reform program, thus:

ARTICLE XIII

x x x x x x x x x

Agrarian and Natural Resources Reform

Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the **just distribution of all agricultural lands**, subject to such priorities and reasonable retention limits as the Congress may prescribe, **taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation**. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied.)

To give life to the foregoing Constitutional provision, the CARL provides, among others:

Sec. 2. Declaration of Principles and Policies.— It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the **highest consideration to promote social justice** and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.

To this end, **a more equitable distribution and ownership of land**, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands. (Emphasis supplied.)

x x x x x x x x x

Both the Constitution and CARL underscore the underlying principle of the agrarian reform program, that is, *to endeavor a more equitable and just distribution of agricultural lands taking into account, among others, equity considerations.* We find merit in the DAR's contention that the objective of AO 05-06 is equitable[16]— that in order to ensure the effective implementation of the CARL, previous sales of landholding (without DAR clearance) should be treated as the exercise of retention rights of the landowner, as embodied in Item No. 4 of the said administrative order.[17]

The equity in this policy of AO 05-06 is apparent and easily discernible. By selling his landholdings, it is reasonably presumed that the landowner already received an amount (as purchase price) commensurate to the just compensation conformable with the constitutional and statutory requirement. At this point, equity dictates that he cannot claim anymore, either in the guise of his retention area or otherwise, that which he already received in the previous sale of his land.

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[16] *Id.* at 309.

[17] *Id.* at 310-311.

In *Delfino, Sr. v. Anasao*,[18] the issue of whether the inclusion of the two-hectare portion sold by Delfino to SM Prime Holdings, Inc. (without DAR clearance) resulted in the diminution of his retention rights was raised before this Court. In that case, Delfino was adjudged by the DAR to be entitled to five hectares of retention area, to be taken out from the tenanted area that he owns. Subsequently, however, and without prior clearance from the DAR, Delfino sold two hectares of land to SM Prime Holdings, Inc. This supervening event prompted the DAR Secretary to clarify his previous Order (albeit the same having already attained finality) and *found it fair and equitable to include the two-hectare portion sold to SM Prime Holdings, Inc. as part of Delfino's retention area*. Consequently, Delfino is now entitled only to the balance of three hectares. Upon motion for reconsideration by Delfino, the DAR Secretary explained that the clarification was made *in order not to circumvent the five-hectare limitation as said landowner "cannot [be allowed to] simultaneously enjoy x x x the proceeds of the [sale] and at the same time exercise the right of retention under CARP*."[19] This Court upheld the clarification issued by the DAR Secretary insofar as in holding that Delfino had partially exercised his right of retention when he sold two hectares to SM Prime Holdings, Inc. after his application for retention was granted by the DAR.[20] We do not see any reason why the same principle cannot be applied in this case.

In relation to this, we also take note of the submissions of the DAR pertaining to the "immense danger to the implementation of CARP" that it perceives to arise as a consequence of our Decision. Particularly, DAR posits that the Decision "will provide landowners unbridled freedom to dispose any or all of their agricultural properties without DAR clearance and still at a moment's notice decide which of those lands he wishes to retain, *to the prejudice not only of the tenants and/or farmer*

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[18] G.R. No. 197486, September 10, 2014, 734 SCRA 672.

[19] *Id.* at 677-683.

[20] *Id.* at 688-689.

beneficiaries but of the entire CARP as well."[21] It further posits that to allow Carriedo to claim the subject landholdings as his retained area "will in effect put on hold the implementation of [the] CARP to wait for the landowner, despite selling majority of his agricultural landholdings, and despite receiving compensation for the same, to still be able to choose the retention area."[22]

The DAR, therefore, maintains that AO 05-06 is the regulation adopted by the agency precisely in order to prevent these perceived dangers in the implementation of the CARL. The policy behind AO 05-06 should deter any attempt to circumvent the provisions of the CARL which may arise under a factual milieu similar in this case.

We also agree with the DAR on this point.

AO 05-06 is in consonance with the Stewardship Doctrine, which has been held to be the property concept in Section 6,[23] Article II of the 1973 Constitution. Under this concept, private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners. As a mere steward, the individual must exercise his rights to the property not for his own exclusive and selfish benefit but for the good of the entire community or nation.[24] Property use must not only be for the benefit of the owner but of society as well. The State, in the promotion of social justice, may regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.[25]

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[21] *Rollo*, p. 308. Emphasis supplied.

[22] *Id.* at 308-309.

[23] Sec. 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.

[24] *Mataas na Lupa Tenants Assoc., Inc. v. Dimayuga*, G.R. No. L-32049, June 25, 1984, 130 SCRA 30, 42-43.

[25] *Almeda v. Court of Appeals*, G.R. No. L-43800, July 29, 1977, 78 SCRA 194, 199.

It has been held that Presidential Decree No. 27, one of the precursors of the CARL, embodies this policy and concept.[26]

This interpretation is consistent with the objective of the agrarian reform program, which is, of course, land distribution to the landless farmers and farmworkers.[27] The objective is carried out by Item No. 4 of AO 05-06 as it provides for the consequences in situations where a landowner had sold portions of his/her land with an area more than the statutory limitation of five hectares. In this scenario, Item No. 4 of AO 05-06 treats the

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[26] See *Almeda v. Court of Appeals, supra*, where this Court held that:

> It is to be noted that under the new Constitution, property ownership is impressed with social function. Property use must not only be for the benefit of the owner but of society as well. The State, in the promotion of social justice, may "regulate the acquisition, ownership, use, enjoyment and disposition of *private* property, and equitably diffuse property... ownership and profits." One governmental policy of recent date projects the emancipation of tenants from the bondage of the soil and the transfer to them of the ownership of the land they till. This is Presidential Decree No. 27 of October 21, 1972, ordaining that all tenant farmers "of private agricultural lands devoted to rice and corn under a system of sharecrop or lease-tenancy, whether classified as landed estates or not" shall be deemed "owner of a portion constituting family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated." (Citations and italics omitted.)

[27] CONSTITUTION, Article XIII, Sec. 4; See also Republic Act No. 6657, Sec. 2, which states:

> Sec. 2. Declaration of Principles and Policies. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.
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> x x x x x x x x x

The objective is enlivened by the provisions on Chapter VII of the CARL which is entitled "Land Redistribution," to wit: Section 22 (Qualified Beneficiaries); Section 23 (Distribution Limit); Section 24 (Award to Beneficiaries); Section 25 (Award Ceilings for Beneficiaries); and Section 26 (Payment by Beneficiaries).

sale of the first five hectares as the exercise of the landowner's retention rights. The reason is that, effectively, the landowner has already chosen, and in fact has already disposed of, and has been duly compensated for, the area he is entitled to retain under the law.

Further, Item No. 4 of AO 05-06 is consistent with Section 70[28] of the CARL as the former likewise treats the sale of the first five hectares (in case of multiple/series of transactions) as valid, such that the same already constitutes the retained area of the landowner. This legal consequence arising from the previous sale of land therefore eliminates the prejudice, in terms of equitable land distribution, that may befall the landless farmers and farmworkers.

We note that records also bear that the previous sale of Carriedo's landholdings was made in violation of the law, being made without the clearance of the DAR.[29] To rule that Carriedo is still entitled to retain the subject landholding will, in effect, reward the violation, which this Court cannot allow. We emphasize that the right of retention serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant, and by implementing the doctrine that social justice was not meant to perpetrate an injustice against

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[28] Sec. 70. Disposition of Private Agricultural Lands. — The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceiling provided for in this Act. x x x

[29] Republic Act No. 6657, Sec. 6. Retention Limits.— x x x

x x x x x x x x x

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void: *Provided, however*, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

the landowner.[30] In this case, however, Carriedo claims his right over the subject landholding ***not*** because he was "deprived" of a portion of his land as a consequence of compulsory land coverage, but precisely because he already previously sold his landholdings, so that the subject landholding is the only portion left for him.

Although constitutionally guaranteed, the exercise of a landowner's right of retention should not be done without due regard to other considerations which may affect the implementation of the agrarian reform program. This is especially true when such exercise pays no heed to the intent of the law, or worse, when such exercise amounts to its circumvention.

In view of the foregoing, we hold that Item No. 4 of AO 05-06 is valid. Indeed, the issue in this case is more than the mere claim of an individual to his retained area, but had been, at the onset, an issue of the implementation of the CARL in line with the mandate and objective as set forth in the Constitution.

On Certificate of Land Ownership Award

The Decision also adjudged that CLOAs are not equivalent to a Torrens certificate of title, and thus are not indefeasible.[31] The DAR disagrees and submits that this ruling relegated Emancipation Patents and CLOAs to the status of a Certificate of Land Transfer, which is merely part of the preparatory steps for the eventual issuance of a certificate of title.[32]

We agree with the DAR. A Certificate of Land Ownership Award or CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and

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[30] *Danan v. Court of Appeals*, G.R. No. 132759, October 25, 2005, 474 SCRA 113, 128.

[31] *Department of Agrarian Reform, Quezon City v. Carriedo*, *supra* note 2 at 333.

[32] *Rollo*, pp. 297-298.

contains the restrictions and conditions provided for in the CARL and other applicable laws.[33]

Section 24 of the CARL, as amended,[34] reads:

> Sec. 24. Award to Beneficiaries. — The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: ***Provided*, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds**, subject to the conditions, limitations and qualifications of this Act, the property registration decree, and other pertinent laws. **The emancipation patents or the certificates of land ownership award being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732.** (Emphasis supplied.)
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> x x x x x x x x x

Further, in *Estribillo v. Department of Agrarian Reform*,[35] we held that:

> The rule in this jurisdiction, regarding public land patents and the character of the certificate of title that may be issued

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[33] *Lebrudo v. Loyola*, G.R. No. 181370, March 9, 2011, 645 SCRA 156, 161. See also *Roxas & Co., Inc. v. Court of Appeals*, G.R. No. 127876, December 17, 1999, 321 SCRA 106.

[34] Republic Act No. 9700, An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor.

[35] G.R. No. 159674, June 30, 2006, 494 SCRA 218.

> by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act, the title issued to the grantee becoming entitled to all the safeguards provided in Section 38 of the said Act. In other words, upon expiration of one year from its issuance, the certificate of title shall become irrevocable and indefeasible like a certificate issued in a registration proceeding. (Emphasis and italics omitted.)

The EPs themselves, like the Certificates of Land Ownership Award (CLOAs) in Republic Act No. 6657 (the Comprehensive Agrarian Reform Law of 1988), are enrolled in the Torrens system of registration. The Property Registration Decree in fact devotes Chapter IX on the subject of EPs. Indeed, such EPs and CLOAs are, in themselves, entitled to be as indefeasible as certificates of title issued in registration proceedings.[36] (Citation omitted.)

We, however, note that the issue involving the issuance, recall, or cancellation of CLOAs is lodged with the DAR,[37] which has primary jurisdiction over the matter.[38]

WHEREFORE, premises considered, the motion for reconsideration filed by the Department of Agrarian Reform is hereby **GRANTED**, and the Decision dated January 20, 2016 is **REVERSED and SET ASIDE**. Item No. 4 of DAR Administrative Order No. 05, Series of 2006 is hereby declared **VALID**.

SO ORDERED.

Peralta (Chairperson), Leonen, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr., J., on official leave.

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[36] *Id.* at 237-238, citing *Lahora v. Dayanghirang, Jr.*, G.R. No. L-28565, January 30, 1971, 37 SCRA 346, 350.

[37] See *Aninao v. Asturias Chemical Industries, Inc.,* G.R. No. 160420, July 28, 2005, 464 SCRA 526, 542-543.

[38] See *Bagongahasa v. Romualdez*, G.R. No. 179844, March 23, 2011, 646 SCRA 338, 350-351.

SECOND DIVISION

[G.R. No. 221250. October 10, 2018]

MAGSAYSAY MARITIME CORPORATION, FLEET MARITIME SERVICE INTERNATIONAL LTD. AND/OR MARLON ROÑO, and M/V AZURA, *petitioners, vs.* **MANUEL R. VERGA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; THIRD-PARTY PHYSICIAN REFERRAL PROCEDURE; THE SEAFARER HAS THE RIGHT TO IMPUGN THE CERTIFICATION ISSUED BY THE COMPANY-DESIGNATED PHYSICIAN WHERE THE SAME IS CONTRARY TO THE FINDINGS OF HIS DOCTOR, BUT HE 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; ON THE OTHER HAND, THE COMPANY CARRIES THE BURDEN OF INITIATING THE PROCESS FOR THE REFERRAL TO A THIRD-DOCTOR COMMONLY AGREED BETWEEN THE PARTIES, AND THE THIRD DOCTOR'S RULING IS FINAL AND BINDING ON THE PARTIES.— In *OSG Ship Management Manila, Inc. v. Pellazar*, the Court explained that the POEA-SEC recognizes the right of the seafarer to seek "a second medical opinion from a physician of his own choice." However, the process does not stop there. The same provision in the POEA-SEC provides a mechanism in case the seafarer's chosen doctor disagrees with the findings of the company-designated physician. x x x. In a long line of cases, most recently *Tulabing v. MST Marine Services (Phils.), Inc.*, the Court has held that the conflicting findings of the company-designated physician and the seafarer's chosen doctor "shall be settled by referring the matter to a neutral third-party physician, whose

assessment shall be final and binding." x x x . Since his doctors had findings contrary to those of the company-designated physician, Verga had the right to impugn the latter's certification. However, it is Verga who "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." On the other hand, "the company carries the **burden of initiating the process for the referral to a third doctor** commonly agreed between the parties[.]" The third doctor's ruling is final and binding on the parties.

2. **ID.; ID.; ID.; ID.; ID.; FAILURE OF THE SEAFARER TO COMPLY WITH THE THIRD-DOCTOR REFERRAL PROCEDURE MAY MILITATE AGAINST THE CLAIM FOR PERMANENT TOTAL DISABILITY IN CASES WHERE THE COMPANY-DESIGNATED DOCTOR DECLARED OTHERWISE, ESPECIALLY IF THE SEAFARER FAILED TO EXPLAIN WHY RECOURSE TO THE SAID REMEDY WAS NOT MADE.—** [T]he referral to a third doctor agreed upon by the parties is **mandatory**. Failure to comply with the procedure "may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made." Verga never questioned the company-designated physician's certification, nor informed the company of the contrary diagnosis by his doctors. There is likewise no evidence that Verga ever gave the company any chance to seek a third doctor's opinion. The diagnosis of Dr. Runas was made on 31 August 2011. Two days later, Verga filed his complaint. Further, Verga's filing of the complaint is considered a breach of his contractual obligations under the POEA-SEC, since it states that conflicting assessments by the company-designated physician and the seafarer's own doctor should be referred to a third doctor for a binding opinion. In the end, the failure of Verga to follow procedure is considered **fatal** to his cause. The Court, therefore, holds that the Certificate of Fitness to Work issued by the company-designated physician to Verga is conclusive and binding on the parties.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for petitioners.
Concepcion Concepcion Asinas & Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the 23 February 2015 Decision[2] and 22 October 2015 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 129671. The Court of Appeals reversed the Decision[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (M) 07-000660-12 and reinstated the Decision[5] of the Labor Arbiter dated 25 June 2012 in favor of respondent Manuel R. Verga (Verga).

The Facts

In February 2010, Verga signed his 13th contract of deployment with petitioner Magsaysay Maritime Corporation for a nine-month stint as a "technical rating" aboard the vessel Azura-D/E with a basic monthly salary of US$495.00. He started his duties on board said vessel on 31 March 2010.[6]

On 20 October 2010, while on board the vessel, Verga slipped and fell on his back. He was taken to a medical center where he had an x-ray. He was found to be suffering from Stable

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[1] *Rollo*, pp. 3-33.

[2] *Id*. at 36-49. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Isaias P. Dicdican and Elihu A. Ybañez concurring.

[3] *Id*. at 70-71.

[4] CA *rollo*, pp. 237-261.

[5] *Id*. at 166-176.

[6] *Rollo*, p. 37.

Anterior Wedge Fracture T10. Because of this, Verga was repatriated to the Philippines on 29 October 2010.[7]

Upon his return, Verga was examined by the company-designated physician, Dr. Karen Frances Hao-Quan, at the Metropolitan Medical Center. The physician's initial evaluation was that Verga had a Compression Fracture T12 and was advised to use a Jewett brace for immobilization. He had another x-ray on 23 November 2010 and it was found that he had Thoracic Spine Spondylosis with Associated T12 Compression Fracture. Over the course of several months, he went for several more consultations with the company-designated physician.[8]

By February 2011, Verga was still complaining of some pain in his left lateral trunk area, and Dr. Hao-Quan assessed his condition to be Grade 8, with moderate rigidity or loss of motion or lifting power of the trunk. On 17 March 2011, Verga had another x-ray and evaluation with one of the company-designated physicians. With the continued pain in his back, he was advised to continue his rehabilitation and medication. He was told to come back on 31 March 2011 for another x-ray and re-evaluation.[9]

On 31 March 2011, Verga came back for re-evaluation. The company physician issued Verga a certification that he was fit to work. Verga also signed a pro forma Certificate of Fitness to Work. He then waited to be called back for re-deployment.[10]

By July 2011, Verga had still not been re-deployed, so he consulted with another doctor about the pain in his back. Dr. Alan Paul Quintero (Dr. Quintero) of the AMOSUP Seamen's Hospital assessed that Verga had Compression Fracture T10. According to the doctor, although the injury has partly healed, Verga still suffered through some back pain because of it, and diagnosed his impediment to be Grade 11. Dr. Quintero's

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[7] *Id*.

[8] *Id*.

[9] *Id*. at 37-38.

[10] *Id*. at 38.

recommendation was that Verga could return to work but was not allowed to lift heavy objects.[11]

On 31 August 2011, Verga consulted orthopedic surgeon Dr. Renato Runas. Dr. Runas concluded that Verga was "not fit for further sea duty permanently in whatever capacity."[12] He found that Verga still suffered from severe lower and middle back pain and could not move without his anterior brace. Such permanent disability, the doctor said, was a result of the injury Verga sustained while on board the ship. Verga was advised to undergo physical therapy and regular check-up.[13]

On 2 September 2011, Verga filed a complaint for total disability benefits and damages.[14]

The Decision of the Labor Arbiter

In a Decision dated 25 June 2012, the Labor Arbiter ruled in favor of Verga:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Magsaysay Maritime Corporation and/or the foreign principal Fleet Maritime Service International Ltd. to jointly and severally pay complainant Manuel R. Verga the amount of SIXTY THOUSAND US DOLLARS (US$66,00.00) (sic) Philippine Peso equivalent at the time of actual payment x x x representing total permanent disability benefits, plus ten percent (10%) thereof as and for attorney's fees.
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> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[15]

The Labor Arbiter held that the medical certificate issued by the company-designated physician that Verga was fit to work

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[11] *Id*.

[12] *Id*. at 38.

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

[14] *Id*. at 39.

[15] CA *rollo*, p. 176.

was "equivocal and unsubstantiated"[16] while the medical certificate from the private doctor consulted by Verga was detailed as to the nature and extent of petitioner's disability and incapacity.[17] She also held that the certificate of fitness to work was proscribed and ineffectual because it contained a waiver of future claims. She also pointed out that the fact that Verga was not re-engaged supported the finding that the latter was not fit to resume his duties.

The Labor Arbiter also held that Verga did not abandon his right to claim disability compensation when he signed the Certificate of Fitness to Work because said certification is "characteristically a waiver of future claims which is proscribed in this jurisdiction."[18] The Labor Arbiter concluded that Verga signed the certification with the "expectation that he would be re-deployed, given his long and continued service with the respondents under his previous contract"[19] and the fact that he was not re-engaged "further supports this disposition that complainant was not fit for re-deployment notwithstanding the fit to work assessment."[20]

The Decision of the NLRC

Petitioners appealed the decision to the NLRC. In its 21 November 2012 Decision, the NLRC reversed the Labor Arbiter's decision and dismissed the complaint:

> WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and SET ASIDE, and another one entered DISMISSING the instant complaint for lack of merit.
>
> SO ORDERED.[21]

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[16] *Id*. at 174.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 260.

In reversing the Labor Arbiter's decision, the NLRC held that, since the findings of the company-designated physician differed from those of the private physicians consulted by respondent, the commission has to make its own evaluation based on the evidence presented.[22]

The NLRC gave more credence to the company-designated physician's diagnosis:

> [T]he evaluation of the company-designated physician was arrived at after a lengthy period of examination and treatment of complainant x x x. As such, the fit-to-work evaluation of the company-designated physician has solid basis, based as it were on a protracted period of evaluation and treatment that necessarily means that the company-designated physician is far more familiar with the condition of complainant than the latter's physician x x x.[23]

The NLRC also noted that "complainant did not immediately contest the fit-to-work finding because he found no issue with the same, which is shown by his expecting to be re-employed by respondents. Only when this did not materialize did he [seek] a second (and third) medical opinion."[24] Moreover, the NLRC pointed out that petitioners were under no obligation to re-hire Verga after his contract expired.[25]

The NLRC concluded that "the Executive Labor Arbiter erred in awarding [Verga] total permanent disability benefits, as the same has no legal basis, as discussed above. Neither is [he] entitled to any attorney's fees."[26]

Verga filed a motion for reconsideration, which was denied. He subsequently elevated the matter to the Court of Appeals.

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[22] *Id*. at 243.

[23] *Id*. at 254.

[24] *Id*. at 258.

[25] *Id*. at 259.

[26] *Id*. at 260.

The Decision of the Court of Appeals

In its assailed decision, the Court of Appeals reversed the NLRC's decision and reinstated that of the Labor Arbiter:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision dated November 21, 2012 and the Resolution dated February 8, 2013 of the National Labor Relations Commission in LAC No. OFW(M) 07-000660-12, are REVERSED and SET ASIDE. The Decision dated June 25, 2012 of the Labor Arbiter is REINSTATED.
>
> SO ORDERED.[27]

It held that the NLRC gravely abused its discretion in setting aside the decision of the Labor Arbiter. The Court of Appeals noted that prior to the declaration by the company physician of Verga's fitness to work, the last assessment was a Grade 8 condition. There was no showing that a re-evaluation and another x-ray would have yielded a more positive result. However, the fact that petitioner company failed to re-deploy Verga, as it had regularly done for ten years, indicates his unfitness to resume his duties.[28]

The Court of Appeals also said that Verga signed the Certificate of Fitness to Work with the expectation of being re-deployed. Moreover, Verga cannot legally waive future claims. The Court of Appeals pointed out that more than 240 days had elapsed since Verga had been unable to work because of the accident.[29]

The Court of Appeals further held that jurisprudence which favors the certification by the company physician for being the result of a series of tests as against the one-time evaluation of a personal physician does not apply in this case since the facts of this case reveal that he did not undergo a repeat x-ray and re-evaluation on the day the certificate of fitness to work

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[27] *Rollo*, p. 48.

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

[29] *Id*. at 47.

was issued. The abrupt issuance of the certification led the Court of Appeals to conclude that the haste to declare Verga fit to work was so that the presumption of permanent total disability will not arise.[30]

Petitioners filed a Motion for Reconsideration, which was subsequently denied.

Petitioners' Arguments

Petitioners are now before the Court assailing the Court of Appeals' decision and resolution, raising the following issues:

1. Whether the Court of Appeals erred in awarding the respondent seafarer total and permanent disability benefits when he was declared fit to work by the company-designated physician on 31 March 2011.

2. Whether the Court of Appeals erred in awarding the respondent seafarer total and permanent disability benefits when he has waived his right to claim disability benefits when he voluntarily executed the "Certificate of Fitness to Work["] dated 31 March 2011.

3. Whether the Court of Appeals erred in awarding attorney's fees considering that petitioners never acted with bad faith and malice in dealing with respondent seafarer.[31]

Petitioners argue that "the findings of the [company-designated physician] are supported by objective tests and reached after months of treatment x x x the manner by which the respondent seafarer was examined and assessed, are far from hasty."[32] The findings of the company-designated physician were reached after months of monitoring, treatment and therapy.[33]

Petitioners also aver that the findings of Verga's personal doctors should not be given weight by the Court as these were

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[30] *Id*. at 47-48.

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

[32] *Id*. at 13.

