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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 9361. March 20, 2019]

JOHAIDA GARINA ROA- BUENAFE, *complainant, vs.* **ATTY. AARON R. LIRAZAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; IMPORTANCE OF A NOTARY. — [N]otarization is not an empty, meaningless or routinary act, but rather an act invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

2. ID.; ID.; FAILURE TO MAKE THE PROPER ENTRIES IN THE NOTARY PUBLIC'S NOTARIAL REGISTER IS A GROUND FOR REVOCATION OF COMMISSION; CASE AT BAR. — Failure to make the proper entry or entries in the notary public's notarial register concerning his notarial acts shall give ground for the revocation of his commission or imposition of appropriate administrative sanctions. Such failure also violates his duty under the Code to uphold and obey the laws of the land and to promote respect for law and legal

processes. Here, respondent failed to properly discharge his duties as a notary public. While the conformity document appears to have respondent's notarial details and was registered in respondent's notarial book with specific document and page numbers, such document does not appear in the records of the National Archives, the final repository for notarized documents of the Philippines. Worse, the National Archives found in their records another document which bore the same notarial registration details as that in the conformity. Since the document or instrument does not appear in the notarial records, doubt is engendered that it has not really been notarized. Notably, respondent did not deny notarizing the document and even admitted that Jose appeared before him for the said notarization of the document. However, respondent failed to record the assailed document in his notarial book and even used the same notarial details in notarizing another document. Such failure by respondent is inexcusable and constitutes gross negligence in carefully discharging his duties as a notary public.

3. ID.; ID.; NOTARIAL RULES REQUIRE THAT THE NOTARIAL FUNCTION OF RECORDING ENTRIES IN THE NOTARIAL REGISTER SHALL BE FULFILLED BY NOTARY PUBLIC HIMSELF AND NOT BY ANYONE ELSE. — Respondent's delegation of his notarial function of recording entries in his notarial register to his secretary is a clear contravention of the explicit provision of the notarial rules that such duty should be fulfilled by him and not by anyone else. This is a direct violation of Canon 9, Rule 9.01 of the Code, x x x Respondent's negligence degrades the function of notarization and diminishes public confidence on notarial documents. Canon 1 of the Code clearly mandates the obedience of every lawyer to laws and legal processes. x x x The notarization of public documents is vested with substantive public interest. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Respondent's failure to strictly comply with the rules on notarial practice seriously undermines the dependability and efficacy of notarized documents.

4. ID.; ID.; VIOLATION OF NOTARIAL RULES; PENALTY; CASE AT BAR. — Jurisprudence provides that a notary public who fails to discharge his duties as such is meted out the following

> penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law - the terms of which vary based on the circumstances of each case. x x x In this case, respondent inexcusably delegated the task of notarization to his secretary who supposedly entered the notarial details in his notarial book. He also failed to explain why there was no copy in his notarial records of the conformity he had admittedly notarized. His acts not only violate his duties as a duly commissioned notary public but also Canons 1 and 9 of the Code. Thus, the Court modifies the recommended penalty of the IBP Board that respondent's notarial commission be revoked and he further be disqualified from reappointment as notary public for a period of two (2) years. In addition, and in keeping with recent jurisprudence, the Court deems it proper to impose upon respondent the penalty of suspension from the practice of law for one (1) year for his utter disregard of the integrity and dignity due the legal profession.

APPEARANCES OF COUNSEL

Vicente D. Millora for complainant.

D E C I S I O N

GESMUNDO, *J.*:

This Complaint,[1] dated January 30, 2012, filed by Johaida Garina Roa-Buenafe (*complainant*) before the Integrated Bar of the Philippines Commission on Bar Discipline (*IBP Commission*), seeks to disbar Atty. Aaron R. Lirazan (*respondent*) for grave misconduct in allegedly notarizing and falsifying a public document.

Complainant alleged that she is the owner of Lot No. 3507 (*the property*), covered by Tax Declaration No. 1447, with an area of 11,530 square meters. She acquired the property on the basis of a document denominated as Declaration of Heirship

[1] *Rollo* (Vol. I), pp. 1-5.

with Extrajudicial Settlement of Estate with Waiver and/or Quitclaim of Rights,[2] dated February 15, 2005, executed by her siblings, which effectively relinquished their inheritance claims over the property in favor of complainant. Since then, complainant has religiously paid the real estate taxes for the property.

In 2008, complainant was surprised that a certain Serena Garaygay (*Serena*) had paid the real estate tax for the property. Upon verification, complainant discovered an undated but notarized document denominated as Conformity (*document*),[3] signed by complainant's brother, Jose G. Roa (*Jose*), and notarized by respondent with the following notarial details: Document No. 469, Page No. 94, Book I, Series of 2002. Meanwhile, Transfer Certificate of Title No. 269034 was issued by the Registry of Deeds of Negros Occidental, in favor of Serena, on the basis of the document allegedly signed by Jose.

According to complainant, the signature of Jose in the document was forged as it did not match his specimen signatures in another document[4] and in his voter's ID.[5] Upon further verification with the National Archives of the Philippines (*National Archives*), complainant found out that no such document exists in their records. The National Archives, however, disclosed that the notarial details appearing in the document pertained to a Certification, dated December 1, 2002, executed by a certain SPO1 Edmundo S. Acosido.[6]

In his Comment,[7] respondent denied the allegations against him and claimed that he did not falsify the document. He asserted that Jose, whom he had known since childhood, personally

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

[2] *Id.* at 24.

[4] *Id.* at 27.

[5] *Id.* at 31.

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

[7] *Id.* at 114-119.

appeared before him when he notarized the document. According to respondent, Jose even manifested that the document merely affirmed the contents and execution of the missing deed of absolute sale concerning the subject property he had previously executed in favor of Serena. Thus, due to its notarization, the document signed by Jose enjoys the presumption of validity as to its authenticity and due execution.[8]

On the issue of error in the recording of the document in respondent's notarial book, respondent asserted that the error of his secretary in encoding the document was made in good faith and, as such, did not affect the validity and authenticity of the document.[9]

Respondent also argued that the issue on the authenticity and validity of the document was pending before the Regional Trial Court of Kabankalan City, Negros Occidental, Branch 61, docketed as Civil Case No. 1694.[10]

IBP Report and Recommendation

In its Report and Recommendation,[11] dated September 7, 2016, the IBP Commission recommended the revocation of respondent's notarial commission and his disqualification from reappointment as notary public for a period of two (2) years. While it categorically ruled that respondent did not falsify the document, the IBP Commission noted the discrepancy and error in the notarial book of respondent which violated his responsibilities as a notary public under Section 2, Rule VI[12]

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[8] *Id*. at 114-115.

[9] *Id*. at 115.

[10] *Id.*

[11] *Rollo* (Volume II), pp. 296-301.

[12] SECTION 2. *Entries in the Notarial Register*. - (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:

(1) the entry number and page number;

(2) the date and time of day of the notarial act;

(3) the type of notarial act;

of the Rules on Notarial Practice. It opined that as a notary public, respondent is mandated to maintain his books in proper order. His failure to do so violated his oath, which merits the

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(4) the title or description of the instrument, document or proceeding; (5) the name and address of each principal;

(6) the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;

(7) the name and address of each credible witness swearing to or affirming the person's identity;

(8) the fee charged for the notarial act;

(9) the address where the notarization was performed if not in the notary's regular place of work or business; and

(10) any other circumstance the notary public may deem of significance or relevance.

(b) A notary public shall record in the notarial register the reasons and circumstances for not completing a notarial act.

(c) A notary public shall record in the notarial register the circumstances of any request to inspect or copy an entry in the notarial register, including the requester's name, address, signature, thumbmark or other recognized identifier, and evidence of identity. The reasons for refusal to allow inspection or copying of a journal entry shall also be recorded.

(d) When the instrument or document is a contract, the notary public shall keep an original copy thereof as part of his records and enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. He shall also retain a duplicate original copy for the Clerk of Court. TCASIH

(e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

(f) In case of a protest of any draft, bill of exchange or promissory note, the notary public shall make a full and true record of all proceedings in relation thereto and shall note therein whether the demand for the sum of money was made, by whom, when, and where; whether he presented such draft, bill or note; whether notices were given, to whom and in what manner; where the same was made, when and to whom and where directed; and of every other fact touching the same.

(g) At the end of each week, the notary public shall certify in his notarial register the number of instruments or documents executed, sworn to,

penalty of disbarment or suspension under Section 27, Rule 138[13] of the Revised Rules of Court.

In its December 7, 2017 Resolution,[14] the IBP Board of Governors (*IBP Board*) adopted the findings of fact and recommendation of the IBP Commission.

THE COURT'S RULING

The Court adopts the findings of the IBP Commission but modifies the recommendation of the IBP Board.

The act of notarization is impressed with public interest. A notary public is mandated to discharge with fidelity the duties of his office, such duties being dictated by public policy.[15] Moreover, a lawyer commissioned as a notary public has a responsibility to faithfully observe the rules governing notarial practice, having taken a solemn oath under the Code of Professional Responsibility (*Code*) to obey the laws and to do no falsehood or consent to the doing of any.[16]

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acknowledged, or protested before him; or if none, this certificate shall show this fact.

(h) A certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required.

[13] **Section 27.** *Attorneys removed or suspended by Supreme Court on what grounds*. - A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[14] *Rollo* (Volume II), pp. 294-295.

[15] *Agbulos v. Viray*, 704 Phil. 9 (2013).

[16] *Id*.

It is settled that notarization is not an empty, meaningless or routinary act, but rather an act invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[17]

Sec. 2, Rule VI of the 2004 Rules on Notarial Practice enumerates the details required to be written in the notarial register of a notary public:

> SECTION 2. *Entries in the Notarial Register*. - (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:
>
> (1) the entry number and page number;
>
> (2) the date and time of day of the notarial act;
>
> (3) the type of notarial act;
>
> (4) the title or description of the instrument, document or proceeding;
>
> (5) the name and address of each principal;
>
> (6) the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;
>
> (7) the name and address of each credible witness swearing to or affirming the person's identity;
>
> (8) the fee charged for the notarial act;
>
> (9) the address where the notarization was performed if not in the notary's regular place of work or business; and
>
> (10) any other circumstance the notary public may deem of significance or relevance.

Failure to make the proper entry or entries in the notary public's notarial register concerning his notarial acts shall give ground for the revocation of his commission or imposition of appropriate administrative sanctions.[18] Such failure also violates

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[17] *Triol v. Agcaoili, Jr.*, A.C. No, 12011, June 26, 2018.

[18] Section 1 (b2), Rule XI of the 2004 Rules on Notarial Practice.

his duty under the Code to uphold and obey the laws of the land and to promote respect for law and legal processes.[19]

Here, respondent failed to properly discharge his duties as a notary public. While the conformity document appears to have respondent's notarial details and was registered in respondent's notarial book with specific document and page numbers, such document does not appear in the records of the National Archives, the final repository for notarized documents of the Philippines. Worse, the National Archives found in their records another document which bore the same notarial registration details as that in the conformity. Since the document or instrument does not appear in the notarial records, doubt is engendered that it has not really been notarized.[20]

Notably, respondent did not deny notarizing the document and even admitted that Jose appeared before him for the said notarization of the document. However, respondent failed to record the assailed document in his notarial book and even used the same notarial details in notarizing another document. Such failure by respondent is inexcusable and constitutes gross negligence in carefully discharging his duties as a notary public.

Respondent cannot simply impute the error to his secretary because he is the one charged by law with the recording in his notarial register of the necessary information regarding documents or instruments he has notarized. Notaries public must observe the highest degree of compliance with the basic requirements of notarial practice in order to preserve public confidence in the integrity of the notarial system.[21] Respondent cannot simply evade liability and invoke good faith. Failure to enter the notarial acts in one's notarial register constitutes dereliction of a notary public's duties, which warrants the revocation of a lawyer's commission as a notary public.[22]

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[19] Canon 1 of the Code of Professional Responsibility.

[20] *Bernardo Vda. De Rosales v. Ramos*, 433 Phil. 8, 16 (2002).

[21] *Heirs of Alilano v. Examen*, 756 Phil. 608, 618 (2015).

[22] *Malvar v. Baleros*, 807 Phil. 16, 30 (2017).

Respondent's delegation of his notarial function of recording entries in his notarial register to his secretary is a clear contravention of the explicit provision of the notarial rules that such duty should be fulfilled by him and not by anyone else. This is a direct violation of Canon 9, Rule 9.01 of the Code, which provides that:

> A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

Respondent's failure to properly perform his duty as a notary public resulted in damage to those directly affected by the notarized document. In fact, a new and questionable certificate of title was issued in favor of a certain Serena on the basis of such document. Such title unduly prejudiced complainant's right over her property. Respondent's negligence degrades the function of notarization and diminishes public confidence on notarial documents. Canon 1 of the Code clearly mandates the obedience of every lawyer to laws and legal processes.[23] In *Agagon v. Bustamante*,[24] the Court ruled:

> Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. Moreover, the Notarial Law and the 2004 Rules on Notarial Practice require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction. Unfortunately, respondent failed in both respects.[25] (citation omitted)

The notarization of public documents is vested with substantive public interest. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[26]

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[23] *Gonzales v. Bañares*, A.C. No. 11396, June 20, 2018.

[24] 565 Phil. 581 (2007).

[25] *Id*. at 587.

[26] *Uy v. Apuhin*, A.C. No. 11826, September 5, 2018.

Respondent's failure to strictly comply with the rules on notarial practice seriously undermines the dependability and efficacy of notarized documents.

Proper Penalty

Jurisprudence provides that a notary public who fails to discharge his duties as such is meted out the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law - the terms of which vary based on the circumstances of each case.[27]

In *Malvar v. Baleros*,[28] the lawyer delegated her notarial function of recording entries in her notarial register to one of her staff. The assailed document therein was likewise missing from the notarial records of the lawyer. The Court ruled that this is a defiance of the notarial rules as well as a breach of the Code. The lawyer was suspended from the practice of law for six (6) months and disqualified from reappointment as notary public for a period of two (2) years. Her notarial commission was also revoked.

In *Spouses Chambon v. Ruiz*,[29] the lawyer therein failed to make the proper entries in his notarial book and even admitted that he delegated such duty to his secretary. The Court found him doubly negligent in the performance of his duties as a notary public and ruled that his acts constitute dishonesty. The lawyer was meted out the penalty of perpetual disqualification from being a notary public, suspension from the practice of law for one (1) year, and revocation of his notarial commission.

In this case, respondent inexcusably delegated the task of notarization to his secretary who supposedly entered the notarial details in his notarial book. He also failed to explain why there was no copy in his notarial records of the conformity he had admittedly notarized. His acts not only violate his duties as a

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[27] *Sappayani v. Gasmen*, 768 Phil. 1, 9 (2015).

[28] *Supra* note 22.

[29] A.C. No. 11478, September 5, 2017, 838 SCRA 526.

duly commissioned notary public but also Canons 1 and 9 of the Code.

Thus, the Court modifies the recommended penalty of the IBP Board that respondent's notarial commission be revoked and he further be disqualified from reappointment as notary public for a period of two (2) years. In addition, and in keeping with recent jurisprudence, the Court deems it proper to impose upon respondent the penalty of suspension from the practice of law for one (1) year for his utter disregard of the integrity and dignity due the legal profession.

The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but are also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be over-emphasized. Since, of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.[30]

WHEREFORE, Atty. Aaron R. Lirazan is found **GUILTY** of violating Canons 1 and 9 of the Code of Professional Responsibility and Section 2, Rule VI of the 2004 Rules on Notarial Practice. He is hereby **SUSPENDED** from the practice of law for one (1) year; his notarial commission is **REVOKED** if presently commissioned; and he is **DISQUALIFIED** from reappointment as notary public for a period of two (2) years. Atty. Lirazan is **STERNLY WARNED** that a repetition of the same or similar conduct in the future shall be dealt with more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Let a copy of this Decision be attached to the personal records of Atty. Aaron R. Lirazan in the Office of the Bar Confidant

[30] *Gonzales v. Bañares*, A.C. No. 11396, June 20, 2018.

and copies thereof be furnished the courts and the Integrated Bar of the Philippines.

SO ORDERED.

Del Castillo (*Acting Chairperson*), *Jardeleza*, and *Carandang, JJ.*, concur

Bersamin,[*] *C.J.*, on official leave.

SECOND DIVISION

[A.C. No. 12098. March 20, 2019]

MARILYN PABALAN *complainant, vs.* **ATTY. ELISEO MAGNO C. SALVA** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; AS THE ALLEGATIONS IN THE INSTANT DISBARMENT COMPLAINT WERE ALREADY RAISED BY COMPLAINANT AND CONSIDERED BY THE IBP BOARD OF GOVERNORS IN A PRIOR CASE, THE INSTANT COMPLAINT SHOULD BE DISMISSED.— [T]he Court notes that in the instant disbarment complaint filed by Pabalan in CBD Case No. 11-3282, she manifested that she had been a witness in the disbarment complaint filed by Benito against Salva in CBD Case No. 09-2382[.] x x x The Court also notes that Pabalan issued an "Appointment Paper" where she designated Benito as her attorney-in-fact to represent her in the cases she filed before the IBP, RTC, and MTC against Salva, which include the instant disbarment complaint. In his Answer in the instant case, Salva raised forum shopping as an

[*] Per Special Order No. 2645 dated March 15, 2019.

affirmative defense. This, along with Pabalan's manifestation, should have been enough to alert the IBP. Indeed, the IBP should have already dismissed the instant disbarment complaint because the same grounds raised by Pabalan were already contained in her *Sinumpaang Salaysay* as a witness in CBD Case No. 09-2382. The instant complaint even contains the same annexes as those attached to her *Sinumpaang Salaysay*. While Pabalan's allegations were only part of the many other allegations raised by Benito in CBD Case No. 09-2382, Salva was able to address Pabalan's allegations in his Answer therein. In fact, he even devoted the last few pages of said Answer as a Reply to Pabalan's *Sinumpaang Salaysay*. x x x [T]he IBP had already considered the allegations of Pabalan against Salva when it ruled on the disbarment complaint filed by Benito in CBD Case No. 09-2382. x x x **It is noteworthy that among all the allegations of Benito, it is the allegation specific to Pabalan that became the basis for Salva's suspension.** Still, the IBP Board of Governors denied Salva's MR, "there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors." This is serious error on the part of the IBP. Upon being informed of the Court's ruling in A.C. No. 9809, which approved and adopted the IBP's findings in CBD Case No. 09-2382 (including Pabalan's allegations), the IBP should have granted the MR and dismissed the complaint.

APPEARANCES OF COUNSEL

Salva & Salva Law Office for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

On December 13, 2011, Marilyn Pabalan (Pabalan) filed before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD) a **Complaint for Disbarment**[1] against Atty. Eliseo Magno Salva (Salva) for unprofessional and immoral conduct, originally docketed as **CBD Case No. 11-3282**.

[1] *Rollo*, pp. 2-6.

Complaint

Pabalan claimed that she and Salva were live-in partners for three years until 2008. She alleged that: 1) "with sweet words and promise of marriage," Salva deceived her into taking him in her condo unit and induced her to advance the funding for his proposed law office; 2) she and Salva entered into an agreement wherein she would solicit clients for Salva and they would evenly divide the attorney's fees paid by the clients, not knowing that a partnership between a lawyer and non-lawyer was illegal; 3) Salva is a womanizer with children from different women, and he faked a certificate of non-marriage (CENOMAR) in order to enter into a marriage for convenience with a U.S. citizen in 2008; 4) Salva was her counsel in a case before the National Labor Relations Commission (NLRC) and he failed to represent her with zeal, even withdrawing as counsel prior to his substitution; and 5) Salva neglected to return more than P1 million she incurred in putting up his law office, including payment of her shares in the solicitation of clients which she endorsed to him per their agreement.

Pabalan also stated that she was a witness in another disbarment case filed by a certain Daniel Benito (Benito) against Salva in **CBD Case No. 09-2382**. She claimed that she was emboldened to file a separate case and not just be a witness when a certain Cherry Reyes-Abastillas (Abastillas) filed another disbarment case against Salva in **CBD Case No. 11-3098**.[2]

Answer

In his *Answer*[3] dated March 12, 2012, Salva denied the allegations against him. He averred that Pabalan, Benito, and Abastillas are all close friends who have an axe to grind against him; hence, they fabricated the disbarment complaints.

[2] On June 11, 2018, the Court issued a Resolution in A.C. No. 12043 titled *Cherry Reyes-Abastillas v. Atty. Eliseo Magno C. Salva* wherein the Court adopted the Recommendation of the IBP to dismiss the complaint for failure to sufficiently establish the fact that respondent committed grossly immoral conduct as to warrant disbarment. There being no motion for re-consideration, the Court also considered the case as closed and terminated.

[3] *Rollo*, pp. 19-23.

As regards the instant case, Salva admitted that he and Pabalan were seeing each other but he decided not to see her anymore when she insisted that he change his religious affiliation and marry her abroad. Subsequently, Pabalan demanded P1 million from him, failure of which meant that she would do everything to destroy him. Salva claimed that it was actually Pabalan who owed him money for unpaid legal services when he represented her in an ejectment suit. He also denied inducing Pabalan to fund his law firm as he already had a law office at Salva Salva & Associates. Likewise, he denied entering into a partnership with Pabalan, and even assuming such agreement validly existed, it was Pabalan who insisted on entering the same. He averred that the agreement was never enforced nor implemented because Pabalan never referred any client to him.

Salva also denied that he falsified his CENOMAR. He countered that it was Pabalan and Benito who secured the CENOMAR on the basis of falsified information. Lastly, Salva claimed that he withdrew as counsel in the NLRC case upon instructions of Pabalan since according to her, she would just engage the services of another counsel. He alleged that Pabalan no longer participated in the case when he withdrew as counsel since she was not actually an employee of the party respondent in that case so her complaint had no basis. In fact, after the complaint was dismissed without prejudice by the NLRC due to non-attendance of Pabalan, the latter never refiled the same.