[33] *Id*.

made 10 months after the Certificate of Fitness to Work was issued by the company-designated physician.[34]

Further, petitioners point out that "even assuming that the respondent seafarer's doctor states that he will be unable to return to work, mere allegation of inability to return to work does not automatically mean that a respondent seafarer is already entitled to total and permanent disability benefits."[35] They insist that the seafarer should have been assessed with Grade 1 disability by his doctor.[36]

Next, petitioners argue that the Court should uphold Verga's execution of a Certificate of Fitness to Work, which contains among others, a stipulation that he has waived all entitlements under his contract of employment.[37] They argue that there is no showing that respondent's "consent was vitiated, or he was otherwise coerced or incapacitated when he executed the certificate of fitness."[38]

Respondent's Arguments

Verga insists that the company-designated physician's conclusion that he was fit to return to work was based on pure conjectures and surmises, as pointed out by the Court of Appeals,[39] and thus, was not a definite declaration of his fitness to work.[40]

Verga also contends that since the Certificate of Fitness to Work was not a notarized document, it should not have been given weight and credence.[41] He also avers that quitclaims and

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[34] *Id*. at 16.

[35] *Id*. at 17.

[36] *Id*.

[37] *Id*. at 22.

[38] *Id*.

[39] *Id*. at 120.

[40] *Id*. at 122.

[41] *Id*. at 124.

waivers are "oftentimes frowned upon and are considered ineffective in barring recovery for the full measure of the worker's right and that acceptance of the benefits therefrom does not amount to estoppel."[42]

Lastly, Verga argues that the award of attorney's fees was valid because in labor law, the "withholding of wages need not be coupled with malice or bad faith to warrant the grant of attorney's fees under Article 111 of the Labor Code. All that is required is that lawful wages be not paid without justification, thus compelling the employee to litigate."[43]

The Ruling of the Court

The petition is impressed with merit.

Initially, the Court should determine whether it will uphold the findings of the company-designated physician and the subsequent issuance of a Certificate of Fitness to Work in favor of Verga. The veracity and weight to be given the certification is at the heart of this case's resolution.

There is no doubt that the company-designated physician's certification was issued within the extended 240-day period allowed for the seafarer's medical treatment.[44] This is not contested even by Verga. In fact, Verga did not challenge the certification when it was issued and for four months after that. That he signed the Certificate of Fitness to Work on the same day is proof of his concurrence with the company-designated physician's findings.[45]

Likewise, within those four months before filing the complaint, he did not return to the company-designated physician or see a doctor of his choice to complain of any lingering affliction.

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[42] *Id*.

[43] *Id*. at 126.

[44] See *Jebsens Maritime, Inc. v. Rapiz*, 803 Phil. 266, 272 (2017).

[45] See *Bahia Shipping Services, Inc. v. Constantino*, 738 Phil. 564, 576 (2014).

It was only when he was not deployed that he consulted with two doctors — both of his own choosing.

Section 20(A)(3) of POEA Memorandum Circular No. 10 (Series of 2010), which sets out the amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships (POEA-SEC), states:

SECTION 20. COMPENSATION AND BENEFITS
A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated 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.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and

the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

In *OSG Ship Management Manila, Inc. v. Pellazar*,[46] the Court explained that the POEA-SEC recognizes the right of the seafarer to seek "a second medical opinion from a physician of his own choice."

However, the process does not stop there. The same provision in the POEA-SEC provides a mechanism in case the seafarer's chosen doctor disagrees with the findings of the company-designated physician.

In a long line of cases, most recently *Tulabing v. MST Marine Services (Phils.), Inc.*,[47] the Court has held that the conflicting findings of the company-designated physician and the seafarer's chosen doctor "shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding."

In *Vergara v. Hammonia Maritime Services, Inc*.,[48] the Court ruled that while the seafarer "had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure."[49] In that case, the Court upheld the company-designated physician's certification "mindful that the company had exerted real effort to provide the petitioner with medical assistance and that the company-designated physician, too, monitored the petitioner's case from the beginning."[50]

In this case, the Court takes note that the company complied with its duty to Verga from the time of his accident until the company-designated doctor finally issued the Certificate of Fitness to Work.

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[46] 740 Phil. 638, 652 (2014).

[47] G.R. Nos. 202113 and 202120, 6 June 2018.

[48] 588 Phil. 895 (2008).

[49] *Id*. at 914.

[50] *Id*.

Moreover, said certification was not a hastily issued missive but the product of months of consultations, examinations, treatments, and assessment.[51] Compared to the findings of the two doctors Verga chose, who only examined him once and based their assessment on his previous medical treatment, the company-designated physician's certification is more credible[52] and must be upheld.

Since his doctors had findings contrary to those of the company-designated physician, Verga had the right to impugn the latter's certification. However, it is Verga who "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."[53] On the other hand, "the company carries the **burden of initiating the process for the referral to a third doctor** commonly agreed between the parties[.]"[54] The third doctor's ruling is final and binding on the parties.

To reiterate, the referral to a third doctor agreed upon by the parties is **mandatory**.[55] Failure to comply with the procedure "may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made."[56]

Verga never questioned the company-designated physician's certification, nor informed the company of the contrary diagnosis by his doctors. There is likewise no evidence that Verga ever gave the company any chance to seek a third doctor's opinion.

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[51] *Supra* note 44, at 275-276.

[52] *Supra* note 44, at 275-276.

[53] *Supra* note 45, at 576. Emphasis supplied.

[54] *INC Navigation Co., Philippines, Inc. v. Rosales*, 744 Phil. 774, 788 (2014). Emphasis supplied.

[55] *Id*. at 787.

[56] *Hernandez v. Magsaysay Maritime Corporation*, G.R. No. 226103, 24 January 2018.

The diagnosis of Dr. Runas was made on 31 August 2011. Two days later, Verga filed his complaint.

Further, Verga's filing of the complaint is considered a breach of his contractual obligations under the POEA-SEC,[57] since it states that conflicting assessments by the company-designated physician and the seafarer's own doctor should be referred to a third doctor for a binding opinion.

In the end, the failure of Verga to follow procedure is considered **fatal** to his cause.[58]

The Court, therefore, holds that the Certificate of Fitness to Work issued by the company-designated physician to Verga is conclusive and binding on the parties.

WHEREFORE, the petition is **GRANTED**. The assailed 23 February 2015 Decision and 22 October 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 129671 are **REVERSED and SET ASIDE**. The 21 November 2012 Decision of the National Labor Relations Commission in NLRC LAC No. OFW (M) 07-000660-12 is **REINSTATED**.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,[*] *J.*, on official leave.

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[57] See *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, 712 Phil. 507, 521 (2013).

[58] *Oriental Shipmanagement Co., Inc. v. Ocangas*, G.R. No. 226766, 27 September 2017.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

SECOND DIVISION

[G.R. No. 224894. October 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WELITO SERAD *y* RAVILLES** *a.k.a.* **"WACKY",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court. Thus, when the case pivots on the issue of the credibility of the testimonies of witnesses, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; THE EXISTENCE OF DANGEROUS DRUGS IS A CONDITION *SINE QUA NON* FOR CONVICTION.— Well-settled in jurisprudence is the principle that in all prosecutions for violation of R.A. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crimes. What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*. *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.

3. ID.; ID.; CHAIN OF CUSTODY; REQUIREMENT THAT THE APPREHENDING TEAM CONDUCT A PHYSICAL INVENTORY OF THE SEIZED ITEMS AND PHOTOGRAPH THE SAME IMMEDIATELY AFTER

SEIZURE AND CONFISCATION IN THE PRESENCE OF THE ACCUSED AND WITNESSES; THIS ALSO MEANS THAT THE WITNESSES SHOULD ALREADY BE PRESENT AT THE TIME OF APPREHENSION; ELUCIDATED.— In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of R.A. 9165 is followed. x x x Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (1) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. In buy-bust situations, or warrantless arrests, 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 practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses. x x x By the same token, however, this also means that the required witnesses should already be physically present at the time of apprehension. x x x 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.** Recent jurisprudence is clear that the procedure enshrined in Section 21 of R.A. 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.

4. **ID.; ID.; ID.; ID.; NON-COMPLIANCE EXCUSED WHERE THERE WAS EARNEST EFFORTS TO COMPLY WITH THE MANDATED PROCEDURE.—** In the present case, while the police officers were not able to explain why only two of the three required witnesses were at the place of arrest – and why no elected official was available — **the police officers nevertheless showed earnest efforts to comply with the mandated procedure**. To ensure that the integrity of the seized items were preserved, the police officers conducted a preliminary inventory at the place of the arrest as preferred by law.

> Recognizing that what was done was not *strictly* compliant with the law, the police officers conducted another inventory, this time in the police station where all the three required witnesses were available and were, in fact, present. While the Court emphasizes the importance of strictly following the procedure outlined in Section 21, it likewise recognizes that there may be instances where a *slight* deviation from the said procedure is justifiable and subsequent earnest efforts were made to comply with the mandated procedure, much like in this case where the officers showed that they did their duties bearing in mind the requirements of the law.

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

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Welito Serad y Ravilles (Wacky) assailing the Decision[2] dated January 13, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01814, which affirmed the Judgment[3] dated February 19, 2014 of Regional Trial Court (RTC) of Negros Oriental, Branch 30 in Criminal Case No. 20331, finding Wacky guilty beyond reasonable doubt for violating Section 5, Article II of Republic Act No. 9165[4] (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] See Notice of Appeal dated January 27, 2016, *rollo*, pp. 19-21.

[2] *Rollo*, pp. 5-18. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, concurring.

[3] CA *rollo*, pp. 23-31. Penned by Judge Rafael Crescencio C. Tan, Jr.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972,

The Facts

An Information[5] was filed against Wacky for violating Section 5, Article II of R.A. 9165, the accusatory portion of which reads:

> That on or about the 10th day of January 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell to a poseur buyer one (1) heat-sealed transparent plastic sachet containing 0.32 gram of Methamphetamine Hydrochloride, otherwise known as "SHABU", a dangerous drug.
>
> Contrary to Sec. 5, Art. II of R.A. 9165.[6]

The version of the prosecution, as summarized by the CA, is as follows:

> In its Brief, the State, through the Office of the Solicitor General (OSG), avers that in the early afternoon of January 10, 2011, the Office of Task Force Kasaligan in Negros Oriental was informed by a confidential informant that Wacky was engaged in the illegal sale of drugs at his home at Zone 3, Barangay Looc, Dumaguete City. The confidential informant further volunteered that he could arrange a sale of *shabu* with appellant. As appellant was included in the Task Force's anti-narcotics operation target list, SA Miguel Dungog, team leader of the Task Force, decided to carry out a buy-bust operation.
>
> Prior to the buy-bust operation, SA Dungog conducted a briefing with his men. PO2 Mark Jester Ayunting and the confidential informant were assigned as poseur-buyers, while SPO2 Allen June Germodo, as PO2 Ayunting's immediate backup, and the other members, as additional back up. SPO2 Germodo prepared nine (9) pieces of five hundred (500) peso bills as buy-bust money. The bills were marked with the initials of SPO2 Germodo and were given to PO2 Ayunting.
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> The members of the Task Force agreed that a drop call from PO2 Ayunting to SPO2 Germodo would serve as a signal to the back up

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AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

[5] Records, p. 3.

[6] *Id.*

team that the sale of illegal drugs had been consummated. At around 3 o'clock of the same day, after the briefing, the members of the Task Force, i.e., SA Dungog, SPO2 Germodo, PO2 Ayunting, PO2 Consame and SI Manzanaris, proceeded to the target area. PO2 Ayunting and the confidential informant went to Wacky's house, which was located fifty (50) meters from the main road. The other members of the Task Force waited at their designated posts.

PO2 Ayunting and the confidential informant transacted with Wacky outside the latter's house. After telling Wacky that Ayunting and the confidential informant intend to purchase *shabu* worth four thousand five hundred pesos (₱4,500.00), Wacky agreed to sell the requested amount of *shabu* to his buyers, and asked them to wait outside while he went to get the drugs inside the house. Upon his return, appellant was in possession of one (1) plastic sachet which appeared to be containing *shabu*. While Wacky handed the plastic sachet to the confidential informant, PO2 Ayunting made the [pre]-arranged signal (drop call) to SPO2 Germodo. Upon receipt of the drop call, the Task Force members proceeded to the area.

As Wacky demanded payment, PO2 Ayunting handed him the marked money and got the plastic sachet from the confidential informant to confirm if it was *shabu*. At this moment, Wacky noticed the arrival of the back up team, prompting him to flee.

PO2 Ayunting placed the plastic sachet inside his pocket and proceeded to run after Wacky. The other members of the Task Force joined the pursuit. During the chase, Wacky threw the marked money previously paid to him. He was caught by PO2 Ayunting with the aid of SPO2 Germodo and the rest of the back up team, forty (40) or fifty (50) meters away from where the sale took place. Speaking in the Visayan dialect, SPO2 Germodo informed Wacky of their authority as police officers, and accordingly, arrested him. He was likewise informed of the cause of his arrest and of his Constitutional rights. While PO2 Ayunting held the accused, the rest of the members of the Task Force returned to the area to recover marked money thrown away by Wacky. However, SPO2 Germodo was only able to get back a single five hundred peso (₱500) bill. PO2 Ayunting marked the transparent plastic sachet with "WS-BB," which stood for "Wellito Serad[-]Buy Bust." After recovering the marked money, SPO2 Germodo conducted an inventory of the item bought from Wacky.

The inventory was held at the place where Wacky was arrested and in the presence of the required witnesses, which included Neil

Rio (local media practitioner), Anthony Chilius Benlot (representative of the local DOJ), and IO1 Julieta Amatong (representative [o]f the PDEA-Dumaguete City). Another witness to the inventory, Dandan Teves Leon (Dumaguete City Kagawad), was not present at the place of the arrest, but he was present at the NBI-Dumaguete District Office. PO2 Ayunting took pictures of the marked money recovered by members of the Task Force and the plastic sachet bought from Wacky.[7]

On the other hand, the defense's version, as summarized also by the CA, is as follows:

For his part, Wacky narrates a different story. Wacky testified that on January 10, 2011 he was at the well located at the back of his house at Brgy. Looc, Dumaguete City when two (2) men in civilian clothes suddenly came rushing towards him. They asked him the whereabouts of a certain Ricardo Pimentel alias "Tadong." Wacky pointed to them the passage going to Tadong's house. A few minutes later, former NBI Supervising Agent, [Miguel] Dungog (hereinafter SA Dungog), arrived and told the two (2) men to hold him. Wacky was able to free himself from their grasp and run away but they were able to catch him. SA Dungog asked Wacky where the *shabu* was hidden by Tadong, but he replied that he did not know. SA Dungog hit Wacky on the lap with the butt of the armalite rifle he was carrying at the time. Wacky was handcuffed and was told not to worry since he will be released if he tells the truth. They forced h[i]m to tell them where Tadong's house was located and he went with them to said house. The men searched the house. Wacky denies selling dangerous drugs on that day and believes that the present case was filed because SA Dungog had a grudge on him. Dungog previously arrested and filed a case against Wacky last 2006 in which he was acquitted. In 2009, SA Dungog asked Wacky to work for him in an operation against Dandan Liu but he refused.[8]

Wacky was arraigned on February 25, 2011, in which he pleaded "not guilty" to the crime charged.[9] Pre-trial and trial thereafter ensued.

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

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

[9] Records, p. 39.

Ruling of the RTC

After trial on the merits, in its Judgment dated February 19, 2014, the RTC convicted Wacky of the crime charged. The dispositive portion of the said Judgment reads:

> **WHEREFORE**, in the light of the foregoing, the Court hereby finds the accused Welito Serad y Ravilles a.k.a. Wacky GUILTY beyond reasonable doubt of the offense of illegal sale of 0.32 gram of *shabu* in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).[10]

The RTC gave full faith and credit to the straightforward testimonies of PO2 Mark Jester Ayunting (PO2 Ayunting) and SPO2 Allen June Germodo (SPO2 Germodo) regarding the buy-bust operation and held that the prosecution was able to establish Wacky's guilt beyond reasonable doubt. The RTC found that there was sufficient compliance with the chain of custody rule, and thus the integrity of the evidence was properly preserved.

Aggrieved, Wacky appealed to the CA.

Ruling of the CA

In the CA, Wacky maintained that the case was only filed because National Bureau of Investigation (NBI) Supervising Agent Miguel Dungog (SA Dungog) had a grudge against him, as the latter previously arrested and filed a case against him in 2006 but he was later on acquitted in the said case. Wacky further contended in his appeal that the testimonies of the police officers should not have been given credence for these were marred by inconsistencies, specifically, that it was highly dubious that the confiscated *shabu* only weighed 0.32 gram when the informant supposedly told him that ₱4,500.00 worth was to be purchased, considering that in 2011 the market price of *shabu* was around ₱100.00 per 0.01 gram.[11] Lastly, he put in issue

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

[11] Brief for the Accused-Appellant, *id*. at 49.

why only one out of the nine bills or marked money was successfully confiscated and presented in court.[12]

In the assailed Decision dated January 13, 2016, the CA affirmed the RTC's conviction of Wacky, and held that the prosecution was able to sufficiently prove the elements of the crime charged. The CA also found Wacky's arguments to be untenable. It held that the supposed market price of *shabu* was not supported by credible evidence and that, in any event, there were a number of possibilities as to why the amount of *shabu* was more or less than ₱4,500.00 worth.[13] The CA ruled that this supposed discrepancy did not cast doubt upon the fact that the sale of *shabu* took place.[14] Finally, the CA noted that the police officers were able to sufficiently explain why only one of the nine ₱500.00 bills used as marked money was successfully confiscated and presented in court.[15]

Hence, the instant appeal.

Issue

The sole issue raised in this appeal is whether the CA erred in finding Wacky guilty beyond reasonable doubt of violating Section 5, Article II of R.A. 9165.

The Court's Ruling

The appeal is unmeritorious.

At the outset, it bears mentioning that Wacky raises the same issues as those raised in — and duly passed upon by — the CA. It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.[16] Thus, when the case pivots on the issue of the

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[12] *Id*.

[13] *Rollo*, p. 14.

[14] *Id*.

[15] *Id*. at 15.

[16] *People v. Gerola*, G.R. No. 217973, July 19, 2017, 831 SCRA 469, 478.

credibility of the testimonies of the witnesses, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.[17] Here, after examining the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of the testimonial evidence, which was affirmed *in toto* by the CA.

The Court is thus convinced that Wacky is guilty beyond reasonable doubt.

Well-settled in jurisprudence is the principle that in all prosecutions for violation of R.A. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus d*elicti of the crimes.[18] What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti.*[19] *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.[20]

In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of R.A. 9165 is followed. The said section provides:

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,

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[17] *People v. Aguilar*, 565 Phil. 233, 247 (2007).

[18] *People v. Magat*, 588 Phil. 395, 402 (2008).

[19] *People v. Dumangay*, 587 Phil. 730, 739 (2008).

[20] *Id*.

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;

(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[.]

Furthermore, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. 9165 (IRR) filled in the details as to where the physical inventory and photographing of the seized items that had to be done immediately after seizure could be done: *i.e.*, at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, thus:

(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 [was] served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (1) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

In buy-bust situations, or warrantless arrests, 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 practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses.

To the mind of the Court, 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 can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team. There can be no other meaning to the plain import of this requirement. By the same token, however, this also means

that the required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering 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 are allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures," this does not dispense with the requirement of having all the required witnesses 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**.

Recent jurisprudence is clear that the procedure enshrined in Section 21 of R.A. 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.[21] For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs

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[21] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 10; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 12; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 9; *People v. Guieb*, G.R. No. 233100, February 14, 2018, p. 9; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 11; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 11; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 9; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 9; *People v. Calibod*, G.R. No. 230230, November 20, 2017, p. 9; *People v. Ching*, G.R. No. 223556, October 9, 2017, p. 10; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, p. 9; *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44; *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215; *Gamboa v. People*, 799 Phil. 584, 597 (2016).

may be, it is still a governmental action that must always be executed within the boundaries of law.

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 R.A. 6425 (Dangerous Drugs Act of 1972) would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and would thus adversely affect 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 the evidentiary value of the seized [drugs]" in a buy-bust situation whose nature, as already explained, is that it is a planned operation.

Bearing in mind the foregoing principles, the Court holds that the prosecution in this case was able to prove the *corpus delicti* of the crime; thus, the RTC and the CA were correct in finding Wacky guilty beyond reasonable doubt.

As the prosecution's witness, SPO2 Germodo, testified:

Pros. Montenegro[:]

Q Now, as far as you are concerned, Mr. Witness, what else transpired after the inventory?

A PO2 Mark Ayunting took photographs during the inventory, Your Honor.

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[22] 736 Phil. 749 (2014).

[23] *Id*. at 764.

Q And who attended the inventory then?

A **It was Neil Rio, Your Honor, and Benlot, Your Honor.**

Q Where was the inventory conducted then?

A In the area, Your Honor. At that time there was no available elected official in the area, Your Honor, so after the initial inventory, we proceeded to the NBI Office, Your Honor.

Q What happened at the NBI Office?

A **We conducted the inventory, Your Honor, together with SB Member Dan-dan Teves Leon.**

Q You mean to say the inventory was being continued at the NBI Office?

A Yes, Your Honor.[24] (Emphasis supplied)

The Court recognizes the fact that, based on the above testimony, not all of the three required witnesses — the representative from the DOJ, media, and the elected official — were present during the initial inventory at the place of arrest and seizure of the items. Specifically, only Neil Rio, a local media practitioner, and Anthony Chilius Benlot, the representative from DOJ, were present in the place of arrest and seizure. It was only in the inventory in the police station when Dandan Teves Leon, a councilor, was present.[25]

Notwithstanding the foregoing, the Court cannot close its eyes to the fact that the apprehending officers in this case exerted *earnest efforts* to comply with the law. The ruling of the Court in *People v. Ramos*[26] is instructive:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. x x x **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that**

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[24] TSN, October 22, 2013, p. 11.

[25] CA *rollo*, p. 85.

[26] *Supra* note 21.

they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[27] (Emphasis and underscoring supplied)

In the present case, while the police officers were not able to explain why only two of the three required witnesses were at the place of arrest — and why no elected official was available — **the police officers nevertheless showed earnest efforts to comply with the mandated procedure.**[28] To ensure that the integrity of the seized items were preserved, the police officers conducted a preliminary inventory at the place of the arrest as preferred by law. Recognizing that what was done was not *strictly* compliant with the law, the police officers conducted another inventory, this time in the police station where all the three required witnesses were available and were, in fact, present.

While the Court emphasizes the importance of strictly following the procedure outlined in Section 21, it likewise recognizes that there may be instances where a *slight* deviation from the said procedure is justifiable and subsequent earnest efforts were made to comply with the mandated procedure, much like in this case where the officers showed that they did their duties bearing in mind the requirements of the law. In short, it would be error for the Court not to reward such compliance.

It must also be pointed out that the apprehending officers in this case not only followed the procedure on inventory, but they were likewise able to follow the rest of the procedure outlined in Section 21. PO2 Ayunting testified that immediately after the inventory, specifically forty-five minutes thereafter, they turned over the seized items to the Provincial Crime Laboratory for qualitative and quantitative examination.[29] This is well-within the 24-hour period provided under Section 21. A day after, or on January 11, 2011, the Provincial Crime

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[27] *Id*. at 8.

[28] *Id*.

[29] TSN, December 10, 2013, pp. 11-13.

Laboratory issued the forensic laboratory examination results, as proved by Chemistry Report No. D-004-11[30] attached in the records. This is likewise within the second 24-hour period provided in Section 21.

Prior to the submission to the RTC of the seized items, it was kept by the forensic chemist in the crime laboratory where only she had access to. She then submitted the seized items and her chemistry reports to the RTC on February 1, 2011.[31]

It is indubitable, therefore, that the integrity of the dangerous drugs in this case was properly preserved as the prosecution was able to convincingly show an unbroken link in the chain of custody of the seized items. As the *corpus delicti* of the crime — and the transaction in which it was sold — was properly established in evidence, then the RTC and the CA could not have erred in holding that Wacky is guilty beyond reasonable doubt.

For Wacky's other arguments to support his claim for innocence, the Court quotes with approval the following disquisition by the CA:

> We find no merit in these arguments.
>
> The alleged market price of *shabu* is not supported by credible evidence. Nonetheless, there are also a host of possibilities as to why the amount of *shabu* Wacky gave to the poseur-buyers could be more or less than the alleged ₱4,500.00 worth. This does not in any way cast doubt upon the fact that the sale of *shabu* took place.
>
> Anent the presentation of only one (1) ₱500 bill, this was satisfactorily explained by SPO3 Allen June Germodo's testimony. Wacky fled when he noticed the back-up team approaching and threw away the marked bills. After the chase, the team recovered one (1) of the bills. Besides, it is not even essential for the prosecution to present the marked money as its absence does not create a hiatus in

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[30] Prepared by Police Chief Inspector and Forensic Chemist Josephine Suico Llena, records, p. 18.

[31] CA *rollo*, p. 58.

the evidence provided that the prosecution adequately proves the sale.[32]

In sum, the Court is convinced that Wacky was indeed engaged in the illegal sale of *shabu*, thereby violating Section 5, Article II of R.A. 9165.

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. The Court **ADOPTS** the findings of facts and conclusions of law in the Decision of the Court of Appeals dated January 13, 2016 in CA-G.R. CR-HC No. 01814 and **AFFIRMS** said Decision finding accused-appellant Welito Serad y Ravilles **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165. Accordingly, he is hereby sentenced to suffer the penalty of life imprisonment and a fine in the amount of five hundred thousand pesos (₱500,000.00).

SO ORDERED.

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

Reyes, J. Jr., J., on wellness leave.

SECOND DIVISION

[G.R. No. 225061. October 10, 2018]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOMAR MENDOZA *y* MAGNO,** *appellant.*

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[32] *Rollo*, pp. 14-15.

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165), AS AMENDED BY REPUBLIC ACT NO. 10640; MANDATORY REQUIREMENTS IN THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED AND/OR SURRENDERED DANGEROUS DRUGS; PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS; THREE-WITNESS RULE.—** On 15 July 2014, Republic Act No. 10640 (RA 10640) amended Section 21 of RA 9165. x x x. RA 10640 mandates that the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.** In *People v. Ocampo*, this Court ruled that the presence of the three witnesses is required to guarantee against the unlawful planting of evidence and of frame-up. The three witnesses are necessary to remove any taint of irregularity or illegitimacy in the conduct of the apprehension of the accused in the buy-bust operation.

2. **ID.; ID.; ID.; ID.; FAILURE TO FOLLOW MANDATED PROCEDURE IN DRUGS CASES MUST BE ADEQUATELY EXPLAINED, AND MUST BE PROVEN AS A FACT UNDER THE RULES.—** In *People v. Sipin*, this Court stressed that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165 including the mandatory presence of the three witnesses. This Court held that the failure to follow mandated procedure in drugs cases must be adequately explained, and must be **proven as a fact** under the rules. The Rules require that apprehending officers do not simply mention a justifiable ground for the absence of the required witnesses, but **clearly state the ground in their sworn affidavit**, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items.

3. **ID.; ID.; ID.; ID.; JUSTIFIABLE REASONS FOR THE ABSENCE OF ANY OF THE THREE WITNESSES.—** This

Court in *People v. Sipin* also ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses, to wit: (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 of the Revised 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.

4. ID.; ID.; ID.; ID.; MANDATORY GUIDELINES THAT MUST BE FOLLOWED TO PROVE CHAIN OF CUSTODY.— [I]n *People v. Lim*, promulgated on 4 September 2018, this Court listed **mandatory guidelines** that must be followed by the prosecution, including police officers, apprehending officers, and fiscals to prove *chain of custody* under Section 21 of RA 9165, as amended, to wit: 1. In the sworn statement/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of RA 9165, as amended, and its IRR (Internal Rules and Regulations). 2**. In case of non-observance of the provision, the apprehending /seizing officers must state the justification or explanation** therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized confiscated items. 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause. 4. **If the investigating fiscal filed the case despite such absence, the court may exercise its discretion** to either refuse to issue a commitment order (or warrant of arrest) **or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.**

5. ID.; ID.; ID.; ID.; ID.; THE CONFIDENTIAL CHARACTER OF THE BUY-BUST OPERATION DOES NOT JUSTIFY EXCLUSION OF ANY OF THE REQUIRED WITNESS FROM THE PHYSICAL INVENTORY; THREE-WITNESS RULE NOT COMPLIED WITH.— Notably, the **confidential character of the buy-bust operation is not a justifiable reason** to exclude any required witness from the physical inventory under the law. Section 21 of RA 9165, as amended, requires that the three witnesses must be present during the physical inventory **"immediately after seizure and confiscation"** of the seized drug. Thus, the buy-bust team may inform the member of the media *prior to the buy-bust operation* **or** *after the accused's arrest*. **In both instances, the law requires that the member of the media be present during the physical inventory of the seized drug, when the seized drug is photographed, and sign copies of the inventory of the seized drug**. During the buy-bust operation, the buy-bust team may bring along the representative of the National Prosecution Service or the media without giving the representative details of the buy-bust operation. The buy-bust team may also contact the representative from the National Prosecution Service or the media to go to the buy-bust site immediately after the arrest and seizure. Either approach will not result in leakage of the planned buy-bust operation. However, upon the arrest of appellant, a representative from the National Prosecution Service or the media must be present to witness the physical inventory and sign the copies of the inventory receipt. Evidently, in this case, the buy-bust team decided to proceed with the physical inventory without the required witness from the National Prosecution Service or the media as mandated under Section 21 of RA 9165, as amended.

6. ID.; ID.; ID.; ID.; ACQUITTAL OF THE APPELLANT BASED ON REASONABLE DOUBT WARRANTED ABSENT JUSTIFICATION OR EXPLANATION FOR THE NON-OBSERVANCE OF THE REQUIREMENTS OF CHAIN OF CUSTODY RULE.— [T]here was **no justification or explanation** for the non-observance of the *three witness rule* under Section 21 of RA 9165, as amended, in the Affidavit of Arrest or in other sworn statements or affidavits submitted by the prosecution. Thus, following Section 21 of RA 9165, as amended, the Chain of Custody Implementing Rules and Regulations, and the guidelines of this Court in *People v. Lim*,

this Court finds that appellant should be acquitted based on reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 15 May 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 06851. The CA affirmed the Joint Decision[2] dated 23 April 2014 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC), in Criminal Case Nos. L-9716 and L-9717 convicting Jomar Mendoza y Magno (appellant) of violating Section 5 and Section 11 of Republic Act No. 9165 (RA 9165).

The Charges

In Criminal Case No. L-9717, appellant was charged with illegal sale of dangerous drugs under Section 5 of RA 9165. The Information[3] reads:

That on or about April 4, 2013 in the evening in Laoag, Aguilar, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully and unlawfully sell Methamphetamine Hydrochloride or Shabu, a dangerous drug, placed in a small heat sealed transparent plastic sachet worth ₱300.00 to SPO1 Jimmy Va[q]uilar, acting as poseur-buyer during a police

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[1] *Rollo*, pp. 2-17. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Agnes Reyes-Carpio and Melchor Quirino C. Sadang concurring.

[2] CA *rollo*, pp. 7-20. Penned by Presiding Judge Loreto S. Alog, Jr.

[3] Records (Criminal Case No. L-9717), p. 1.

buy-bust operation; such dealing by the accused with dangerous drug is without authority.

Contrary to Section 5 Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002).

In Criminal Case No. L-9716, appellant was charged with illegal possession of dangerous drugs under Section 11 of RA 9165. The Information[4] reads:

That on or about April 4, 2013 in the evening in Laoag, Aguilar, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully and unlawfully have in his possession 0.018 g. of Methamphetamine Hydrochloride or Shabu, a dangerous drug placed inside a small heat sealed transparent plastic sachet; such activity by the accused in dealing with dangerous drug is without authority.

Contrary to Section 11 Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002).

Upon arraignment, appellant pleaded *not* guilty.

The Version of the Prosecution

The prosecution presented one (1) witness: SPO1 Jimmy B. Vaquilar (SPO1 Vaquilar). According to the prosecution, on 25 March 2013, the Provincial Anti-Illegal Drugs Special Operation Task Group based in Lingayen, Pangasinan received a memorandum from the Philippine National Police Regional Office 1 in San Fernando City, La Union about the drug dealing activities of appellant in Laoag, Aguilar, Pangasinan. On 4 April 2013, a buy-bust operation against appellant was set into motion. Prior to the operation, a police asset transacted with appellant through cellular phone. The team then proceeded to a bridge located at the boundary of Poblacion and Laoag, Aguilar, Pangasinan. When the team arrived, SPO1 Vaquilar walked on his own to meet with appellant. SPO1 Vaquilar gave appellant the marked money, the latter, in turn, delivered to SPO1 Vaquilar a plastic sachet. Upon receipt of the sachet, SPO1 Vaquilar

[4] Records (Criminal Case No. L-9716), p. 1.

immediately identified himself as a policeman, simultaneously signaling the team to approach and arrest appellant. SPO1 Vaquilar marked the sachet "JBV1." Thereafter, SPO1 Vaquilar conducted a search on appellant. He was able to recover another plastic sachet, which he marked as "JBV2." SPO1 Vaquilar then prepared the confiscation receipt in the presence of Barangay Kagawad Gabriel Lagas, after which the team proceeded to the Aguilar police station where the documentation and photographing of the seized items were made. At the police station, SPO1 Vaquilar retained custody over the seized items. That same day, SPO1 Vaquilar brought the seized items to the Pangasinan Provincial Crime Laboratory Office in Lingayen, Pangasinan for examination. The seized items were received by PO1 Frias, in the presence of Police Senior Inspector Myrna Malojo-Todeño (PSI Todeño). After qualitative examination, PSI Todeño found that the seized items contained methamphetamine hydrochloride or *shabu*, a dangerous drug. The two sachets of *shabu* weighed 0.024 gram and 0.018 gram, respectively.[5]

The testimony of PSI Todeño, who conducted the qualitative examination of the contents of the two (2) plastic sachets of *shabu*, was dispensed with after the defense admitted: (1) that she was the one who received the said items weighing 0.018 gram and 0.024 gram, respectively from SPO1 Vaquilar who delivered the same; (2) that she conducted examination on the two plastic sachets and set forth her findings in the initial laboratory and final laboratory reports; and (3) that the items she brought to court were the same items delivered to, and examined by, her.[6]

The Version of the Defense

The defense presented three (3) witnesses: appellant, Barangay Captain Jesus Zamoco, Sr.[7] (Zamoco), and Rosemarie Mendoza.

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[5] CA *rollo*, pp. 9-10.

[6] *Id*. at 8-9.

[7] Sometimes referred to as "Jesus Zamuco" in the records.

The defense claimed that appellant was working that day in the farm of Zamoco and was on his way home when two male persons, who turned out to be policemen, appeared, took him into custody without any explanation and brought him to the municipal hall of Aguilar, where he was interrogated for more than an hour without informing him of his custodial rights.[8] Appellant alleged that he was illegally arrested and the items seized from him by the police had no evidentiary value being *fruits of the poisonous tree*.[9]

Zamoco corroborated appellant's testimony. Zamoco testified that appellant was working for him in the farm from 7:30 a.m. to 3:45 p.m. the day when appellant was arrested.[10] Lastly, Rosemarie Mendoza, appellant's sister-in-law, also testified that appellant was illegally arrested since appellant was not in the act of selling *shabu* when appellant was arrested.[11]

The Ruling of the RTC

In a Joint Decision dated 23 April 2014, the RTC convicted appellant of violating Section 5 and Section 11 of RA 9165. The trial court gave credence to the positive identification by the witness for the prosecution over the evidence of the defense consisting of denial, illegal arrest, and frame-up. The RTC ruled that the buy-bust operation team caught appellant *in flagrante delicto*, particularly, the act of appellant of handing over the sachet containing shabu in exchange for the marked money. The subsequent search on appellant was legal since the search was incidental to a lawful arrest. Lastly, the RTC held that the chain of custody over the seized *shabu* was also duly established by the prosecution. The dispositive portion of the Joint Decision reads:

> WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt of violation of Section 5 and Section 11 of Republic Act No. 9165 and is accordingly sentenced to suffer:

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[8] CA *rollo*, pp. 10-11.

[9] *Id.* at 42.

[10] TSN, 25 March 2014, p. 5.

[11] TSN, 8 April 2014, p. 8.

(1) IN CRIMINAL CASE NO. L-9716: the penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to seventeen (17) years, as maximum, and to pay a fine of ₱300,00.00;and

(2) IN CRIMINAL CASE NO. L-9717; the penalty of life imprisonment and to pay a fine of ₱500,000.00.

and such accessory penalties provided for in the law.

The two (2) sachets of methamphetamine hydrochloride subject of these cases are confiscated in favor of the government to be dealt with as the law directs.

SO ORDERED.[12]

The Ruling of the CA

In a Decision dated 15 May 2015, the CA affirmed the decision of the RTC. The CA ruled that the prosecution was able to prove the elements of illegal sale and illegal possession of dangerous drugs under Section 5 and Section 11 of RA 9165. The CA considered appellant's defense of frame-up as weak and self-serving. The CA took note that appellant's alibi could not account for his whereabouts during the time when the buy-bust operation transpired. Lastly, the CA held that the chain of custody was unbroken because it was proven by the prosecution that the integrity of the illegal drug was preserved from the time it was seized up to the time it was presented in court. The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is DENIED. The assailed *Joint Decision* dated April 23, 2014, of the RTC, Branch 69, Lingayen, Pangasinan, in Criminal Cases Nos. L-9716 and L-9717 is AFFIRMED *in toto*.

SO ORDERED.[13]

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[12] CA *rollo*, p. 20.

[13] *Rollo*, p. 16.

The Issue

The issue in this case is whether appellant is guilty of the offenses charged.

The Ruling of this Court

We resolve to acquit appellant based on reasonable doubt due to the prosecution's failure to comply with the requirements of the *chain of custody rule* under Section 21 of RA 9165, as amended.

Section 21 of RA 9165 states:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (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;
>
> x x x x x x x x x
> (Emphasis supplied)

On 15 July 2014, Republic Act No. 10640 (RA 10640) amended Section 21 of RA 9165. The pertinent provision states:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall

take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 [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 and custody over said items.

x x x x x x x x x

(Emphasis supplied)

RA 10640 mandates that the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.** In *People v. Ocampo*,[14] this Court ruled that the presence of the three witnesses is required to guarantee against the unlawful planting of evidence and of frame-up. The three witnesses are

[14] G.R. No. 232300, 1 August 2018.

necessary to remove any taint of irregularity or illegitimacy in the conduct of the apprehension of the accused in the buy-bust operation.[15]

In *People v. Sipin*,[16] this Court stressed that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165 including the mandatory presence of the three witnesses.[17] This Court held that the failure to follow mandated procedure in drugs cases must be adequately explained, and must be **proven as a fact** under the rules.[18] The Rules require that apprehending officers do not simply mention a justifiable ground for the absence of the required witnesses, but **clearly state the ground in their sworn affidavit**, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items.[19] Section 1 (A. 1.10) of the Chain of Custody Implementing Rules and Regulations provides:

> A. 1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, **shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers**, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented. (Emphasis supplied)

This Court in *People v. Sipin* also ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses, to wit:

> (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)

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[15] *Id*., citing *People v. Sagana*, G.R. No. 208471, 2 August 2017.

[16] G.R. No. 224290, 11 June 2018.

[17] *Id*.

[18] *Id*.

[19] *Id*.

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 of the Revised 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.[20] (Emphasis supplied)

Likewise, in *People v. Lim*,[21] promulgated on 4 September 2018, this Court listed **mandatory guidelines** that must be followed by the prosecution, including police officers, apprehending officers, and fiscals to prove *chain of custody* under Section 21 of RA 9165, as amended, to wit:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR (Internal Rules and Regulations).

2. **In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation** therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. **If the investigating fiscal filed the case despite such absence, the court may exercise its discretion** to either refuse to issue a commitment order (or warrant of arrest) **or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.** (Emphasis supplied)

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[20] *Id*. See also *People v. Lim*, G.R. No. 231989, 4 September 2018; *People v. Reyes*, G.R. No. 219953, 23 April 2018, and *People v. Mola*, G.R. No. 226481, 18 April 2018.

[21] G.R. No. 231989.

In the present case, a representative of the National Prosecution Service or the media was not present during all the phases of the buy-bust operation including **the conduct of the physical inventory** of the seized *shabu*. There was also no signature of the representative of the National Prosecution Service or the media in the inventory receipt. Moreover, SPO1 Vaquilar admitted in his testimony that no picture was taken of the seized *shabu* at the time he marked it, to wit:

> Q: Do you have a picture to show that you marked the evidence at the place of incident [and] that you marked JBV1 and JBV2 on site?
> A: **We don't have a picture because it [was] already 6:30 o'clock in the evening sir.**
>
> Q: So you did not take a picture?
> A: Yes, sir.
>
> Q: Are you sure?
> A: Yes, sir.[22] (Emphasis supplied)

During his testimony, SPO1 Vaquilar was also asked why no representative of the media was present, to wit:

> Q: Mr. Witness you also know that you are supposed to bring along with you, members of the media to participate in the buy bust operation, are you aware of that?
> A: **We are aware but to keep our operation secret [and] not to divulge it publicly, sir.**[23] (Emphasis supplied)

SPO1 Vaquilar, during cross-examination, admitted that the buy-bust team **deliberately excluded** the member of the media from the physical inventory of the seized drug.

Notably, the **confidential character of the buy-bust operation is not a justifiable reason** to exclude any required witness from the physical inventory under the law. Section 21 of RA 9165, as amended, requires that the three witnesses must

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[22] TSN, 22 October 2013, p. 29.

[23] *Id*.

be present during the physical inventory **"immediately after seizure and confiscation"** of the seized drug. Thus, the buy-bust team may inform the member of the media *prior to the buy-bust operation* **or** *after the accused's arrest*. **In both instances, the law requires that the member of the media be present during the physical inventory of the seized drug, when the seized drug is photographed, and sign copies of the inventory of the seized drug**.

During the buy-bust operation, the buy-bust team may bring along the representative of the National Prosecution Service or the media without giving the representative details of the buy-bust operation. The buy-bust team may also contact the representative from the National Prosecution Service or the media to go to the buy-bust site immediately after the arrest and seizure. Either approach will not result in leakage of the planned buy-bust operation. However, upon the arrest of appellant, a representative from the National Prosecution Service or the media must be present to witness the physical inventory and sign the copies of the inventory receipt. Evidently, in this case, the buy-bust team decided to proceed with the physical inventory without the required witness from the National Prosecution Service or the media as mandated under Section 21 of RA 9165, as amended.

Further, there was **no justification or explanation** for the non-observance of the *three witness rule* under Section 21 of RA 9165, as amended, in the Affidavit of Arrest[24] or in other sworn statements or affidavits submitted by the prosecution. Thus, following Section 21 of RA 9165, as amended, the Chain of Custody Implementing Rules and Regulations, and the guidelines of this Court in *People v. Lim*,[25] this Court finds that appellant should be acquitted[26] based on reasonable doubt.

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[24] Records (Criminal Case No. L-9716), pp. 9-10.

[25] *Supra* note 21.

[26] The Constitution guarantees the accused's presumption of innocence until proven guilty. Section 14(2) of the Bill of Rights (Article III) provides that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. Section 2, Rule 133 of the Rules of Court

WHEREFORE, we **GRANT** the appeal. The 15 May 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 06851, which affirmed the 23 April 2014 Joint Decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 69, in Criminal Case Nos. L-9716 and L-9717, finding appellant Jomar Mendoza y Magno guilty of violating Section 5 and Section 11 of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Jomar Mendoza y Magno is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the Bureau of Corrections in Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,[*] *J.*, on official leave.

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likewise states that, in a criminal case the accused is entitled to an acquittal, unless his guilt is proved beyond reasonable doubt.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

SECOND DIVISION

[G.R. No. 226045. October 10, 2018]

ALBERTO GRANTON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; CONFINED TO QUESTIONS OF LAW; QUESTION OF FACT MAY BE ENTERTAINED ONLY IN EXCEPTIONAL CIRCUMSTANCES, WHICH THE ACCUSED FAILED TO DEMONSTRATE IN THE INSTANT CASE.— [I]ssues dealing with the sufficiency of the evidence and the relative weight accorded to it by the RTC cannot be raised in an appeal by *certiorari*, which is confined to questions of law. Questions that are purely factual and evidentiary and which require a re-evaluation and recalibration of the evidence are outside the scope of the Court's discretionary appellate jurisdiction under Rule 45. Moreover, it is settled that in assessing the credibility of witnesses, the Court will not disturb the findings of the trial court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the results of the case. While questions of fact have been entertained by the Court in exceptional circumstances, Alberto herein failed to specify or demonstrate how the instant case falls within the allowable exceptions.

2. CRIMINAL LAW; REVISED PENAL CODE (RPC); RAPE BY SEXUAL ASSAULT; ELEMENTS; SUFFICIENTLY ESTABLISHED.— The elements of Rape by Sexual Assault are as follows: (1) That the offender commits an act of sexual assault; (2) That the act of sexual assault is *committed by* any of the following means: (a) By inserting his penis into another person's mouth or anal orifice; or (b) **By inserting any instrument or object into the genital or anal orifice of another person;** (3) That the act of sexual assault is accomplished under any of the following circumstances: (a) By using force and intimidation; (b) When the woman is deprived of reason or otherwise unconscious; or (c) By means of fraudulent

machination or grave abuse of authority; or (d) **When the woman is under 12 years of age or demented.** The foregoing elements as described in the Information were sufficiently established by the evidence of the prosecution, *i.e.*, that Alberto inserted his finger in the genital area of CCC, who was then under twelve (12) years of age.

3. ID.; ID.; ID.; THE COURT MODIFIES THE NOMENCLATURE OF THE OFFENSE TO ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE RPC IN RELATION TO SECTION 5(b), ARTICLE III OF R.A. 7610; PROPER PENALTY.— [T]he Court modifies the nomenclature of the offense committed following its recent ruling in *People v. Macapagal*. x x x In this regard, the Court affirms Alberto's conviction for the acts complained of and finds him guilty of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610. Finally, to conform with recent jurisprudence, the penalty of imprisonment is hereby modified to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum. The damages awarded by the CA are accordingly modified to Fifteen Thousand Pesos (₱15,000.00) each for moral damages and exemplary damages as well as Twenty Thousand Pesos (₱20,000.00) as civil indemnity.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal by *certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 30,

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[1] *Rollo*, pp. 15-36.

[2] *Id*. at 86-102. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap concurring.

2015 and Resolution[3] dated June 24, 2016 in CA-G.R. CR No. 02316 of the Court of Appeals (CA), Eighteenth (18th) Division and Special Former Eighteenth (18th) Division, respectively, which found herein petitioner Alberto Granton (Alberto) liable for two (2) counts of Rape through Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code (RPC).

Factual Antecedents

On December 23, 2009, two (2) separate Informations for Rape through Sexual Assault were filed against Alberto, which read as follows:

Criminal Case No. 5158

That on or about [the] 18th day of September 2009 in the [xxx][4] Province of Leyte, Philippines and within the jurisdiction of the Honorable Court, the said accused, by force, threat and intimidation did then and there, willfully, unlawfully and feloniously inserted his finger inside the genital of two (2) year old CCC without the latter's consent and against her will.

CONTRARY TO LAW.[5]

Criminal Case No. 5159

That on or about [the] 22nd day of September 2009 in the [x x x] Province of Leyte, Philippines and within the jurisdiction of the Honorable Court, the said accused, by force, threat and intimidation did then and there, willfully, unlawfully and feloniously inserted his finger inside the genital of two (2) year old CCC without the latter's consent and against her will.

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[3] *Id*. at 110-112. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi concurring.

[4] 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 Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[5] *Rollo*, pp. 87-88.

CONTRARY TO LAW.[6]

The CA summarized the evidence of the prosecution as follows:

On 18 September 2009, at around 5:00 o'clock in the afternoon, NNN was cleaning the house when she noticed blood in the undergarments of CCC, the two (2)-year old daughter of MMM and FFF. The undergarments had two blood stains — one was already brown but the other is still fresh and red. At first, she thought CCC was suffering from a Urinary Tract Infection (UTI).

The following day, 19 September 2009, when NNN was about to do the laundry, once again, she saw one of CCC's undergarments stained with blood.

The day after, or on 20 September 2009, NNN noticed another of CCC's undergarments with blood stains on it. It was then that she started having misgivings whether it was really UTI that had been causing all these blood stains. Thus, she suspected CCC to have been playing with her vagina.