As an affirmative defense, Salva argued that the case should be dismissed for forum shopping because Pabalan already raised the same issues in the instant case in her *Sinumpaang Salaysay* in the earlier disbarment case filed by Benito against Salva.

Pabalan filed her **Reply**[4] on July 10, 2012, reiterating her allegations and denying Salva's assertions.

Motion to Dismiss

On September 17, 2012, Salva filed a **Motion to Dismiss**[5] (MTD) on the grounds of forum shopping, *res judicata*, and

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

[5] *Id.* at 46-49.

double jeopardy. He informed the IBP-CBD that it had already issued a Report and Recommendation in CBD Case No. 09-2382 which was adopted and approved by the IBP Board of Governors, wherein he was admonishedfor entering into an agreement with Pabalan for the solicitation of clients and division of attorney's fees.

Salva claimed that Pabalan is in effect a complainant in CBD Case No. 09-23 82 because her *Sinumpaang Salaysay*, which raised the same issues in the instant case, was incorporated therein, with the same annexes as those attached to her complaint in the instant case.

IBP Report and Recommendation

The records do not show any action by the IBP on the MTD. However, on November 20, 2012, the Investigating Commissioner issued a **Report and Recommendation**[6] finding Salva guilty of grossly immoral conduct and of violating his oath as a lawyer, thereby recommending that he be suspended from the practice of law for six months. The pertinent findings of the Investigating Commissioner are reproduced below:

> We found that [c]omplainant and [respondent before July 2006 had been living together as shown by Annex "A"[.] Respondent calls [c]omplainant [by her] nickname "Mayie". As proof of their relationship in July 2006[,] [Respondent wrote a letter greeting complainant happy anniversary and happy birthday, expressing his love and praying [for] God to bless them and to be part of everything they do[,] which letter is marked as Annex "B"[.] To show also that there was an agreement for the partnership between [Respondent and [c]omplainant[,] the same is marked as Annex C[.] Likewise, complainant submitted Annex C to show that [Respondent secured a certification that the name of [Respondent does not appear in the record of marriages in the NSO[,] marked as Annex D.
>
> Respondent should know that **it is a violation of Canon 33 to form a partnership between a lawyer and non-lawyer. As there is no clear evidence to show how much [c]omplainant spent [for his] law office, [if] there was such really, we cannot grant her the reimbursement claimed.**[7] (Emphasis supplied)

[6] *Id*. at 79-85, by Investigating Commissioner Honesto A. Villamor.

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

In a **Resolution**[8] dated June 21, 2013, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner with modification of the penalty, increasing the admonition to one-year suspension from the practice of law.

On October 2, 2013, Salva filed a motion for reconsideration[9] (MR) before the IBP, citing among others the grounds of *res judicata* and double jeopardy. He cited the earlier ruling of the IBP Board of Governors in CBD Case No. 09-2382[10] which already admonished him for the same acts being raised in the instant case. On May 11, 2015, Salva filed a supplemental MR[11] where he informed the IBP that its ruling in CBD Case No. 09-2382 had already been affirmed by the Supreme Court in a Resolution[12] dated September 11, 2013 in ***A.C. No. 9809 (Daniel V. Benito v. Atty. Eliseo Magno C. Salva)***, the dispositive portion of which is quoted below:

> **WHEREFORE**, respondent Atty. Eliseo Magno C. Salva is found **GUILTY** of violating Rule 9.02 of the Code of Professional Responsibility. He is **SUSPENDED**from the practice of law for six (6) months effective from notice and **STERNLY WARNED** that any similar infraction will be dealt with more severely.[13]

In a Resolution[14] dated April 20, 2017, the IBP Board of Governors denied the MR. Hence, this case before the Court.

The Court's Ruling

The Court disagrees with the IBP. The disbarment complaint should be dismissed in view of the ruling in A.C. No. 9809.

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[8] *Id.* at 78.

[9] *Id.* at 86-124. Titled "PETITION TO RECONSIDER AND SET ASIDE RESOLUTION NO. XX-2013-777."

[10] Mistakenly indicated in the MR as CBD Case No. 09-2383.

[11] *Rollo*, pp. 287-303.

[12] *Id*. at 305-308, including dorsal portion.

[13] *Id*. at 308, including dorsal portion.

[14] *Id*. at 522-523.

At the outset, the Court notes that in the instant disbarment complaint filed by Pabalan in CBD Case No. 11-3282, she manifested that she had been a witness in the disbarment complaint filed by Benito against Salva in CBD Case No. 09-2382:

> 3. When **CBD Case No. 09-2382** was filed by Mr. Benito against the Respondent herein, **Complainant and her "SINUMPAANG SALAYSAY" was integrated therein as one of the witnesses (WITNESS L) and her information therein were marked as Annex-A thru Annex-H[.]** Complainant could have remained only as a witness had it not been for Ms[.] CHERRY REYES-ABASTILLAS who filed a Disbarment Case (CBD Case No. 11-3098) against this same Respondent for the maltreatment and mental anguish she suffered from him; that this Complainant had come to realize how she was gravely abused by Respondent that it is only warranted that she file her Claims and Complaint directly herself like her other co-victims.[15] (Emphasis and underscoring supplied)

The Court also notes that Pabalan issued an "Appointment Paper"[16] where she designated Benito as her attorney-in-fact to represent her in the cases she filed before the IBP, RTC, and MTC against Salva, which include the instant disbarment complaint.

In his Answer in the instant case, Salva raised forum shopping as an affirmative defense. This, along with Pabalan's manifestation, should have been enough to alert the IBP. Indeed, the IBP should have already dismissed the instant disbarment complaint because the same grounds raised by Pabalan were already contained in her *Sinumpaang Salaysay*[17] as a witness in CBD Case No. 09-2382. The instant complaint even contains the same annexes as those attached to her *Sinumpaang Salaysay*. While Pabalan's allegations were only part of the many other allegations raised by Benito in CBD Case No. 09-2382, Salva

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[15] *Id*. at 2.

[16] *Id*. at 12.

[17] *Id*. at 205-207.

was able to address Pabalan's allegations in his Answer[18] therein. In fact, he even devoted the last few pages of said Answer as a Reply to Pabalan's *Sinumpaang Salaysay*.[19]

Further, before the Investigating Commissioner issued his Report and Recommendation on November 20, 2012, Salva filed a Motion to Dismiss on September 17, 2012 where he informed the IBP that a Report and Recommendation[20] on CBD Case No. 09-2382 was already issued on April 11, 2011, which was adopted and approved by the IBP Board of Governors on June 28, 2012.[21] The relevant portions of the IBP Report in CBD Case No. 09-2382 are quoted below:

> Complainant also accuses respondent of immoral conduct, x x x Complainant accuses respondent of an "(a)greement with Ms. Marilyn Pabalan, a non-lawyer, on a 50-50 scheme as indicated on her Annex-C for her to solicit clients or acting as agent or touter" knowing that Ms. Pabalan is a non-lawyer x x x. Complainant also accuses respondent of "withdrawal as counsel of Ms. Marilyn Pabalan x x x out of malice and ill will" x x x.
>
> Complainant also accuses respondent of irregularities in the entries pertaining to respondent's marriage appearing in the records of the [NSO] x x x.
>
> x x x x x x x x x
>
> Respondent denies committing any unprofessional conduct with respect to Marilyn Pabalan. x x x Respondent likewise denies having an agreement with Pabalan for a 50-50 sharing scheme in the solicitation of clients x x x and states that he withdrew as counsel of Pabalan "due to the instructions and insistence of Pabalan." x x x
>
> x x x x x x x x x
>
> With respect to the irregular entries pertaining to respondent's marriage as appearing in the records of the [NSO], it is pure speculation to conclude that respondent was responsible for tampering his records

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[18] *Id.* at 212-232.

[19] *Id*. at 228-232.

[20] *Id*. at 276-283.

[21] *Id*. at 65.

in the NSO or should be held accountable for his missing NSO records. Indeed, respondent is not the official custodian of his marriage records. If there will be any [irregularity] in the official records, then it is the NSO which should be made to explain. On the other hand, if complainant is claiming that respondent was engaged in any immorality with respect to his marriage, then complainant has to present something more than a mere certification from the NSO that records of respondent pertaining to marriage could not be found. Again, we are dwelling in the realm of speculation. Thus, once again, there is no factual basis for this charge.

With respect to the charge of respondent entering into a 50-50 agreement on the sharing of attorney's fees, complainant attached as Annex "C" of his complaint a copy of said agreement.

x x x x x x x x x

Hence, **except for the charge of entering into an agreement with a non-lawyer for the sharing of attorney's fees, all the charges raised against respondent are found to have no factual and legal basis**. With respect to the charge of entering into an agreement with a non-lawyer for the sharing of attorney's fees, respondent is found guilty. (Emphasis and underscoring supplied).[22]

As gleaned from above, the IBP had already considered the allegations of Pabalan against Salva when it ruled on the disbarment complaint filed by Benito in CBD Case No. 09-2382. To repeat, the allegations of Pabalan in CBD Case No. 09-2382 and in the instant case are the same. Still, the IBP adopted and approved on June 21, 2013 the Report and Recommendation of the Investigating Commissioner, without even acknowledging its earlier ruling in CBD Case No. 09-2382.

Furthermore, Salva cited again the IBP's ruling in CBD Case No. 09-2382 when he filed his MR on October 2, 2013. Subsequently, he filed on May 11, 2015 a supplemental MR, informing the IBP that the Court had already issued a Resolution on September 11, 2013 in A.C. No. 9809 adopting its Report and Recommendation in CBD Case No. 09-2382 but modifying

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[22] *Id*. at 277-283.

the penalty from admonition to suspension from the practice of law for six months. The Court therein ruled:

> After a careful examination of the records, **this Court concurs with and adopts the findings of the [IBP] Investigating Commissioner and of the [IBP] Board of Governors** x x x. Respondent violated Rule 9.02 of the Code of Professional Responsibility in entering into an agreement to divide attorney's fees with a non-lawyer. As such, respondent is suspended from the practice of law for six (6) months.
>
> There is a dearth of evidence that will justify the imposition of a grave penalty premised on gross misconduct relating to respondent's participation in the eviction of complainant, inordinate appearance in proceedings before the *Lupon Tagapamayapa*, conflict of interest, direct and personal liability for a retired judge's supposed practice of law as well as erroneous and/or missing records in the [NSO]. **Nevertheless, the document identified by complainant as "Annex-C (Mayie's Annexes IBP Complaint)" is clearly an agreement between respondent and Pabalan, a non-lawyer, concerning the equal division of attorney's fees paid by clients solicited by Pabalan.**
>
> x x x x x x x x x
>
> Given these, it is, at the very least, unclear if respondent and Pabalan actually divided for themselves the attorney's fees paid to respondent. Nevertheless, Rule 9.02 of the Code of Professional Responsibility prohibits not only the actual division of attorney's fees by a lawyer with a non-lawyer but also the *mere stipulation of such an agreement*. **The mere execution of the agreement is, thus, a violation of Rule 9.02 of the Code of Professional Responsibility for which it is proper to suspend respondent from the practice of law for six (6) months.**[23] (Emphasis and underscoring supplied)

It is noteworthy that among all the allegations of Benito, it is the allegation specific to Pabalan that became the basis for Salva's suspension.

Still, the IBP Board of Governors denied Salva's MR, "there being no new reason and/or new argument adduced to reverse

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[23] *Id*. at 306 (dorsal portion) to 308.

the previous findings and decision of the Board of Governors."[24] This is serious error on the part of the IBP. Upon being informed of the Court's ruling in A.C. No. 9809, which approved and adopted the IBP's findings in CBD Case No. 09-2382 (including Pabalan's allegations), the IBP should have granted the MR and dismissed the complaint.

Evidently, the allegations raised by Pabalan in this case have been previously ruled upon by the IBP and the Court in A.C. No. 9809. Having already imposed a punishment on Salva in the said case involving the same set of facts, the Court is thus constrained to dismiss the instant complaint.

On this note, the Court calls on the IBP to be more circumspect and prudent in handling the cases before it.

WHEREFORE, the disbarment complaint against Atty. Eliseo Magno C. Salva is **DISMISSED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194619. March 20, 2019]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, ROBERTO S. BENEDICTO, ANTONIO M. DIAZ, ISMAEL M. REINOSO, SIMEON G. MIRANDA. RENATO D. TAYAG, JUAN F. TRIVINIO, CESAR VIRATA, JUAN PONCE ENRILE,**

[24] *Id.* at 522.

JOSE MACARIO LAUREL IV, JOSE J. LEIDO, JR. (ALL FORMER DIRECTORS OF PNB 304 EL HOGAR FIL. BLDG., 115 JUAN LUNA ST., BINONDO, MANILA), RAFAEL G. PEREZ, FELICISIMO R. GONZALES[*] (BOTH FORMER MANAGERS OF PNB DUMAGUETE BRANCH, DUMAGUETE CITY), RAMON V. ESCAÑO, EVELINA TEVES, HERMINIO V. TEVES, LORENZO G. TEVES, CATALINO NOEL, AND LAMBERTO MACIAS (ALL FORMER OFFICERS OF TOLONG SUGAR MILLING COMPANY, INC.), *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTION; *CERTIORARI*; NATURE; "GRAVE ABUSE OF DISCRETION," DEFINED AND EXPLAINED.— Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. The reason is that the term "grave abuse of discretion" has a specific meaning. The term is not an amorphous concept that may easily be manipulated to suit one's purpose. In a plethora of cases, the Court has defined the term "grave abuse of discretion" as the capricious and whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Corollary, the petitioner in a petition for *certiorari* is duty-bound to prove that the respondent court or tribunal not merely erred in its judgment but, most importantly, gravely abused its discretion in doing so. The petitioner must show that the respondent court or tribunal acted beyond the parameters of its jurisdiction when it issued the assailed order or resolution.

2. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; POWERS TO INVESTIGATE AND

[*] Also referred to as "Gonzalo" in some parts of the *rollo*.

PROSECUTE PUBLIC OFFICERS AND EMPLOYEES ARE PLENARY AND UNQUALIFIED.— [I]t is well to point out that the Ombudsman's powers to investigate and prosecute crimes allegedly committed by public officers or employees are plenary and unqualified. x x x The full discretion to investigate and prosecute necessarily comes with it the discretion not to file a case as when the Ombudsman finds the complaint insufficient in form or in substance. In short, the filing or non-filing of the information is primarily lodged within the full discretion of the Ombudsman. Simply stated, the Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion. Similarly, the Court shall also respect a finding of the existence of probable cause.

3. **ID.; ID.; ID.; ID.; IT HAS BEEN THE LONG-STANDING POLICY OF THE COURT NOT TO INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATORY AND PROSECUTORIAL POWERS; DETERMINATION OF PROBABLE CAUSE LIES WITHIN THE DISCRETION OF THE PUBLIC PROSECUTORS; PROBABLE CAUSE, DEFINED AND EXPLAINED.—** There is no compelling reason to depart from the Court's long-standing policy of non-interference in the exercise by the Ombudsman of its plenary investigatory and prosecutorial powers. The determination of the existence of probable cause lies within the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party. Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion. To engender a well-founded

belief that a crime has been committed, and to determine if the respondents are probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be - at the most - no criminal offense.

4. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); ELEMENTS THAT MUST BE SUFFICIENTLY ALLEGED IN THE INFORMATION FOR VIOLATION OF SECTION 3(e) AND (g) OF R.A. 3019.— For a charge under Section 3(e), the following elements must sufficiently be alleged in the complaint: (i) that the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions. On the other hand, the following elements must be shown in the complaint to support an accusation under Section 3(g), to wit: (i) that the accused is a public officer, or a private individual acting in conspiracy with such public officers; (ii) that he entered into a contract or transaction on behalf of the government; and (iii) that such contract or transaction is grossly and manifestly disadvantageous to the government.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; SUFFICIENCY OF INFORMATION; THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) FAILED TO SUFFICIENTLY ALLEGE THE ELEMENTS OF SECTION 3(e) AND (g) OF R.A. 3019.— A careful review of the subject complaint-affidavit would reveal that the PCGG failed to sufficiently allege the elements of Section 3(e) and (g) of R.A. No. 3019. Although the PCGG exerted great effort in explaining how the subject loan bears the characteristics of a behest loan, they utterly failed to demonstrate or even allege that the respondents acted with manifest partiality, evident bad faith, or inexcusable negligence, causing undue injury or unwarranted benefit to any party. The PCGG merely highlighted the alleged scandalous disproportion of the assets and collateral offered by TSMCI with the amount

of the loan without even stating the alleged acts committed by the respondents which constituted or exhibited manifest partiality, evident bad faith or inexcusable negligence. Further, there was no allegation that the respondents-government officials and the officers of TSMCI conspired and colluded with each other to defraud the government. As pointed out by the Ombudsman, the complaint-affidavit is bereft of sufficient allegation and relevant documents to support the charges therein[.]

6. ID.; SPECIAL CIVIL ACTION; *CERTIORARI*; AN INQUIRY INTO THE CORRECTNESS OF THE OMBUDSMAN'S EVALUATION OF THE EVIDENCE IS NOT THE PROPER SUBJECT OF A PETITION FOR *CERTIORARI;* NO GRAVE ABUSE OF DISCRETION MAY BE ATTRIBUTED TO THE OMBUDSMAN WHEN IT DISMISSED THE CRIMINAL COMPLAINT AGAINST RESPONDENTS.— [I]t is clear that PCGG's arguments are anchored on the Ombudsman's supposed failure to consider that the arguments and pieces of evidence it presented, duly establish probable cause against the respondents. In effect, the PCGG is questioning how the Ombudsman assessed the pieces of evidence it presented — an inquiry which could not be the proper subject of a petition for *certiorari*. A petition for *certiorari* does not include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Simply stated, no grave abuse of discretion may be attributed to the Ombudsman merely because of its alleged misappreciation of facts and evidence. The petitioner in a *certiorari* proceeding must clearly demonstrate that the court or tribunal blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. In this case, the PCGG failed to show that the Ombudsman gravely abused its discretion when it dismissed the criminal complaint against the respondents.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Angara Abello Concepcion Regala & Cruz for respondent Cesar Virata.

Ponce Enrile Reyes & Manalastas for Juan Ponce Enrile.

Bathan & Associates Law Firm for Jose Mari M. Miranda (Heir of deceased respondent Simeon G. Miranda).

D E C I S I O N

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

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks to set aside the Resolution[1] dated December 29, 2006, and the Order[2] dated April 21, 2009, of the respondent Office of the Ombudsman (Ombudsman) in OMB-C-C-03-0252-D, which, respectively, dismissed for lack of probable cause the criminal complaints against herein private respondents; and denied the motion for reconsideration thereon.

The Facts

On December 5, 2002, herein petitioner Presidential Commission on Good Government (PCGG), through its then Commissioner Victoria A. Avena, filed before the Ombudsman an Affidavit-Complaint for violation of Section 3(e) & (g) of Republic Act (R.A.) No. 3019.

In its complaint, the PCGG stated that it is in charge of the prosecution of civil and criminal cases arising from behest loans, as discovered by the Presidential Ad Hoc Fact-Finding Committee (hereinafter, the "Committee") created under Administrative Order No. 13, dated October 8, 1992.

The PCGG averred that one of the accounts investigated by the Committee's Technical Working Group (TWG) was the

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[1] *Rollo*, pp. 47-65.

[2] *Id.* at 85-90.

account of Tolong Sugar Milling Company, Inc. (TSMCI) with the Philippine National Bank (PNB). It explained that the TWG's examination disclosed that on March 20, 1968, PNB granted TSMCI a stand-by irrevocable unconfirmed letter of credit in the amount of US$27,793,123.45 to cover importation of sugar machinery and equipment in connection with TSMCI's proposed sugar central at Sta. Catalina and Bayawan, Negros Oriental. The loan was granted under PNB Board Resolution No. 711, dated March 20, 1968, and was purportedly secured by (1) 51.2496 hectares of agricultural land covered by Tax Declaration (TD) Nos. 4718 and 10282; (2) Machinery and equipment, building and other improvements to be erected and/or installed in the company's milling site; (3) 3,000 hectares of central-owned and operated sugar plantation; and (4) Joint and solidary surety executed by TSMCI's officers. The loan was also subjected to various conditions including the need to increase TSMCI's paid-up capital to at least ₱7,000,000.00.

The TWG discovered that at the time of its incorporation on May 10, 1967, TSMCI only had subscribed capital stock amounting to ₱2,000,000.00, of which only P500,000.00 was paid-up; that it only had capitalization in the amount of ₱10,000,000.00; that the lands covered by TD Nos. 4718 and 10282 were appraised by PNB Dumaguete Branch on October 21, 1967 at ₱22,350.00 only; and that the two parcels were not titled or registered in the name of TSMCI, but in the names of some other persons. Further, a re-inspection and re-appraisal by the PNB Credit Department on August 7-9, 1975 also disclosed that the value of all of the assets TSMCI pledged as security for the loan amounted only to a total of ₱69,631,500.00, which was substantially insufficient to cover the loan amount of US$27,793,123.45 or ₱108,912,912.86 based on the prevailing exchange rate at that time (US$1 = ₱3.9187). Lastly, no "Joint and Solidary Surety" undertaking by its officers could be found in the records pertaining to TSMCI's account, contrary to the conditions set by the PNB.

The PCGG claimed that the TWG's findings show that TSMCI's account was a behest loan as shown by the facts that:

(1) TSMCI was under-capitalized; and (2) the loan was under-collateralized. Nevertheless, despite these glaring realities and the clear financial incapability of TSMCI, it still secured the subject loan with the PNB. Thus, the PCGG alleged that there are sufficient factual circumstances which would support a finding of probable cause for violation of Section 3(e) and (g) of R.A. No. 3019 against the officers/directors of TSMCI, namely: (1) Ramon V. Escaño; (2) Herminio V. Teves; (3) Evelina J. Teves; (4) Lorenzo G. Teves; (5) Catalino Noel; and (6) Lamberto Macias, as well as the PNB Managers who recommended the approval of the loan, and the members of the Board of Directors who approved the pertinent Board Resolution and who may later be identified during the investigation of the case.