On 22 September 2009, NNN asked CCC if she was "touched" by her "Tito Ambet" (referring to appellant). She suspected appellant to have something to do with the blood stains found on the undergarments because of his close familiarity with the child— appellant being a distant relative of FFF and hired by the latter to feed his flock of fighting cocks on several occasions. Appellant likewise resides in the house of spouses FFF-MMM and at times he was free to hug and touch the child. CCC answered "yes", and demonstrated a push-and-pull movement of her index finger. NNN likewise asked SSS, the elder sister of CCC, if she had seen appellant touching the genitalia of her younger sister. SSS answered in the affirmative.

On the evening of that day, NNN told the spouses FFF-MMM about what appellant had done to their child. She likewise showed them the two undergarments with blood stains. The spouses then asked CCC whether NNN's accusations were true and the child confirmed the same. MMM broke down in tears while FFF was unable to say a word.

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[6] *Id*. at 88.

CCC was then brought to the municipal hospital for physical examination. Thereafter, spouses FFF-MMM brought her to the Women and Children Protection Desk of the Philippine National Police (PNP) in Leyte, where a police blotter of the incident was made.[7]

Meanwhile, the evidence for the defense was presented by the CA to wit:

To exculpate himself from liability, appellant advanced denial and alibi as his defense.

Appellant's evidence disclosed that he works as the personal driver of the Lim Family in Leyte. His job involved ferrying the Lim children to school using his employer's motorcycle. He works casually, upon FFF's request, by feeding FFF's fighting cocks or washing the latter's vehicle, usually on Saturdays.

From 18 September to 24 September 2009, appellant was at the house of Arturo Cadano (Arturo), the father of his common-law wife, Mary Jane Enriquez (Mary Jane), to ask the latter's hand in marriage. He said that Arturo wanted him to stay thereat for several days so that they could have enough time to know each other. He denied having sexually molested CCC.[8]

When arraigned, Alberto entered a plea of "not guilty."[9] Trial on the merits thereafter ensued.

During trial, the prosecution presented the testimonies of the victim, CCC, who was already four (4) years old when she testified[10]; NNN, the housekeeper of the victim's family; MMM, the victim's mother; Dr. Maribeth R. Aguilar, the medico-legal officer who physically examined the victim; and SPO2 Evelyn Bernal. The defense presented the testimonies of Arturo Cadano (Arturo), father of Alberto's common-law wife; Mary Jane Enriquez (Mary Jane), Alberto's common-law wife; and Alberto himself.[11]

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[7] *Id*. at 89-90.

[8] *Id*. at 90.

[9] *Id*. at 88.

[10] *Id*. at 59.

[11] *Id*. at 88-89.

Ruling of the RTC

In a Decision[12] dated October 22, 2013, the Regional Trial Court of Carigara, Leyte, Branch 13 (RTC), convicted Alberto of two (2) counts of Rape through Sexual Assault under paragraph 2, Article 266-A of the RPC, as amended:

> **WHEREFORE**, premises considered, this court, finding accused **ALBERTO GRANTON, GUILTY** beyond reasonable doubt of the crime of Sexual Assault under par. 2 of Art. 266-A of the Revised Penal Code as amended by Rep. Act [N]o. 8353 otherwise known as the Anti-Rape Law of 1997, committed as charged in the Information respectively under Criminal Case [N]os. 5158 and 5159, hereby sentenced to suffer an indeterminate sentence of **TWELVE (12) YEARS maximum of prision mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTH[S] medium period of RECLUSION TEMPORAL as the maximum in Criminal Case [N]o. 5158, and likewise to suffer the same sentence of imprisonment of TWELVE (12) YEARS maximum of prision mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of medium period of Reclusion Temporal as maximum** in Criminal Case [N]o. 5159.
>
> Further, ordering accused Alberto Granton to pay to minor victim in each count of [R]ape by [S]exual Assault, the amount of **Fifty Thousand Pesos (Php 50,000.00)** as civil indemnity; the amount of **Fifty Thousand Pesos (Php 50,000.00)** as moral damages, and exemplary damages in the amount of **Thirty Thousand (Php 30,000.00) Pesos**, and to pay the costs.[13]

On whether Alberto committed sexual assault against CCC on the dates specified in the Informations, the RTC relied on the testimony of CCC that Alberto inserted his finger in her vagina while they were watching TV but noted that she could not remember how many times he did it but that she was certain that it happened more than once. CCC testified that she felt pain and that blood flowed out from her vagina, but she could not determine for certain when it happened.[14] The RTC also

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[12] *Id*. at 54-71. Penned by Presiding Judge Emelinda R. Maquilan.

[13] *Id*. at 70-71.

[14] *Id*. at 64.

considered that the testimony of CCC was corroborated by the medical findings of a physician who testified that there was a superficial abrasion in the *labia majora*, redness of the left *labia minora*, and healed laceration of the hymen at 9:00 o'clock position. The doctor conducted her medical examination on September 23, 2009.[15] At the time of the examination, the vaginal laceration had already healed, so the injury could have happened three (3) to seven (7) days before,[16] which is consistent with the dates alleged in the Informations. For the RTC, although CCC failed to exactly state when the two acts of sexual assault happened, her direct testimony and that of the medical officer were sufficient because the exact time of the commission of the crime of rape is not a material ingredient of the crime.[17]

The RTC likewise believed the testimonies of NNN and MMM on the discovery of the bloody underwear by NNN and the subsequent reporting of MMM and FFF to the police of what happened to their daughter.[18]

Anent Alberto's defense, the RTC ruled that his defense of alibi was not believable. The petitioner admitted that the house of Arturo was near the house of CCC. The evidence also showed that Alberto and Mary Jane only stayed in the house of Arturo on September 22, 2009, which is contrary to Alberto's representations that he had stayed there from September 18 to 24, 2009.[19] Thus, for the RTC, it was not physically impossible for Alberto to be physically present at the house of CCC.[20] The RTC also ruled that the defense did not adduce any evidence that would show that any of the prosecution witnesses was prompted by ill motive when they testified against him. The

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[15] *Id*. at 65.

[16] *Id*.

[17] *Id*. at 69.

[18] *Id*. at 65-66.

[19] *Id*. at 62, 69-70.

[20] *Id*. at 70.

absence of such proof shows that no such motive exists and that such testimonies were worthy of full faith and credit.[21]

Unsatisfied, Alberto appealed to the CA. Alberto argued that the findings in the medical certificate were not conclusive to establish that they were caused by him through sexual assault.[22] He also questioned the credibility of the testimony of CCC allegedly because she did not even cry in pain or shout for help during the incidents. According to Alberto, this reaction made the sexual assault improbable because CCC herself testified that NNN was around the house and that her parents were in the adjacent room.[23]

Ruling of the CA

In a Decision[24] dated September 30, 2015, the CA affirmed the RTC's conviction of Alberto and found him guilty beyond reasonable doubt for the acts charged.

The CA, however, modified the penalty imposed in accordance with Article III, Section 5(b) of Republic Act (R.A.) No. 7610,[25] which imposes a penalty of *reclusion temporal* in its medium period when the lascivious conduct is committed against a victim who is under twelve (12) years old.[26] The indeterminate sentence was therefore modified to twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal* as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal* as maximum. Thus:

WHEREFORE, the foregoing premises considered, the *Decision dated 22 October 2013* of Branch 13, Regional Trial Court (RTC) of Leyte in Criminal Case Nos. 5158 and 5159 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

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[21] *Id*. at 68-69.

[22] *Id*. at 93.

[23] *Id*.

[24] *Id*. at 86-102.

[25] SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT.

[26] *Rollo*, p. 99.

(a) Accused-Appellant Alberto Granton is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum for each count of rape;

(b) Accused-Appellant is hereby ORDERED to pay the victim the following amounts for each count of rape: Php 30,000.00 as civil indemnity; Php 30,000.00 as moral damages; and Php 30,000.00 as exemplary damages.

(c) All monetary awards shall earn interest at the legal rate of 6% per *annum* from the date of finality of this judgment until fully paid.

SO ORDERED.[27]

A motion for reconsideration was filed by Alberto, which was denied by the CA in a Resolution[28] dated June 24, 2016 for lack of merit.

Hence, this Petition.

Public respondent, through the Office of the Solicitor General, filed its Comment[29] dated June 29, 2017. In lieu of a reply, Alberto filed a Manifestation[30] dated December 6, 2017, reiterating the arguments in his Petition.

Issue

Whether the CA committed reversible error in finding Alberto guilty beyond reasonable doubt for two (2) counts of Rape through Sexual Assault.

The Court's Ruling

The Petition is denied.

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

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

[29] *Id*. at 131-145.

[30] *Id*. at 148-150.

In his Petition, Alberto raises the following arguments in contesting his conviction: (i) that the findings in the medical certificate do not strengthen the alleged commission of rape,[31] and (ii) the improbable testimony of CCC casts doubt on her credibility as a witness.[32]

The Court notes at the outset that Alberto's Petition relies on issues that are factual in nature, as he questions in particular the RTC and CA's appreciation of the evidence as well as the credibility of the testimony of the victim, CCC.[33]

As a rule, issues dealing with the sufficiency of the evidence and the relative weight accorded to it by the RTC cannot be raised in an appeal by *certiorari*, which is confined to questions of law. Questions that are purely factual and evidentiary and which require a re-evaluation and recalibration of the evidence are outside the scope of the Court's discretionary appellate jurisdiction under Rule 45. Moreover, it is settled that in assessing the credibility of witnesses, the Court will not disturb the findings of the trial court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the results of the case.[34] While questions of fact have been entertained by the Court in exceptional circumstances, Alberto herein failed to specify or demonstrate how the instant case falls within the allowable exceptions.

Be that as it may, even if the foregoing rule were to be relaxed and after a careful study of the submissions of the parties, the Court finds no error committed by the CA in convicting Alberto for the subject crimes.

The elements of Rape by Sexual Assault are as follows:

(1) That the offender commits an act of sexual assault;

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[31] See *id*. at 32-33, 49.

[32] See *id*. at 28-31, 50.

[33] See *id*. at 27-34, 48-52.

[34] *Nerpio v. People*, 555 Phil. 87, 92 (2007).

(2) That the act of sexual assault is *committed by* any of the following means:

(a) By inserting his penis into another person's mouth or anal orifice; or

(b) **By inserting any instrument or object into the genital or anal orifice of another person;**

(3) That the act of sexual assault is accomplished under any of the following circumstances:

(a) By using force and intimidation;

(b) When the woman is deprived of reason or otherwise unconscious; or

(c) By means of fraudulent machination or grave abuse of authority; or

(d) **When the woman is under 12 years of age or demented.**[35] (Emphasis supplied)

The foregoing elements as described in the Information were sufficiently established by the evidence of the prosecution, *i.e.*, that Alberto inserted his finger in the genital area of CCC, who was then under twelve (12) years of age.

As a rule, the testimonies of child-victims are given full weight and credit. The Court finds no cogent reason to doubt the testimony of CCC relative to her defilement by Alberto, as such testimony was delivered in a clear, consistent, straightforward, and spontaneous manner.[36] Meanwhile, on the issue of the medical certificate, assuming that Alberto was correct and that it is not to be given any weight, the CA correctly ruled that the medical certificate was only corroborative and not indispensable to obtaining a conviction.[37]

Further, as to the circumstances under which the sexual assault happened, it is a known fact that there is no standard rational

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[35] *People v. Soria*, 698 Phil. 676, 693-694 (2012).

[36] *Rollo*, p. 94.

[37] *Id*. at 97.

reaction to an irrational or traumatic experience; Alberto cannot dictate upon CCC a certain type of behavior as people are known to react differently to similar situations. Thus, regardless of whether CCC cried or shouted for help, the CA was correct in ruling that this did not diminish the established fact that Alberto, in more than one occasion, inserted his finger into CCC's vagina who was then only two (2) years of age.[38]

Proceeding from the foregoing, the Court thus adopts the following pronouncements of the CA:

> After a circumspect perusal of the pieces of evidence adduced by the parties before the court *a quo*, We find that the prosecution successfully proved appellant's guilt beyond reasonable doubt.
>
> The clear, consistent, straightforward, and spontaneous testimony of CCC established that appellant inserted his index finger into her vagina on more than one occasion. Pertinent portion of her testimony states:
>
> Q Is it not a fact that while you are watching Television that your Titio (*sic*) Ambit will hold your vagina and inserted (*sic*) his finger into it?
>
> A Yes, sir.
>
> Q Do you recall how many times your Tito Ambit done it?
>
> A I cannot recall anymore how many times.
>
> Q But, would it be more than once?
>
> A Yes, sir.
>
> Q Is it not a fact that you would feel pain every time your Tito Ambit would insert his finger into your vagina?
>
> A Yes, sir.
>
> Q Did blood flow from your vagina when your Tito Ambit inserted his finger into it?
>
> A Yes, sir.

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[38] See *id*. at 98.

Q Is your Tito Ambit around in the courtroom today?

A Yes, sir.

Q Will you please point him out in the courtroom?

A There. Witness pointing to a person inside of the courtroom who when asked of his name identified himself as Alberto Granton.

x x x x x x x x x

Q And is it not a fact that your father is the cousin of your Tito Ambit?

A Yes, ma'am.

Q That is why you call him Tito Ambit?

A Yes, sir.

x x x x x x x x x

Indeed, in order to obtain a conviction for rape by sexual assault, it is essential for the prosecution to establish the elements that constitute such crime. Article 266-A, paragraph 2 of the Revised Penal Code explicitly provides that the gravamen of the crime of rape by sexual assault which is the **insertion of** the penis into another x x x person's mouth or anal orifice, or **any instrument or object, into another person's genital or anal orifice**. In the instant case, this element is clearly present when CCC straightforwardly testified in court that appellant inserted his index finger in her vagina.

Settled is the rule that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been sexually violated, she says in effect all that is necessary to show that rape was indeed committed. x x x

x x x x x x x x x

There is likewise no legal mooring to appellant's contention that the medical certificate should not have been given credence since it does not establish with conclusiveness his culpability.

Even granting that appellant was correct in saying that the medical certificate did not establish his guilt with reasonable certainty, it is noteworthy that **expert testimony is merely corroborative in character and not essential to conviction since an accused can still be convicted of rape on the basis of the sole testimony of the private complainant**.

In other words, the medico-legal officer's testimony cannot be considered to possess comparative weight to that of the victim's assertions of rape and, thus, can be disregarded without affecting the finding of guilt imposed upon the appellant.[39] (Emphasis supplied)

On a different matter, the Court modifies the nomenclature of the offense committed following its recent ruling in *People v. Macapagal*.[40] Therein, the original conviction for Rape through Sexual Assault under paragraph 2, Article 266-A of the RPC was modified to Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610:

After a careful review of the records, the Court finds no reason to reverse the RTC's judgment of conviction, but a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed, are in order.

In Criminal Case No. RTC-2003-0294, appellant should be held liable for acts of lasciviousness under Art. 336 of the RPC, in relation to Section [5](b), Art. III of R.A. No. 7610 instead of rape through sexual assault under Art. 266-A, paragraph 2 of the RPC.

In ***Dimakuta v. People***, the Court stressed that **in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Art. 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5 (b), Art. III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim**. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special

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[39] *Id*. at 94-97.

[40] G.R. No. 218574, November 22, 2017.

law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.

In ***People v. Chingh***, the Court noted that "it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. **Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those 'persons below eighteen (18) years of age** or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.'"

In ***People v. Noel Go Caoili***, the Court prescribed guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section S(b) of R.A. No. 7610, and in determining the imposable penalty. "**If the victim of lascivious conduct is under twelve (12) years of age, the nomenclature of the crime should be 'Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of R.A. No. 7610' and pursuant to the second *proviso* thereof, the imposable penalty is *reclusion temporal* in its medium period.**" In this case, it was alleged in the information, stipulated during pre-trial and indicated in her birth certificate that BBB was 11 years old at the time of the commission of the crime charged in Criminal Case No. RTC-2003-0294.[41] (Emphasis supplied)

In this regard, the Court affirms Alberto's conviction for the acts complained of and finds him guilty of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

Finally, to conform with recent jurisprudence, the penalty of imprisonment is hereby modified to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum.[42] The damages awarded by the CA are accordingly

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[41] *Id.* at 7-9.

[42] *Quimvel v. People*, G.R. No. 214497, April 18, 2017, 823 SCRA 192, 251-252.

modified to Fifteen Thousand Pesos (₱15,000.00) each for moral damages and exemplary damages as well as Twenty Thousand Pesos (₱20,000.00) as civil indemnity.[43]

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The Decision dated September 30, 2015 of the Court of Appeals in CA-G.R. CR No. 02316 is **AFFIRMED** with **MODIFICATION**. Petitioner Alberto Granton is hereby found **GUILTY** beyond reasonable doubt of two (2) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of Republic Act No. 7610 and is sentenced to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum, for each count.

Petitioner is likewise **ORDERED** to **PAY** the victim moral damages and exemplary damages in the amount of Fifteen Thousand Pesos (₱15,000.00) each and Twenty Thousand Pesos (₱20,000.00) as civil indemnity for each count committed. All damages awarded shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Reyes, J. Jr.,[*] *J.*, on wellness leave.

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[43] See *id*. at 252.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 233193. October 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO BACOLOT *y* IDLISAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW, REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; IN ORDER FOR THE ACCUSED TO BE EXEMPTED FROM CRIMINAL LIABILITY UNDER A PLEA OF INSANITY, HE MUST SUCCESSFULLY SHOW THAT HE WAS COMPLETELY DEPRIVED OF INTELLIGENCE, AND SUCH COMPLETE DEPRIVATION OF INTELLIGENCE MUST BE MANIFEST AT THE TIME IMMEDIATELY PRECEDING OR SIMULTANEOUS WITH THE COMMISSION OF THE OFFENSE WITH WHICH THE ACCUSED IS CHARGED.— In the case of *People v. Isla*, the Court stated that: Article 12 of the [RPC] provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless the latter has acted during a lucid interval. This circumstance, however, is not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. Under Article 800 of the Civil Code, the presumption is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. **The testimony or proof of an accused's insanity, must, however, relate to the time immediately preceding or simultaneous with the commission of the offense which he is charged.** For the defense of insanity to be successfully invoked as a circumstance to evade criminal liability, it is necessary that insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which the accused is charged. In short, in order for the accused to be exempted from criminal liability under a plea of insanity, he must successfully show that: (1) he

was completely deprived of intelligence; and (2) such complete deprivation of intelligence must be manifest at the time or immediately before the commission of the offense.

2. **ID.; ID.; ID.; ID.; ACCUSED-APPELLANT IS DEEMED TO HAVE ADMITTED THE COMMISSION OF THE CRIME WHEN HE INVOKED THE DEFENSE OF INSANITY; THUS, HE HAS THE ONUS TO ESTABLISH WITH CERTAINTY THAT HE WAS COMPLETELY DEPRIVED OF INTELLIGENCE AT THE TIME OR IMMEDIATELY BEFORE THE COMMISSION OF THE OFFENSE BECAUSE OF HIS MENTAL CONDITION OR ILLNESS.—** Having invoked the defense of insanity, accused-appellant is deemed to have admitted the commission of the crime. Accordingly, he has the onus to establish with certainty that he was completely deprived of intelligence because of his mental condition or illness. After a careful review of the records of the case, the Court finds that the accused-appellant failed to prove that he was insane at the time or immediately before the commission of the offense.

3. **ID.; ID.; ID.; ID.; THE EVIDENCE ON THE ALLEGED INSANITY MUST REFER TO THE TIME PRECEDING THE ACT UNDER PROSECUTION OR TO THE VERY MOMENT OF EXECUTION.—** As can be gleaned from Dr. Genovita's testimony, there was no finding whatsoever that accused-appellant exhibited any of the myriad symptoms associated with schizophrenia immediately before or simultaneous with the hacking of Rodolfo. x x x Although the accused-appellant was diagnosed with schizophrenia in 2005, and again a few months after the stabbing incident in 2008, this evidence of insanity may be accorded weight only if there is also proof of abnormal psychological behaviour immediately before or simultaneously with the commission of the crime. The evidence on the alleged insanity must refer to the time preceding the act under prosecution or to the very moment of execution.

4. **ID.; ID.; ID.; THE PROFESSED INABILITY OF THE ACCUSED TO RECALL EVENTS BEFORE AND AFTER THE STABBING INCIDENT, DOES NOT NECESSARILY INDICATE AN ABERRANT MIND, BUT IS MORE INDICATIVE OF A CONCOCTED EXCUSE TO EXCULPATE HIMSELF.—** [T]he Court agree with the CA that the accused-appellant's defense of insanity is belied by

the following circumstances: *First*, [h]is claim that he has absolutely no recollection of the hacking incident amounts to a mere general denial that can be made with facility. This, by itself, does not prove that the accused-appellant had lost his grip on reality on that occasion. It has been held that the professed inability of the accused to recall events before and after the stabbing incident, as in the instant case, does not necessarily indicate an aberrant mind, but is more indicative of a concocted excuse to exculpate himself.

5. **ID.; ID.; ID.; ACCUSED'S VOLUNTARY SURRENDER THE FOLLOWING DAY BELIES HIS CLAIM OF INSANITY.—** [A]ccused-appellant's voluntary surrender the following day belies his claim of insanity. This act tends to establish that he was well aware of what he had just committed, and that he was capable of discernment.

6. **ID.; ID.; ID.; ID.; AN INQUIRY INTO THE MENTAL STATE OF ACCUSED-APPELLANT SHOULD RELATE TO THE PERIOD BEFORE OR AT THE PRECISE MOMENT OF DOING THE ACT WHICH IS THE SUBJECT OF THE INQUIRY, AND HIS MENTAL CONDITION AFTER THAT CRUCIAL PERIOD OR DURING THE TRIAL IS INCONSEQUENTIAL FOR PURPOSES OF DETERMINING HIS CRIMINAL LIABILITY.—** Dr. Genotiva's testimony regarding accused-appellant's mental condition refers to the time he was examined in 2005, which is three years prior to the incident and in August 15, 2008, which is three months after the commission of the crime. The testimony of Dr. Genotiva failed to show the mental condition of accused-appellant between 2005 and 2008. Hence, the Court cannot second guess whether the accused-appellant was insane at the time the crime was committed. Time and again, this Court has stressed that an inquiry into the mental state of accused-appellant should relate to the period before or at the precise moment of doing the act which is the subject of the inquiry, and his mental condition after that crucial period or during the trial is inconsequential for purposes of determining his criminal liability.

7. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; ELEMENTS.—** There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend to directly and specially ensure its execution, without risk

to himself arising from the defense which the offended party might make. To qualify as an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, method or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. Treachery has two elements, which must be read in conjunction with each other. Thus, it was an error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because it was alleged by the prosecution that the attack made it impossible for the victim to defend himself or retaliate. There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

8. ID.; ID.; ID.; THE SUDDENNESS OF AN ATTACK DOES NOT, OF ITSELF, SUFFICE TO SUPPORT A FINDING OF *ALEVOSIA*, EVEN IF THE PURPOSE WAS TO KILL, SO LONG AS THE DECISION WAS MADE SUDDENLY AND THE VICTIM'S HELPLESS POSITION WAS ACCIDENTAL.— In the case at bar, the following circumstances negate the presence of treachery: *First*, the stabbing incident happened during a drinking spree in which accused-appellant was a party. He did not deliberately seek the presence of the victim as he was already in the same vicinity as the latter when he hacked the victim. *Second*, in killing the victim, accused-appellant did not even use his own weapon — he merely took a scythe from Arnulfo, who was sitting beside him. In a similar case, the Court held that treachery cannot be presumed merely from the fact that the attack was sudden. The suddenness of an attack does not, of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as the decision was made suddenly and the victim's helpless position was accidental. Based on the first and second circumstances abovementioned, accused-appellant's decision to attack the victim was more of a sudden impulse on his part than a planned decision. Considering the foregoing, it was not

proven that the means Renato used in killing Rodolfo was deliberately and consciously adopted by the former. The incident, which happened at the spur of the moment, negates the possibility that accused-appellant consciously adopted the means to execute the crime committed. Thus, it is not possible to appreciate treachery against Renato.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURTS ARE ACCORDED GREAT WEIGHT, PARTICULARLY IN THE DETERMINATION OF CREDIBILITY OF WITNESSES AS SAID COURTS HAVE THE OPPORTUNITY TO OBSERVE THE WITNESS AND THE MANNER IN WHICH THEY TESTIFIED; EXCEPTIONS.— Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of witnesses as said courts have the opportunity to observe the witness and the manner in which they testified. However, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the Court may even consider issues which were not raised by the parties as errors.

10. CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; ABSENT THE QUALIFYING CIRCUMSTANCE OF TREACHERY, THE CRIME IS HOMICIDE, NOT MURDER; PROPER IMPOSABLE PENALTY WHEN A MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER ATTENDED THE COMMISSION OF THE CRIME.— [W]ith the removal of the qualifying circumstance of treachery, the crime is homicide and not murder. Under Article 249 of the RPC, any person found guilty of homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three periods. Given that Renato voluntarily surrendered himself, Article 64 (2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period. Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall *prision*

mayor in any of its periods. Thus, Renato is to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal,* as maximum.

11. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—[I]n view of the Court's ruling in *People v. Jugueta,* the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

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

CAGUIOA, *J.*:

Before this Court is an appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated April 27, 2017 of the Court of Appeals (CA), Twentieth (20th) Division in CA-G.R. CR-HC No. 01965, which affirmed the Decision[3] dated September 22, 2014 of the Regional Trial Court, Eighth Judicial Region, Branch 13, Carigara, Leyte (RTC), in Crim. Case No. 4887, finding herein accused-appellant Renato Bacolot y Idlisan (Renato or accused-appellant) guilty of the crime of murder under Article 248 of the Revised Penal Code (RPC).

The Facts

On June 12, 2008, an Information was filed charging Renato of the crime of murder allegedly committed as follows:

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[1] See Notice of Appeal dated May 19, 2017; *rollo*, pp. 20-21.

[2] *Id*. at 4-19. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez concurring.

[3] CA *rollo*, pp. 40-55. Penned by Presiding Judge Emelinda R. Maquilan.

That on or about the 14th day of May 2008 in the Municipality of Carigara, Province of Leyte and within the jurisdiction of the Honorable Court, the said accused, armed with a bladed weapon, and with evident intent to kill, with treachery, evident premeditation and employing means to insure and afford impunity did then and there willfully, unlawfully and feloniously attacked (*sic*), assault and hacked (*sic*) Rodolfo Leona Jabayjabay with his weapon resulting in the untimely death of said Rodolfo L. Jabayjabay.

CONTRARY TO LAW.[4]

Upon arraignment, Renato's counsel manifested that Renato was suffering from mental disorder and requested for his examination at the Eastern Visayas Regional Medical Center (EVRMC), Psychiatric Department, Tacloban City, which the RTC granted.[5]

The medical report submitted by Dr. Lorelei Grace C. Genotiva (Dr. Genotiva) of the EVRMC affirmed that Renato was mentally incompetent to stand for trial; hence, trial was suspended and Renato was sent to the National Center for Mental Health, Mandaluyong City, for further evaluation and treatment.[6]

On February 18, 2009, the RTC received a letter from Dr. Edison C. Galindez, Chief of the Forensic Psychiatry Section of the National Center for Mental Health, attesting that Renato had regained competency to stand trial and recommended his discharge from the institution.[7]

On May 20, 2009, Renato was arraigned. He pleaded not guilty.[8]

Version of the Prosecution

The prosecution presented witnesses Arnulfo Jabayjabay (Arnulfo), Dr. Bella Profetana (Dr. Profetana), and Angeles Jabayjabay (Angeles).[9]

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[4] *Id*.

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

[6] *Id*. at 6.

[7] *Id*.

[8] *Id*.

[9] *Id*.

Arnulfo, the brother of the victim Rodolfo Leona Jabayjabay (Rodolfo), testified that on May 14, 2008, while having a drinking spree with Renato and some other companions, including Rodolfo who subsequently joined them, Renato suddenly took a scythe (*matabia*) from Arnulfo's waist and hacked Rodolfo three times hitting the latter on the neck, back, and fingers. The hacking happened while Rodolfo was singing with his face turned towards the television. Renato then turned towards Arnulfo and hacked him too on the neck, head, and left shoulder. Arnulfo survived, but Rodolfo died.[10]

Dr. Profetana conducted the post-mortem examination on Rodolfo. She testified that the cause of Rodolfo's death was hypovolemic shock, secondary to blood loss due to hacking wounds. There were four wounds: one, on the right side of Rodolfo's neck; another at his back; the third an incised wound on his arm; and the fourth an incised wound on his right hand. Of these, the neck injury was fatal, while the rest were not. Dr. Profetana opined that the hacking wound on the neck might have been inflicted when the victim was in a position lower than the assailant.[11]

Lastly, Angeles, mother of Rodolfo and Arnulfo, testified that she was on her way to attend to Arnulfo who was already in the hospital when she happened to pass by the lifeless body of Rodolfo lying at the side of the road of Brgy. Sta. Fe, Carigara, Leyte. She informed Brgy. Kagawad Emeriata Dacara of the death of her son, and the latter, in turn, reported via a text message, the matter to the police authorities.[12]

Version of the Defense

Renato pleaded insanity as defense. His lone witness, Dr. Genotiva, testified that she had previously examined Renato

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[10] *Id*.

[11] *Id*. at 7.

[12] *Id*.

in the year 2005 prior to his arrest. That was when Renato tried to burn himself and had to be admitted for his suicidal tendencies. Dr. Genotiva diagnosed Renato then as having "*auditory hallucinations, depressed mood with appropriate effect,"* and was *"able to converse, but he was not oriented to time and place, he had poor memory recall of the incidents, and he had blank stares*."[13]

Dr. Genotiva again examined Renato after his arrest on August 15, 2008, September 12, 2008, and October 10, 2008. Recent psychological tests led her to recommend against Renato's trial as he still had psychotic trends despite his calm behavior. According to Dr. Genotiva, Renato had poor memory recall of the incidents relating to the commission of the crime and that he did not know what he did at the time. Also, Renato showed not only psychotic trends, but a full-blown psychosis, and that his schizophrenia had no chance of being completely healed.[14]

Ruling of the RTC

After trial on the merits, in its Decision[15] dated September 22, 2014, the RTC convicted Renato of the crime of murder. The dispositive portion of said Decision reads:

WHEREFORE, finding the accused **RENATO BACOLOT** y **IDLISAN, GUILTY**, beyond reasonable doubt, of the crime of **MURDER**, this Court, hereby sentences accused **RENATO BACOLOT**, a penalty of **RECLUSION PERPETUA**.

Further, accused is hereby ordered to pay the heirs of the victim, **civil indemnity**, in the amount of **Seventy Five Thousand (Php 75,000.00) Pesos, moral damages** in the amount of **Seventy Five Thousand (Php75,000.00) Pesos, exemplary damages** in the amount of **Thirty Thousand (Php30,000.00) Pesos** and **temperate damages** in the amount of **Fifteen Thousand (Php15,000.00) Pesos**.

No costs.

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[13] *Id*.

[14] *Id*. at 7-8.

[15] *Supra* note 3.

SO ORDERED.[16]

The RTC gave credence to the positive identification of Renato by eyewitness Arnulfo which, according to the court *a quo*, was corroborated by the testimonies of the other witnesses and documentary evidence. The RTC emphasized that the defense did not deny that Renato killed Rodolfo, but failed to present evidence to support Renato's plea of insanity. Thus, the RTC concluded that Renato was sane at the time he killed Rodolfo; hence, criminally liable.[17]

Ruling of the CA

In the assailed Decision[18] dated April 27, 2017, the CA affirmed the RTC's conviction of Renato and held that (1) the prosecution was able to sufficiently prove the elements of murder; (2) the element of treachery was present in the killing of Rodolfo; and (3) Renato's defense of insanity was not proven. The dispositive portion reads:

WHEREFORE, the *appeal* is **DENIED** for lack of merit. The Decision dated September 22, 2014 of the Regional Trial Court, Eight Judicial Region, Branch 13, Carigara, Leyte, in Criminal Case No. 4887 is hereby **AFFIRMED** with the **MODIFICATION** that the award of exemplary damages is increased to Php75,000.00. All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.[19] (emphases in the original)

The CA, however, modified the award of damages to be paid to the heirs of Rodolfo. As to exemplary damages, it increased the award from ₱30,000.00 to ₱75,000.00.[20]

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[16] CA *rollo*, p. 55.

[17] *Rollo*, p. 8.

[18] *Supra* note 2.

[19] *Id*. at 18.

[20] *Id*.

Issues

For resolution of the Court are the following issues submitted by the accused-appellant:

(1) Whether the CA gravely erred in convicting the accused-appellant of the crime charged despite the fact that the defense was able to prove insanity; and

(2) Whether the CA gravely erred in convicting the accused-appellant of murder despite the prosecution's failure to establish the qualifying circumstances of treachery and evident premeditation.

The Court's Ruling

The appeal is partly meritorious. The Court affirms the conviction of the accused-appellant, but only for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not present in the killing of Rodolfo.

Accused-appellant's defense of insanity was not proven

The accused-appellant claims exemption from criminal liability and insists on his acquittal due to his alleged insanity immediately prior to, during and immediately after hacking Rodolfo. According to him, he was completely deprived of intelligence, making his criminal act involuntary. To prove his alleged insanity, accused-appellant presented as witness Dr. Genotiva of EVRMC, who diagnosed him to be suffering from psychosis and schizophrenia.

The Court is not convinced with accused-appellant's defense.

In the case of *People v. Isla,*[21] the Court stated that:

Article 12 of the [RPC] provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless the latter has

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[21] 699 Phil. 256 (2012) citing *People v. Tibon*, 636 Phil. 521 (2010).

acted during a lucid interval. This circumstance, however, is not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. Under Article 800 of the Civil Code, the presumption is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. **The testimony or proof of an accused's insanity, must, however, relate to the time immediately preceding or simultaneous with the commission of the offense which he is charged**.[22] (Emphasis and underscoring supplied)

For the defense of insanity to be successfully invoked as a circumstance to evade criminal liability, it is necessary that insanity must relate to the time immediately preceding or simultaneous with the commission of the offense with which the accused is charged. In short, in order for the accused to be exempted from criminal liability under a plea of insanity, he must successfully show that: (1) he was completely deprived of intelligence; and (2) such complete deprivation of intelligence must be manifest at the time or immediately before the commission of the offense.[23]

Having invoked the defense of insanity, accused-appellant is deemed to have admitted the commission of the crime. Accordingly, he has the onus to establish with certainty that he was completely deprived of intelligence because of his mental condition or illness.[24]

After a careful review of the records of the case, the Court finds that the accused-appellant failed to prove that he was insane at the time or immediately before the commission of the offense.

As can be gleaned from Dr. Genotiva's testimony, there was no finding whatsoever that accused-appellant exhibited any of the myriad symptoms associated with schizophrenia immediately before or simultaneous with the hacking of Rodolfo. This facet

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[22] *Id*. at 266-267.

[23] *People v. Cacho*, G.R. No. 218425, September 27, 2017, p. 5.

[24] *Id*.

of Dr. Genotiva's testimony surfaced upon the RTC's prodding, *viz*.:

> *Cross-examination of Dr. Genotiva —*
>
> COURT:
>
> Q: This psychosis and schizophrenia, doctor, is of course a state of mind condition?
>
> A: Yes Your Honor, it is a thinking disorder.
>
> Q: Wherein you could only know the state of mind of a person if on that time you have conducted his mental condition.
>
> A: Yes Your Honor, right immediately, if he was arrested immediately after the murder.
>
> Q: Everything he did before does not mean that he was at that time suffering from pyschosis?
>
> **A: Because I was not able to examine the client at the time immediately, I could not say that.**
>
> Q: But it could be deciphered according to the situation or the circumstances affecting the situation, am I correct?
>
> A: It could be, Your Honor. Yes, Your Honor, I was not able to examine, I cannot speak for him.[25] (Emphasis and underscoring supplied)

Although the accused-appellant was diagnosed with schizophrenia in 2005, and again a few months after the stabbing incident in 2008, this evidence of insanity may be accorded weight only if there is also proof of abnormal psychological behavior immediately before or simultaneous with the commission of the crime. The evidence on the alleged insanity must refer to the time preceding the act under prosecution or to the very moment of execution.[26]

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[25] *Rollo*, pp. 15-16.

[26] *People v. Estrada*, 389 Phil. 216, 232 (2000), citing *People v. Austria*, 328 Phil. 1208 (1996).

Furthermore, the Court agrees with the CA that the accused-appellant's defense of insanity is belied by the following circumstances: *First*, his claim that he has absolutely no recollection of the hacking incident amounts to a mere general denial that can be made with facility. This, by itself, does not prove that the accused-appellant had lost his grip on reality on that occasion. It has been held that the professed inability of the accused to recall events before and after the stabbing incident, as in the instant case, does not necessarily indicate an aberrant mind, but is more indicative of a concocted excuse to exculpate himself.[27] *Second*, accused-appellant's voluntary surrender the following day belies his claim of insanity. This act tends to establish that he was well aware of what he had just committed, and that he was capable of discernment.[28] *Lastly*, Dr. Genotiva's testimony regarding accused-appellant's mental condition refers to the time he was examined in 2005, which is three years prior to the incident and in August 15, 2008, which is three months after the commission of the crime. The testimony of Dr. Genotiva failed to show the mental condition of accused-appellant between 2005 and 2008. Hence, the Court cannot second guess whether the accused-appellant was insane at the time the crime was committed. Time and again, this Court has stressed that an inquiry into the mental state of accused-appellant should relate to the period before or at the precise moment of doing the act which is the subject of the inquiry, and his mental condition after that crucial period or during the trial is inconsequential for purposes of determining his criminal liability.[29]

Indubitably, the defense failed to meet the quantum of proof required to overthrow the presumption of sanity.

The prosecution failed to prove treachery

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[27] *People v. Tibon*, 636 Phil. 521, 531 (2010), citing *People v. Ocfemia*, 398 Phil. 210 (2000).

[28] *Rollo*, pp. 16-17.

[29] *People v. Villa, Jr.*, 387 Phil. 155, 166 (2000).

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Renato liable for murder instead of homicide. The CA held:

> Additionally, this Court finds no reason to deviate from the finding of the RTC that the qualifying circumstance of treachery attended the killing of Rodolfo.
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> x x x x x x x x x
>
> The evidence for the prosecution, again through the eyewitness account of Arnulfo Jabayjabay, prove that, while the victim was singing, and his face and attention were focused on the television in front of him, accused-appellant, without provocation from anyone or warning from himself, took hold of the scythe then tucked in the waist of Arnulfo. With it, the accused-appellant delivered a series of thrusts and swings at Rodolfo and succeeded in inflicting four (4) wounds from which Rodolfo eventually died. As opined by Dr. Profetana, one wound, the one at Rodolfo's neck, is fatal and may have been inflicted while the victim was in a position lower than accused-appellant.[30]

On the other hand, accused-appellant posits that the RTC misappreciated the qualifying circumstance of treachery. He insists that the means he used in killing Rodolfo was not deliberately and consciously adopted since he did not hatch a plan to kill Rodolfo prior to their merriment, and the bladed weapon used was not even his but that of Arnulfo.

On this issue, the Court rules in favor of accused-appellant.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[31] To qualify as an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the

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[30] *Rollo*, p. 11.

[31] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, p. 11.

criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[32] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[33]

Treachery has two elements, which must be read in conjunction with each other. Thus, it was an error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because it was alleged by the prosecution that the attack made it impossible for the victim to defend himself or retaliate. There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.[34]

In the case at bar, the following circumstances negate the presence of treachery: *First*, the stabbing incident happened during a drinking spree in which accused-appellant was a part. He did not deliberately seek the presence of the victim as he was already in the same vicinity as the latter when he hacked the victim. *Second*, in killing the victim, accused-appellant did not even use his own weapon — he merely took a scythe from Arnulfo, who was sitting beside him. In a similar case, the Court held that treachery cannot be presumed merely from the fact that the attack was sudden. The suddenness of an attack does not, of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as the decision was made suddenly and the victim's helpless position was accidental.[35] Based on the first and second circumstances abovementioned, accused-

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[32] *Id*., citing *People v. Dulin*, 762 Phil. 24 (2015).

[33] *Id*., citing *People v. Escoto, Jr.*, 448 Phil. 749, 786 (2003).

[34] *Id*., citing REVISED PENAL CODE, Art. 14, par. 16.

[35] *People v. Escoto*, 313 Phil. 785, 802 (1995).

appellant's decision to attack the victim was more of a sudden impulse on his part than a planned decision.

Considering the foregoing, it was not proven that the means Renato used in killing Rodolfo was deliberately and consciously adopted by the former. The incident, which happened at the spur of the moment, negates the possibility that accused-appellant consciously adopted the means to execute the crime committed.[36] Thus, it is not possible to appreciate treachery against Renato.

Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of witnesses as said courts have the opportunity to observe the witness and the manner in which they testified.[37] However, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[38] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the Court may even consider issues which were not raised by the parties as errors.[39]

Therefore, with the removal of the qualifying circumstance of treachery, the crime is homicide and not murder. Under Article 249 of the RPC, any person found guilty of homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three periods.[40] Given that Renato voluntarily surrendered himself, Article 64 (2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period.[41] Thus, applying the

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[36] *Fantastico and Villanueva v. Malicse, Sr. and People*, 750 Phil. 120, 137 (2015).

[37] *People v. Duran, Jr.*, *supra* note 31 at 14.

[38] *Id*., citing *People v. Gaspar*, 376 Phil. 762, 785 (1999).

[39] *Id*. at 14-15, citing *Luz v. People,* 683 Phil. 399, 406 (2012).

[40] *People v. Endaya, Jr.*, G.R. No. 225745, February 28, 2018, p. 9.

[41] *Id*.

Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall be *prision mayor* in any of its periods.[42] Thus, Renato is to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum.[43]

Finally, in view of the Court's ruling in *People v. Jugueta*,[44] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant Renato Bacolot y Idlisan **GUILTY** of **HOMICIDE**, with the mitigating circumstance of voluntary surrender, for which he is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Rodolfo L. Jabayjabay the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Reyes, J. Jr.,[*] *J.*, on wellness leave.

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[42] *Id*.

[43] *Id*.

[44] 783 Phil. 806 (2016).

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

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ACTIONS

Mootness doctrine — This case falls under certain exceptions to the mootness doctrine; the issue is clearly capable of repetition given the frequency of his requests for travel and the likelihood of him making similar requests in the future in view of his personal and professional engagements; the Court's resolution would also serve to guide the bar and especially the bench in deciding similar cases wherein they are called upon to rule on whether to issue, upon motion, an allow departure order without unduly restricting an accused's constitutional right to travel. (Sy *vs*. Sandiganbayan [3rd Div.], G.R. No. 237703, Oct. 3, 2018) p. 475

ADMINISTRATIVE PROCEEDINGS

Due process — Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of"; because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure; in this case, although there may have been infirmities or lapses in initiating the cancellation process, the Court, nonetheless, finds that essentially respondent was afforded due process. (Board of Investments *vs*. SR Metals, Inc., G.R. No. 219927, Oct. 3, 2018) p. 332

Requirements of due process — In *Ang Tibay v. The Court of Industrial Relations,* the Court enumerated the fundamental requirements of due process that must be respected in administrative proceedings: (1) The party interested or affected must be able to present his or her own case and submit evidence in support of it; (2) The administrative tribunal or body must consider the evidence presented; (3) There must be evidence supporting the tribunal's decision; (4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"; (5) The

administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected; (6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case; (7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision; *Mendoza v. Comelec*, cited. (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

—— The *Ang Tibay* safeguards were subsequently "simplified into four basic rights," as follows: (a) the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties; *Saunar v. Ermita* expounded on *Ang Tibay* by emphasizing that while administrative bodies enjoy a certain procedural leniency, they are nevertheless obligated to inform themselves of all facts material and relevant to the case, and to render a decision based on an accurate appreciation of facts. (*Id*.)

AGENCY

Contract of — An agency may be express or implied; however, an agent must possess a special power of attorney if he intends to borrow money in his principal's behalf, to bind him as a guarantor or surety, or to create or convey real rights over immovable property, including real estate mortgages; while the special power of attorney may be either oral or written, the authority given must be express. (Phil. Int'l. Trading Corp. *vs*. Threshold Pacific Corp., G.R. No. 209119, Oct. 3, 2018) p. 256

—— There is no express stipulation constituting TPC as ASPAI's agent; a party shall nonetheless be allowed to prove an agreement's terms and conditions through evidence other than the written contract itself when he specifically avers in his pleading that such written instrument does not express the true intent and agreement of the parties; respondents offer no proof to justify denial of liability other than his own account and recollection of the transaction. (*Id*.)

AGRARIAN REFORM

Emancipation patents (EPs) and Certificates of Land Ownership Award (CLOAs) —— A Certificate of Land Ownership Award or CLOA is a document evidencing ownership of the land granted or awarded to the beneficiary by the DAR, and contains the restrictions and conditions provided for in the CARL and other applicable laws; Sec. 24 of the CAR; *Estribillo v. Department of Agrarian Reform*, cited; the EPs themselves, like the Certificates of Land Ownership Award (CLOAs) in R.A. No. 6657 (the Comprehensive Agrarian Reform Law of 1988), are enrolled in the Torrens system of registration; such EPs and CLOAs are, in themselves, entitled to be as indefeasible as certificates of title issued in registration proceedings. (Dep't. of Agrarian Reform *vs*. Carriedo, G.R. No. 176549, Oct. 10, 2018) p. 910

Just compensation —— Both the Constitution and CARL underscore the underlying principle of the agrarian reform program, that is, to endeavor a more equitable and just distribution of agricultural lands taking into account, among others, equity considerations; the objective of AO 05-06 is equitable—that in order to ensure the effective implementation of the CARL, previous sales of landholding (without DAR clearance) should be treated as the exercise of retention rights of the landowner, as embodied in Item No. 4 of the said administrative order; explained. (Dep't. of Agrarian Reform *vs*. Carriedo, G.R. No. 176549, Oct. 10, 2018) p. 910

Retention rights — AO 05-06 is in consonance with the Stewardship Doctrine, which has been held to be the property concept in Sec. 6, Art. II of the 1973 Constitution; under this concept, private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners; P.D. No. 27, one of the precursors of the CARL, embodies this policy and concept. (Dep't. of Agrarian Reform *vs*. Carriedo, G.R. No. 176549, Oct. 10, 2018) p. 910

Right of retention — The previous sale of respondent's landholdings was made in violation of the law, being made without the clearance of the DAR; to rule that it is still entitled to retain the subject landholding will, in effect, reward the violation, which this Court cannot allow; the right of retention serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant, and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. (Dep't. of Agrarian Reform *vs*. Carriedo, G.R. No. 176549, Oct. 10, 2018) p. 910

ALIBI

Defense of — For the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence; here, accused-appellant's defense of alibi must thus necessarily fail. (People *vs*. Villaros *y* Caranto, G.R. No. 228779, Oct. 8, 2018) p. 595

— While it is true that alibi is weak and viewed with skepticism, it is not always undeserving of credit – there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts; moreover, the fact that the witness to the alibi is a relative of the accused does not automatically affect the probative value of the testimony. (People *vs*. Arces, Jr., G.R. No. 225624, Oct. 3, 2018) p. 443

ALIBI AND DENIAL

Defenses of — Both alibi and denial are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime; thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. (People *vs*. Villaros *y* Caranto, G.R. No. 228779, Oct. 8, 2018) p. 595

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Trafficking in persons — In order for one to be convicted of the offense of promoting trafficking in persons, the accused must (a) knowingly lease or sublease, or allow to be used any house, building or establishment, and (b) such use of the house, building or establishment is for the purpose of promoting trafficking in persons; defined under Sec. 3(a) of R.A. No. 9208. (Planteras, Jr. *vs*. People, G.R. No. 238889, Oct. 3, 2018) p. 492

— Knowledge or consent of the minor is not a defense under R.A. No. 9208; the victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking; even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will. (*Id*.)

APPEALS

Appeal in criminal cases — Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of witnesses as said courts have the opportunity to observe the witness and the manner in which they testified; however, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. (People *vs*. Bacolot *y* Idlisan, G.R. No. 233193, Oct. 10, 2018) p. 980

Appeals from decisions in administrative disciplinary cases of the Ombudsman — Appeals from decisions in administrative disciplinary cases of the OMB should be taken to the CA *via* a Petition for Review under Rule 43 of the Rules of Court; although Dator filed a petition for injunction, a close scrutiny of the petition, its allegations and discussion would clearly disclose that it questioned the decision in its entirety; the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioner is justified in straightforwardly seeking the intervention of this Court; while the Rules of Procedure must be faithfully followed, the same Rules may be relaxed for persuasive and weighty reasons. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

Factual findings of quasi-judicial bodies — Factual questions are for the labor tribunal to resolve; findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court; the instant petition must be dismissed outright as it raises a question of fact. (Guerrero *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 222523, Oct. 3, 2018) p. 407

Factual findings of trial courts — As a general rule, the findings of the trial court, when affirmed by the appellate court, are binding on this Court; however, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the lower courts; the Court has not hesitated to reverse judgments of conviction when there were strong indications pointing to a possibility that the rape charge was false. (People *vs*. Arces, Jr., G.R. No. 225624, Oct. 3, 2018) p. 443

— It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court; thus, when the case pivots on the issue of the credibility of the testimonies of witnesses, the findings of the trial courts necessarily

carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial. (People *vs*. Serad *y* Ravilles, G.R. No. 224894, Oct. 10, 2018) p. 941

— The findings of fact of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive and may not be re-examined by this Court; although this rule admits of exceptions, none of the exceptional circumstances applies herein. (Leriou *vs*. Longa, G.R. No. 203923, Oct. 8, 2018) p. 552

Petition for review on certiorari to the Supreme Court under Rule 45 — In a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law should be raised and not questions of fact; factual issues pertaining to the value of the property subject of expropriation are questions of fact which are generally beyond the scope of judicial review of this Court under Rule 45; although this Court has recognized several exceptions to this rule, this case does not fall under any of the exceptions. (Rep. of the Phils. *vs*. Sps. Legaspi, G.R. No. 221995, Oct. 3, 2018) p. 383

— Questions that are purely factual and evidentiary and which require a re-evaluation and recalibration of the evidence are outside the scope of the Court's discretionary appellate jurisdiction under Rule 45; petitioner failed to specify or demonstrate how the instant case falls within the allowable exceptions. (Granton *vs*. People, G.R. No. 226045, Oct. 10, 2018) p. 973

— The court does not entertain questions of fact given that factual findings of the appellate court are final, binding, or conclusive on the parties and on this court; the assessment of the probative value of the evidence presented and of whether the lower courts' appreciation of the evidence is correct are questions of fact which the Court does not address in a Rule 45 petition; while there are certain recognized exceptions to the rule that factual findings of the CA are binding on the Court, such as

when its findings are contrary to that of the trial court, as in this case, this alone does not automatically warrant a review of the appellate court's factual findings. (Bank of the Phil. Islands *vs*. Land Investors and Developers Corp., G.R. No. 198237, Oct. 8, 2018) p. 534

— The determination of what pleadings are material to the Petition is up to the Court; what is important is that the assailed Decision and Resolution, the letters and issuances of petitioner as well as the documents submitted by respondent to petitioner were all attached to the Petition; such failure has been cured as the CA records have been elevated before the Court. (Board of Investments *vs*. SR Metals, Inc., G.R. No. 219927, Oct. 3, 2018) p. 332

— The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45; the court is not a trier of facts; factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court; there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (Planteras, Jr. *vs*. People, G.R. No. 238889, Oct. 3, 2018) p. 492

Points of law, issues, theories and arguments — It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel; 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. (Guerrero *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 222523, Oct. 3, 2018) p. 407

Question of fact — A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties; this review includes assessment of the "probative value of the evidence presented"; there is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties. (Planteras, Jr. *vs*. People, G.R. No. 238889, Oct. 3, 2018) p. 492

ATTORNEYS

Attorney-client relationship — The lawyer's failure to file the required position paper and her failure to properly withdraw from the case reveals her failure to live up to her duties as a lawyer in consonance with the strictures of her oath and the Code of Professional Responsibility (CPR); the acts fall squarely within the prohibition of Rule 18.03 and 18.04 of Canon 18 and Rule 22.01 of Canon 22 of the CPR; lawyer's neglect of a legal matter entrusted to him amounts to inexcusable negligence for which he must be administratively liable, as in this case. (Lopez *vs*. Atty. Cristobal, A.C. No. 12146 [Formerly CBD Case No. 13-4040], Oct. 10, 2018) p. 889

Disbarment and discipline of — The Court frowns upon IBP-BOG's resolutions for they do not clearly and distinctly state the facts and the reasons on which it is based, as required by Sec. 12(b), Rule 139-B of the Rules of Court; time and again, the Court consistently holds that such

form does not satisfy the procedural requirements of the Rules of Court because it makes the entire petition vulnerable for a remand; the requirement serves an important function, explained. (Cabalida *vs*. Atty. Lobrido, Jr., A.C. No. 7972, Oct. 3, 2018) p. 1

Disciplinary proceedings against lawyers — In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar; the Court's only concern is the determination of respondent's administrative liability; disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers; thus, this Court cannot rule on the issue of the amount of money that should be returned. (Cabalida *vs*. Atty. Lobrido, Jr., A.C. No. 7972, Oct. 3, 2018) p. 1

Duties to colleagues — Violation of Canon 8.02 of the Code of Professional Responsibility: A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; 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; this failure of the lawyer, whether by design or because of oversight, is an inexcusable violation of a canon of professional ethics and in utter disregard of a duty owing to a colleague; penalty. (Cabalida *vs*. Atty. Lobrido, Jr., A.C. No. 7972, Oct. 3, 2018) p. 1

Suspension from practice of law — Six-month suspension from the practice of law, appropriate as penalty in this case; while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement,

such as the acceptance fee. (Lopez *vs*. Atty. Cristobal, A.C. No. 12146 [Formerly CBD Case No. 13-4040], Oct. 10, 2018) p. 889

Unauthorized practice of law — Illustrated in this case; violation of Sec. 7(b)(2) of R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, in relation to Memorandum Circular No. 17, series of 1986, which prohibits government officials or employees from engaging in the private practice of their profession unless: 1) they are authorized by their department heads; and 2) that such practice will not conflict or tend to conflict with their official functions. (Cabalida *vs*. Atty. Lobrido, Jr., A.C. No. 7972, Oct. 3, 2018) p. 1

— The lawyer's engagement in the unlawful practice of law, through disregard and apparent ignorance of Sec. 7(b)(2) of R.A. No. 6713, is a contravention of Canon 1, Rule 1.01 of the Code of Professional Responsibility; the Court holds him administratively liable, even in the absence of further investigation, by reason of his admissions of facts on record; penalty. (*Id*.)

ATTORNEY'S FEES

Award of — Where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to 10% of the award. (Phil. Hammonia Ship Agency *vs*. Israel, G.R. No. 200258, Oct. 3, 2018) p. 95

BILL OF RIGHTS

Right to due process — Due process considerations in the exercise of the State's inherent power of eminent domain is two-fold: (1) the determination of the correct amount of compensation for the taking of the property; and (2) the prompt payment of such amount within a reasonable time from its taking; there should be compliance with both requirements. (Bautista *vs*. Yujuico, G.R. No. 199654, Oct. 3, 2018) p. 74

Right to travel — The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law; however, this right is subject to constitutional, statutory, and inherent limitations; one of the inherent limitations is the power of courts to prohibit persons charged with a crime from leaving the country; in one case, the Court held that the court's power to prohibit a person admitted to bail from leaving the Philippines is a necessary consequence of the nature and function of a bail bond; as a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel; purpose of the restriction. (Sy *vs*. Sandiganbayan [3rd Div.], G.R. No. 237703, Oct. 3, 2018) p. 475

— Whether the accused should be permitted to leave the jurisdiction is a matter addressed to the court's sound discretion; the court must delicately balance, on the one hand, the right of the accused to the presumption of his innocence and the exercise of his fundamental rights, and on the other hand, the interest of the State to ensure that the accused will be ready to serve or suffer the penalty should he be eventually found liable for the crime charged; while an accused requesting for permission to travel abroad has the burden to show the need for his travel, such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person, as in this case. (*Id*.)

CERTIORARI

Grave abuse of discretion — The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction; grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction; to justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or

personal hostility, and it 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 at all, in contemplation of law, as to be equivalent to having acted without jurisdiction. (Guerrero *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 222523, Oct. 3, 2018) p. 407

CIVIL SERVICE COMMISSION

Nepotism — CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order: x x x Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee; Macandile, being the sister of Dator, is clearly within the scope of the prohibition from being hired under a contract of services and job order. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

Grave misconduct and simple misconduct — Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer"; in Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifested; otherwise, the misconduct is only simple; a person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave; grave misconduct necessarily includes the lesser offense of simple misconduct. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

CODE OF CONDUCT FOR COURT PERSONNEL

Penalty for offenses — For court personnel who are not judges or justices, the Code of Conduct for Court Personnel

(CCCP) governs the Court's exercise of disciplinary authority over them; it explicitly incorporates civil service rules; hence, offenses under civil service laws and rules committed by court personnel constitute violations of the CCCP, for which the offender will be held administratively liable; considering that the CCCP does not specify the sanctions for those violations, the Court has, in the exercise of its discretion, adopted the penalty provisions under existing civil service rules, such as the RRACCS, including Sec. 50 thereof. (Boston Finance and Investment Corp. *vs*. Gonzalez, A.M. No. RTJ-18-2520 [Formerly OCA IPI No. 14-4296-RTJ], Oct. 9, 2018) p. 701

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Emancipation patents or certificates of land ownership award — A certificate of land ownership award is evidence of the award of a public land by the Department of Agrarian Reform to the beneficiary under R.A. No. 6657; well-settled is the rule that certificates of title emanating from the grant of public land in an administrative proceeding enjoy the same protection as those issued in registration proceedings; "a certificate of land ownership award becomes indefeasible and incontrovertible upon the expiration of one year from the date of registration with the Office of the Registry of Deeds"; reiterated in *Estribillo v. Department of Agrarian Reform.* (Padillo *vs*. Villanueva, G.R. No. 209661, Oct. 3, 2018) p. 282

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — The confidential character of the buy-bust operation is not a justifiable reason to exclude any required witness from the physical inventory under the law; the buy-bust team may inform the member of the media prior to the buy-bust operation or after the accused's arrest; buy-bust operation, explained; here, the buy-bust team decided to proceed with the physical inventory without the required witness from the National Prosecution Service or the media as mandated under Sec. 21 of R.A.

No. 9165, as amended. (People *vs*. Mendoza *y* Magno, G.R. No. 225061, Oct. 10, 2018) p. 957

Chain of custody rule — In cases involving Illegal Sale of Dangerous Drugs, the chain of custody begins the moment the dangerous drugs are seized from the seller after a consummated sale transaction; the prosecution must prove that from the time of seizure up until the seized items are presented in court as evidence, that there was no break or gap in the chain of custody that would ultimately cast doubt on the identity, integrity and evidentiary value of the seized items. (People *vs*. Abadilla *y* Vergara, G.R. No. 232496, Oct. 8, 2018) p. 612

— In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Sec. 21 of R.A. No. 9165 is followed; Sec. 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with: (1) an elected public official; (2) a representative of the Department of Justice (DOJ); and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof; in buy-bust situations, or warrantless arrests, 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 practicable; the procedure in this Section is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. (People *vs*. Serad *y* Ravilles, G.R. No. 224894, Oct. 10, 2018) p. 941

— In *People v. Lim*, the Court listed mandatory guidelines that must be followed by the prosecution, including police officers, apprehending officers, and fiscals to prove chain of custody under Sec. 21 of R.A. No. 9165, as amended: 1. In the sworn statement/affidavits, the apprehending/ seizing officers must state their compliance with the requirements of Sec. 21 (1) of R.A. 9165, as amended, and its IRR; 2. In case of non-observance of the provision,

the apprehending /seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the sized/confiscated items; 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court; instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause; 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Sec. 5, Rule 112, Rules of Court. (People *vs*. Mendoza *y* Magno, G.R. No. 225061, Oct. 10, 2018) p. 957

—— Sec. 21, Art. II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs; paragraph 1 provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted; in 2014, R.A. No. 10640 amended R.A. No. 9165, specifically Sec. 21 thereof; since the offenses subject of this appeal were committed before the amendment introduced by R.A. 10640, the old provisions of Sec. 21 and its Implementing Rules and Regulations should apply. (People *vs*. Bombio *y* De Villa, G.R. No. 234291, Oct. 3, 2018) p. 457

—— There is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from appellant up to the time it was presented in court, was unbroken; *People v. Ismael*, cited; unbroken chain of custody of the dangerous drug, which is required in the successful prosecution of illegal drug cases, not established in this case. (People *vs*. Conlu *y* Benetua, G.R. No. 225213, Oct. 3, 2018) p. 423

—— There was no justification or explanation for the non-observance of the three witness rule under Sec. 21 of

R.A. No. 9165, as amended, in the Affidavit of Arrest or in other sworn statements or affidavits submitted by the prosecution; following Sec. 21 of R.A. No. 9165, as amended, the Chain of Custody Implementing Rules and Regulations, and the guidelines of this Court in *People v. Lim*, appellant should be acquitted based on reasonable doubt. (People *vs*. Mendoza *y* Magno, G.R. No. 225061, Oct. 10, 2018) p. 957

— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; as part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same; the law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the media *and* the Department of Justice (DOJ), and any elected public official"; or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, "an elected public official and a representative of the National Prosecution Service or the media"; purpose. (People *vs*. Velasco *y* Porciuncula, G.R. No. 233084, Oct. 8, 2018) p. 631

— The prosecution failed to establish the unbroken chain of custody of the seized drugs in violation of Sec. 21, Art. II of R.A. No. 9165; the failure of the police team to comply with the procedural safeguards prescribed by law left a reasonable doubt in the chain of custody of the confiscated drug; here, the prosecution miserably failed to prove that its case falls within the exceptions; *People v. Reyes et al.*, cited; accused-appellants are acquitted. (People *vs*. Alunen *y* Prito, G.R. No. 236540, Oct. 8, 2018) p. 644

— While the Court emphasizes the importance of strictly following the procedure outlined in Sec. 21, it likewise recognizes that there may be instances where a slight deviation from the said procedure is justifiable and subsequent earnest efforts were made to comply with the mandated procedure. (People *vs*. Serad *y* Ravilles, G.R. No. 224894, Oct. 10, 2018) p. 941

Corpus delicti of the crime — The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime; the prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. (People *vs*. Abadilla *y* Vergara, G.R. No. 232496, Oct. 8, 2018) p. 612

(People *vs*. Bombio *y* De Villa, G.R. No. 234291, Oct. 3, 2018) p. 457

Custody and disposition of confiscated, seized and/or surrendered dangerous drugs — R.A. No. 10640 mandates that the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: (1) the accused or the persons from whom such items were confiscated and seized or his/her counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media; the three witnesses should sign copies of the inventory and be given a copy thereof; rationale; *People v. Ocampo*, cited. (People *vs*. Mendoza *y* Magno, G.R. No. 225061, Oct. 10, 2018) p. 957

— In *People v. Sipin*, the Court stressed that the prosecution bears the burden of proving compliance with the procedure laid down in Sec. 21 of R.A. No. 9165 including the mandatory presence of the three witnesses; the failure to follow mandated procedure in drugs cases must be adequately explained, and must be proven as a fact under

the rules; the Rules require that apprehending officers do not simply mention a justifiable ground for the absence of the required witnesses, but clearly state the ground in their sworn affidavit, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items. (*Id*.)

Illegal possession of dangerous drugs — To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Sec. 11, Art. II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs. (People *vs*. Bombio *y* De Villa, G.R. No. 234291, Oct. 3, 2018) p. 457

Illegal sale and/or illegal possession of dangerous drugs — In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under R.A. No. 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal. (People *vs*. Velasco *y* Porciuncula, G.R. No. 233084, Oct. 8, 2018) p. 631

–– Well-settled in jurisprudence is the principle that in all prosecutions for violation of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence; the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, it being the very *corpus delicti* of the crimes. (People *vs*. Serad *y* Ravilles, G.R. No. 224894, Oct. 10, 2018) p. 941

Illegal sale of dangerous drugs — In order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Sec. 5, Art. II of R.A. No. 9165, the prosecution must establish the following elements: (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; what is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. (People *vs*. Bombio *y* De Villa, G.R. No. 234291, Oct. 3, 2018) p. 457

(People *vs*. Abadilla *y* Vergara, G.R. No. 232496, Oct. 8, 2018) p. 612

(People *vs*. Conlu *y* Benetua, G.R. No. 225213, Oct. 3, 2018) p. 423

— Jurisprudence dictates that to secure a conviction for illegal sale of *shabu* under Sec. 5, Art. II of R.A. No. 9165, the following must concur: (i) the identity of the buyer and the seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefore; it is necessary that the sale transaction actually took place coupled with the presentation in court of the *corpus delicti* as evidence; in cases of illegal sale, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense charged; thus, the prosecution must prove with certitude each link in the chain of custody over the dangerous drug. (People *vs*. Alunen *y* Prito, G.R. No. 236540, Oct. 8, 2018) p. 644

— There is serious doubt that the sale of the methamphetamine hydrochloride or *shabu* between appellant and the poseur-buyer ever took place; the poseur-buyer, whose testimony would have clearly established that the illegal transaction occurred, was not presented before the court; *Sindac v. People, People v. Guzon*, *People v. Andaya*, and *People v. Casacop*, cited. (People *vs*. Conlu *y* Benetua, G.R. No. 225213, Oct. 3, 2018) p. 423

Required witnesses rule — Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear; while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (People *vs*. Velasco *y* Porciuncula, G.R. No. 233084, Oct. 8, 2018) p. 631

Saving clause — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law"; the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; saving clause found in Sec. 21 (a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165, which was adopted into the text of R.A. No. 10640. (People *vs*. Velasco *y* Porciuncula, G.R. No. 233084, Oct. 8, 2018) p. 631

Three-witnesses rule — In addition to the requirements of venue of physical inventory and photography of the seized items, Sec. 21 also requires the presence of three witnesses during the actual inventory, *i.e*., (1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media; in similar cases involving buy-bust operations, the Court has consistently ruled that failure of the arresting officers to justify the absence of the required witnesses constitutes a substantial gap in the chain of custody; there being no mention of any other circumstance or reason that prevented the arresting officers from securing the attendance of the witnesses at the inventory, the saving clause will not apply. (People *vs*. Abadilla *y* Vergara, G.R. No. 232496, Oct. 8, 2018) p. 612

— In the recent case of *People v. Lim*, the Court stressed the importance of the presence of the three witnesses (i.e. any elected public official and the representative from the media and the DOJ) during the physical inventory and the photograph of the seized items; under prevailing jurisprudence, in case the presence of the necessary witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance; the prosecution failed to prove both. (People *vs*. Pascua *y* Agoto, G.R. No. 227707, Oct. 8, 2018) p. 574

— Sec. 21, Art. II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs; in 2014, R.A. No. 10640 amended R.A. No. 9165, specifically Sec. 21 thereof; the number of witnesses required during the inventory stage was reduced from three (3) to only two (2) – an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media; since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Sec. 21 and its IRR should apply. (People *vs*. Abadilla *y* Vergara, G.R. No. 232496, Oct. 8, 2018) p. 612

— This Court in *People v. Sipin* ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses, to wit: (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 Art. 125 of the Revised 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. (People *vs*. Mendoza *y* Magno, G.R. No. 225061, Oct. 10, 2018) p. 957

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

Jurisdiction over a construction controversy — For CIAC to acquire jurisdiction over a construction controversy, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration, and that an arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC's jurisdiction. (Tourism Infrastructure and Enterprise Zone Authority *vs*. Global-V Builders Co., G.R. No. 219708, Oct. 3, 2018) p. 297

–– Clause 20.2 of the General Conditions of Contract is an arbitration clause that clearly provides that all disputes arising from the implementation of the contract covered by R.A. No. 9184 shall be submitted to arbitration in the Philippines; in accordance with Sec. 4.1 of the CIAC Rules, the existence of the arbitration clause in the General Conditions of Contract that formed part of the said MOAs shall be deemed an agreement of the parties to submit existing or future controversies to CIAC's jurisdiction; since CIAC's jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract. (*Id*.)

–– The MOAs (Construction of Stamped Concrete Sidewalk and Installation of Streetlights [Main Road] Project) and Additional Sidewalk, Streetlighting and Drainage System [Main Road] Project specifically stated that the

projects covered thereby were additional works to the original contracts covered by bidding (with General Conditions of Contract containing an arbitration clause) and the MOA (Widening of Boracay Road along Willy's Place Project) were negotiated procurements made pursuant to Secs. 53(d) and 53(b), respectively, of the IRR-A of R.A. No. 9184; by virtue of R.A. No. 9184, CIAC is vested with jurisdiction over the dispute; the provision on settlement of disputes by arbitration under Sec. 59 of R.A. No. 9184 formed part of the MOAs in this case. (*Id*.)

Jurisdiction over money claims arising from or connected with construction contracts — The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law; Sec. 4 of E.O. No. 1008 provides that the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration; *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, cited; what is only excluded from the coverage of E.O. No. 1008 are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines. (Tourism Infrastructure and Enterprise Zone Authority *vs*. Global-V Builders Co., G.R. No. 219708, Oct. 3, 2018) p. 297

CONTEMPT

Concept — The power to punish for contempt is inherent in all courts for purposes of preserving order in judicial proceedings and enforcing the court's judgments, orders and mandates; contempt of court has been defined as a willful disregard or disobedience of a public authority; contempt may be either civil or criminal in nature, depending on the contumacious act; when the act is directed against the authority and dignity of the court or a judge acting judicially, or when it obstructs the administration of justice and tends to bring the court

into disrepute or disrespect—the contempt is criminal; but if the act constitutes a failure to comply with an order of a court or judge for the benefit of the opposing party, or an offense against the party in whose behalf the violated order was made—the contempt is civil in nature. (Bautista *vs*. Yujuico, G.R. No. 199654, Oct. 3, 2018) p. 74

Exercise of — Courts are constantly reminded that this power should be exercised in the preservative, not on the vindictive, principle; as a drastic and extraordinary measure, the power to punish for contempt must be exercised only when necessary in the interest of justice; considering the absence of willful disobedience or an obstinate refusal on the part of petitioner, the Court does not find him guilty of indirect contempt; as a corrective, not a retaliatory, measure, courts should refrain from exercising this power lacking any deliberate attack or disrespect on the court's dignity; exercised only when there is clear and contumacious refusal to obey the courts. (Bautista *vs*. Yujuico, G.R. No. 199654, Oct. 3, 2018) p. 74

CONTRACTS

Breach of contract — Dela Peña cannot be held solidarily liable with BPI as held by the CA; BPI's liability proceeds from a breach of contract; under Art. 1980 of the Civil Code, "fixed, savings, and current deposits of money in banks shall be governed by the provisions concerning simple loans"; by the contract of loan or *mutuum*, one party delivers money to another upon the condition that the same amount shall be paid; it is basic that those who, in the performance of their obligations, are guilty of negligence, and those who in any manner contravene the tenor thereof, are liable for damages. (Bank of the Phil. Islands *vs*. Land Investors and Developers Corp., G.R. No. 198237, Oct. 8, 2018) p. 534

Joint and solidarily liability — Dela Peña had in fact been charged and convicted of *estafa*; thus, respondent's action to recover actual damages against Dela Peña was deemed

instituted with the criminal action, unless waived, reserved or previously instituted; there is no indication that such reservation had been done by respondent; as such, to hold Dela Peña solidarily liable for damages in this case may result in double recovery which is proscribed; the civil liability upon which Dela Peña was being held liable by the CA is totally distinct and separate from the source of BPI's liability. (Bank of the Phil. Islands *vs*. Land Investors and Developers Corp., G.R. No. 198237, Oct. 8, 2018) p. 534

Nature of — The contracting parties have the autonomy to establish such terms and conditions as they deem fit, provided these are not contrary to law, morals, good customs, public order, or public policy; once there is a meeting of the minds between the parties, the contract constitutes the law between them; the primary rule in interpreting contracts is that when an agreement is clear and unequivocal on its face, the courts are bound to respect and uphold its tenor based on the stipulations' express language; this is supported by the Rules of Evidence, where only the instrument may be presented to prove the terms and conditions of a written agreement; extraneous evidence is generally inadmissible. (Phil. Int'l. Trading Corp. *vs*. Threshold Pacific Corp., G.R. No. 209119, Oct. 3, 2018) p. 256

CORPORATIONS

Liability of corporate officers — As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members; to pierce this fictional veil, it must be shown that the corporate personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue; to hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the

director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith; in this case, there is no showing that the President of the company was guilty of malice or bad faith in terminating the employment; thus, she should not be held personally liable for his monetary claims. (Geraldo *vs*. The Bill Sender Corp., G.R. No. 222219, Oct. 3, 2018) p. 395

COURT OF TAX APPEALS (CTA)

Jurisdiction — Sec. 228 of the Tax Code amended Sec. 229 of the Old Tax Code by adding, among others, the 180-day rule; purpose; with the amendment introduced by R.A. No. 8424, the taxpayer may now immediately appeal to the Court of Tax Appeals in case of inaction of the Commissioner for 180 days from submission of supporting documents; under Sec. 7(a)(2), it is expressly provided that the "inaction" of the Commissioner on his or her failure to decide a disputed assessment within 180 days is "deemed a denial" of the protest. (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

— These two (2) options of the taxpayer, *i.e.*, to (1) file a petition for review before the Court of Tax Appeals (CTA) within 30 days after the expiration of the 180-day period; or (2) to await the final decision of the Commissioner on the disputed assessment and appeal this final decision to the CTA within 30 days from receipt of it, "are mutually exclusive and resort to one bars the application of the other"; Rule 4, Sec. 3(a)(2) of the 2005 CTA Rules clarifies Sec. 7(a)(2) of R.A. No. 9282 by stating that the "deemed a denial" rule is only for the "purposes of allowing the taxpayer to appeal" in case of inaction of the Commissioner and "does not necessarily constitute a formal decision of the Commissioner." (*Id*.)