The complaint was initially acted upon by the Ombudsman's Fact-Finding and Intelligence Bureau (FFIB) which obtained the list of the PNB Board of Directors and PNB-Dumaguete Branch Managers during the period when the loan was granted. Subsequently, Roberto S. Benedicto (Benedicto), Antonio M. Diaz (Diaz), Ismael M. Reinoso (Reinoso), Simeon G. Miranda (Miranda), Renato D. Tayag (Tayag), Juan F. Trivinio (Trivinio), Cesar Virata (Virata), Juan Ponce Enrile (Enrile), Jose Macario Laurel IV (Laurel), and Jose J. Leido, Jr. (Leido), all PNB Directors in 1968; and Rafael G. Perez (Perez) and Felicisimo R. Gonzalo (Gonzalo), both former PNB-Dumaguete Branch Managers, were impleaded as respondents.

Thereafter, the Ombudsman issued an Order directing the respondents to file their respective counter-affidavits.

However, pending the resolution of the case, Benedicto, Reinoso, Tayag, Trivinio, Leido, Evelina Teves, and Macias died. Further, among the remaining respondents, only Enrile, Virata, Laurel, and Herminio Teves filed their respective counter-affdavits or motions to dismiss. It would appear that copies of the Order were not properly served on Miranda, Perez, Gonzalo, Escaño, and Noel, directing them to file their respective counter-affidavits. Thus, copies of the Order were returned unserved. With regard to Diaz and Lorenzo Teves, although copies of

the Order were served upon them, they did not comply with the Order.

For his part, Enrile moved for the dismissal of the complaint against him on the grounds that: (a) the complaint failed to ascribe any act or omission constituting an offense against him; (b) the PCGG, in effect, has no competent proof that the elements of the offense charged - particularly of actual injury - are present in this case; and (c) assuming that a crime has been committed, the same has long prescribed. Herminio Teves adopted the grounds and arguments interposed by Enrile stressing that their situations are similar.

On the other hand, in their respective counter-affidavits, Laurel and Virata, argued that they have no hand in the approval of the loan as they were absent from the meeting when the subject loan was supposedly approved. Laurel further claimed that assuming that he participated in the approval of the loan, the offense had already prescribed and that the elements of undue injury, manifest partiality, evident bad faith and/or gross inexcusable negligence, were lacking.

Ruling of the Ombudsman

In its assailed Resolution dated December 29, 2006, the Ombudsman dismissed the criminal complaints for violation of Section 3(e) and (g) of R.A. No. 3019 against the respondents for lack of probable cause.

The Ombudsman ratiocinated that other than the failure to properly serve them with copies of the Order, there was no reason to indict Perez and Gonzalo for the offenses charged. It noted that neither of them were the branch managers of PNB-Dumaguete during the period in question. It pointed out that the subject loan was granted by PNB to TSMCI on March 20, 1968. However, Perez served as PNB-Dumaguete Branch Manager only until August 30, 1966 or about two (2) years prior to the alleged anomalous transaction. On the other hand, Gonzalo served as PNB-Dumaguete Branch Manager from May 19, 1969 to May 18, 1971, or more than a year after the approval of the subject loan. Further, no document was presented showing

that either of the two former branch managers had any participation n the grant or release of the proceeds of the loan.

Similarly, the Ombudsman opined that there was dearth of evidence to charge Miranda for the alleged offense. It observed that Miranda's name appeared in only one document, that is, in the list of the PNB Board of Directors in 1968 which was submitted by PNB in compliance with the subpoena *duces tecum* issued by the Ombudsman. Hence, there was no evidence linking Miranda with the alleged undue approval of the subject loan.

The Ombudsman, also cleared Laurel and Virata from the criminal charges considering that they were absent when the PNB Board of Directors approved the alleged behest loan. As regards Laurel, the Ombudsman pointed out that the documents attached by the PCGG to its complaint-affidavit do not show any particular act by Laurel showing that he participated in the approval of the loan. In the same vein, there was no allegation that Virata participated in the grant of the loan or that he exerted prior influence leading to the approval of the loan. The Ombudsman dismissed the PCGG's contention that Laurel and Virata's presence were not necessary as they "could easily wield influence beyond the conference table."[3] It ratiocinated that the argument lacks merit as it is a mere speculation.

As regards Escañno, Noel, Herminio V. Teves, and Lorenzo G. Teves, the Ombudsman noted that they were impleaded as respondents on account of their being officers/directors of TSMCI. The PCGG failed to present any evidence showing that they encouraged, persuaded, and influenced any member of the PNB Board of Directors to vote for the approval of the loan. Nevertheless, there was no allegation of specific acts committed by them such as encouraging, persuading, or influencing any member of the PNB Board of Directors to vote for the approval of the subject loan.

With respect to Enrile and Diaz, the Ombudsman stated that while the two were present when the PNB Board approved

[3] *Id*. 57.

TSMCI's loan, PCGG's complaint-affidavit failed to point out circumstances that would indicate a criminal design or collusion between them and the other respondents to cause undue injury to the government by giving unwarranted benefits to TSMCI. Specifically, the evidence present was insufficient to accuse Enrile and Diaz of entering into' a transaction grossly disadvantageous to the government; and that the PCGG failed to show the element of bad faith, manifest partiality or gross inexcusable negligence.

Finally, the Ombudsman was of the opinion that the PNB Board of Directors exercised proper caution to ensure the chances of payment and that the loan was not under-collateralized, contrary to the allegations by the PCGG. It perceived that the PNB Board even required TSMCI to increase its paid-up capital as one of the conditions for the grant of the loan. Also, it stressed that in October 1967, the PNB-Dumaguete Branch had appraised the real properties offered by TSMCI as security at ₱111,172,493.80,[4] which is more than sufficient to cover the amount of the loan. It explained that the appraisal conducted by the PNB in 1975, or about seven (7) years from the initial appraisal in 1967, should be examined in the light of several factors, such as the non-inclusion of some of the mortgaged real properties after the PNB Credit Department deemed their ownership controversial.

The dispositive portion of the assailed resolution provides:

WHEREFORE, the instant criminal complaint for violation of Section 3(e) and (g) of Republic Act No. 3019, as amended, is hereby DISMISSED for lack of probable cause.

SO RESOLVED.[5]

PCGG moved for reconsideration, but the same was denied by the Ombudsman in its Order dated April 21, 2009.

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[4] PNB-Dumaguete's initial appraisal on October 1967 as contained in the TWG's Fact Finding Sheet; *id*. at 174.

[5] *Id*. at 64.

Hence, this petition for *certiorari*.[6]

The Issue

WHETHER THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE CRIMINAL COMPLAINT AGAINST RESPONDENTS FOR LACK OF PROBABLE CAUSE.

The PCGG claims that there was no dispute that the respondents took part in the approval of the questioned loan. It continues that the alleged specific acts by the respondents and the specific details concerning their criminal design are matters of evidence on the motive of the offenders which are not essential elements of the offenses charged, and therefore, matters that are best threshed out during a full blown trial.

The PCGG also disputes the Ombudsman's findings that the PNB Board of Directors took proper precautionary measures in approving the subject loan. It insists that the PNB Board should not have approved the loan stressing that the two tracts of land offered as security were not registered in the name of the borrower, thus, TSMCI could not have validly constituted a mortgage thereon; that one of the tracts of land, specifically, the 3,170 hectares of land covered by TD Nos. 04118, 04115, and 04129, has been verified to be within the unclassified public forest of Sta. Catalina, Negros Oriental; and that the mere fact that the loan was also secured by the very machinery and equipment purchased, and structures and other improvements to be erected and/or installed, using the proceeds of the loan, is violative of the legal requirement under Article 2085 of the Civil Code, that the pledger or mortgagor be the absolute owner of the thing pledged or mortgaged.

The Commission asserts that had the respondents-PNB Directors truly exercised proper caution to ensure repayment of the loan, they would have realized that the borrower was a newly formed corporation, undercapitalized, and offered unacceptable collaterals.

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[6] *Id.* at 9-46.

The Court's Ruling

As already stated, the PCGG imputes grave abuse of discretion on the part of the Ombudsman in dismissing the criminal complaints for violation of Section 3(e) and (g) of R.A. No. 3019 against the respondents.

Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. The reason is that the term "grave abuse of discretion" has a specific meaning. The term is not an amorphous concept that may easily be manipulated to suit one's purpose.[7]

In a plethora of cases,[8] the Court has defined the term "grave abuse of discretion" as the capricious and whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

Corollary, the petitioner in a petition for *certiorari* is duty-bound to prove that the respondent court or tribunal not merely erred in its judgment but, most importantly, gravely abused its discretion in doing so. The petitioner must show that the respondent court or tribunal acted beyond the parameters of its jurisdiction when it issued the assailed order or resolution.

In this regard, it is well to point out that the Ombudsman's powers to investigate and prosecute crimes allegedly committed by public officers or employees are plenary and unqualified.[9] This is clear from the applicable constitutional and statutory provisions, to wit:

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[7] *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 515 (2013).

[8] *Garcia v. The Executive Secretary*, 602 Phil. 64, 78 (2009); *Imperial v. Judge Armes*, 804 Phil. 439, 471 (2017); *Chua v. People of the Philippines*, G.R. No. 195248, November 22, 2017.

Article XI, 1987 Constitution. - ACCOUNTABILITY OF PUBLIC OFFICERS

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

x x x x x x x x x

R.A. No. 6770. - AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES

Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases[.]

x x x x x x x x x

The full discretion to investigate and prosecute necessarily comes with it the discretion not to file a case as when the Ombudsman finds the complaint insufficient in form or in substance. In short, the filing or non-filing of the information is primarily lodged within the full discretion of the Ombudsman.[10] Simply stated, the Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty

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[9] *Office of the Ombudsman v. Atty. Valera,* 508 Phil. 672, 697 (2005); *Galario v. Office of the Ombudsman (Mindanao)*, 554 Phil. 86, 110 (2007); *Castro v. Hon. Deloria*, 597 Phil. 18, 23 (2009).

[10] *Cam v. Casimiro*, 762 Phil. 72, 85 (2015); *Vergara v. The Hon. Ombudsman*, 600 Phil. 26, 41 (2009).

thereof and, thereafter, to file the corresponding information with the appropriate courts.[11] Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.[12] Similarly, the Court shall also respect a finding of the existence of probable cause.

There is no compelling reason to depart from the Court's long-standing policy of non-interference in the exercise by the Ombudsman of its plenary investigatory and prosecutorial powers.

The determination of the existence of probable cause lies within the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party. Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.[13]

To engender a well-founded belief that a crime has been committed, and to determine if the respondents are probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be - at the most - no criminal offense.[14]

In this regard, Section 3(e) and (g) of R.A. No. 3019 provides:

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[11] *Judge Angeles v. Ombudsman Gutierrez*, 685 Phil. 183, 194 (2012).

[12] *Presidential Commission on Good Government v. Hon. Desierto*, 563 Phil. 517, 526 (2007).

[13] *Callo-Claridadv. Esteban*, 707 Phil. 172, 185 (2013).

[14] *Gov. Garcia, Jr. v. Office of the Ombudsman*, 747 Phil. 445, 459 (2014).

Sec. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official[,] administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x x x x x x

For a charge under Section 3(e), the following elements must sufficiently be alleged in the complaint: (i) that the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[15] On the other hand, the following elements must be shown in the complaint to support an accusation under Section 3(g), to wit: (i) that the accused is a public officer, or a private individual acting in conspiracy with such public officers; (ii) that he entered into a contract or transaction on behalf of the government; and (iii) that such contract or transaction is grossly and manifestly disadvantageous to the government.[16]

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[15] *Fuentes v. People*, G.R. No. 186421, April 17, 2017.

[16] *People v. Go*, 730 Phil. 362, 369 (2014).

To establish probable cause for violation of Section 3(e) and (g) of R.A. No. 3019, the PCGG relied on their allegations which essentially state the following: (1) that the subject loan was a behest loan considering that the borrower was under-capitalized and the loan was under-collateralized; and (2) that the respondents were either officers or directors of the borrower, officers of the PNB branch which granted the loan, or members of the PNB Board of Directors which approved the loan. These allegations, however, are insufficient to support the charges for violation of Section 3(e) and (g) of R.A. No. 3019.

A careful review of the subject complaint-affidavit would reveal that the PCGG failed to sufficiently allege the elements of Section 3(e) and (g) of R.A. No. 3019. Although the PCGG exerted great effort in explaining how the subject loan bears the characteristics of a behest loan, they utterly failed to demonstrate or even allege that the respondents acted with manifest partiality, evident bad faith, or inexcusable negligence, causing undue injury or unwarranted benefit to any party. The PCGG merely highlighted the alleged scandalous disproportion of the assets and collateral offered by TSMCI with the amount of the loan without even stating the alleged acts committed by the respondents which constituted or exhibited manifest partiality, evident bad faith or inexcusable negligence.

Further, there was no allegation that the respondents-government officials and the officers of TSMCI conspired and colluded with each other to defraud the government. As pointed out by the Ombudsman, the complaint-affidavit is bereft of sufficient allegation and relevant documents to support the charges therein, thus:

> Other than [the] failure to serve them with copies of the Order to file their respective counter-affidavits because of insufficient addresses, it appears that there is no ground to indict RAFAEL G. PEREZ and FELICISIMO R. GONZALO in the charged offenses because: 1) the US$27,793,123.45 loan was granted by PNB to TSMCI on March 20, 1968 and neither RAFAEL G. PEREZ nor FELICISIMO R. GONZALO was the PNB Dumaguete Branch Manager during that time; and 2) there are no documents showing that RAFAEL G. PEREZ

who served as PNB Dumaguete Branch Manager until August 30, 1966 or about two (2) years prior to the grant of the loan, and FELICISIMO R. GONZALO who served as PNB Dumaguete Branch Manager from May 19, 1969 to May 18, 1971, or more than a year after the loan approval, had a hand in the grant of the loan or the release of the proceeds of the loan.

There are also no documents to support the inclusion of SIMEON G. MIRANDA in this case. SIMEON G. MIRANDA'S name appeared in only one document, that is, in the list of PNB Board of Directors in 1968 that was submitted by the PNB in compliance with the [*subpoena duces tecum*] issued by this Office. His name does not appear in the Minutes of the Meeting of the PNB Board of Directors, either as among those present or absent, when the subject loan was approved.

Assuming that the approval [*per se*] of the loan is unlawful, there is no basis to indict JOSE MACARIO L. LAUREL IV because he was absent when the Board Resolution granting the loan was approved. Moreover, the other documents attached to the complaint do not show any particular act of JOSE MACARIO L. LAUREL IV showing that he participated in any manner whatsoever to the grant of the said loan. Complainant's argument that "actual presence is not absolutely necessary nor is it a condition for securing an approval, especially for a high ranking officer who could easily wield influence beyond the conference table" lacks merit in as much as it is a mere innuendo or speculation.

Likewise, there is no basis to indict CESAR E.A. VIRATA. Aside from the fact that he was on official mission abroad when the grant of the loan was approved by the PNB Board of Directors, there is no allegation [or] proof that prior to or after the grant of the loan, he had participated in any manner whatsoever on the loan.

RAMON V. ESCA[Ñ]O, CATALINO NOEL, HERMINIO V. TEVES and LORENZO G. TEVES were named as respondents on account of their being officers/directors of the borrower corporation. There is no allegation of specific acts committed by them such as encouraging, persuading or influencing any member of the [PNB] Board of Directors to vote for the approval of the loan. There is also no proof that any one of them encouraged, persuaded or influenced any member of the PNB Board of Directors to approve the loan. While the grant of the loan presupposes an application on the part of the borrower corporation, the individual acts or extent of

participation of the officers/directors charged with criminal offenses must be specified to establish probable cause.

While JUAN PONCE ENRILE and ANTONIO M. DIAZ, Chairman and Member of the Board, respectively, were present when the Board approved the grant of **US$27,793,123.45** loan to TSMCI in 1968, the complaint failed to point out circumstances that would indicate the criminal design by them or a collusion between them and the other respondents to cause undue injury to the government by giving unwarranted benefits to TSMCI. No enough evidence to accuse them of entering into a transaction grossly disadvantageous to the government. So too, there is no specific details that would show the element of bad faith, manifest partiality or gross inexcusable negligence.[17] (Underscoring supplied)

Even assuming, for the sake of argument, that the allegations contained in PCGG's complaint-affidavit are sufficient to support the charges for violation of Section 3(e) and (g) of R.A. No. 3019, the Court opines that the Ombudsman's dismissal of the same is not tainted by grave abuse of discretion.

As pointed out by the Ombudsman, the PNB-Dumaguete had appraised the properties offered by TSMCI as security at ₱111,172,493.80 in October 1967. This could be gleaned from the TWG's Fact-Finding Sheet which was attached to the complaint-affidavit as Annex "D."[18] This appraisal negates PCGG's claim that the value of TSMCFs collateral is substantially insufficient to cover the amount of the loan. It is important to note that the PCGG never denied the validity of the initial appraisal in October 1967. They only argue that the PNB Credit Department's re-appraisal in August 1975, revealed that TSMCI's collateral was valued only at ₱69,632,000.00.

And even if the initial appraisal should be claimed to be a ruse to defraud the government, the same would be insufficient to establish probable cause. As aptly stated by the Ombudsman:

Assuming that the appraisal conducted by the PNB-Dumaguete Branch was anomalous[, w]ithout proof of knowledge thereon,

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[17] *Rollo*, pp. 58-60.

[18] Attached to the present petition as Annex "L"; *id*. at 172-186.

respondent Board of Directors could not be held liable unless there are circumstances present suggesting that by the exercise of requisite diligence such anomalous appraisal could be discovered by them.[19]

In any case, it is clear that PCGG's arguments are anchored on the Ombudsman's supposed failure to consider that the arguments and pieces of evidence it presented, duly establish probable cause against the respondents. In effect, the PCGG is questioning how the Ombudsman assessed the pieces of evidence it presented — an inquiry which could not be the proper subject of a petition for *certiorari*.

A petition for *certiorari* does not include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion.[20] To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[21]

Simply stated, no grave abuse of discretion may be attributed to the Ombudsman merely because of its alleged misappreciation of facts and evidence. The petitioner in a *certiorari* proceeding must clearly demonstrate that the court or tribunal blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[22]

In this case, the PCGG failed to show that the Ombudsman gravely abused its discretion when it dismissed the criminal

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[19] *Id*. at 63.

[20] *Leonis Navigation Co., Inc. v. Villamater and/or The Heirs of the Late Catalino U. Villamater*, 628 Phil. 81, 92 (2010); *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, citing *Leonis Navigation Co., Inc. v. Villamater*, *supra*.

[21] *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

[22] *People v. Court of Appeals (Fifteenth Div.)*, 545 Phil. 278, 294 (2007).

complaint against the respondents. Instead, the instant petition is bereft of any statement or allegation purportedly showing that the Ombudsman exercised its power in an arbitrary or despotic manner by reason of passion or hostility. Consequently, the instant petition must be dismissed.

WHEREFORE, the present petition for *certiorari* is **DISMISSED** for lack of merit.

SO ORDERED.

Del Castillo,[**] *Perlas-Bernabe* (*Acting Chairperson*), *Caguioa*, and *Lazaro-Javier, JJ*., concur.

THIRD DIVISION

[G.R. No. 203697. March 20, 2019]

INTERPHIL LABORATORIES, INC., *petitioner, vs.* **OEP PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; LIMITED TO REVIEWING ONLY ERRORS OF LAW; THE COURT IS BOUND BY THE FINDINGS OF THE REGIONAL TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS THAT PETITIONER WAS RESPONSIBLE FOR THE DEFECTIVE PACKAGING OF THE PRODUCTS APPLYING THE DOCTRINE OF *RES IPSA LOQUITOR*.— [T]he Court takes special notice that the findings of fact of both the RTC and the CA as to the liability

[**] Designated additional member in lieu of Senior Associate Justice Antonio T. Carpio, who took no part due to prior action while Chief Presidential Legal Counsel, per Raffle dated March 13, 2019.

of Interphil are the same without the slightest derogation. As such, great weight must be given to these findings, and absent any showing that there was arbitrariness, the Court will refrain from opening up and reviewing once again the facts of the case. This is in line with the rule that the Court is not a trier of facts. In a petition for review on *certiorari*, the scope of the Court's judicial review is limited to reviewing only errors of law, not of fact. x x x Thus, absent any finding that the CA showed any unfairness and arbitrariness in holding that Interphil was responsible for the defective packaging, the Court is bound by the findings of fact which, at the pain of reiteration, is consistent with that of the RTC that *res ipsa loquitor* applies in this case.

2. ID.; EVIDENCE; DOCTRINE OF *RES IPSA LOQUITOR* AS A MATTER OF EVIDENTIARY PROOF FOR NEGLIGENCE, EXPLAINED; ELEMENTS, REITERATED.— The doctrine of *res ipsa loquitor* as a matter of evidentiary proof for negligence was aptly explained and expounded on in *Cortel, et al. v. Gepaya-Lim*: x x x The elements of *res ipsa loquitur* are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured. x x x Utilizing *res ipsa loquitur* is a matter of evidence, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of the burden of producing a specific proof of negligence. It recognizes that parties may establish *prima facie* negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoice the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part.