DAMAGES

Award of — The Court imposed an interest rate of six percent (6%) *per annum* on the total amount of monetary award

pursuant to the guidelines enunciated in *Eastern Shipping Lines, Inc. v. CA*, as modified by *Nacar v. Gallery Frames, et al*; the interest rate shall commence to run from the promulgation of this decision, the date when the amount of damages has been determined with certainty. (Sulpicio Lines, Inc. *vs*. Major Karaan, G.R. No. 208590, Oct. 3, 2018) p. 239

Exemplary damages — The Court sees no error in the award of exemplary damages considering the lower courts' consistent finding that respondents are entitled to moral and temperate damages for the sinking of M/V Princess of the Orient; since petitioner failed to prove that it had exercised the degree of extraordinary diligence required of common carriers, it should be presumed to have acted in a reckless manner; "exemplary damages are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior." (Sulpicio Lines, Inc. *vs*. Major Karaan, G.R. No. 208590, Oct. 3, 2018) p. 239

Temperate damages — Apart from the actual damages for the hospital and medical expenses that respondents have incurred, they are entitled to temperate damages for loss of earning capacity; temperate or moderate damages, which are more than nominal but less than actual or compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered, but its amount cannot, from the nature of the case, be proved with certainty; they must be reasonable under the circumstances. (Imperial *vs*. Heirs of Neil Bayaban, G.R. No. 197626, Oct. 3, 2018) p. 53

—— The law sanctions the award of temperate damages in case of insufficiency of evidence of actual loss suffered; the records of the case undoubtedly establishes that respondents suffered loss during the unfortunate sinking of M/V Princess of the Orient; however, no independent proof, other than respondents' bare claims, were presented

to provide a numerical value to their loss. (Sulpicio Lines, Inc. *vs*. Major Karaan, G.R. No. 208590, Oct. 3, 2018) p. 239

DEPARTMENT OF AGRARIAN REFORM (DAR)

Functions — Being the government agency legally mandated to implement the Comprehensive Agrarian Reform Law of 1988 (CARL) and the primary agency vested with the expertise on the technicalities of the CARL, the DAR's position on the issues raised before us deserves cogent consideration; the CARL specifically empowers the DAR to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of the law; the DAR possesses the special knowledge and acquired expertise on the implementation of the agrarian reform program. (Dep't. of Agrarian Reform *vs*. Carriedo, G.R. No. 176549, Oct. 10, 2018) p. 910

ELECTIVE OFFICIALS

Condonation principle –– The case of the *Office of the Ombudsman vs. Mayor Julius Cesar Vergara* made a succinct discussion on the condonation principle and its prospective application; the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post; condonation principle, no longer applicable in this case. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

EMPLOYEE, KINDS OF

Regular employee — Art. 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect

to the activity in which he is employed; in the case, the law deems the petitioner as a regular employee of the company; explained. (Geraldo *vs*. The Bill Sender Corp., G.R. No. 222219, Oct. 3, 2018) p. 395

— In *Hacienda Leddy/Ricardo Gamboa, Jr. v. Villegas*, the Court held that the payment on a piece-rate basis does not negate regular employment; the term "wage" is broadly defined in Art. 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis; payment by the piece is just a method of compensation and does not define the essence of the relations. (*Id*.)

EMPLOYMENT, TERMINATION OF

Illegal dismissal — In illegal dismissal cases like the one at bench, the burden of proof is upon the employer to prove that the employee's termination from service is for a just and valid cause; time and again, the Court has held that to justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment; the burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. (Geraldo *vs*. The Bill Sender Corp., G.R. No. 222219, Oct. 3, 2018) p. 395

— It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her; the company in the present case failed to show its compliance with the twin-notice rule. (*Id*.)

EVIDENCE

Authentication of private document — A private document requires authentication in the manner allowed by law or

the Rules of Court before it may be received in evidence; however, it is not required when: (a) the document is an ancient one under Sec. 21, Rule 132 of the Rules of Court; (b) the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) the genuineness and authenticity of the document have been admitted; or (d) the document is not being offered as genuine; the trial court had admitted all of respondent's exhibits to which BPI raised no further objections. (Bank of the Phil. Islands *vs*. Land Investors and Developers Corp., G.R. No. 198237, Oct. 8, 2018) p. 534

Circumstantial and direct evidence — The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense; courts must be convinced that the accused is guilty beyond reasonable doubt. (Planteras, Jr. *vs*. People, G.R. No. 238889, Oct. 3, 2018) p. 492

Circumstantial evidence — Rule 113, Sec. 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence: "Sec. 4. *Circumstantial evidence, when sufficient*. - Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt"; the commission of a crime, the identity of the perpetrator, and the finding of guilt may all be established by circumstantial evidence; the determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one. (Planteras, Jr. *vs*. People, G.R. No. 238889, Oct. 3, 2018) p. 492

Documentary evidence — Sec. 3(b), Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except when the

original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; Sec. 6, Rule 130 also provides that after notice and after satisfactory proof of the existence of the document, the party in custody fails to produce it, secondary evidence may be presented as in the case of a loss; application. (Villas *vs*. C.F. Sharp Crew Mgm't., Inc., G.R. No. 221548, Oct. 3, 2018) p. 363

Out-of-court identification — The gross corruption of Macutay's out-of-court identification through the improper suggestion of police officers affected the admissibility of his in-court identification; petitioners are acquitted for reasonable doubt. (Concha *vs*. People, G.R. No. 208114, Oct. 3, 2018) p. 212

— *People v. Teehankee, Jr*. enumerated the ways on how the police may conduct out-of-court identification and provided guidance on its admissibility; the courts have adopted the totality of circumstances test where they consider the following factors: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure. (*Id*.)

Police show-up — What was conducted was a police show-up, since only four (4) persons were shown to the prosecution's witness for the purpose of identifying his four (4) assailants; as to whether the out-of-court identification of petitioners satisfied the totality of circumstances test, this Court finds that it did not; explained. (Concha *vs*. People, G.R. No. 208114, Oct. 3, 2018) p. 212

Proof of private document — Official receipts of hospital and medical expenses are not among those enumerated in Rule 132, Sec. 19; these official receipts are private

documents which may be authenticated either by presenting as witness anyone who saw the document executed or written, or by presenting an evidence of the genuineness of the signature or handwriting of the maker; in insisting that respondents should have presented as witnesses the persons who signed the official receipts, petitioner ignores the first manner of authenticating private documents. (Imperial *vs*. Heirs of Neil Bayaban, G.R. No. 197626, Oct. 3, 2018) p. 53

Substantial evidence — The burden is placed upon Guerrero to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his injury; self-serving and unsubstantiated declarations are insufficient to establish a case where the quantum of proof required to establish as fact is substantial evidence. (Guerrero *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 222523, Oct. 3, 2018) p. 407

EXEMPTING CIRCUMSTANCES

Insanity –– Accused-appellant's voluntary surrender the following day belies his claim of insanity; this act tends to establish that he was well aware of what he had just committed, and that he was capable of discernment. (People *vs*. Bacolot *y* Idlisan, G.R. No. 233193, Oct. 10, 2018) p. 980

–– Having invoked the defense of insanity, accused-appellant is deemed to have admitted the commission of the crime; he has the *onus* to establish with certainty that he was completely deprived of intelligence because of his mental condition or illness; he failed to prove that he was insane at the time or immediately before the commission of the offense. (*Id*.)

–– In *People v. Isla*, the Court stated that: Art. 12 of the RPC provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless

the latter has acted during a lucid interval; under Art. 800 of the Civil Code, the presumption is that every human is sane; anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence; the accused must successfully show that: 1) he was completely deprived of intelligence; and 2) such complete deprivation of intelligence must be manifest at the time or immediately before the commission of the offense. (*Id*.)

— The accused-appellant's defense of insanity is belied by the circumstances; his claim that he has absolutely no recollection of the hacking incident amounts to a mere general denial that can be made with facility; the professed inability of the accused to recall events before and after the stabbing incident, as in this case, does not necessarily indicate an aberrant mind, but is more indicative of a concocted excuse to exculpate himself. (*Id*.)

— The doctor's testimony regarding accused-appellant's mental condition refers to the time he was examined, which is three years prior to the incident and three months after the commission of the crime; time and again, this Court has stressed that an inquiry into the mental state of accused-appellant should relate to the period before or at the precise moment of doing the act which is the subject of the inquiry, and his mental condition after that crucial period or during the trial is inconsequential for purposes of determining his criminal liability. (*Id*.)

— The evidence of insanity may be accorded weight only if there is also proof of abnormal psychological behaviour immediately before or simultaneously with the commission of the crime; the evidence on the alleged insanity must refer to the time preceding the act under prosecution or to the very moment of execution. (*Id*.)

FORUM SHOPPING

Certification against forum shopping — Rule 45, Sec. 4 of the Revised Rules of Court requires the petition to contain a sworn certification against forum shopping; it is the

party-pleader who must sign the sworn certification against forum shopping for the reason that he/she has personal knowledge of whether or not another action or proceeding was commenced involving the same parties and causes of action; if the party-pleader is unable to personally sign the certification, he/she must execute a special power of attorney (SPA) authorizing his/her counsel to sign in his/her behalf; the Petition should be dismissed pursuant to the ruling in *Anderson v. Ho.* (Leriou *vs*. Longa, G.R. No. 203923, Oct. 8, 2018) p. 552

Commission of — *Yamson, et al. vs. Castro, et al.*, cited; the rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment; forum shopping may be committed in three ways: (1) through *litis pendentia* – filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) through *res judicata* - filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) splitting of causes of action – filing multiple cases based on the same cause of action but with different prayers – the ground to dismiss being either *litis pendentia* or *res judicata*. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

Consequences of — A finding of forum shopping does not automatically render both cases dismissible; the consequences of forum shopping depend on whether the act was wilful and deliberate or not; if it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice; but if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata*. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Negotiated procurement — The Court holds that the MOAs are valid as they complied with the requirements of negotiated procurement under Sec. 53, paragraphs (b) and (d) of R.A. No. 9184; Sec. 48 of R.A. No. 9184 provides that the Procuring Entity, in this case, PTA/TIEZA, may, in order to promote economy and efficiency, resort to alternative methods of procurement, including negotiated procurement. (Tourism Infrastructure and Enterprise Zone Authority *vs*. Global-V Builders Co., G.R. No. 219708, Oct. 3, 2018) p. 297

HOMICIDE

Commission of — In view of the Court's ruling in *People v. Jugueta*, the damages awarded in the questioned Decision are modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each. (People *vs*. Bacolot *y* Idlisan, G.R. No. 233193, Oct. 10, 2018) p. 980

— With the removal of the qualifying circumstance of treachery, the crime is homicide and not murder; under Art. 249 of the RPC, any person found guilty of homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three periods; Art. 64 (2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period; Indeterminate Sentence Law, explained. (*Id*.)

INJUNCTION

Petition for — Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage; a temporary restraining order (TRO) issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately; Sec. 5, Rule 58 of the Rules of Court; to be entitled to the injunctive writ, petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly

threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

INSURANCE

Concealment — Sec. 27 of the Insurance Code reads: x x x. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance; in insurance contracts, concealing material facts is inherently fraudulent: "if a material fact is actually known to the insured, its concealment must of itself necessarily be a fraud"; when one knows a material fact and conceals it, "it is difficult to see how the inference of a fraudulent intent or intentional concealment can be avoided"; a concealment, regardless of actual intent to defraud, "is equivalent to a false representation"; following *Vda. de Canilang*, the Court was categorical in *Sunlife Assurance Co. of Canada v. Court of Appeals*: "'good faith' is no defense in concealment". (The Insular Life Insurance Co., Ltd. *vs*. Heirs of Jose H. Alvarez, G.R. No. 207526, Oct. 3, 2018) p. 175

Fraudulent intent — Consistent with the requirement of clear and convincing evidence, it was the insurer's burden to establish the merits of its own case; relative strength as against respondents' evidence does not suffice; a single piece of evidence hardly qualifies as clear and convincing. (The Insular Life Insurance Co., Ltd. *vs*. Heirs of Jose H. Alvarez, G.R. No. 207526, Oct. 3, 2018) p. 175

Representations and concealments — Sec. 26 defines concealment as "a neglect to communicate that which a party knows and ought to communicate"; Sec. 44 of the Insurance Code states, "A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations"; concealment applies only with respect to material facts; that is, those facts which by their nature would clearly, unequivocally, and logically be known by the insured as necessary for the insurer to calculate the

proper risks; on the other hand, when the insured makes a representation, it is incumbent on them to assure themselves that a representation on a material fact is not false; and if it is false, that it is not a fraudulent misrepresentation of a material fact. (The Insular Life Insurance Co., Ltd. *vs*. Heirs of Jose H. Alvarez, G.R. No. 207526, Oct. 3, 2018) p. 175

INTEREST AND ATTORNEY'S FEES

Award of — The Court of Appeals correctly sustained the imposition of 6% legal interest on the monetary award pursuant to *Nacar v. Gallery Frames, et al.*, which held that "when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit"; award of attorney's fees and cost of arbitration against TIEZA, upheld. (Tourism Infrastructure and Enterprise Zone Authority *vs*. Global-V Builders Co., G.R. No. 219708, Oct. 3, 2018) p. 297

INTERESTS

Computation of the interest rate — The computation of the rate of interest likewise needs modification; in *Nacar v. Gallery Frames, et al.*, the Court modified the guidelines regarding the manner of computing legal interest; *Nacar* also instructs that the new rate is to be applied prospectively, or from July 1, 2013; applying the foregoing guidelines, the amount shall earn interest at the rate of 12% *per annum* from September 16, 2002, or the date when judicial demand was made, until June 30, 2013 and 6% *per annum* from July 1, 2013 until satisfaction thereof. (Bank of the Phil. Islands *vs*. Land Investors and Developers Corp., G.R. No. 198237, Oct. 8, 2018) p. 534

JUDGES

Conduct of — "No judge can be held administratively liable for gross misconduct, ignorance of the law, or

incompetence in the adjudication of cases unless his acts constituted fraud, dishonesty or corruption; or were imbued with malice or ill-will, bad faith, or deliberate intent to do an injustice"; *Romero v. Judge Luna*, cited; it is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened and closed. (Gov. Tallado *vs*. Hon. Racoma, A.M. No. RTJ-18-2536 [Formerly OCA IPI No. 15-4396-RTJ], Oct. 10, 2018) p. 900

Failure to comply with the court's orders — The judge's failure to submit the required Comment reveals a failure to live up to the standards required of a government employee for failing to comply with the Court's orders; Sec. 9, Rule 140 of the Rules of Court provides that violation of Supreme Court's rules, directives and circulars is considered as a less serious offense; penalty. (Gov. Tallado *vs*. Hon. Racoma, A.M. No. RTJ-18-2536 [Formerly OCA IPI No. 15-4396-RTJ], Oct. 10, 2018) p. 900

Gross ignorance of the law — Even if this Court were to brush aside the impropriety of the Judge's Order, his act of granting MADCI's *ex-parte* motion for execution infringes on the time-honored principle that "the notice requirement in a motion is mandatory" because a "notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that a party's right be not affected without an opportunity to be heard"; *Atty. Cabili v. Judge Balindong*, cited. (Mañalac *vs*. Hon. Gellada, A.M. No. RTJ-18-2535 [Formerly OCA IPI No. 16-4583-RTJ], Oct. 8, 2018) p. 521

–– In *Mercado v. Judge Salcedo (Ret.)*, the Court found therein respondent judge guilty of gross ignorance of the law when he effectively modified a decision that had attained finality; there are exceptions to this rule, such as "the correction of clerical errors, or the making of so-

called *nunc pro tunc* entries, which cause no prejudice to any party, and the nullification of a judgment that is void"; none of the exceptions obtain in this case. (*Id*.)

— Neither will the Judge's explanation, that the motion to revive the proceedings was wrongfully granted for being based on the outdated 2000 Rules and 2008 Rules, merit an exoneration from administrative liability; even if this Court were to consider such mistaken interpretation of the amendments to the Rules on Corporate Rehabilitation, his explanation in itself highlighted his gross ignorance of the law in failing to apply the latest law on the matter, *i.e.*, FRIA. (*Id*.)

— Respondent's "cease and desist" Order was in the nature of a TRO; however, it failed to justify the necessity for its issuance, as it merely issued the directive to the Clerk of Court, acting as *Ex-Officio* Sheriff, and the Deputy Sheriff without stating the reasons therefor; likewise, it did not specify any period for its effectivity, in essence making the same indefinite; these omissions are contrary to the provisions of Sec. 5, Rule 58 of the Rules of Court; respondent administratively liable for gross ignorance of the law; gross ignorance of the law or incompetence cannot be excused by a claim of good faith. (Boston Finance and Investment Corp. *vs*. Judge Gonzalez, A.M. No. RTJ-18-2520 [Formerly OCA IPI No. 14-4296-RTJ], Oct. 9, 2018) p. 701

Gross ignorance of the law and undue delay in rendering a decision or order — Under Rule 140 of the Revised Rules of Court, as amended, gross ignorance of the law or procedure is a serious charge punishable by either: (a) dismissal from service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation; or (b) suspension from office without salary and other benefits for more than three (3) months, but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00; on the other hand, undue

delay in rendering a decision or order is a less serious charge punishable by either: (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. (Boston Finance and Investment Corp. *vs*. Judge Gonzalez, A.M. No. RTJ-18-2520 [Formerly OCA IPI No. 14-4296-RTJ], Oct. 9, 2018) p. 701

Undue delay in rendering an order –– The Court finds respondent guilty of undue delay in rendering an order for his failure to expeditiously resolve the pending incidents in Civil Case No. 10-27-MY despite complainant's repeated motions for early resolution; the provisions of Administrative Circular No. 7-A-92 or the "Guidelines in the Archiving of Cases" provides that a case may be archived only for a period not exceeding ninety (90) days, after which, it shall be immediately included in the trial calendar after the lapse thereof; his failure to perform his judicial duty with reasonable promptness in this respect clearly contravenes the provisions of Secs. 3 and 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary. (Boston Finance and Investment Corp. *vs*. Judge Gonzalez, A.M. No. RTJ-18-2520 [Formerly OCA IPI No. 14-4296-RTJ], Oct. 9, 2018) p. 701

Violation of Supreme Court rules, directives, and circulars –– The Court has consistently reminded government officials that the Halls of Justice must strictly be used for official functions only, in accordance with Administrative Circular No. 3-92 and Sec. 3 of A.M. No. 01-9-09-SC; as held in *Bautista v. Costelo, Jr.,* "the prohibition against the use of Halls of Justice for purposes other than that for which they have been built extends to their immediate vicinity including their grounds"; respondent judge's use of the courthouse as dwelling "brings the court into public contempt and disrepute in addition to exposing judicial records to danger of loss or damage"; under A.M. No. 01-8-10-SC, violation of Supreme Court rules, directives, and circulars is considered

a less serious charge; penalty. (Abiog *vs*. Hon. Cañete, A.M. No. MTJ-18-1917 [Formerly OCA IPI No. 15-2812-MTJ], Oct. 8, 2018) p. 513

JUDGES AND JUSTICES

Administrative cases against –– In administrative cases involving judges and justices of the lower courts, the respondent shall be charged and penalized under Rule 140 of the Rules of Court, and accordingly, separate penalties shall be imposed for every offense; the penalty provisions under the RRACCS shall not apply in such cases; Rule 140 of the Rules of Court, entitled "Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the *Sandiganbayan*"; was crafted to specifically govern the discipline of judges and justices of the lower courts, providing therein not only a distinct classification of charges but also the applicable sanctions; the offenses listed therein are broad enough to cover all kinds of administrative charges related to judicial functions, as they even include violations of the codes of conduct for judges, as well as of Supreme Court directives. (Boston Finance and Investment Corp. *vs*. Gonzalez, A.M. No. RTJ-18-2520 [Formerly OCA IPI No. 14-4296-RTJ], Oct. 9, 2018) p. 701

JUDGMENTS

Conflict between the fallo and the body of the decision or order — When there is a conflict between the *fallo*, or the dispositive portion, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order, which becomes the subject of execution, while the body of the decision or order merely contains the reasons or conclusions of the court ordering nothing; however, as an exception, "when one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail"; *Tuatis v. Spouses Escol*, cited; the Court cannot be precluded from making the necessary amendment thereof, so that the *fallo* will

conform to the body of the said decision." (Martin *vs*. Atty. Dela Cruz, A.C. No. 9832, Oct. 3, 2018) p. 34

JUDICIARY

Power of judicial review — An actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute since the courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions; related to the requirement of an actual case or controversy is the requirement of "ripeness," and a question is ripe when the act being challenged has a direct effect on the individual challenging it; illustrated. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. NO. 216930, Oct. 9, 2018) p. 724

— Legal standing refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act; in constitutional cases, which are often brought through public actions and the relief prayed for is likely to affect other persons, non-traditional plaintiffs have been given standing by this Court provided specific requirements have been met; petitioners have sufficient legal interest in the outcome of the controversy. (*Id*.)

— Sec. 1, Art. VIII authorizes courts of justice not only "to settle actual case controversies involving rights which are legally demandable and enforceable" but also "to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"; under the Court's expanded jurisdiction, the writs of *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, on the ground of grave abuse of discretion, any act of any branch or instrumentality of the government,

even if the latter does not exercise judicial, quasi-judicial or ministerial functions. (*Id*.)

— The following requisites must first be complied with before the Court may exercise its power of judicial review: (1) there is an actual case or controversy calling for the exercise of judicial power; (2) the petitioner has standing to question the validity of the subject act or issuance, *i.e.*, he has a personal and substantial interest in the case that he has sustained, or will sustain, direct injury as a result of the enforcement of the act or issuance; (3) the question of constitutionality is raised at the earliest opportunity; and (4) the constitutional question is the very *lis mota* of the case; of these four, the most important are the first two requisites. (*Id*.)

LAND REGISTRATION

Torrens system — Similar to a certificate of title issued in registration proceedings, the registration of a certificate of land ownership award places the subject land under the operation of the Torrens system; once under the Torrens system, a certificate of land ownership award or certificate of title issued may only be attacked through a direct proceeding before the court; collateral and direct attack, distinguished; this Petition was a collateral attack on respondents' title. (Padillo *vs*. Villanueva, G.R. No. 209661, Oct. 3, 2018) p. 282

LEGISLATIVE POWER

Delegation of — DO No. 31 is an administrative regulation addressed to DepEd personnel providing for general guidelines on the implementation of a new curriculum for Grades 1 to 10 in preparation for the K to 12 basic education; issued in accordance with the DepEd's mandate; interpretative regulations and those merely internal in nature, including the rules and guidelines to be followed by subordinates in the performance of their duties are not required to be published. (Council of Teachers and Staff of Colleges and Universities of the Phils.

(CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

— In determining whether or not a statute constitutes an undue delegation of legislative power, the Court has adopted two tests: the completeness test and the sufficient standard test; under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it; the sufficient standard test, on the other hand, mandates adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot; to be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented; under the two tests, the *K to 12 Law* is complete in all essential terms and conditions and contains sufficient parameters on the power delegated to the DepEd, CHED and TESDA. (*Id*.)

Validity of enactment — The *K to 12 Law* was validly enacted; first, petitioners' claim of lack of prior consultations is belied by the nationwide regional consultations conducted by DepEd; the Philippine Congress, in the course of drafting the *K to 12 Law*, also conducted regional public hearings; second, the enrolled bill doctrine applies in this case; third, there is no undue delegation of legislative power in the enactment of the *K to 12 Law*. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

— Under the "enrolled bill doctrine," the signing of a bill by the Speaker of the House and the Senate President and the certification of the Secretaries of both Houses of Congress that it was passed is conclusive not only as to its provisions but also as to its due enactment; rationale behind the doctrine; there is no doubt as to the formal validity of the *K to 12 Law.* (*Id*.)

MORTGAGES

Foreclosure of — UnionBank's passivity and indifference, even when it was in a prime position to enable a more conscientious consideration, were not just a cause of Insular Life's rescission bereft of clear and convincing proof of a design to defraud, but also, ultimately, of the unjust seizure of Alvarez's property; UnionBank cannot be allowed to profit; its foreclosure must be annulled. (The Insular Life Insurance Co., Ltd. *vs*. Heirs of Jose H. Alvarez, G.R. No. 207526, Oct. 3, 2018) p. 175

1997 NATIONAL INTERNAL REVENUE CODE (TAX CODE)

Assessment and collection of taxes — As a general rule, petitioner has three (3) years from the filing of the return to assess taxpayers; an exception to the rule of prescription is found in Sec. 222, paragraphs (b) and (d) of the same Code; a Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the Bureau of Internal Revenue to extend the period of assessment and collection to a certain date; "the requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement." (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

Assessment of taxes — Avon was compelled to pay a portion of the deficiency assessments "in compliance with the Revenue Officer's condition in the hope of cancelling the assessments on the non-existent sales discrepancy"; its payment of an insignificant portion of the assessment cannot be deemed an admission or recognition of the validity of the waivers. (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

Deficiency tax assessments — The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and

effect; the Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Sec. 228 of the Tax Code and Revenue Regulation No. 12–99; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, cited. (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

Right of the taxpayer to procedural due process — Avon was deprived of due process; it was not fully apprised of the legal and factual bases of the assessments issued against it; the Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon; the Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

— Sec. 228 explicitly requires that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; Sec. 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based; Sec. 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void; Section 3.1.6 requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based; "the use of the word 'shall' in Sec. 228 of the National Internal Revenue Code and in Revenue Regulations No. 12-99, construed. (*Id*.)

OFFICE OF THE OMBUDSMAN

Decisions in administrative cases — Case law recognizes two (2) instances where a decision, resolution or order

of the Ombudsman arising from an administrative case becomes final and unappealable: (a) where the respondent is absolved of the charge; and (b) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary; *Reyes, Jr. v. Belisario*, cited. (Mandagan *vs*. Dela Cruz, G.R. No. 228267, Oct. 8, 2018) p. 588

OMNIBUS INVESTMENT CODE

Income Tax Holiday (ITH) Incentive — The withdrawal of respondent's ITH incentive was not supported by the law and the evidence; in its Application for Registration, respondent asked that it "be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted Mineral Production Sharing Agreement and newly adopted beneficiation process"; respondent never made any representation that it would be building a beneficiation plant; since there was no such requirement under the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP, petitioner cannot use this as ground to withdraw respondent's ITH incentive. (Board of Investments *vs*. SR Metals, Inc., G.R. No. 219927, Oct. 3, 2018) p. 332

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION–STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Assessment of disability — Since there were two conflicting findings by two different physicians, the parties should have moved to seek the opinion of a third doctor; in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting medical assessments of the company-designated doctor on one hand, and the seafarer's chosen physician, on the other; that is the procedure followed by the PVA in this case; no basis for

the issuance of the fit to work certificate to Villas. (Villas *vs*. C.F. Sharp Crew Mgm't., Inc., G.R. No. 221548, Oct. 3, 2018) p. 363

Disability benefits — For disability to be compensable, 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; work-related injury pertains to injury(ies) resulting in disability or death arising out of, and in the course of, employment; jurisprudence elucidates that 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; an injury or accident "in the course of employment," explained. (Guerrero *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 222523, Oct. 3, 2018) p. 407

— Work-relatedness of an injury or illness means that the seafarer's injury or illness has a possible connection to one's work, and thus, allows the seafarer to claim disability benefits therefor; the oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. (*Id*.)

Permanent and total disability — Even if the Court resolves the present Petition by its pronouncements in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr*., the company-designated physician still failed to make a determination of respondent's disability within the period prescribed by law, *i.e*., 120 days; hence, respondent's disability became permanent and total. (Phil. Hammonia Ship Agency *vs*. Israel, G.R. No. 200258, Oct. 3, 2018) p. 95

— In *Aldaba v. Career Philippines Shipmanagement, Inc*., the Court clarified the seeming conflict in jurisprudence on the 120-day and 240-day rules; *Elburg Shipmanagement Phils., Inc. v. Quiogue*, cited; the Court further affirmed that the company-designated physician must still make an assessment within 120 days from the date of medical

repatriation, and he is only allowed to extend the medical treatment to 240 days when there is sufficient justification for it; here, the Final Medical Report was issued by the doctor 141 days from the time of repatriation; the disability had become total and permanent. (Villas *vs*. C.F. Sharp Crew Mgm't., Inc., G.R. No. 221548, Oct. 3, 2018) p. 363

—— The 120-day rule in *Crystal Shipping v. Natividad* applies herein; the Court reiterates the pertinent ruling in *Crystal Shipping*: Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body; total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. (Phil. Hammonia Ship Agency *vs*. Israel, G.R. No. 200258, Oct. 3, 2018) p. 95

Third-doctor referral procedure —— OSG Ship Management Manila, Inc. v. Pellazar, cited; in a long line of cases, most recently *Tulabing v. MST Marine Services (Phils.), Inc.*, the Court has held that the conflicting findings of the company-designated physician and the seafarer's chosen doctor "shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding"; on the other hand, "the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties." (Magsaysay Maritime Corp. *vs*. Verga, G.R. No. 221250, Oct. 10, 2018) p. 926

—— The referral to a third doctor agreed upon by the parties is mandatory; failure to comply with the procedure "may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise; this is especially so if the seafarer failed to explain why recourse to the said remedy was not made." (*Id*.)

PRESUMPTIONS

Presumption of constitutionality — Every law has in its favor the presumption of constitutionality; for a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution; petitioners must clearly establish that the constitutional provisions they cite bestow upon them demandable and enforceable rights and that such rights clash against the State's exercise of its police power under the *K to 12 Law*. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

Presumption of regular performance of official duty — Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves; where the official act in question is irregular on its face, the presumption of regularity cannot stand. (People *vs*. Abadilla *y* Vergara, G.R. No. 232496, Oct. 8, 2018) p. 612

— The Court of Tax Appeals erroneously applied the "presumption of regularity" in sustaining the commissioner's assessments; it is a disputable presumption under Rule 131, Sec. 3(m) of the Rules of Court; the presumption of regularity in the performance of the Commissioner's official duties cannot stand in the face of positive evidence of irregularity or failure to perform a duty. (Commissioner of Internal Revenue *vs*. Avon Products Mfg., Inc., G.R. Nos. 201398-99, Oct. 3, 2018) p. 114

PUBLIC OFFICERS

Presumption of negligence in the selection and supervision of employee — With respondents having discharged their burden of proof, the disputable presumption that petitioner was negligent in the selection and supervision of the employee arises; considering that petitioner failed

to dispute the presumption of negligence on his part, he was correctly deemed liable for the damages incurred by the spouses when the tricycle they were riding collided with the van driven by petitioner's employee. (Imperial *vs*. Heirs of Neil Bayaban, G.R. No. 197626, Oct. 3, 2018) p. 53

QUASI-DELICT

Doctrine of vicarous liability — Employers are deemed liable or morally responsible for the fault or negligence of their employees but only if the employees are acting within the scope of their assigned tasks; the burden of proving the existence of an employer-employee relationship and that the employee was acting within the scope of his or her assigned tasks rests with the plaintiff under the Latin maxim "*ei incumbit probatio qui dicit, non qui negat*" or "he who asserts, not he who denies, must prove"; application. (Imperial *vs*. Heirs of Neil Bayaban, G.R. No. 197626, Oct. 3, 2018) p. 53

RAPE

Elements — The two elements of rape: (1) that the offender had carnal knowledge of the girl; and (2) that such act was accomplished through the use of force or intimidation – are both present as duly proven by the prosecution. (People *vs*. Villaros *y* Caranto, G.R. No. 228779, Oct. 8, 2018) p. 595

Force and intimidation — The law does not impose on the rape victim the burden of proving resistance; in rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; the fact that the accused-appellant did not use any weapon is immaterial, especially since the victim in this case was just 12 or 13 years old at the time of the incidents; in rapes committed by a close kin, moral influence or ascendancy takes the place of violence or intimidation. (People *vs*. Villaros *y* Caranto, G.R. No. 228779, Oct. 8, 2018) p. 595

Guiding principles in reviewing rape cases — There are three (3) guiding principles in reviewing rape cases: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *vs*. Arces, Jr., G.R. No. 225624, Oct. 3, 2018) p. 443

Prosecution for — The Court has held numerous times in the past that a medical examination is not indispensable in a prosecution for rape; the medico-legal officer's responsibility is only limited to finding out whether or not there is enough evidence to conclude that AAA was sexually abused. (People *vs*. Villaros *y* Caranto, G.R. No. 228779, Oct. 8, 2018) p. 595

— While a medical report is not indispensable to the prosecution of a rape case, and is not at all controlling because its value is merely corroborative, the medico-legal's findings can still raise serious doubt as to the credibility of the alleged rape victim. (People *vs*. Arces, Jr., G.R. No. 225624, Oct. 3, 2018) p. 443

RAPE BY SEXUAL ASSAULT

Elements — The elements of Rape by Sexual Assault are as follows: (1) That the offender commits an act of sexual assault; (2) That the act of sexual assault is committed by any of the following means: (a) By inserting his penis into another person's mouth or anal orifice; or (b) By inserting any instrument or object into the genital or anal orifice of another person; (3) That the act of sexual assault is accomplished under any of the following circumstances: (a) By using force and intimidation; (b) When the woman is deprived of reason or otherwise unconscious; or (c) By means of fraudulent machination

or grave abuse of authority; or (d) When the woman is under 12 years of age or demented; the foregoing elements as described in the Information were sufficiently established by the evidence of the prosecution. (Granton *vs*. People, G.R. No. 226045, Oct. 10, 2018) p. 973

Penalty — The Court modifies the nomenclature of the offense to acts of lasciviousness under Art. 336 of the RPC in relation to Sec. 5(b), Art. III of R.A. No. 7610; proper penalty. (Granton *vs*. People, G.R. No. 226045, Oct. 10, 2018) p. 973

REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE

Multiple administrative charges — Sec. 50 of the Revised Rules on Administrative Cases in the Civil Service provides that "if the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances"; this particularly applies in this case because under the Code of Conduct for Court Personnel, "all provisions of law, Civil Service rules, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary are deemed incorporated into the Code"; the sheriff's dismissal from the service is correct. (Litonjua *vs*. Marcelino, A.M. No. P-18-3865 [Formerly OCA I.P.I. No. 11-3735-P], Oct. 9, 2018) p. 688

RIGHTS OF THE ACCUSED

Right to be presumed innocent — It is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved; in *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*, the Court ruled that the prosecution bears the burden to overcome such presumption; if the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal; on the other hand, if the existence of proof beyond

reasonable doubt is established by the prosecution, the accused gets a guilty verdict. (People *vs*. Bombio *y* De Villa, G.R. No. 234291, Oct. 3, 2018) p. 457

2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE

Dropping from the rolls — Sec. 107-a-1, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service warrants the dropping from the rolls of the name of the employee who has been continuously absent without approved leave for at least 30 days even without prior notice; by going on AWOL, the employee grossly disregarded and neglected the duties of his office; separation from the service for unauthorized absences is non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee or in disqualifying him from re-employment in the government, in accordance with Sec. 110, Rule 20 of the 2017 RACCS. (Re: Dropping from the Rolls of Mr. Victor R. Laqui, Jr., Cash Clerk II, OCC, MTC, Manila, A.M. No. 18-08-79-MeTC, Oct. 3, 2018) p. 40

SECRETARY OF DEPARTMENT OF AGRARIAN REFORM

Jurisdiction —Regional Director Arsenal has no jurisdiction in a Petition for Inclusion as farmer-beneficiary over lots covered by the Certificates of Title or registered Certificates of Land Ownership Award; thus, all subsequent proceedings are void for lack of jurisdiction; Sec. 9 of R.A. No. 9700, which amends Sec. 24 of R.A. No. 6657, states that "the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the Department of Agrarian Reform"; this covers only certificates under the Department of Agrarian Reform's jurisdiction. (Padillo *vs*. Villanueva, G.R. No. 209661, Oct. 3, 2018) p. 282

SETTLEMENT OF ESTATE OF THE DECEASED

Letters of Administration — As to whom the Letters of Administration should be issued, the Court, in *Gabriel v. Court of Appeals*, gave emphasis on the extent of one's interest in the decedent's estate as the paramount consideration for appointing him/her as the administrator; the preference given to the surviving spouse, next of kin, and creditors is not absolute, and that the appointment of an administrator greatly depends on the attendant facts and circumstances of each case; the Court fully agrees with the ruling of the trial and appellate courts in choosing respondent-administratrix. (Leriou *vs*. Longa, G.R. No. 203923, Oct. 8, 2018) p. 552

Notice requirement — Contrary to petitioners' argument that personal notice under Sec. 4 of Rule 76 is a jurisdictional requirement, the Court, in *Alaban v. Court of Appeals*, explained that it is just a matter of personal convenience; a testate or intestate settlement of a deceased's estate is a proceeding *in rem*, such that the publication under Section 3 of the same Rule, vests the court with jurisdiction over all persons who are interested therein; the Order was published for three consecutive weeks in *Balita*, a newspaper of general circulation, which constitutes notice to the whole world. (Leriou *vs*. Longa, G.R. No. 203923, Oct. 8, 2018) p. 552

SHERIFFS

Dishonesty and dereliction of duty — A sheriff's failure to turn over amounts received from a party in his official capacity constitutes an act of misappropriation of funds amounting to dishonesty; respondent's failure to observe the procedural rules further classifies as dereliction of duty. (Litonjua *vs*. Marcelino, A.M. No. P-18-3865 [Formerly OCA I.P.I. No. 11-3735-P], Oct. 9, 2018) p. 688

Duties — A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps otherwise, it would amount to dishonesty and extortion; and any amount received in violation of

Sec. 10, Rule 141 of the Rules of Court constitutes unauthorized fees; even as the Rules of Court allows payments to sheriffs, it limits the amounts they could receive from parties in relation to the execution of writs, and likewise prescribes the manner by which the sums should be handled. (Litonjua *vs*. Marcelino, A.M. No. P-18-3865 [Formerly OCA I.P.I. No. 11-3735-P], Oct. 9, 2018) p. 688

— It is hornbook law that "a sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Sec. 10(c) of Rule 39"; *Calaunan v. Madolaria*, cited; failure to observe the requirements of the said provision constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension pursuant to Sec. 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil Service; under Sec. 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, which applies to the instant case, simple neglect of duty is classified as a less grave offense. (Mañalac *vs*. Bidan, A.M. No. P-18-3875 [Formerly OCA IPI No. 16-4577], Oct. 3, 2018) p. 45

Extenuating circumstance — As to the proper penalty, this Court notes that the OCA had appreciated one extenuating circumstance, *i.e.* "respondent's violation of the procedure in the implementation of the writ is not so grave and absent a showing of malice and bad faith"; under Section 49(a), Rule 10 of the RRACCS, "the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present"; the penalty of fine may be imposed in lieu of suspension from office pursuant to Sec. 47(1)(b), Rule 10 of the RRACCS. (Mañalac *vs*. Bidan, A.M. No. P-18-3875 [Formerly OCA IPI No. 16-4577], Oct. 3, 2018) p. 45

STATE POLICIES

Academic freedom — Academic freedom for the individual member of the academe, defined as "the right of a faculty

member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments"; however, the Court does not agree with petitioners that their transfer to the secondary level, as provided by the *K to 12 Law* and the assailed issuances, constitutes a violation of their academic freedom. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

— The Senior High School Voucher program (subsidy given to those who will enroll in non-DepEd schools) simply offers a viable alternative to both student and government; the voucher system is one of the mechanisms established by the State through R.A. No. 6728, otherwise known as the *Government Assistance to Students and Teachers in Private Education Act; Mariño, Jr. v. Gamilla*, cited; through the law, the State provided "the mechanisms to improve quality in private education by maximizing the use of existing resources of private education"; the program was later expanded through R.A. No. 8545. (*Id*.)

Interpretation of — Government policy is within the exclusive dominion of the political branches of the government; the Court, despite its vast powers, will not review the wisdom, merits, or propriety of governmental policies, but will strike them down only on either of two grounds: (1) unconstitutionality or illegality and/or (2) grave abuse of discretion. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No.. 216930, Oct. 9, 2018) p. 724

K to 12 Law and right to due process and equal protection of the students — The *K to 12 Law* does not offend the substantive due process of petitioners; the assailed law's declaration of policy itself reveals that, contrary to the claims of petitioners, the objectives of the law serve the

interest of the public and not only of a particular class: x x x All students are intended to benefit from the law; the basic education curriculum was restructured according to what the political departments believed is the best approach to learning, or what they call as the "spiral approach"; the means employed by the assailed law are commensurate with its objectives. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

STATE, POWERS OF THE

Power of eminent domain — Just compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator; the Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss; the word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample"; purpose. (Rep. of the Phils. *vs*. Sps. Legaspi, G.R. No. 221995, Oct. 3, 2018) p. 383

—— Sec. 5 of R.A. 8974 states the standards for the determination of just compensation: Sec. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards: (a) The classification and use for which the property is suited; (b) The developmental costs for improving the land; (c) The value declared by the owners; (d) The current selling price of similar lands in the vicinity; (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon; (f) The size, shape or location, tax declaration and zonal valuation of the land; (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence

presented; and (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible; clearly, the ruling of both the trial court and the Court of Appeals is supported by evidence. (*Id*.)

STATUTORY CONSTRUCTION

K to 12 Law and related issuances and the Constitution — There is no conflict between the *K to 12 Law* and related issuances and the Constitution when it made kindergarten and senior high school compulsory; the Constitution is clear in making elementary education compulsory; the definition of basic education was expanded by the legislature through the enactment of different laws, consistent with the State's exercise of police power; absent any showing of a violation of any Constitutional self-executing right or any international law, the Court cannot question the desirability, wisdom, or utility of the *K to 12 Law* as this is best addressed by the wisdom of Congress. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

K to 12 Law and the right of senior high students — There is no conflict between the *K to 12 Law* and its IRR and the right of the senior high school students to choose their profession or course of study; the curriculum is designed in such a way that students have core subjects and thereafter, may choose among four strands; petitioners have failed to show that the State has imposed unfair and inequitable conditions for senior high schools to enroll in their chosen path. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

Retroactive application — The K to 12 Basic Education Program is not being retroactively applied because only those currently enrolled at the time the *K to 12 Law* took

effect and future students will be subject to the K to 12 BEC and the additional two (2) years of senior high school; BP Blg. 232 does not confer any vested right to four (4) years of high school education; in adding two (2) years of secondary education to students who have not yet graduated from high school, Congress was merely exercising its police power and legislative wisdom in imposing reasonable regulations for the control and duration of basic education. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

Self-executing provisions — Only self-executing provisions of the Constitution embody judicially enforceable rights and therefore give rise to causes of action in court; "a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action; the *Kindergarten Education Act*, the *K to 12 Law* and its related issuances cannot be nullified based solely on petitioners' bare allegations that they violate general provisions of the Constitution which are mere directives addressed to the executive and legislative departments. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

Use of the mother tongue and the provision on language under the Constitution — There is no conflict between the use of the MT as a primary medium of instruction and Sec. 7, Art. XIV of the 1987 Philippine Constitution; Secs. 6 and 7, Art. XIV of the 1987 Philippine Constitution; the deliberations of the Constitutional Commission also confirm that MT or regional languages may be used as a medium of instruction; when the government, through the *K to 12 Law* and the DepEd issuances, determined that the use of MT as primary

medium of instruction until Grade 3 constitutes a better curriculum, it was working towards discharging its constitutional duty to provide its citizens with quality education. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

Use of mother tongue and the right of parents in rearing children — There is no conflict between the use of MT as a primary medium of instruction and the right of parents in rearing their children; while Sec. 12, Art. II of the 1987 Philippine Constitution grants parents the primary right to rear and educate their children, the State, as *parens patriae,* has the inherent right and duty to support parents in the exercise of this constitutional right. (Council of Teachers and Staff of Colleges and Universities of the Phils. (CoTeSCUP) *vs*. Sec. of Education, G.R. No. 216930, Oct. 9, 2018) p. 724

TREACHERY

As a qualifying circumstance — There is treachery when the offender commits any of the crimes against persons, employing means and method or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make; to qualify as an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, method or forms of execution were deliberately or consciously adopted by the assailant; it has two elements, which must be read in conjunction with each other. (People *vs*. Bacolot *y* Idlisan, G.R. No. 233193, Oct. 10, 2018) p. 980

— Treachery cannot be presumed merely from the fact that the attack was sudden; the suddenness of an attack does not, of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as the decision

was made suddenly and the victim's helpless position was accidental. (*Id*.)

UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE

Simple misconduct — Sec. 52(B)(2), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies simple misconduct as a less grave offense punishable with a corresponding penalty of suspension for one month and one day to six months for the first offense; Sec. 54 of the same rules sets out the manner of imposition of penalty, to wit: Sec. 54. *Manner of imposition;* when applicable, the imposition of the penalty may be made in accordance with the manner provided herein below: a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present; mitigating circumstance of good faith appreciated in this case; penalty. (Dator *vs*. Hon. Carpio-Morales, G.R. No. 237742, Oct. 8, 2018) p. 655

— The Civil Service Commission (CSC) came out with CSC Resolution No. 020790 (Policy Guidelines for Contract of Services) as it has been made aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service, as in the situation in this case. (*Id*.)

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

Signing of — Although it appears that the verification and certification of non-forum shopping was not among the list of official documents mentioned in Department Order No. 14-39, series of 2014, the Court is still inclined to uphold the authority of the OIC to sign the same; considering the rationale of the Memorandum, any doubt as to the authority of the OIC to file the instant case and

to sign the verification and certification of non-forum shopping should be resolved in favor of the government. (Board of Investments *vs*. SR Metals, Inc., G.R. No. 219927, Oct. 3, 2018) p. 332

WITNESSES

Credibility of — In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature; this is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. (People *vs*. Villaros *y* Caranto, G.R. No. 228779, Oct. 8, 2018) p. 595

— It is well settled that delay in making a criminal accusation does not impair the credibility of a witness if such delay is satisfactorily explained; *People v. Historillo*, cited; failure of the complainant to immediately report the rape to the police authorities does not detract from her credibility; it considered (1) the victim's age; (2) the accused's moral ascendancy over the victim; and (3) his threats against her, in excusing the delay in filing the case; application. (*Id*.)

— When the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect; the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination; in the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound

by the former's findings. (Planteras, Jr. *vs*. People, G.R. No. 238889, Oct. 3, 2018) p. 492

— While an accused may be convicted of rape solely on the basis of the testimony of the complainant, such testimony should meet the test of credibility - it should be straightforward, clear, positive, and convincing; the testimony of AAA did not meet these requirements. (People *vs*. Arces, Jr., G.R. No. 225624, Oct. 3, 2018) p. 443

Delay in reporting an incident of rape — Generally, a delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the victim; a rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained; in this case, the delay in reporting is unexplained and unjustified. (People *vs*. Arces, Jr., G.R. No. 225624, Oct. 3, 2018) p. 443

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