3. ID.; ID.; ID.; ELEMENTS OF *RES IPSA LOQUITOR*, ESTABLISHED IN CASE AT BAR.— [A]s argued by OEP and as found valid by both the RTC and the CA, the elements of *res ipsa loquitor* have been clearly established by the facts on record. **First**, it is uncontroverted that Interphil had exclusive

control in the packaging of the materials, before the company delivered the same to OEP, sealed and warranted to be ready for delivery to the latter's client, Elan Taiwan. x x x As the records of the case show, it was Interphil's negligence that directly and proximately contributed to the incident. **Second**, Interphil had exclusive management and control at the time of the packaging, and as to all the processes appurtenant to the same. x x x [I]t was admitted by Interphil that its personnel inspected the packages upon delivery, in line with its standard operating procedure which enjoins its personnel to note or report any defect found in the course of inspection. Interphil even charged OEP for "packaging materials inspection fees" in consideration of the former's commitment to properly inspect the materials delivered to them, which means that any argument on the part of Interphil as to the quality of the goods received before their faulty packaging goes contrary to their own manifestations. **Third**, there is no contributory fault on the part of OEP.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; NO BAD FAITH OR CONTRIBUTORY FAULT CAN BE ATTRIBUTED TO RESPONDENT DUE TO ITS UNILATERAL DESTRUCTION OF THE PRODUCTS.— [T]he Court finds that OEP sufficiently rebutted the presumption of fault and/or negligence. Not only is the finding of the CA correct that the provisions cited by Interphil do not bar OEP from exercising discretion when it comes to the destruction of defectively packaged capsules as in this case, OEP was able to show that it needed to do so immediately because of the danger and health risks posed to the public due to the wrong packaging. What was at stake is not only the good reputation of a company, but also the possibility of prejudicing consumers who could be adversely-affected by the incorrect content of the capsules, and it would be a matter of recklessness to do anything but urgently recall the same from public distribution. If OEP would have spent precious time corresponding with Interphil or allowing the latter to fix the matter, it would have just aggravated an already precarious situation. Thus, the CA did not err in treating OEP's action as a prudent move to prevent against the risk of contamination, contamination which would compromise the safety of the consumers or end-users. No bad faith is present in OEP's decision to recall and destroy the products. The Court reminds the parties

of the statutory presumption of good faith, and, absent any valid rebuttal of the same on the part of Interphil, that presumption will stand. As with its previous arguments, Interphil has been unable to validly counter nor adduce evidence which would militate against its clear fault and liability, and in doing so overcome its burden to show that the findings of fact and conclusions of law from the RTC and the CA were found wanting.

5. ID.; ID.; DAMAGES; PETITIONER IS LIABLE FOR ACTUAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.— The Court finds that Interphil is liable for actual damages to OEP, the latter pleading in its complaint and able to substantiate the amounts owed to them as a result of the costs and expenses it incurred in the amount of ₱5,183,525.05 and the profits it failed to realize due to the gross negligence of Interphil in the amount of ₱306,648.81 as compensatory damages. While OEP incorrectly distinguished the damages as two separate entities, as in this jurisdiction actual and compensatory damages are one and the same, this is largely a matter of semantics and the Court finds that OEP was able to prove the amounts owed to them, as found by the RTC and concurred in by the CA. x x x Interphil is also liable for exemplary damages. Under Article 2232 of the Civil Code, the court may award exemplary damages if the defendant in a contract or a quasi-contract acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. x x x While Interphil did not necessarily act in a willful, malicious, or wanton manner, it is clear that it was grossly negligent in its defective packaging. This gross negligence not only prejudiced the contractual relationship between the parties, but also endangered the health of the end consumers who received the packages, seen in the fact that the hospitals themselves sent notice of the infirmity after receiving the defective items. Therefore, the Court adheres to the findings of the lower courts that Interphil is also liable for exemplary damages to serve as a warning to the public to be more circumspect when it comes to product handling, particularly those involving the health and safety of the consumers. On the matter of attorney's fees, OEP's entitlement thereto is beyond caveat as it was compelled to litigate and, thus, incurred expenses thereto.

APPEARANCES OF COUNSEL

Sebastian Liganor Galinato and Alamis for petitioner.
Gatmaytan Yap Patacsil Gutierez & Protacio for respondent.

D E C I S I O N

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

Challenged before this Court *via* this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated October 21, 2011 of the Court of Appeals (CA) and the Resolution[3] dated September 26, 2012, in CA-G.R. CV No. 92550, which affirmed the Decision[4] dated January 24, 2008 of the Regional Trial Court (RTC) of Makati City, Branch 62, in Civil Case No. 03-907.

The Antecedent Facts

Petitioner Interphil Laboratories, Inc. (Interphil) is engaged in the business of processing and packaging of pharmaceutical and other projects. Respondent OEP Philippines, Inc. (OEP) is a corporation in the business of trading, among others, 60-, 90-, 120-, and 180-milligram Diltelan capsules.[5]

Sometime in 1998, OEP and Interphil entered into a Manufacturing Agreement (Agreement)[6] whereby Interphil undertook to process and package 90- and 120-mg Diltelan capsules for OEP under the terms and conditions stated in the Agreement.[7] The pertinent provisions of the Agreement state:

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[1] *Rollo*, pp. 3-34.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S.E. Veloso and Angelita A. Gacutan, concurring; *id*. at 36-52.

[3] *Id*. at 55-56.

[4] Rendered by Judge Selma Palacio Alaras; *id*. at 270-278.

[5] *Id*. at 37.

[6] *Id*. at 58-67.

[7] *Id*. at 37.

III. **INFORMATION:**

[OEP][8] shall furnish to **INTERPHIL** at **[OEP]**'s expense, descriptions and instructions concerning the methods, formulae, and standards to be employed by **INTERPHIL** in the processing and packaging of the **Products**, including such written descriptions, flow sheets, work forms, testing methods and specifications and other process data as **INTERPHIL** determines to be necessary or desirable for the proper performance of this **Agreement**. x x x.

IV. **PROCESSING AND PACKAGING:**

All **Products** processed by **INTERPHIL** under this **Agreement** shall be prepared and packed strictly in accordance with the formulae, processes, standards, techniques, and designs furnished by **[OEP]** to **INTERPHIL** from time to time. All materials Re-packaging such products shall first be approved by **[OEP]** and no change in any packaging materials shall be made by **INTERPHIL** without the previous approval in writing of **[OEP]**.

V. **TESTING AND INSPECTION:**

x x x x x x x x x

INTERPHIL shall conduct quality control and other tests as **[OEP]** shall specify for each of the products at **[OEP]**'s cost and expense. Costs of these tests and of any special analytical equipment required shall be charged separately to **[OEP]**.

x x x x x x x x x

VI. **SUBSTANDARD PROCESSING OR PACKAGING:**

Should a batch or any of the **Products** fail to meet the processing or packaging standards specified by **[OEP]**, **INTERPHIL** shall either correct the deficiency in such batch or destroy the batch on **[OEP]**'s instructions. The expenses incurred in the correction of a deficient batch or the loss and damages resulting from the destruction of the batch shall be for the account of **[OEP]** unless the failure of the batch to meet **[OEP]**'s specifications

[8] Note: Formerly known as ELAN PHARMACEUTICAL CORPORATION, and referred to as ELAN in the Agreement. For purposes of consistency, the newest name OEP has been used for purposes of this Decision.

> can be attributed to **INTERPHIL**'s failure to observe written instructions of **[OEP]** or negligence or fault of **INTERPHIL**'s personnel.
>
> **INTERPHIL** agrees that it will, at all times, maintain and cause to be maintained, the highest standards of workmanship and care in its processing operations hereunder, to the end that **INTERPHIL** shall produce pure **Products** which meet the standards established by **[OEP]** or such **Products**. **INTERPHIL** shall not be responsible for **Product** defects arising from the use of ingredients which have been supplied by **[OEP]**.[9] (Emphases and underlining in the original)

Likewise, in order to comply with Section 2.2.2.1 of the Department of Health's (DOH) Administrative Order (A.O.) No. 56, Series of 1989,[10] the parties issued a letter to the Bureau of Food and Drugs (BFD), stating:

> [P]arties hereby agree to be jointly responsible for the quality of the **Product**without prejudice to the liability after the determination of the cause in case of defect in quality.
>
> x x x [I]f the cause of the defect be the manufacturing process or packaging, **INTERPHIL** should assume the liability and if the cause be the formulae, process, methods, instructions or raw materials provided by **[OEP]**, then the latter shall x x x assume the liability arising out of the defect.[11] (Emphases in the original)

After the execution of the Agreement, Interphil agreed to inspect the type and quality of the packaging supplies delivered to its plant, for which it charged OEP a "packaging materials inspection fee." From January 1999 to May 2000, Interphil

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[9] *Rollo*, pp. 59-60.

[10] 2.2 **Specific Requirements:**

Any entity applying for [an] LTO as a drug manufacturer, drug trader or drug distributor shall be required to demonstrate its capacity to perform adequately as such in a manner that satisfactorily assures the safety, efficacy and quality of its drug products. It shall be required to conform with the following relevant standards and requirements specific for each category, in addition to the above general requirements[.]

[11] *Rollo*, p. 145.

accepted the delivery of several 90- and 120-mg Diltelan capsules, as well as printed foils and boxes for these capsules, for purposes of processing and packaging pursuant to the Agreement, while charging OEP for a packaging fee and the aforementioned packaging materials inspection fee, in consideration of Interphil's commitment to inspect the materials delivered. Thereafter, Interphil sorted, wrapped and boxed the capsules, and subsequently delivered the same to OEP. OEP, subsequently, delivered the capsules to its client, Orient Eropharma Co., Ltd./Elan Pharma Ltd. of Taiwan (Elan Taiwan).[12]

The conflict between the parties arose on August 8, 2000, when OEP received a facsimile from Elan Taiwan informing the former that Elan Taiwan had received several urgent phone calls from certain hospitals in Taiwan regarding a defect in the packaging of several 90-mg Diltelan capsules which had been sold and delivered by Interphil. Elan Taiwan further reported that several 90-mg Diltelan capsules were inadvertently wrapped in foils meant and labeled for 120-mg Diltelan capsules and then placed in boxes meant and labeled for 90-mg Diltelan capsules.[13]

OEP immediately informed Interphil of the packaging defect. Investigations conducted by both OEP and Interphil revealed that the defectively packaged capsules belonged to a single batch, Lot No. 001369, which Interphil processed and packaged in April 2000.[14]

As a result of the defectively packaged capsules and the necessary reworking of the same to the public due to the danger and health risks, OEP alleges that it had no choice but to recall and destroy all capsules belonging to the aforementioned Lot No. 001369. As a consequence, this resulted in the incurring of numerous costs and expenses on the part of OEP.[15]

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[12] *Id*. at 40.

[13] *Id*.

[14] *Id*.

[15] *Id*.

Due to the foregoing, OEP demanded that Interphil reimburse it the total of ₱5,183,525.05 for the expenses that it had incurred for and in connection with the recall and destruction of these capsules, including the costs of the materials destroyed.[16] However, Interphil refused and did not pay the amount demanded.

Due to Interphil's refusal to pay the same, OEP filed a complaint with the RTC of Makati City. After trial, the RTC rendered a Decision[17] in favor of OEP, finding that on the basis of the doctrine of *res ipsa loquitor*, Interphil was negligent in the performance of its obligations under the Agreement, and that there was no merit in Interphil's defense that OEP, likewise, breached the Agreement in unilaterally destroying the complained-of products without observing the agreed procedure for the recall and destruction in case a defect in a certain batch of capsules is found.

The dispositive portion of said decision reads, to wit:

WHEREFORE, by preponderance of evidence, judgment is hereby rendered in favor of [OEP], ordering [INTERPHIL] to pay the former the following:

1. Five million one hundred eighty[-]three thousand five hundred twenty[-]five & 5/100 (₱5,183,525[.]05) Pesos as actual damages;
2. Three hundred six thousand six hundred forty-eight & 81/100 (₱306.648.81) Pesos as compensatory damages;
3. One Hundred thousand (₱100.000.00) Pesos as exemplary damages; and
4. Fifty thousand (₱50,000.00) Pesos as attorney's fees, costs and expenses.[18]

Interphil's Motion for Reconsideration was denied in an Order[19] issued by the RTC on August 20, 2008. On appeal to the CA, Interphil interposed the arguments that the RTC erred

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[16] *Id*. at 40-41.

[17] *Id*. at 270-278.

[18] *Id*. at 278.

[19] *Id*. at 311.

in both applying the *res ipsa loquitor* rule to find Interphil liable for the product conundrum, and in finding that OEP's action of unilaterally destroying the products was valid and was not imbued with any bad faith.[20]

On the issue of whether or not Interphil was liable to OEP in the recall and destruction of the defectively packaged Diltelan capsules, the CA ruled in favor of OEP and affirmed the decision of the RTC.[21] The CA found that the proximate cause for the damage incurred by OEP was the fact that Interphil erroneously packed the 90-mg Diltelan capsules in the 120-mg labeled foils, an action which was in the exclusive hands and control of Interphil.[22]

The CA found that since Interphil failed to detect or rectify the erroneous packaging despite multiple opportunities to do so, it was unnecessary to delve into Interphil's allegation as to OEP's faults, since the former failed to overcome its negligence as the immediate and proximate cause of the damage.[23] Even if OEP's possible fault would be considered, the CA held that Interphil was unable to offer substantial proof that OEP Was in bad faith with its actions, and as such, the presumption of good faith will continue to stand unless proven otherwise.[24]

For the CA, OEP's act of unilaterally recalling and destroying the products, far from being a breach of the contract, was a prudent move in order to prevent any further injury to the public, considering that in the event that the products were reworked, the risk of contamination would still be present, compromising, thus, the safety of the consumers or the end-users.[25]

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[20] *Id.* at 43.

[21] *Id*.

[22] *Id.* at 45.

[23] *Id.* at 46.

[24] *Id*. at 51.

[25] *Id*.

Interphil's Motion for Reconsideration was denied in a Resolution[26] dated September 26, 2012, as the CA found that no matter of substance was adduced by Interphil that would warrant the modification, much less the reversal, of the assailed decision.

Hence, this Petition, to which OEP filed a Comment/ Opposition[27] on April 5, 2013, assailing not only the substantive issues brought up by Interphil, but also decrying the alleged fact that the Petition was fatally defective for failure of Interphil to serve the CA with a copy of the Petition. Interphil responded via Reply[28] on October 4, 2013.

The Issues of the Case

A perusal of the parties' pleadings will show the following issues and points of contention:

First, whether or not the Petition must be dismissed outright due to Interphil's failure to timely serve the CA with a copy of the Petition, as required under Rule 45 of the Rules of Court;

Second, whether or not Interphil was negligent based on the doctrine of *res ipsa loquitor*; and

Third, whether or not OEP can, likewise, be held liable for breach of the Agreement due to its unilateral destruction of the products.

The Parties' Arguments

On the procedural aspect, OEP contends that Interphil failed to provide proof of service of the Petition on the CA, prior to its filing to the Court. This was admitted to by Interphil in a Manifestation *Ad Cautelam* dated March 27, 2013 that it filed with the CA, stating that a copy of the Petition was served only on the undersigned counsel but not on the CA prior, or simultaneous, to its filing with the Court. OEP also adds that,

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[26] *Id.* at 55-56.

[27] *Id*. at 432-456.

[28] *Id*. at 473-481.

as a result, Interphil's failure to serve the CA with a copy of the Petition prompted the CA to issue an Entry of Judgment on March 8, 2013.[29]

Based on the foregoing, OEP submits that the Court should dismiss the Petition outright for being fatally defective and for failing to comply with the mandatory requirements of an appeal by certiorari to the Court. OEP also points out that, despite Interphil attempting to excuse the omission by reason of supposed time constraints, it served a copy of the Petition to the CA almost five (5) months after the time that it should have served the same, or only on March 25, 2013.[30]

In answer to OEP's contentions, Interphil submits that the Petition should not be dismissed on the basis of a technicality, considering that the same had been rectified through its furnishing of a copy to the CA on March 25, 2013.

On the substantial merits, OEP argues first that this Petition improperly raises pure questions of facts, which are beyond the ambit of the Court's jurisdiction. OEP asserts the time-honored doctrine that the Court is restricted to reviewing only pure questions of law, and that the CA's, as vf/ell as the trial court's, findings of feet, evaluation and assessment of the evidence, which concur in this case, are binding and conclusive upon the Court.[31]

Assuming, however, that the Court may resolve the factual questions in Interphil's petition, OEP asserts that the arguments therein are, nevertheless, erroneous, and have already been exhaustively addressed by both the trial court and the CA.[32] Both courts found that, under the doctrine of *res ipsa loquitor*, Interphil was indeed negligent and, thus, liable for damages. Likewise, both lower courts found that Interphil's mispackaging

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[29] *Id*. at 433.

[30] *Id*. at 434.

[31] *Id*. at 436.

[32] *Id*. at 441.

was the proximate cause of the injury sustained by OEP,[33] and that OEP did not violate the Agreement when it unilaterally destroyed the defectively packaged capsules.[34]

Interphil, on the other hand, asserts that it raises questions of law. However, even if questions of fact were raised, the same would be within the exception pronounced by the Court in the case of *Spouses Alcaraz v. Arante*,[35] the same applying when "the CA fails to notice certain relevant facts, which, if properly considered, will justify a different conclusion."[36]

Critical to the case, Interphil advocates its stance that the requisites of *res ipsa loquitor* are not applicable to it. It asserts that while it had the exclusive control over the plant where the packaging was effected, it, nevertheless, had no exclusive control over the packaging materials supplied by OEP, and that the cause of the injury was the mis-splicing of the foil and, therefore, the defects in the packaging materials supplied by OEP.[37]

Interphil stresses that it could not have discovered the mis-splicing of the foil even after investigation, as attested to by Mr. Francisco R. Billano,[38] and that the inspection of the packaging materials was limited to whether the same were not deformed or in such sufficient quantity as indicated.[39] For Interphil, OEP failed to exercise due care in providing distinguishable packaging materials to the former, and that the packaging materials were defective to begin with.[40]

As a consequence of the alleged inapplicability of the *res ipsa loquitor* doctrine, Interphil asserts that OEP failed to

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[33] *Id*. at 449.

[34] *Id*. at 450.

[35] 700 Phil. 614 (2012).

[36] *Id.* at 624-625.

[37] *Rollo*, pp. 12-13.

[38] *Id*. at 13.

[39] *Id*. at 14.

[40] *Id*. at 17.

overcome its burden of proof to establish that Interphii was negligent in performing its contractual obligations. OEP only offered the David Beff Report that points to the similarity of design of the packaging materials, which, Interphil also points out, actually emphasized that the mix up could have been initiated at the printing stage of the packaging materials.[41]

Interphil, likewise, states that, even if for the sake of argument, such failure to detect the mis-splicing in the foil is indeed negligence on the part of the petitioner, such negligent act is still not the proximate cause of the injury.[42] Any failure on the part of Interphil is argued to be due to the acts on the part of OEP that came prior to the packaging, i.e., the similarity in design of the packaging materials of 90- and 120-mg Diltelan capsules, the mis-splicing in the foil, and the alleged failure to properly flag the splices. As such, Interphil argues that its failure to detect the mix up is part of the natural and continuous sequence of events.

Finally, Interphil accuses OEP of unilaterally destroying the products instead of possibly reworking or repackaging the same, which went contrary to the provisions of the Agreement, and without even informing Interphil or giving the latter any chance to rectify the situation.[43] This allegedly did not only run counter to the Agreement, but also violated the law and the regulations relating to the proper destruction of the subject products, namely, A.O. No. 43, Series of 1999 as issued by the DOH.[44]

On the other hand, OEP states that, as aptly found by both the RTC and the CA, Interphil was proven clearly negligent based on the doctrine of *res ipsa loquitor*. For OEP, there is no doubt that the error was committed at the time of the packaging and within the control of Interphil. OEP also alleges that there is nothing in the records to show that it contributed to the incident,

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

[42] *Id*. at 21.

[43] *Id*. at 22

[44] *Id*. at 24.

and that the fact of mis-splicing was never established with clear and preponderant evidence. On the contrary, the processing and packaging of said products were all in the hands of Interphil, and the latter even maintained that upon delivery of the materials to its plant, its personnel inspected the same through the procedures and using the specifications imposed by OEP.[45]

On the matter of OEP allegedly violating the Agreement by unilaterally destroying the defectively packaged Diltelan capsules, OEP points to the Agreement itself which says that the same does not bar OEP from correcting or destroying the subject capsules. OEP points out that the Agreement recognizes that it is OEP that has the absolute discretion in terms of deciding what to do with the subject capsules.[46] And, contrary to Interphil's allegations of bad faith on the part of OEP, as found by the lower courts, OEP was able to satisfactorily explain the danger and health risks posed by the defectively packaged capsules.[47] All in all, OEP asserts that Interphil's arguments are all baseless, groundless, and not supported by evidence, as found by the lower courts in their appreciation of the facts on record.

Ruling of the Court

The Court first seeks to lay to rest the procedural matter as to whether or not the Petition must be dismissed outright for failure to subscribe to the requirements under Rule 45 of the Rules of Court. As previously mentioned, OEP argues in its Comment/Opposition that the Petition filed by Interphil with the Court is fatally defective for failure of Interphil to serve the CA with a copy of the Petition, an omission of its responsibility under Rule 45 of the Rules of Court, and which would necessitate the denial of the same.

The pertinent provisions of Rule 43 of the Rules of Court read:

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[45] *Id*. at 443-445.

[46] *Id*. at 451.

[47] *Id*. at 453.

Section 3. *Docket and other lawful fees; proof of service of petition.* — Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

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.

The Court invokes liberality and rules in favor of allowing the Petition. As cited by Interphil in its Reply, in *Pagdonsalan v. NLRC, et al.*:[48]

> The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again[,] We have acted on petitions to review decisions of the [CA] even in the absence of proof of service of a copy thereof to the [CA] as required by Section 1 of Rule 45, Rules of Court. We act on the petitions and simply require the petitioners to comply with the rule.[49]

In a later case, *Sunrise Manning Agency, Inc. v. NLRC*,[50] the Court took the opportunity to reiterate the relaxation of the rule for excusable reasons:

> *[T]he appellant's failure to furnish copy of his memorandum appeal to respondent is not a jurisdictional defect, and does not justify dismissal of the appeal. x x x*

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[48] 212 Phil. 426 (1984).

[49] *Id*. at 430.

[50] 485 Phil. 426 (2004).

x x x x x x x x x

> Jurisprudential support is not absent to sustain Our action. In *Estrada vs. National Labor Relations Commission*, G.R. 57735. March 19, 1982, 112 SCRA 688. this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant had not furnished the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9. Rule XIII of its Implementing Rules and Regulations.
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> The same rule was reiterated in *Carnation Phil. Employees Labor Union-FFW v. NLRC* x x x.[51] (Italics in the original)

In this case, Interphil admitted to the error and belatedly, yet subsequently, rectified the same by furnishing a copy to the CA. In the mind of the Court, such an action, as well as the mantra of the country's courts to refrain from dismissing cases on mere technicalities, is enough to overcome the slight procedural infirmity. The aforestated jurisprudence and the attendant facts bolster the Court's finding

However, despite the lack of any procedural bar, the Court finds that Interphil's Petition is unmeritorious. The CA did not commit any grave abuse of discretion in finding Interphil liable for the defective packaging of the Diltelan capsules which caused much prejudice to OEP and the latter's client Elan Taiwan.

Interphil is liable for the wrong packaging of Diltelan capsules.

The simple crux of this case lies in the question of whether or not Interphil is the reason for the defective packaging that led to the prejudice of OEP's sales and its goodwill with its own client. After an examination of the pleadings of both parties, the Court finds it crystal clear that Interphil is the cause for the defective packaging, and, thus, must be held accountable for its negligence.

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[51] *Id*. at 431.

Consistent with the aforementioned conclusion, the Court takes special notice that the findings of fact of both the RTC and the CA as to the liability of Interphil are the same without the slightest derogation. As such, great weight must be given to these findings, and absent any showing that there was arbitrariness, the Court will refrain from opening up and reviewing once again the facts of the case. This is in line with the rule that the Court is not a trier of facts. In a petition for review on *certiorari*, the scope of the Court's judicial review is limited to reviewing only errors of law, not of fact.

In *Pascual v. Burgos, et al.*,[52] the Court explained:

> Only questions of law may be raised in a petition for review on *certiorari*. The factual findings of the [CA] bind this court. Although jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this court may evaluate and review the facts of the case. In any event, even in such cases, this court retains full discretion on whether to review the factual findings of the [CA].
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> x x x x x x x x x
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> The [CA] must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this court. x x x[.][53] (Citations omitted)

Thus, absent any finding that the CA showed any unfairness and arbitrariness in holding that Interphil was responsible for the defective packaging, the Court is bound by the findings of fact which, at the pain of reiteration, is consistent with that of the RTC that *res ipsa loquitor* applies in this case.

The doctrine of *res ipsa loquitor* as a matter of evidentiary proof for negligence was aptly explained and expounded on in *Cortel, et al. v. Gepaya-Lim*:[54]

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[52] 776 Phil. 167 (2016).

[53] *Id*. at 169, 185.

[54] 802 Phil. 779 (2016).

> While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.
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> x x x Where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.
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> x x x x x x x x x
>
> The elements of *res ipsa loquitur* are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[55] (Citation omitted)

Utilizing *res ipsa loquitur* is a matter of evidence, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of the burden of producing a specific proof of negligence. It recognizes that parties may establish *prima facie* negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoice the doctrine, create an inference or presumption of negligence and thereby

[55] *Id*. at 787-788.

place on the defendant the burden of proving that there was no negligence on his part.[56]

In this case, as argued by OEP and as found valid by both the RTC and the CA, the elements of *res ipsa loquitor* have been clearly established by the facts on record.

First, it is uncontroverted that Interphil had exclusive control in the packaging of the materials, before the company delivered the same to OEP, sealed and warranted to be ready for delivery to the latter's client, Elan Taiwan. Not only did the Agreement itself serve to place Interphil's responsibilities and the degree of diligence that it must abide by, for this particular transaction, Interphil itself mentioned that upon delivery of the materials to its plant, its personnel inspected the same through the procedures and using the specifications imposed by OEP.[57] As the records of the case show, it was Interphil's negligence that directly and proximately contributed to the incident.

Second, Interphil had exclusive management and control at the time of the packaging, and as to all the processes appurtenant to the same. While Interphil argues that at least one roll of 90-mg printed foil was already mis-spliced with the 120-mg foil when it received the same from OEP, the records are bereft of any proof of this other than the bare assertion of Interphil. As already mentioned, it was admitted by Interphil that its personnel inspected the packages upon delivery, in line with its standard operating procedure which enjoins its personnel to note or report any defect found in the course of inspection.[58]

Interphil even charged OEP for "packaging materials inspection fees" in consideration of the former's commitment to properly inspect the materials delivered to them, which means that any argument on the part of Interphil as to the quality of the goods received before their faulty packaging goes contrary to their own manifestations.

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[56] *Del Carmen, Jr. v. Bacoy*, 686 Phil. 799, 814-815 (2012).

[57] *Rollo*, p. 445.

[58] *Id*. at 444.

Third, there is no contributory fault on the part of OEP. While Interphil alleges that OEP was at fault for supplying and delivering the reel/s of foils which are similar in appearance and which were not distinctly labeled with colored tape, the Court agrees with the CA that any fault there is not. the proximate and immediate cause of the damage, as it was clearly the erroneous packaging that caused OEP to recall arid destroy the products, causing much expense.

Interphil cannot escape the finding of negligence by attempting to cast shade on the possible liability of OEP, especially after its own warranties as to the pristine condition of the packaging. The letter the parties issued to the BFD itself states that if the cause of the defect be the manufacturing process or packaging, it will be Interphil which shall assume the liability.

Absent any showing of infirmity in the appreciation of evidence of the lower courts in this regard, the Court cannot subscribe to the version of events as posited by Interphil, especially, as this has been soundly rebutted by the actual evidence on record.

No bad faith or contributory fault can be attributed to OEP due to its unilateral destruction of the products.

Notwithstanding its own negligence, Interphil accuses OEP for unilaterally destroying the products without informing Interphil nor giving a chance to the latter to rectify the same, in contravention of the Agreement. In effect, Interphil pins liability on OEP on the basis of *culpa* contractual, or a breach of contract, particularly Section VI of the Agreement.

On *culpa* contractual, Article 1170 of the Civil Code states that those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages. Explaining the same further, the Court, in *RCPI v. Verchez*,[59] stated:

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[59] 516 Phil. 725 (2006).

In culpa contractual the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promissee that may include his expectation interest, which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his reliance interest, which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his restitution interest, which is his interest in having restored to him any benefit that he has conferred on the other party.[60]

In this case, the Court finds that OEP sufficiently rebutted the presumption of fault and/or negligence. Not only is the finding of the CA correct that the provisions cited by Interphil do not bar OEP from exercising discretion when it comes to the destruction of defectively packaged capsules as in this case, OEP was able to show that it needed to do so immediately because of the danger and health risks posed to the public due to the wrong packaging. What was at stake is not only the good reputation of a company, but also the possibility of prejudicing consumers who could be adversely-affected by the incorrect content of the capsules, and it would be a matter of recklessness to do anything but urgently recall the same from public distribution. If OEP would have spent precious time corresponding with Interphil or allowing the latter to fix the matter, it would have just aggravated an already precarious situation.

Thus, the CA did not err in treating OEP's action as a prudent move to prevent against the risk of contamination, contamination which would compromise the safety of the consumers or end-users. No bad faith is present in OEP's decision to recall and destroy the products. The Court reminds the parties of the statutory presumption of good faith, and, absent any valid rebuttal

[60] *Id*. at 735.

of the same on the part of Interphil, that presumption will stand. As with its previous arguments, Interphil has been unable to validly counter nor adduce evidence which would militate against its clear fault and liability, and in doing so overcome its burden to show that the findings of fact and conclusions of law from the RTC and the CA were found wanting.

Interphil is liable for damages.

The Court finds that Interphil is liable for actual damages to OEP, the latter pleading in its complaint and able to substantiate the amounts owed to them as a result of the costs and expenses it incurred in the amount of ₱5,183,525.05 and the profits it failed to realize due to the gross negligence of Interphil in the amount of ₱306,648.81 as compensatory damages.[61]

While OEP incorrectly distinguished the damages as two separate entities, as in this jurisdiction actual and compensatory damages are one and the same, this is largely a matter of semantics and the Court finds that OEP was able to prove the amounts owed to them, as found by the RTC and concurred in by the CA. In *Casiño, Jr. v. CA*,[62] the Court ruled that actual or compensatory damages may be awarded to reimburse an awardee for either loss or the failure to receive a benefit that would have pertained to said awardee, such as loss of profits. To wit:

> Under Articles 2199 and 2200 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done.[63] (Citation omitted)

Citing *Producers Bank of the Philippines v. CA*,[64] the Court, in the subsequent case of *Terminal Facilities & Services Corp. v. Philippine Ports Authority*,[65] ruled:

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[61] *Rollo*, p. 273.

[62] 507 Phil. 59 (2005).

[63] *Id*. at 72-73.

[64] 417 Phil. 646 (2001).

[65] 428 Phil. 99 (2002).

There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him x x x. In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred as "*ganacias frustradas*" or "*lucrum cessans*" are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances x x x.[66]

Absolute certainty, however, is not necessary to establish the amount of *ganacias frustradas* or *lucrum cessans*. As the Court has said in *Producers Bank of the Philippines*:[67]

When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. x x x.[68]

Interphil is also liable for exemplary damages. Under Article 2232 of the Civil Code, the court may award exemplary damages if the defendant in a contract or a quasi-contract acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In *Arco Pulp and Paper Co., Inc., et al. v. Lim*[69] the Court expounded, thus:

The purpose of exemplary damages is to serve as a deterrent to future and subsequent parties from the commission of a similar offense. The case of *People v. Rante* citing *People v. Dalisay* held that:

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[66] *Id*. at 138.

[67] *Supra*.

[68] *Id*. at 660, citing *Central Bank of the Phils, v. CA*, 159-A Phil. 21, 50-51 (1975).

[69] 737 Phil. 133 (2014).

Also known as 'punitive' or 'vindictive' damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future. x x x[70] (Citation and emphases in the original deleted)

While Interphil did not necessarily act in a willful, malicious, or wanton manner, it is clear that it was grossly negligent in its defective packaging. This gross negligence not only prejudiced the contractual relationship between the parties, but also endangered the health of the end consumers who received the packages, seen in the fact that the hospitals themselves sent notice of the infirmity after receiving the defective items. Therefore, the Court adheres to the findings of the lower courts that Interphil is also liable for exemplary damages to serve as a warning to the public to be more circumspect when it comes to product handling, particularly those involving the health and safety of the consumers.

On the matter of attorney's fees, OEP's entitlement thereto is beyond caveat as it was compelled to litigate and, thus, incurred expenses thereto.

WHEREFORE, the Decision dated October 21, 2011, and the Resolution dated September 26, 2012, of the Court of Appeals

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[70] *Id*. at 152-153.

in CA-G.R. CV No. 92550, affirming the Decision dated January 24, 2008 of the Regional Trial Court of Makati City, Branch 62, in Civil Case No. 03-907, are **AFFIRMED WITH MODIFICATION** in that an interest rate of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Carandang*,[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 206316. March 20, 2019]

PANASONIC MANUFACTURING PHILIPPINES CORPORATION (FORMERLY MATSUSHITA ELECTRIC PHILIPPINES CORP.), *petitioner, vs.* **JOHN PECKSON,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL AS DISTINGUISHED FROM RESIGNATION WHETHER FORCED OR VOLUNTARY, REITERATED.— Constructive dismissal *vis-a-vis* its relation to forced or voluntary resignation, was discussed in *Gan v. Galderma Philippines, Inc., et al.* to wit: Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion

[*] Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances. On the other hand, "[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."

2. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR REVEAL THAT PETITIONER WAS ABLE TO ESTABLISH RESPONDENT'S VOLUNTARY RESIGNATION.— [A] judicious review of the facts on record will show that Panasonic was able to show Peckson's voluntary resignation. *First*, the company aptly proved that Peckson's resignation letters showed the voluntariness of his separation from Panasonic. x x x [T]he facts show that the resignation letters are grounded in Peckson's desire to leave the company as opposed to any deceitful machination or coercion on the part of Panasonic. The very contents of the letters show not only any lack of reluctance or tension on the part of Peckson, but in fact express gratitude and well wishes, without qualification, nor do they show any sign of aggression, bitterness, or hostility towards his former employer. x x x *Second*, the Court finds that Peckson's subsequent and contemporaneous actions belie his claim that he was subjected to harassment on the part of Panasonic. x x x Peckson failed to show any substantial evidence that he was treated unfairly and, thus, he was forced to resign. As supposed proof, Peckson only produced his affidavits and the

PNP Crime Laboratory Report. He failed to show any tangible acts of harassment, insults, and any abuse that would warrant a possible finding of constructive dismissal. Even Peckson's belated filing of a complaint highlight the lack of merit to his accusations, especially as he was unable to give any valid reason why he hesitated in filing the same. This sort of delay has already been held to be supportive proof that the resignation leaned more towards being voluntary a mere afterthought.

3. ID.; ID.; ID.; SOCIAL JUSTICE CANNOT BE UNDERSTOOD TO MEAN THAT EVERY LABOR DISPUTE SHALL BE AUTOMATICALLY DECIDED IN FAVOR OF LABOR; AS EMPLOYEE WAS NOT ABLE TO PROVE THAT HIS RESIGNATION WAS INVOLUNTARY NOR WAS ABLE TO ASSAIL EMPLOYER'S PROOF THAT HE LEFT ON HIS OWN ACCORD, THE COURT AFFIRMS THE FINDINGS THAT EMPLOYEE'S RESIGNATION AND SEPARATION FROM WORK WERE VOLUNTARY.— While the rights of the workers, as with all human rights, must be protected, the law does not authorize the oppression or self-destruction of the employer. The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor, especially when the antecedent facts indicate the lack of malfeasance on the part of the management. In this case, Peckson was not able to overcome his burden to prove that his resignation was involuntary. Nor was he able to properly assail with his own evidence Panasonic's proof that he left of his own accord. Thus, the CA erred in deviating from the findings of both the LA and the NLRC, findings, which, upon our own independent review, show without a shadow of the doubt the voluntariness of Peckson's actions and separation from work.

APPEARANCES OF COUNSEL

P.r. Cruz Law Offices for petitioner.

D E C I S I O N

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

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated December 7, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 118641, and its Resolution[3] dated March 15, 2013, which set aside the Decisions dated May 11, 2010[4] and September 30, 2010[5] of the National Labor Relations Commission (NLRC) affirming the ruling of the Labor Arbiter (LA), which dismissed respondent John V. Peckson's (Peckson) complaint for lack of merit.

The facts are aptly summarized by the CA. Peckson was formerly employed as a Sales Supervisor for the Battery Department of petitioner Panasonic Manufacturing Philippines Corporation (Panasonic). The legal controversy started when, in a letter dated September 16, 2003, Peckson expressed his intention to resign effective on October 30, 2003.[6] The contents of said letter read, thus:

TO: PERSONNEL DEPARTMENT
FROM: JOHN PECKSON
RE: RESIGNATION
DATE: SEPTEMBER 16, 2003

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[1] *Rollo*, pp. 3-33.

[2] Penned by Associate Justice Florito S. Macalino, with Associate Justices Sesinando E. Villon and Manuel M. Barrios, concurring; *id*. at 35-50.

[3] *Id*. at 53-55.

[4] Rendered by Commissioner Romeo L. Go, with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco; *id*. at 288-289.

[5] *Id*. at 304-307.

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

I am tendering my resignation effective October 30, 2003. I would like to thank this company for giving me the opportunity to work here.

I would like to thank also the few people who tried to support me namely Mr. Tiongson and some of my friends in NBP.

Sincerely yours,

(Sgd.) JOHN PECKSON[7]

In a subsequent letter dated September 25, 2003, Peckson informed Panasonic that he wished to change the effectivity of his resignation instead to October 15, 2003:[8]

TO: PERSONNEL DEPARTMENT
FROM: JOHN PECKSON
RE: RESIGNATION
DATE: SEPTEMBER 25, 2003

I would like to change the date of my resignation from MEPCO to October 15, 2003, my earlier resignation letter stated October 30, 2003. I am doing this so that I could attend to some personal matters. Again, I would like to thank MEPCO for all the support it has given and also the people who became my friends in the company.

Good luck to the battery business and I wish you all the best in your future endeavors.

Sincerely yours,

(Sgd.) JOHN PECKSON[9]

On April 11, 2005, Peckson filed a complaint for constructive dismissal with the NLRC, with claims for payment of separation pay in lieu of reinstatement with full backwages, non-payment of 13th month pay and other benefits, moral and exemplary damages and attorney's fees against Panasonic and Jose De Jesus (De Jesus) in the latter's personal capacity as Manager

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[7] *Id*.

[8] *Id*. at 37.

[9] *Id.*

of Peckson's former Battery Sales Department. In the complaint, Peckson alleged that he was forced to resign by De Jesus after the latter accused him of falsifying De Jesus' signature in an "Authority to Travel" form dated August 20, 2003.[10] In an effort to disprove De Jesus' accusations, Peckson had proceeded to the Philippine National Police (PNP) to have the controversial "Authority to Travel" form examined, and also submitted several other documents signed by De Jesus as a way to compare the signatures and prove that it was De Jesus who had indeed signed the form.

Based on its findings, the PNP Crime Laboratory reported that the signature of De Jesus appearing on the "Authority to Travel" form and on the other submitted documents was written by one and the same person.[11] Peckson alleged that he submitted the report findings alongside two Affidavit-Complaints informing the Personnel Department of the lack of merit in De Jesus' claim of falsification, and that he, Peckson, was placed on "floating status" solely to be the subject of ridicule.[12] However, De Jesus allegedly told Peckson that he was disregarding the PNP report and threatened to terminate Peckson's employment the very next day,[13] prompting Peckson to end his employment with the company and subsequently file the complaint.

To these allegations, Panasonic maintained that Peckson voluntarily resigned from work, as seen in the tenor of his two resignation letters, his willing completion of the exit interview and the clearance procedure, as well as his signing of a quitclaim and release.[14]

Proceedings in the LA and the NLRC

LA Danna M. Castillon dismissed the complaint for lack of merit, ruling that Peckson's resignation was a voluntary act.

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[10] *Id*. at 37.

[11] *Id*.

[12] *Id*. at 38.

[13] *Id*.

[14] *Id*.

The LA found that Peckson's submission of not one, but two resignation letters, as well as his complete performance of the exit procedure, clearly showed the voluntariness on his part. The LA also pointed to Peckson's alleged conduct during his exit interview when asked his reason for leaving, wherein he answered that he would be working in another company. Also, the fact that Peckson filed his complaint 18 months after his resignation did not escape the notice of the LA, who opined that the lapse of a considerably long period of time erodes the integrity of Peckson's claim, as it did not seem to be the actuation of an aggrieved party.[15]

The dispositive portion of the LA's Decision[16] dated November 28, 2006 reads:

> WHEREFORE, premises considered, the complaint filed by [Peckson] is hereby ordered DISMISSED for lack of merit.
>
> SO ORDERED.[17]

On April 25, 2007, Peckson filed an appeal with the NLRC, which was however dismissed for being filed out of time. In dismissing the appeal for being filed beyond the ten-day prescriptive period, the NLRC reasoned that while Peckson alleged that he received a copy of the LA's decision only on April 18, 2007, the records showed the mail bearing the decision was served at Peckson's given address on January 4, 2007, but the same was not delivered since the addressee moved out.[18]

Notwithstanding the foregoing, the NLRC gave due course to the appeal. However, it concurred with the finding of the LA that Peckson's act of resigning was clearly voluntary and belied his claim of constructive dismissal. The NLRC found that there was nothing on record to prove the allegations in the complaint, and that even on appeal, Peckson failed to present

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[15] *Id*. at 207.

[16] *Id.* at 205-208.

[17] *Id*. at 208.

[18] *Id*. at 39.

evidence substantial enough to support any of his claims.[19] As such, the NLRC affirmed the decision of the LA *in toto*, in its Decision[20] dated September 30, 2010:

> WHEREFORE, the appealed decision is AFFIRMED and the appeal is dismissed for lack of merit.
>
> SO ORDERED.[21]

Proceedings in the CA

Finding merit in Peckson's appeal, the CA reversed the decisions of the lower courts in a Decision[22] promulgated on December 7, 2012.[23] The CA found that Panasonic did not sufficiently discharge its burden to prove that Peckson's resignation was voluntary, and that it failed to overcome the burden to prove that Peckson was validly placed on "floating status."[24] As De Jesus made Peckson believe that the latter would be reinstated after he filed his resignation, the CA found that Peckson was constructively dismissed, and as such he was entitled to his full backwages including his 13th month pay and other benefits.

Likewise, since Peckson specifically prayed for the relief of separation pay in lieu of reinstatement in his Complaint, and considering the CA's finding that actual animosity existed between Peckson and De Jesus, the CA directed Panasonic and De Jesus, found as solidarily liable, to pay backwages, separation pay, and damages to Peckson, the dispositive portion reading, to wit:

> WHEREFORE, premises considered, the petition is GRANTED. The Assailed Decisions dated May 11, 2010 and September 30, 2010,

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[19] *Id*. at 307.

[20] *Id.* at 304-307.

[21] *Id*. at 307.

[22] *Id*. at 35-50.

[23] *Id*. at 41.

[24] *Id*. at 43.

respectively, both rendered by the [NLRC] in NLRC CA No. 052522-07, NLRC Case No. RAB-IV 04-20622-05-RI are hereby SET ASIDE. Accordingly, private respondents [Panasonic] and [De Jesus] are solidarily liable to pay [Peckson] the following: (a) full backwages reckoned from October 15, 2003 up to April 11, 2005 based on a salary of Php 21,345.00 a month, including 13th month pay and other benefits; (b) the additional sum equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one whole year, from August 1, 2002 to April 11, 2005, as separation pay; (c) Php 50,000.00 as moral damages; (d) Php 50,000.00 as exemplary damages and (e) Attorney's Fees equivalent to 10% of the total award.

SO ORDERED.[25]

Panasonic's Motion for Reconsideration was denied.[26] Hence, this Petition.

The Issues

The issues can be melded into two: Whether or not Peckson's resignation was voluntary, and if so, whether or not Panasonic and De Jesus are guilty of constructive dismissal.

The Parties' Arguments

Panasonic argues first and foremost that the CA erred in ruling that Peckson's resignation was not voluntary, despite the facts on record allegedly proving otherwise, namely: (1) Peckson's submission of not only one, but two resignation letters where he clearly indicated his desire to work for another company as his main reason for resigning; (2) the tenor of those resignation letters, wherein Peckson allegedly expressed his profound gratitude to the officers of the company; (3) Peckson's accomplishment of the necessary exit interview for resigning employees; (4) Peckson's signing of the quitclaim and release, as well as his receipt of his final pay; and (5) the almost two years delay before he filed his complaint for constructive dismissal.[27]

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[25] *Id*. at 49.

[26] CA Resolution dated March 15, 2013, *id*. at 53-55.

[27] *Id*. at 4.

In essence, Panasonic argues that the facts show the completely voluntary nature attendant to Peckson's resignation, and that the filing of a complaint for constructive dismissal was merely an afterthought.[28] According to Panasonic, the circumstances likewise provide the true state of mind of Peckson at the time of his resignation, buoyed by his pleasant relationship with the officers of the company. These, taken cumulatively, negate any indication that Peckson was under any duress when he resigned, contrary to his assertions. Because of the same, Panasonic cannot be held guilty of constructive dismissal, and therefore, the company is not liable to Peckson for damages, including moral, exemplary, and attorney's fees.[29]

On the part of Peckson, he counters that the C A correctly reversed the decision of the LA and the NLRC. Peckson alleges that the LA and the NLRC, in dismissing his complaint for constructive dismissal, failed to take cognizance of his affidavit dated September 5, 2003, wherein Peckson stated that De Jesus took away Peckson's supervisory functions, his office laptop, and mentioned that the latter could no longer attend the sales meeting, do his usual field work, and sign any business documents.[30] Peckson contends that his resignation was not voluntary, and that he highlighted the reason for leaving as his "personality conflict with manager" in his exit interview form, contrary to Panasonic's statement that Peckson left in order to find work in another establishment.[31]

Peckson also alleges that Panasonic failed to address his accusation that he was invalidly put on floating status.[32] More grievously, Peckson points to his contention that he was accused by De Jesus of forging his signature, despite the PNP Crime Laboratory report purportedly proving otherwise. Peckson,

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[28] *Id*. at 22.

[29] *Id.* at 24.

[30] *Id*. at 507.

[31] *Id*. at 510.

[32] *Id*. at 508.

likewise, decries Panasonic's production of the quitclaim he allegedly signed, as Peckson was allegedly deceived into signing the same as he never received his final pay.[33]

Ruling of the Court

The petition is meritorious. Peckson's resignation was voluntary and, thus, Panasonic is not guilty of constructive dismissal.

The Court is behooved to take a look at the records of the case to determine whether or not Peckson's resignation was through the latter's own volition or was necessarily effected by Panasonic's allegedly hostile treatment. While only errors of law are generally reviewable on *certiorari*, the Court may look into the factual issues in labor cases when the findings of the LA, the NLRC, and the CA are conflicting.[34] In this case, the findings of the LA and the NLRC, while in resonance with the other, conflict the findings of the CA.

Panasonic faults the CA for reversing these findings of the respective administrative agencies that Peckson's resignation was voluntary, which would mean that the company is not guilty of constructive dismissal. However, the Court emphasizes the well-settled doctrine that for dearth of substantial basis, the factual findings of administrative agencies such as the NLRC cannot be given the stamp of finality and conclusiveness normally accorded to it, as even the decisions of administrative agencies which are declared final by law are not exempt from judicial review, when so warranted.[35]

Panasonic's misguided assumption aside, the Court disagrees with the finding of the CA that Panasonic failed to prove that Peckson resigned out of his own volition and without any outside influence from the company. As such, since Peckson resigned

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[33] *Id*. at 510.

[34] *South East International Rattan, Inc., et al. v. Coming*, 729 Phil. 298, 305 (2014).

[35] *Vicente v. CA (Former 17th Division)*, 557 Phil. 777, 784 (2007).

willingly, Panasonic and De Jesus are not guilty of constructive dismissal.

Constructive dismissal *vis-a-vis* its relation to forced or voluntary resignation, was discussed in *Gan v. Galderma Philippines, Inc., et al.*[36] to wit:

> Constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the; circumstances.
>
> On the other hand, "[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether lie or she, in fact, intended to sever his or her employment."[37] (Citation omitted)

To note, the intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he, in fact, intended to terminate his employment. In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.[38]

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[36] 701 Phil. 612 (2013).

[37] *Id*. at 638-639.

[38] *Central Azucarera de Bais, Inc., et al. v. Siason*, 765 Phil. 399, 407 (2015).

Guided by these legal precepts, a judicious review of the facts on record will show that Panasonic was able to show Peckson's voluntary resignation.

First, the company aptly proved that Peckson's resignation letters showed the voluntariness of his separation from Panasonic. While the fact of filing a resignation letter alone does not shift the burden of proof, and it is still incumbent upon the employer to prove that the employee voluntarily resigned,[39] in this case, the facts show that the resignation letters are grounded in Peckson's desire to leave the company as opposed to any deceitful machination or coercion on the part of Panasonic.

The very contents of the letters show not only any lack of reluctance or tension on the part of Peckson, but in fact express gratitude and well wishes, without qualification, nor do they show any sign of aggression, bitterness, or hostility towards his former employer. In *Bilbao v. Saudi Arabian Airlines*.[40] the Court found as voluntary the resignation of the complainant, whose clear use of words of appreciation and gratitude negated the notion that she was forced and coerced to resign. Likewise, the Court held in *Rodriguez v. Park N Ride Inc., et al.*,[41] that the petitioner-employee voluntarily resigned as evidenced in part by her submission of two resignation letters containing words of gratitude.

Second, the Court finds that Peckson's subsequent and contemporaneous actions belie his claim that he was subjected to harassment on the part of Panasonic. Peckson neglected to show any sign that he had reached out to company management regarding his alleged complaints with De Jesus or any other employee of Panasonic, and if he did, he failed to show the same. It would stand to reason that if Peckson had legitimate grievances, he would have raised them up with management. While Peckson alleges that he sent two complaint-affidavits

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[39] *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 511 (2015).

[40] 678 Phil. 793 (2011).

[41] 807 Phil. 747 (2017).

detailing the acts of abuse heaped on him, as well as his being put on floating status, the Court notes that Peckson was unable to proffer any proof that he sent these to Panasonic. The lack of any proof that he did, without any evidence of intimidation or coercion, should highlight the intangibility of these accusations.

Even when given the opportunity to alert management regarding his grievances during the last days of his employment with Panasonic, Peckson conspicuously failed to do so. As seen in the Exit Interview Form filled up by Peckson, to wit

> Q: Why are you leaving the Company? (Ask employee to fill up form B and probe on reasons cited. Draw out critical incidents, comments or suggestions.) Please rank reason(s) in order of priority.
>
> A: To work for another FMCG company.
>
> Q: What did you like most/least about working in this Company? (Draw out comments about job management, peers, compensation, advancement, etc.)
>
> A: A very structured/layered organization.
> Human Resource Dept. was very supportive of me.[42]

While Peckson later on ticked a box in the form stating "Personality conflict with manager" as one of the factors influencing his decision to leave Panasonic in page 2 of the Exit Interview Form,[43] he did not expound on the same. In fact, he ticked several other boxes, such as "Dissatisfied with pay and compensation scheme," "Desire for more responsibilities/ higher status," as well as even reiterating his reason to "Consider working for another FMCG company."[44]

Thus, Peckson's assertion that he was instructed to express gratitude in his letter cannot be used as proof of the company's

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[42] *Rollo*, p. 71.

[43] *Id*. at 72.

[44] *Id*.

alleged transgressions, as the same is self-serving and uncorroborated by any substantial evidence. Also, Peckson's claim that he was put on floating status after he was allegedly instructed to file a resignation letter does not hold water. It makes no sense for an employee to file a resignation letter solely based on an alleged promise that said employee would be later reinstated by the company. This, especially as Peckson's only proof of said arrangement is the conversation he had with management, which, again, is supported by nothing but his bare testimony.

Likewise does the Court find untenable Peckson's claim that he was merely coerced into signing the quitclaim and release. The Court has previously held that voluntary agreements, which include quitclaims, entered into and represented by a reasonable settlement are binding on the parties which may not be later disowned simply because of a change of mind.[45] It is only where there is clear and substantial proof that "the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable, that the law will step in to bail out the employee."[46]

In *Iladan v. La Suerte Intl. Manpower Agency, Inc., et al.*,[47] the Court struck down an employee's assertion that she did not resign voluntarily and there was an irregularity in her Release, Waiver, and Quitclaim form, using as basis the lack of evidence of such, as well as her actions indicating otherwise. To wit:

> In the instant case, Iladan executed a resignation letter in her own handwriting. She also accepted the amount of ₱35,000.00 as financial assistance and executed an Affidavit of Release, Waiver and Quitclaim and an Agreement, as settlement and waiver of any cause of action against respondents. The affidavit of waiver and the settlement were acknowledged/subscribed before Labor Attache Romulo on August 6, 2009, and duly authenticated by the Philippine Consulate. An

[45] *Auza, Jr., et al. v. MOL Philippines, Inc., et al.*, 699 Phil. 62, 83-84 (2012).

[46] *Id*.

[47] 776 Phil. 591 (2016).

affidavit of waiver duly acknowledged before a notary public is a public document which cannot be impugned by mere self-serving allegations. Proof of an irregularity in its execution is absolutely essential. The Agreement likewise bears the signature of Conciliator-Mediator Diaz. Thus, the signatures of these officials sufficiently prove that Iladan was duly assisted when she signed the waiver and settlement. Concededly, the presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. In this case, no such evidence was presented. Besides, "[T]he Court has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import." Absent any extant and clear proof of the alleged coercion and threats Iladan allegedly received from respondents that led her to terminate her employment relations with respondents, it can be concluded that Iladan resigned voluntarily.[48] (Citations omitted)

As Peckson failed to present any relevant evidence aside from his own self-serving declarations, the Court cannot countenance his claims especially considering the legal dictum that he who asserts, not he who denies, must prove.[49] In the absence of such, the Court must rely on the actual proof presented as evidence, *i.e.*, the resignation letters of Peckson showing his voluntary separation from the company, and not the mere allegations of fraud and deception that have characterized Peckson's grievances as the latter tried to explain his apparent involuntary resignation.

In *BMG Records (Phils.), Inc. v. Aparecio*,[50] the Court found that based on the evidence presented, therein respondent's claims of machinations on the part, of the petitioner company to induce him to resign were completely unsupported by proof:

Based on the pleadings, this Court finds nothing to support Aparecio's allegation that fraud was employed on her to resign. Fraud exists only when, through insidious words or machinations, the other

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[48] *Id.* at 600-601.

[49] *Portuguez v. GSIS Family Bank*, 546 Phil. 140, 156-157 (2007).

[50] 559 Phil. 80 (2007).

party is induced to act and without which, the latter would not have agreed to. This Court has held that the circumstances evidencing fraud and misrepresentation are as varied as the people who perpetrate it, each assuming different shapes and forms and may be committed in as many different ways. Fraud and misrepresentation are, therefore, never presumed; it must be proved by clear and convincing evidence and not mere preponderance of evidence. Hence, this Court does not sustain findings of fraud upon circumstances which, at most, create only suspicion; otherwise, it would be indulging in speculations and surmises.[51]

In summation, Peckson failed to show any substantial evidence that he was treated unfairly and, thus, he was forced to resign. As supposed proof, Peckson only produced his affidavits and the PNP Crime Laboratory Report. He failed to show any tangible acts of harassment, insults, and any abuse that would warrant a possible finding of constructive dismissal. Even Peckson's belated filing of a complaint highlight the lack of merit to his accusations, especially as he was unable to give any valid reason why he hesitated in filing the same.

This sort of delay has already been held to be supportive proof that the resignation leaned more towards being voluntary a mere afterthought. In *Vicente v. CA*:[52]

Subsequently, petitioner stopped reporting for work although she met with the officers of the corporation to settle her accountabilities but never raised the alleged intimidation employed on her. **Also, though the complaint was filed within the 4-year prescriptive period, its belated filing supports the contention of respondent that it was a mere afterthought. Taken together, these circumstances are substantial proof that petitioners resignation was voluntary.**

Hence, petitioner cannot take refuge in the argument that it is the employer who bears the burden of proof that the resignation is voluntary and not the product of coercion or intimidation. Having submitted a resignation letter, it is then incumbent upon her to prove that the resignation was not voluntary but was actually a case of constructive

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[51] *Id*. at 92.

[52] 557 Phil. 777 (2007).

dismissal with clear, positive, and convincing evidence. Petitioner failed to substantiate her claim of constructive dismissal.[53] (Emphasis Ours)

While the rights of the workers, as with all human rights, must be protected, the law does not authorize the oppression or self-destruction of the employer.[54] The constitutional commitment to the policy of social justice cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor,[55] especially when the antecedent facts indicate the lack of malfeasance on the part of the management. In this case, Peckson was not able to overcome his burden to prove that his resignation was involuntary. Nor was he able to properly assail with his own evidence Panasonic's proof that he left of his own accord. Thus, the CA erred in deviating from the findings of both the LA and the NLRC, findings, which, upon our own independent review, show without a shadow of the doubt the voluntariness of Peckson's actions and separation from work.

WHEREFORE, the petition is **GRANTED**. The Decision dated December 7, 2012 of the Court of Appeals, and its Resolution dated March 15, 2013, in CA-G.R. SP No. 118641, which set aside the Decisions dated May 11, 2010 and September 30, 2010 of the National Labor Relations Commission in NLRC LAC Case No. RAB IV-4-20622-05-RI affirming the ruling of the Labor Arbiter, are hereby **REVERSED AND SET ASIDE**. The Decision dated September 30, 2010 of the National Labor Relations Commission is **REINSTATED AND AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Carandang*,[*] *JJ.*, concur.

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[53] *Id.* at 786-787.

[54] *Imasen Philippine Manufacturing Corporation v. Alcon, et al.*, 746 Phil. 172, 179 (2014).

[55] *Id.*

[*] Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

SECOND DIVISION

[G.R. No. 206780. March 20, 2019]

DR. RICO VARGAS SUBSTITUTED BY HIS WIFE, CECILIA VARGAS AND CHILDREN, NAMELY: RICHELLE JOSIE JUDY VARGAS-CASTRO, ARVEE T. VARGAS AND CECILIA VARGAS, *petitioners, vs.* **JOSE F. ACSAYAN, JR.,** *respondent.*

[G.R. No. 206843. March 20, 2019]

STARDIAMOND INTERNATIONAL TRADING, INC., BENJAMIN N. LIBARNES AND ERNESTO V. PARANIS, *petitioners, vs.* **JOSE F. ACSAYAN, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, GENERALLY RESPECTED; EXCEPTIONS. — Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) *when the inference made is manifestly mistaken, absurd or impossible*; 3) where there is 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) *when the findings are contrary to those of the trial court*; 8) when the findings of fact are

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* Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

conclusions without citations of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and, 10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on records.

2. **CIVIL LAW; SPECIAL CONTRACTS; ASSIGNMENT OF RIGHTS; PARTAKES OF A NATURE OF SALE; CONSIDERATION IS PRESUMED UNLESS THE CONTRARY IS PROVEN. ––** Under Article 1624 of the Civil Code, assignment of rights partakes of a nature of a sale, such that it is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. The meeting of the minds contemplated here is that between the assignor of the credit and his assignee, there being no necessity for the consent of any other person not a party to the contract. Here, the CA invalidated the Deed of Assignment purportedly because the parties never mentioned anything about a valuable consideration that was paid by the spouses Tabangcora to spouses Vargas. Under Art. 1354 of the Civil Code, consideration is presumed unless the contrary is proven. The presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration. x x x The valuable consideration need not be specified. To rebut the presumption that there was consideration, it is incumbent upon respondent to show that no consideration was passed between the parties.

3. **ID.; OBLIGATIONS AND CONTRACTS; DOUBT AS TO THE NATURE AND CONDITIONS OF A CONTRACT; IT IS PRESUMED THAT THE DEBTOR ASSUMED THE LESSER OBLIGATION AND THAT THE LIABILITY CONTRACTED IS THAT WHICH PERMITS THE GREATEST RECIPROCITY OF INTEREST AND RIGHTS; CASE AT BAR. ––** [I]n the event of doubt as to the nature and conditions of a contract that cannot be decided by the language of an x x x agreement, in justice, it must be presumed that the debtor assumed the lesser obligation and that the liability contracted is that which permits the greatest reciprocity of interest and rights. Since there was doubt as to whether the agreement between the parties was a loan or a sale, it is more sound that the agreement in question be considered

as a loan contract –– with the spouses Tabangcora not surrendering all the rights to the property but simply conferring upon respondent merely to collect from the spouses Tabangcora what is owing to him (with interest for the use of money) thereby promoting a greater reciprocity of rights and obligations between them. With the existence of a valid loan between the parties, it is imperative for respondent to be paid of the amount which the spouses Tabangcora borrowed from him consisting of the principal amount and the accrued legal interest as their alleged stipulation on the interest was not reduced to writing. Thus, the interest on the amount loaned shall then be fixed at 12% *per annum* to be computed from the date of default, which was June 20, 2000 (date of the judicial demand) until June 30, 2013 and at 6% per annum from July 1, 2013 until satisfaction thereof in accordance with *Nacar v. Gallery Frames*.

APPEARANCES OF COUNSEL

The Law Firm of Habitan Ferrer Chan Tagapan & Associates for the Vargases.

Jimenez Gonzales Bello Valdes Caluya & Fernandez (JGLAW) for Star Diamond, Libarnes & Paranis.

D E C I S I O N

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

The Facts

Assailed in this Consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules on Civil Procedure are: 1) the Decision[2] dated June 30, 2011, which reversed and set aside the Decision[3] dated March 31, 2009, issued by the Regional Trial Court (RTC), Branch 55, Lucena City in Civil

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[1] *Id*. at 10-23, G.R. No. 206780; id. at 9-58, G.R. No. 206843.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea- Leagogo and Michael P. Elbinias, G.R. No. 206780; *id*. at 32-67.

[3] Penned by Presiding Judge Bienvenido A. Mapaye, *id*. at 69-101.

Case No. 2000-86; and, 2) the Resolution[4] dated April 19, 2013, denying petitioners' Motion for Reconsideration, both of which were promulgated by the Court of Appeals (CA) in CA-G.R. CV No. 94670.

The case arose from a Complaint with Prayer for Preliminary Attachment[5] filed by Jose F. Acsayan, Jr. (respondent), against defendants Maximino and Estela Tabangcora (spouses Tabangcora), petitioner spouses Rico and Cecilia Vargas (spouses Vargas), Benjamin N. Libarnes (Libarnes), Ernesto V. Paranis (Paranis) and Star Diamond International Trading, Inc. (Stardiamond).

The said complaint alleged that in October 1997, the spouses Tabangcora offered to sell to respondent a parcel of land (subject property) in Sariaya, Quezon, consisting of about 4 hectares for a purchase price of Five Million Nine Hundred Fifty Thousand Pesos (₱5,950,000.00), which is to be paid as follows: 1) as downpayment, he shall immediately pay the indebtedness incurred by the spouses Tabangcora with the Land Bank of the Philippines (LBP) which was covered by a mortgage over the subject property herein; and 2) the balance shall be paid upon execution of a Deed of Absolute Sale in favor of respondent.

Upon demand, the spouses Tabangcora delivered to respondent a photocopy of Transfer Certificate of Title (TCT) No. T-264567[6] covering the subject property, registered under the names of spouses Vargas, the brother-in-law and sister, respectively, of Maximino Tabangcora. Annotated in the said title are two entries - Entries Nos. 603729 and 659404 - evidencing the mortgage with LBP and the amendment thereto.

Respondent was also given a duplicate original copy of the Deed of Assignment[7] dated November 1997 executed by spouses

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[4] *Id.* at 27-30.

[5] *Id.* at 476-494, G.R. No. 206843.

[6] *Id.* at 380-382.

[7] *Id.* at 496.

Vargas which purportedly ceded the subject property in favor of Tavar Farm & Marketing, represented by the spouses Tabangcora. By virtue of such Deed of Assignment, the spouses Tabangcora claimed ownership over the subject property.

Thus, on November 24, 1997, respondent issued Metrobank Check No. 0067796[8] amounting to Four Million Six Hundred Seventeen Thousand Two Hundred Ninety-Three Pesos and Eighty-Eight Centavos (₱4,617,293.88) in favor of LBP as full payment of indebtedness incurred by the spouses Tabangcora to the LBP, covered by the mortgage executed over the subject property. The spouses Tabangcora then promised to execute the Deed of Absolute Sale over the subject property upon release of the mortgage and to issue the title over the subject property under respondent's name.

Afterwards, the spouses Tabangcora asked respondent for another One Hundred Thousand Pesos (₱100,000.00) allegedly as payment for processing fees for the transfer of the subject property in the former's name, which the latter acceded and respondent issued Metrobank Check No. 0067706[9] dated December 5, 1997, for the same amount.

After respondent's additional payment of ₱100,000.00, he insisted on the execution of the Deed of Absolute Sale but the spouses Tabangcora advised him that the same will be executed in due time.

Sometime in April 2000, the spouses Tabangcora, again, attempted to secure another One Hundred Thousand Pesos (₱100,000.00) from herein respondent which the latter promptly refused. Thus, respondent decided to investigate the status of the subject property on his own and found that a real estate mortgage over the subject property had been executed by the spouses Tabangcora and spouses Vargas in favor of herein petitioner Stardiamond, a corporation incorporated by petitioners Libarnes, Paranis, Maximino, Tabangcora and certain individuals

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[8] *Id.* at 497.

[9] *Id.*

who wanted to invest in the poultry business namely, Major Roberto Almadin, Commander Edgardo Zafra and Colonel Rainier Cruz.

Apparently, petitioner spouses Vargas had executed a Special Power of Attorney[10] dated February 25, 1998, designating the spouses Tabangcora as their attorneys-in-fact for the purpose of entering into an Agreement[11] and a Real Estate Mortgage[12] with petitioner Stardiamond.

The aforesaid Agreement dated March 1, 1998, provides that the spouses Tabangcora and spouses Vargas would purchase on credit from Stardiamond the buildings and improvements constructed on the subject land in the amount of ₱5,000,000.00. The said purchase on credit is nonetheless, secured by a Real Estate Mortgage over the subject land.

Respondent also discovered that at the time the spouses Tabangcora were negotiating the alleged sale to him, the subject land and the improvement thereon were already foreclosed by LBP and a certificate of sale had already been issued in favor of LBP. Thus, he realized that the down payment he paid was actually used by the spouses Tabangcora not for the payment of the loan, but to redeem the subject property that was previously foreclosed by LBP.

Believing that petitioners conspired and connived with one another to deprive him of the land he allegedly purchased, respondent, on June 20, 2000,[13] filed a Complaint with Prayer for Preliminary Attachment[14] with the Regional Trial Court (RTC), Branch 55, Lucena City seeking as follows: (a) to declare him the absolute owner of the property covered by TCT No. T-264567; (b) to declare the agreement between the spouses

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[10] *Id*. at 462-464.

[11] *Id*. at 465-468.

[12] *Id*. at 469-473.

[13] *Supra* note 5.

[14] *Id.*

Tabangcora and Stardiamond as well as the Real Estate Mortgage executed in favor of Stardiamond as null and void; (c) to direct the spouses Tabangcora and spouses Vargas to execute a formal Deed of Absolute Sale in his favor; (d) to order the spouses Tabangcora and spouses Vargas to return the sum of ₱4,717,293.88 to him; and (e) to order petitioners to pay him moral and exemplary and attorney's fees.

In their Answer, petitioners Stardiamond, Libarnes and Paranis denied the allegations of herein respondent, claiming that they neither conspired with the spouses Tabangcora and spouses Vargas nor had they known or participated in the dealings and/or transactions between the spouses Tabangcora and respondent. They argued that the purported sale between the spouses Tabangcora and respondent, is unenforceable for not complying with the requirements under the Statute of Frauds because it was merely verbal and not written. Petitioners Stardiamond, Libarnes and Paranis contended that the Agreement and the Real Estate Mortgage, both dated March 1, 1998, executed by the spouses Tabangcora and petitioner Spouses Vargas in favor of petitioner Stardiamond were not simulated as alleged by respondent and the latter lacks the legal personality or capacity to assail the validity of the same as he is not a party thereto.

On the other hand, petitioner spouses Vargas denied any knowledge or participation in any agreement made between the spouses Tabangcora and herein respondent; and claimed to have merely provided capital to petitioner Maximino Tabangcora for the operation of his farm business.

The spouses Tabangcora also denied offering the subject property for sale to herein respondent and instead, asserted that the amount covered by Metrobank Check No. 0067796 in the amount of ₱4,617,293.88 was in the form of a loan, which was intended to be used for the redemption of the subject property from LBP.

The Ruling of the RTC

On March 31, 2009, the RTC, Branch 55, Lucena City rendered a Decision in favor of the respondent and declaring as valid

the verbal agreement to sell between the spouses Tabangcora and respondent. Hence the RTC ruled:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against all the defendants:

1) Declaring the plaintiff the absolute owner of the property covered by TCT No. T-264567 of the Registry of Deeds of Quezon together with the buildings and improvements existing thereon;

2) Directing defendants-spouses Rico Vargas and Cecilia Vargas and defendants-spouses Maximino Tabangcora and Estela Tabangcora to execute a formal Deed of Absolute Sale in favor of the plaintiff with a purchase price of ₱5,950,000.00, the remaining balance thereof, after deducting the partial payment of ₱4,717,293.88 already made, to be paid to defendants Vargas couple upon execution thereof, should there be no other obligations owing to plaintiff, in order that plaintiff can secure his own transfer certificate of title over the said parcel of land covered by TCT No. T-264567;

3) Nullifying the Agreement dated March 1, 1998[,] between the defendants spouses and defendant Stardiamond Int'l Trading, Inc., as well as the Real Estate Mortgage executed in favor of defendant Stardiamond Int'l Trading, Inc. and registered in the Memorandum of Encumbrances on page C of TCT No. T-264567 as they were simulated and fictitious. The Register of Deeds of Quezon is authorized to cancel the annotation of the Agreement (Exh. G) Entry No. 733192-A and Real Estate Mortgage Entry No. 733193;

4) Ordering defendants to deliver and surrender to plaintiff the owner's copy of TCT No. 264567 of the Registry of Deeds for the Province of Quezon with the cancellation of the annotations mentioned in the immediately preceding paragraph, and if they refused to do so, ordering the Register of Deeds to issue another copy and declaring the owner's copy in their possession null and void or without any effect;

5) Ordering the defendants, jointly and severally to pay plaintiff moral damages in the amount of ₱1 million pesos and exemplary damages in the sum of ₱500,000.00 pesos;

6) Ordering the defendants, jointly and severally to pay and reimburse plaintiff by way of attorney's fees in the amount of ₱500,000.00 representing acceptance fees and appearance fees for at least forty-four (44) times after verifying from the records or a total amount of ₱220,000.00, plus court filing fees in the sum of ₱138,344.00, ₱75,000.00 representing expenses in getting attachment surety bond, etc., and costs.

SO ORDERED.[15]

Not contented with the ruling of the RTC, petitioners seasonably filed their respective appeals with the CA.

The Ruling of the CA

On June 30, 2011, the CA issued the now assailed Decision reversing the dispositions made by the RTC, specifically:

WHEREFORE, premises considered, the assailed Decision dated March 31, 2009 of the RTC, Branch 55, Lucena City in Civil Case No. 2000-86 is hereby **REVERSED** in accordance with the following **DISPOSITIONS**, to wit:

1. Defendants-appellants Spouses Vargas are hereby declared the registered owners of the subject land covered by TCT No. T- 264567, subject to the attachment lien in favor of plaintiff-appellee Acsayan;

2. Defendants-appellants Spouses Vargas and defendants Spouses Tabangcora are hereby held solidarity liable to pay plaintiff-appellee Acsayan the amount of ₱4,717,293.88 plus 2% monthly interest thereon from June 20, 2000 up to the finality of this Decision;

3. Defendants Spouses Tabangcora and defendants-appellants Libarnes, et al. are held solidarity liable to pay plaintiff-appellee Acsayan ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages and ₱50,0000.00 as attorney's fees, as well as the costs of suit to be computed in accordance with Rule 142 of the Rules of Court;

4. The Agreement and Real Estate Mortgage, both dated March 1, 1998, are hereby annulled and ordered cancelled from

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[15] *Id*. at 676-678.

the memorandum of encumbrances of TCT No. T-264567; and,

5. Defendants-appellants Libarnes, et al. are entitled to the improvements they introduced on the subject land in accordance with Article 1678 of the Civil Code.

SO ORDERED.[16]

Aggrieved, petitioners spouses Vargas, Libarnes, Paranis and Stardiamond filed their respective Partial Motion[s] for Reconsideration, while respondent filed his own Motion for Reconsideration, all of which were denied by the CA, in a Resolution dated April 19, 2013, to wit:

> Thus, finding no new matter of substance which would warrant the modification much less the reversal of this Court's June 30, 2011 Decision, plaintiff-appellee Acsayan's Motion for Reconsideration, defendants-appellants Libarnes, Paranis and Stardiamond's Partial Motion for Reconsideration and defendants-appellants Spouses Vargas' Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.
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> **SO ORDERED.**[17]

Petitioners filed their respective Petition [s] for Review on *Certiorari* before this Court, as follows:

a) G.R. No. 206780 - filed by petitioner spouses Rico and Cecilia Vargas; and

b) G.R. No. 206843 - filed by petitioners Stardiamond, Libarnes and Paranis.

The Issues

In G.R. No. 206780, petitioner spouses Vargas posited the following assignment of errors, to wit:

I. WITH ALL DUE RESPECT[,] THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT

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[16] *Supra* note 2, at 66-67.

[17] *Supra* note 4, at 29.

THE DEED OF ASSIGNMENT IS VOID AND NEVER PASSED ANYTHING (SIC).

II. WITH ALL DUE RESPECT[,] THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT SPOUSES VARGAS ARE SOLIDARILY LIABLE WITH SPOUSES TABANGCORA TO PAY PLAINTIFF-APPELLEE ACSAYAN THE AMOUNT OF [P]4,717,293.88 PLUS 2% MONTHLY INTEREST FROM JUNE 20, 2000 UP TO THE FINALITY OF THE DECISION[18]

In G.R. No. 206843, petitioners Stardiamond, Libames and Paranis raised the following assignment of errors, to wit:

1. Whether or not the RTC and the Court of Appeals grossly misapprehended the facts and pieces of evidence of the case in concluding that the Agreement and Real Estate Mortgage, both dated 01 March 1998, are void and without legal effect and that Petitioners acted in bad faith and in conspiracy to the prejudice of respondent.

2. Whether or not the assailed portions of the 30 June 2011 Decision and the 19 April 2013 Resolution of the Honorable Court of Appeals are contrary to the doctrine of mortgagee in good faith as laid down in numerous cases of the Honorable Supreme Court.

3. In the event that the assailed portions of the 30 June 2011 Decision and the 19 April 2013 Resolution of the Honorable Court of Appeals are found to be contrary to the doctrine of mortgagee in good faith, whether or not Petitioner Stardiamond has prior right over the subject property and whether Petitioners are still to be made to suffer the damages awarded to Respondent, and conversely, should Respondent be held liable to Petitioners for damages.[19]

The Court's Ruling

We find the Consolidated Petitions to be meritorious.

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[18] *Rollo* (G.R. No. 206780), p. 15.

[19] *Rollo* (G.R. No. 206843), pp. 26-27.

I.

On the procedural aspect, petitioners Stardiamond, Libarnes and Paranis contend that only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) *when the inference made is manifestly mistaken, absurd or impossible*; 3) where there is 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) *when the findings are contrary to those of the trial court*; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and, 10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on records.[20]

Since the finding of fact of the RTC is in contrast with the finding of facts of the CA, then, we are constrained to re-examine the facts and evidence presented by the parties in the instant case.

II.

Petitioner spouses Vargas contend that they had already disposed the subject property in question in favor of Tavar Farm

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[20] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc*., 665 Phil. 784 789 (2011).

& Marketing, as represented by the spouses Tabangcora, through a Deed of Assignment dated November 1997, for a valuable consideration. Thus, they could no longer be held liable for the subsequent acts of the spouses Tabangcora regarding their transactions with herein respondent involving the subject property.

We sustain the validity of the Deed of Assignment executed by spouses Vargas. Under Article 1624 of the Civil Code, assignment of rights partakes of a nature of a sale, such that it is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.[21] The meeting of the minds contemplated here is that between the assignor of the credit and his assignee,[22] there being no necessity for the consent of any other person not a party to the contract. Here, the CA invalidated the Deed of Assignment purportedly because the parties never mentioned anything about a valuable consideration that was paid by the spouses Tabangcora to spouses Vargas.

Under Art. 1354 of the Civil Code, consideration is presumed unless the contrary is proven.[23] The presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration.[24] Paragraph No. 2 of the said Deed of Assignment states as follows:

> x x x [T]he ASSIGNORS, for valuable considerations, do hereby assign, transfer and convey unto the ASSIGNEE, its successors and assigns, the above described parcel of land including all the improvements thereon, free from liens and encumbrances.[25] (Underscoring supplied)

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[21] *C & C Commercial Corporation vs. Philippine National Bank*, 256 Phil. 451, 460 (1989).

[22] *Id.* at 460-461.

[23] *Fernandez v. Fernandez*, 416 Phil. 322, 342 (2001).

[24] *Id.*

[25] *Supra* note 7.

The valuable consideration need not be specified. To rebut the presumption that there was consideration, it is incumbent upon respondent to show that no consideration was passed between the parties. However, respondent cannot explicitly state that the Deed of Assignment was executed without any consideration at all. In his attempt to nullify the Deed of Assignment, respondent raised some peripheral issues surrounding the execution of the said Deed.

Respondent argued that one of the spouses Vargas (Rico Vargas) admitted that the Deed of Assignment was executed so that Maximino Tabangcora could apply for a loan with a bank.[26] This admission alone cannot invalidate the Deed of Assignment duly agreed upon by the parties. Under Article 1331 of the Civil Code, the particular motives of the parties in entering into a contract are different from the cause thereof. Considering that the admitted purpose of the contract, which is to enable the spouses Tabangcora to obtain a loan, is not contrary to law, morals and public policy then there is no reason to declare as void the deed of assignment, which as mentioned earlier is presumed to be executed with a valuable consideration.

Respondent also averred that there was no showing that the parties intend to be bound by the said Deed considering that there was never any attempt to register it so that the title to the property will be transferred to the assignees.[27] The parties may have various reasons for not registering the Deed of Assignment but it is not a conclusive indication that the same was void and was not binding between the parties.

Respondent, thereafter, reasoned out that if spouses Tabangcora were the owners of the property by virtue of the Deed of Assignment, there was no need for spouses Vargas to execute the Special Power of Attorney (SPA) dated November 21, 1997, which authorized them to execute contracts and enter into agreements with Stardiamond and the SPA dated February

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[26] *Supra* note 2, at 59.

[27] *Rollo* (GR No. 206843), p. 896.

25, 1998, which authorized them to purchase from Stardiamond the improvements erected on the land and to mortgage the land in favor of Stardiamond. Again, while we cannot ascertain the reason why the spouses Vargas executed the said SPAs, this alone is not sufficient basis to invalidate the Deed of Assignment. Since the Certificate of Title was yet to be issued in the name of Tavar Farm and Marketing (as represented by the spouses Tabangcora), it was still necessary for the assignor to execute a SPA in order for the assignee to do (*i.e.* acts of dominion) what he deemed necessary to the subject property at the moment.

What was clear is that respondent transacted with the spouses Tabangcora involving the subject property still registered under the names of spouses Vargas. Considering that spouses Vargas did not execute any SPA authorizing spouses Tabangcora to transact with respondent, evidently, the latter was just relying on the Deed of Assignment which ceded the rights and interest of the registered owner to the spouses Tabangcora over the subject property. Respondent cannot now attack the validity of the said Deed of Assignment which he relied upon when he transacted with the spouses Tabangcora.

As the Deed of Assignment is declared valid, for all intents and purposes, the subject property has effectively been transferred to Tavar Farm & Marketing, as represented by Maximino Tabangcora. Verily, when the spouses Tabangcora entered into a contract with respondent, the same is only binding between them as the contracting parties. Since there was no showing that there was a privity of contract between spouses Vargas and respondent, then spouses Vargas cannot be held liable to the respondent for the payment of any amount or interest due to the latter.

III.

As to the nature of the transaction between the spouses Tabangcora and respondent, we agree with the CA that the same was not one of sale. From the start of their transaction, respondent knew that the initial money (he called the downpayment) which he will give to spouses Tabangcora was intended to pay the

loan of the spouses Tabangcora with LBP. As a matter of fact, he even issued a check with LBP as the payee. If from the very start, the parties intended to enter into a contract of sale, respondent should have required the execution of a written instrument evidencing their transaction. Respondent should have acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.

Another instance that negates a sale transaction between the spouses Tabangcora and respondent was their verbal agreement to impose a 2% interest on the money given to the spouses Tabangcora. As observed by the CA, as to why respondent readily loaned a big amount without collateral was because respondent was enticed by the 2% monthly interest.[28]

At any rate, in the event of doubt as to the nature and conditions of a contract that cannot be decided by the language of an x x x agreement, in justice, it must be presumed that the debtor assumed the lesser obligation and that the liability contracted is that which permits the greatest reciprocity of interest and rights.[29] Since there was doubt as to whether the agreement between the parties was a loan or a sale, it is more sound that the agreement in question be considered as a loan contract — with the spouses Tabangcora not surrendering all the rights to the property but simply conferring upon respondent merely to collect from the spouses Tabangcora what is owing to him (with interest for the use of his money) thereby promoting a greater reciprocity of rights and obligations between them.

With the existence of a valid loan between the parties, it is imperative for respondent to be paid of the amount which the spouses Tabangcora borrowed from him consisting of the principal amount and the accrued legal interest as their alleged stipulation on the interest was not reduced to writing. Thus, the interest on the amount loaned shall then be fixed at 12% *per annum* to be computed from the date of default, which was

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[28] *Supra* note 2, at 57.

[29] *Heirs of Severo Legaspi, Sr. v. Vda. De Dayot*, 266 Phil. 569, 578 (1990).

June 20, 2000 (date of the judicial demand) until June 30, 2013[30] and at 6% per annum from July 1, 2013 until satisfaction thereof in accordance with *Nacar v. Gallery Frames*.[31]

IV.

Having ruled that the transaction between the spouses Tabangcora is one of loan and not of sale (or a mortgage) of the subject property, then respondent has neither a vested right over the said property or a right superior to that of petitioners Stardiamond, Libarnes and Paranis. Hence, we need not delve on the issue of whether petitioners Stardiamond, Libarnes, Paranis and spouses Tabangcora conspired and connived with one another in fraudulently depriving respondent of his right over the subject property when they executed the Agreement and the Real Estate Mortgage both dated March 1, 1998.

V.

There is likewise no basis to award respondent with moral and exemplary damages and attorney's fees. As earlier discussed, respondent is only entitled to the above-discussed legal interest rate per annum which accrued when he entered into a contract of loan with the spouses Tabangcora.

WHEREFORE, the assailed Decision dated June 30, 2011, and the Resolution dated April 19, 2013 of the Court of Appeals, in CA-G.R. CV No. 94670 are **REVERSED** and **SET ASIDE** and a new one is entered as follows:

1. Declaring the Deed of Assignment dated November 1997 executed by spouses Rico and Cecilia Vargas in favor of Tavar Farm & Marketing, as represented by Maximino Tabangcora as **VALID**;
2. Declaring Tavar Farm & Marketing, as represented by Maximino Tabangcora, married to Estela Tabangcora,

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[30] *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236, 253 (1994).

[31] 716 Phil. 267 (2013).

as the **ABSOLUTE OWNER** of the property covered by TCT No. T- 264567;

3. Ordering the spouses Maximino and Estela Tabangcora **TO PAY** respondent Jose F. Acsayan, Jr. the amount of ₱4,717,293.88 plus interest of 12% *per annum* from June 20, 2000, the date of judicial demand, until June 30, 2013 and at 6% *per annum* from July 1, 2013 until full payment thereof.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ*., concur.

THIRD DIVISION

[G.R. No. 211214. March 20, 2019]

LARRY SABUCO MANIBOG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS AGAINST UNREASONABLE SEARCHES AND SEIZURES; RECOGNIZED INSTANCES OF REASONABLE WARRANTLESS SEARCHES AND SEIZURES.— The general rule is that a search and seizure must be carried out through a judicial warrant; otherwise, such search and seizure violates the Constitution. Any evidence resulting from it "shall be inadmissible for any purpose in any proceeding." However, the constitutional proscription only

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* Also referred to as Sps. Rico and Cecilia Vargas in *rollo* (G.R. No. 206780), pp. 118-124.

covers *unreasonable* searches and seizures. Jurisprudence has recognized instances of reasonable warrantless searches and seizures, which are: 1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; 2. Seizure of evidence in "plain view," the elements of which are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent, and (d) "plain view" justified mere seizure of evidence without further search; 3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity; 4. *Consented* warrantless search; 5. Customs search; 6. *Stop and Frisk*; and 7. *Exigent and Emergency Circumstances*.

2. ID.; ID.; ID.; ID.; ID.; WARRANTLESS SEARCH INCIDENTAL TO A LAWFUL ARREST AND "STOP AND FRISK" SEARCH, DISTINGUISHED.— Two (2) of these exceptions to a search warrant—a warrantless search incidental to a lawful arrest and "stop and frisk"—are often confused with each other. *Malacat v. Court of Appeals* explained that they "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope." For an arrest to be lawful, a warrant of arrest must have been judicially issued or there was a lawful warrantless arrest as provided for in Rule 113, Section 5 of the Rules of Court[.] x x x For valid warrantless arrests under Section 5(a) and (b), the arresting officer must have personal knowledge of the offense. The difference is that under Section 5(a), the arresting officer must have personally witnessed the crime; meanwhile, under Section 5(b), the arresting officer must have had probable cause to believe that the person to be arrested committed an offense. Nonetheless, whether under Section 5(a) or (b), the lawful arrest generally precedes, or is substantially contemporaneous, with the search. In direct contrast with warrantless searches incidental to a lawful arrest, stop and frisk searches are conducted to deter crime. *People v. Cogaed* underscored that they are necessary for law

enforcement, though never at the expense of violating a citizen's right to privacy[.] x x x [T]o sustain the validity of a stop and frisk search, the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.

3. **ID.; ID.; ID.; ID.; ID.; WHAT TRANSPIRED IN THIS CASE WAS A VALID STOP AND FRISK SEARCH; THE COMBINATION OF POLICE ASSET'S TIP AND THE ARRESTING OFFICERS' OBSERVATION OF A GUN-SHAPED OBJECT UNDER PETITIONER'S SHIRT ALREADY SUFFICES AS A GENUINE REASON FOR THE ARRESTING OFFICERS TO CONDUCT A STOP AND FRISK SEARCH ON PETITIONER.—** [W]hile the Court of Appeals correctly ruled that a reasonable search was conducted on petitioner, the facts on record do not point to a warrantless search incidental to a lawful arrest. Rather, what transpired was a stop and frisk search. x x x The tip on petitioner, coupled with the police officers' visual confirmation that petitioner had a gun-shaped object tucked in his waistband, led to a reasonable suspicion that he was carrying a gun during an election gun ban. However, a reasonable suspicion is not synonymous with the personal knowledge required under Section 5(a) and (b) to effect a valid warrantless arrest. Thus, the Court of Appeals erred in ruling that the search conducted on petitioner fell under the established exception of a warrantless search incidental to a lawful arrest. Nonetheless, the combination of the police asset's tip and the arresting officers' observation of a gun-shaped object under petitioner's shirt already suffices as a genuine reason for the arresting officers to conduct a stop and frisk search on petitioner.

4. **CRIMINAL LAW; BATAS PAMBANSA BLG. 881 OR THE OMNIBUS ELECTION CODE (GUN BAN); PENALTY FOR VIOLATION THEREOF.—** [T]he Regional Trial Court, as affirmed by the Court of Appeals, correctly found petitioner guilty of committing an election offense. It imposed the indeterminate penalty of imprisonment of one (1) year and six (6) months as minimum, and two (2) years as maximum, which finds basis in Section 264 of the Omnibus Election Code[.] x x x Nonetheless, as petitioner is legally disqualified to apply for probation under Section 264 of the Omnibus Election Code[.]

x x x He is further **DISQUALIFIED** from holding public office and **DEPRIVED** of the right to suffrage. The subject firearm is **CONFISCATED** and **FORFEITED** in favor of the government.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

For a "stop and frisk" search to be valid, the totality of suspicious circumstances, as personally observed by the arresting officer, must lead to a genuine reason to suspect that a person is committing an illicit act. Consequently, a warrantless arrest not based on this constitutes an infringement of a person's basic right to privacy.

This resolves a Petition for Review on Certiorari[1] filed by Larry Sabuco Manibog (Manibog) assailing the Court of Appeals July 31, 2013 Decision[2] and January 29, 2014 Resolution[3] in CA-G.R. CR No. 34482. The Court of Appeals upheld the Regional Trial Court August 25, 2011 Judgment[4] finding him guilty of violating the Omnibus Election Code (Gun Ban).

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[1] *Rollo*, pp. 3-26.

[2] *Id*. at 36-42. The Decision was penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Socorro B. Inting of the Ninth Division, Court of Appeals, Manila.

[3] *Id*. at 27-30. The Resolution was penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Socorro B. Inting of the Former Ninth Division, Court of Appeals, Manila.

[4] *Id*. at 51-60. The Judgment was written by Presiding Judge Francisco R.D. Quilala of Branch 14, Regional Trial Court, Laoag City, Ilocos Norte.

On March 17, 2010, Manibog was charged with violation of Section 1 of Commission on Elections Resolution No. 8714, in relation to Section 32 of Republic Act No. 7166, and Sections 261(q) and 264 of Batas Pambansa Blg. 881 or the Omnibus Election Code (Gun Ban).[5] The accusatory portion of the Information read:

> That on or about 10:20 o'clock (*sic*) in the morning of March 17, 2010, at Brgy. Madamba, municipality of Dingras, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, **the above-named accused did then and there willfully, unlawfully and knowingly carry in a public place, and outside of his residence a caliber [.]45 pistol ARMSCOR Model 1911 bearing Serial Number 1167503 with one (1) magazine loaded with eight (8) ammunitions during the election period from Jan. 10, 2010 to June 9, 2010 without first securing the written authority or permit from the Commission on Elections, Manila, Philippines.**
>
> CONTRARY TO LAW.[6] (Emphasis in the original)

On arraignment, Manibog pleaded not guilty to the crime charged.[7]

During pre-trial, the parties stipulated that on March 17, 2010, police officers arrested Manibog and seized his firearm for not having a permit from the Commission on Elections to carry it. The issue was later narrowed down to whether an illegal search and seizure attended Manibog's apprehension and confiscation of his gun.[8]

In the morning of March 17, 2010, Police Chief Inspector Randolph Beniat (Chief Inspector Beniat) received information from a police asset that Manibog was standing outside the Municipal Tourism Office of Dingras, Ilocos Norte with a gun tucked in his waistband.[9]

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[5] *Id.* at 37.

[6] *Id.*

[7] *Id.* at 51.

[8] *Id*.

[9] *Id*. at 80.

To verify this information, Chief Inspector Beniat immediately organized a team. Together, they proceeded to the Municipal Tourism Office located around 20 meters from the police station.[10]

About five (5) to eight (8) meters away from the Municipal Tourism Office, Chief Inspector Beniat saw Manibog standing outside the building. The team slowly approached him for fear that he might fight back. As he moved closer, Chief Inspector Beniat saw a bulge on Manibog's waist, which the police officer deduced to be a gun due to its distinct contour.[11]

Chief Inspector Beniat went up to Manibog, patted the bulging object on his waist, and confirmed that there was a gun tucked in Manibog's waistband. He disarmed Manibog of the .45 caliber handgun inside a holster, after which he arrested him for violating the election gun ban and brought him to the police station for an inquest proceeding.[12]

Police Officer Rodel 2 Caraballa (PO2 Caraballa) testified that he was part of the team organized by Chief Inspector Beniat to verify a tip they received concerning Manibog. He narrated that as he walked up to Manibog with the team during their operation, he noticed what appeared to be a gun-shaped bulge on Manibog's waist.[13]

PO2 Caraballa testified that Chief Inspector Beniat handed him the gun after it had been confiscated from Manibog. Later at the police station, he marked the gun with his initials "RC."[14]

For the defense, Manibog did not deny that he was carrying a gun when the police officers arrested him. However, he claimed that while Chief Inspector Beniat was frisking him, the police officer whispered an apology, explaining that he had to do it or he would get in trouble with the police provincial director.[15]

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[10] *Id*. at 80.

[11] *Id*. at 82-83.

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

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

[14] *Id*. at 106-107.

[15] *Id*. at 52.

Manibog further testified that at the police station, Chief Inspector Beniat asked him to relay his apologies to Dingras Mayor Marinette Gamboa[16] (Mayor Gamboa) since Manibog had worked closely with her. He also stated that he did not hold a grudge against Chief Inspector Beniat.[17]

In its August 25, 2011 Judgment,[18] the Regional Trial Court found Manibog guilty beyond reasonable doubt of the election offense with which he was charged. It ruled that the warrantless search on Manibog was incidental to a lawful arrest because there was probable cause for the police officers to frisk and arrest him.[19]

The Regional Trial Court also noted that *People v. Tudtud*,[20] which reversed *People v. Ayangao*,[21] instructed that to justify a warrantless arrest, it was not enough that the police officers were armed with reliable information. Such reliable information must be combined with an accused's overt act indicating that he or she has committed, is committing, or is about to commit a crime.[22] Here, the trial court found that the police officers arrested Manibog not only because of "a very specific"[23] tip, but also because they personally observed a distinct bulge on his waistline, which they suspected to be a gun due to its contour and their experience as police officers.[24]

The Regional Trial Court likewise brushed off the defense's assertions that the police officers' failure to obtain a warrant invalidated Manibog's search and arrest. It declared that the

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[16] *Id*. at 82.

[17] *Id*. at 52 and 86-87.

[18] *Id*. at 51-60.

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

[20] 458 Phil. 752 (2003) [Per *J*. Tinga, Second Division].

[21] 471 Phil. 379 (2004) [Per *J*. Corona, Third Division].

[22] *Rollo*, p. 55.

[23] *Id*.

[24] *Id*. at 55-56.

police officers merely acted befitting the urgency of the situation; they would have been remiss in their duty if they did not immediately act on the information they had received.[25]

The dispositive portion of the Regional Trial Court Judgment read:

> WHEREFORE, the accused LARRY MANIBOG y SABUCO is found GUILTY beyond reasonable doubt of the election offense of violation of Section 32 of Republic Act No. 7166 in relation to Comelec Resolution No. 8714 and is hereby sentenced to an indeterminate penalty of imprisonment ranging from one (1) year and six (6) months as minimum to two (2) years as maximum. He shall also suffer DISQUALIFICATION to hold public office and DEPRIVATION of the right to suffrage. The subject firearm is CONFISCATED and FORFEITED in favor of the Government.
>
> SO ORDERED.[26]

Manibog appealed[27] the Judgment, but it was denied by the Court of Appeals in its July 31, 2013 Decision.[28]

The Court of Appeals upheld the trial court's finding that the warrantless search made on Manibog was incidental to a lawful arrest, since the police officers had probable cause to believe that he was committing a crime when he was arrested. It noted that Manibog had been caught *in flagrante delicto* and failed to show a permit allowing him to carry his firearm.[29] The dispositive portion of the Court of Appeals July 31, 2013 Decision read:

> **FOR THE STATED REASONS**, the appeal is **DENIED.**
>
> **SO ORDERED.**[30] (Emphasis in the original)

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[25] *Id*. at 57.

[26] *Id*. at 60.

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

[28] *Id*. at 36-42.

[29] *Id*. at 40-41.

[30] *Id*. at 42.

Manibog moved for reconsideration, but his Motion was denied in the Court of Appeals January 29, 2014 Resolution.[31]

In his Petition for Review on Certiorari,[32] Manibog urges this Court to reverse the Court of Appeals Decision validating the police officers' warrantless search and arrest.[33]

Petitioner claims that he was not arrested *in flagrante delicto* because he was only standing in front of the Municipal Tourism Office when the police officers descended upon and searched him. He maintains that the search came prior to his arrest, rendering any evidence obtained from him tainted and inadmissible.[34]

Petitioner asserts that at the time of his arrest, the police officers could not have seen the contour or bulge of his gun, as it was tucked in his waistband below his navel and could not be seen from a distance. He emphasizes that the police officer who frisked him first patted his back before finding the gun in his waist. This indicates that the police officer was unsure if he actually had a gun on him.[35]

Petitioner also imputes malice on the police officers, who had earlier received orders to dismantle Mayor Gamboa's private army. As part of her security, he claims that he was singled out and illegally searched and arrested despite merely standing outside a building at that time.[36]

In its Comment,[37] respondent People of the Philippines, through the Office of the Solicitor General, insists that the Court of Appeals did not err in affirming petitioner's conviction.[38] It

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[31] *Id*. at 27-30.

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

[33] *Id*. at 7-9.

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

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

[36] *Id*. at 19-20.

[37] *Id*. at 136-147.

[38] *Id*. at 138.

posits that the warrantless search was done incidental to a lawful arrest as petitioner was arrested while he was committing a crime.[39]

Respondent maintains that the police officers had probable cause to arrest petitioner. It explains that aside from the tip that petitioner was carrying a gun outside the Municipal Tourism Office, the police officers' simple visual inspection confirmed that he had a gun tucked in his waist, which suitably fell under the plain view doctrine.[40]

In his Comment and Opposition,[41] petitioner insists that there was no probable cause for his warrantless arrest, as he was not committing a crime at that time.[42] He also refutes respondent's assertion that the gun seized from him fell under the plain view doctrine.[43]

The lone issue for this Court's resolution is whether or not the warrantless search made upon petitioner Larry Sabuco Manibog was unlawful, and, consequently, whether the gun confiscated from him is inadmissible in evidence.

The Petition must fail.

Article III, Section 2 of the Constitution provides for the inviolability of a person's right against unreasonable searches and seizures:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he

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[39] *Id*. at 140.

[40] *Id*. at 141.

[41] *Id*. at 150-159.

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

[43] *Id*. at 152-153.

may produce, and particularly describing the place to be searched and the persons or things to be seized.

The general rule is that a search and seizure must be carried out through a judicial warrant; otherwise, such search and. seizure violates the Constitution. Any evidence resulting from it "shall be inadmissible for any purpose in any proceeding."[44]

However, the constitutional proscription only covers *unreasonable* searches and seizures. Jurisprudence has recognized instances of reasonable warrantless searches and seizures, which are:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:
    (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
    (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
    (c) the evidence must be immediately apparent, and
    (d) "plain view" justified mere seizure of evidence without further search;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. *Consented* warrantless search;
5. Customs search;
6. *Stop and Frisk*; and
7. *Exigent and Emergency Circumstances*.[45] (Emphasis in the original, citations omitted)

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[44] CONST., Art. III, Sec. 3(2).

[45] *People v. Aruta*, 351 Phil. 868, 879-880 (1998) [Per *J*. Romero, Third Division].

Two (2) of these exceptions to a search warrant—a warrantless search incidental to a lawful arrest and "stop and frisk"—are often confused with each other. *Malacat v. Court of Appeals*[46] explained that they "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope."[47]

For an arrest to be lawful, a warrant of arrest must have been judicially issued or there was a lawful warrantless arrest as provided for in Rule 113, Section 5 of the Rules of Court:

> SECTION 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:
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> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
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> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

For valid warrantless arrests under Section 5(a) and (b), the arresting officer must have personal knowledge of the offense. The difference is that under Section 5(a), the arresting officer must have personally witnessed the crime; meanwhile, under Section 5(b), the arresting officer must have had probable cause to believe that the person to be arrested committed an offense.[48] Nonetheless, whether under Section 5(a) or (b), the lawful arrest

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[46] 347 Phil. 462 (1997) [Per *J*. Davide, Jr., *En Banc*].

[47] *Id*. at 479-480.

[48] *See Sindac v. People*, 794 Phil. 421 (2016) [Per *J*. Perlas-Bernabe, First Division].

generally precedes,[49] or is substantially contemporaneous,[50] with the search.

In direct contrast with warrantless searches incidental to a lawful arrest, stop and frisk searches are conducted to deter crime.[51] *People v. Cogaed*[52] underscored that they are necessary for law enforcement, though never at the expense of violating a citizen's right to privacy:

> "Stop and frisk" searches (sometimes referred to as Terry searches) are necessary for law enforcement. That is, law enforcers should be given the legal arsenal to prevent the commission of offenses. However, this should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.
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> The balance lies in the concept of "suspiciousness" present in the situation where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern — based on facts that they themselves observe — whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.[53]

Posadas v. Court of Appeals[54] saw this Court uphold the warrantless search and seizure done as a valid stop and frisk search. There, the accused's suspicious actions, coupled with his attempt to flee when the police officers introduced themselves

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[49] *Malacat v. Court of Appeals*, 347 Phil. 462, 480 (1997) [Per *J*. Davide, Jr., *En Banc*]; *People v. Racho*, 640 Phil. 669, 676 (2010) [Per *J*. Nachura, Second Division]; and *Sanchez v. People*, 747 Phil. 552, 569 (2014) [Per *J*. Mendoza, Second Division].

[50] *People v. Tudtud*, 458 Phil. 752, 773 (2003) [Per *J*. Tinga, Second Division].

[51] *People v. Cogaed*, 740 Phil. 212, 229 (2014) [Per *J*. Leonen, Second Division].

[52] 740 Phil. 212 (2014) [Per *J*. Leonen, Second Division].

[53] *Id*. at 229-230.

[54] 266 Phil. 306 (1990) [Per *J*. Gancayco, First Division].

to him, amounted to a reasonable suspicion that he was concealing something illegal in his buri bag.[55] However, *Posadas* failed to elaborate on or describe what the police officers observed as the suspicious act that led them to search the accused's buri bag.

In comparison, the police officers in *Manalili v. Court of Appeals*[56] responded to a report that drug addicts were roaming in front of the Kalookan City Cemetery. There, they saw a man with bloodshot eyes who had trouble walking straight.[57] This Court upheld the validity of the warrantless arrest as a stop and frisk search, since the police officers' observation and assessment led them to believe that the man was high on drugs and compelled them to investigate and search him.

Similarly, in *People v. Solayao*,[58] police officers were investigating reports that a group of armed men was roaming the barangay at night. As they patrolled the streets, they saw seemingly drunk men, among them Solayao in a camouflage uniform. The men fled upon seeing the police, but Solayao was caught and found with an unlicensed firearm.[59] This Court upheld the validity of the warrantless search and seizure conducted as a stop and frisk search, since the unfolding events did not leave the police officers enough time to procure a search warrant.[60]

Manalili and *Solayao* upheld the warrantless searches conducted because "the police officers[,] using their senses[,] observed facts that led to the suspicion."[61] Furthermore, the totality of the circumstances in each case provided sufficient

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[55] *Id.* at 312.

[56] 345 Phil. 632 (1997) [Per *J.* Panganiban, Third Division].

[57] *Manalili v. Court of Appeals*, 345 Phil. 632, 638 (1997) [Per *J.* Panganiban, Third Division].

[58] 330 Phil. 811 (1996) [Per *J.* Romero, Second Division].

[59] *Id.* at 815.

[60] *People v. Cogaed*, 740 Phil. 212, 231 (2014) [Per *J.* Leonen, Second Division].

[61] *Id.*

and genuine reason for them to suspect that something illicit was afoot.

For a valid stop and frisk search, the arresting officer must have had personal knowledge of facts, which would engender a reasonable degree of suspicion of an illicit act. *Cogaed* emphasized that anything less than the arresting officer's personal observation of a suspicious circumstance as basis for the search is an infringement of the "basic right to security of one's person and effects."[62]

Malacat instructed that for a stop and frisk search to be valid, mere suspicion is not enough; there should be a genuine reason, as determined by the police officer, to warrant a belief that the person searched was carrying a weapon. In short, the totality of circumstances should result in a genuine reason to justify a stop and frisk search.

In *Esquillo v. People*,[63] the police officer approached and searched the accused after seeing her put a clear plastic sachet in her cigarette case and try to flee from him.[64] This Court upheld the validity of the stop and frisk search conducted, since the police officer's experience led him to reasonably suspect that the plastic sachet with white crystalline substance in the cigarette case was a dangerous drug.[65]

In his dissent in *Esquillo*, however, then Associate Justice, now Chief Justice Lucas Bersamin (Chief Justice Bersamin) pointed out how the police officer admitted that only his curiosity upon seeing the accused put a plastic sachet in her cigarette case prompted him to approach her. This was despite not seeing what was in it, as he was standing three (3) meters away from her at that time.[66] The dissent read:

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[62] *Id*. at 232.

[63] 643 Phil. 577 (2010) [Per *J*. Carpio Morales, Third Division].

[64] *Id*. at 589.

[65] *Id*. at 594.

[66] *C.J*. Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577, 606-611 (2010) [Per *J*. Carpio Morales, Third Division].

For purposes of a valid Terry stop-and-frisk search, the test for the existence of reasonable suspicion that a person is engaged in criminal activity is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer. Yet, the totality of the circumstances described by PO1 Cruzin did not suffice to engender any reasonable suspicion in his mind. The petitioner's act, without more, was an innocuous movement, absolutely not one to give rise in the mind of an experienced officer to any belief that she had any weapon concealed about her, or that she was probably committing a crime in the presence of the officer. Neither should her act and the surrounding circumstances engender any reasonable suspicion on the part of the officer that a criminal activity was afoot. We should bear in mind that the Court has frequently struck down the arrest of individuals whose overt acts did not transgress the penal laws, or were wholly innocent.[67] (Citation omitted)

Chief Justice Bersamin cautioned against warrantless searches based on just one (1) suspicious circumstance. There should have been "more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity"[68] to uphold the validity of a stop and frisk search.

Accordingly, to sustain the validity of a stop and frisk search, the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.

Here, while the Court of Appeals correctly ruled that a reasonable search was conducted on petitioner, the facts on record do not point to a warrantless search incidental to a lawful arrest. Rather, what transpired was a stop and frisk search.

Chief Inspector Beniat received information that petitioner, whom he knew as a kagawad and security aide of Mayor Gamboa, was carrying a gun outside the Municipal Tourism Office during an election gun ban. With a few other police officers, he went there and spotted petitioner right in front of the building with a suspicious-looking bulge protruding under his shirt, around

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[67] *Id*. at 609.

[68] *Id*. at 606.

his waist. The police officer deduced this to be a firearm based on the object's size and contour. He testified:

> Court
> Q The question is, how far was the accused from you when you first saw him at the vicinity of Municipal Tourism Office?
> A About 5 to 8 meters, your Honor.
>
> [Prosecutor] Felipe
> Q And when you saw Brgy. Kagawad Larry Manibog, what did you do?
> A I usually checked the subject, sir while still approaching and I saw that his waist is bulging in a manner that suggested he is carrying that getting (*sic*) firearm, sir.
>
> Q How far were you actually to accused (*sic*) Larry Manibog when you said you noticed something that is bulging presumptive to you to be a firearm?
> A About two to three meters, sir.
>
> Q What made you say that what was bulging on his waistline, what was your word again? In a manner suggested that is a firearm?
> A There is a distinct peculiar of a contour firearm when tucked on his waist.
>
> Q What gave you the idea of determining contour of the firearm at a certain distance?
> A Based on my experience I saw my colleagues and other agents that [tuck] their gun on their waist so that now I know that is a gun I can distinguish a firearm or other items that are [tucked] on the waist, sir.[69]

Even on cross-examination, Chief Inspector Beniat did not waver from his testimony that petitioner had a gun tucked in his waistband.[70] His testimony was corroborated by PO2 Caraballa, who was part of the team that investigated the report on petitioner:

> [Prosecutor Garcia]
> Q And what did you find out when you went to verify the report in front of the Dingras Tourism Office?

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[69] *Rollo*, pp. 82-83.

[70] *Id.* at 89-91.

A Upon the description by our Chief of Police, we saw Larry Manibog that there is something bulging on his waistline, sir.

Q And so when you saw Brgy. [K]agawad Larry Manibog having a bulging waistline . . .

Court -

Q What did you mean bulging [waistline]?

A We observe, your Honor, that there was as if a gun bulging on the waistline of Brgy. Kagawad Larry Manibog, we could determine, as a police that it is a gun, your Honor.

[Prosecutor] Garcia -

May we make it of record that the witness has been tapping his waistline while testifying that there was something bulging on his waistline, your Honor.[71]

The tip on petitioner, coupled with the police officers' visual confirmation that petitioner had a gun-shaped object tucked in his waistband, led to a reasonable suspicion that he was carrying a gun during an election gun ban. However, a reasonable suspicion is not synonymous with the personal knowledge required under Section 5(a) and (b) to effect a valid warrantless arrest. Thus, the Court of Appeals erred in ruling that the search conducted on petitioner fell under the established exception of a warrantless search incidental to a lawful arrest.

Nonetheless, the combination of the police asset's tip and the arresting officers' observation of a gun-shaped object under petitioner's shirt already suffices as a genuine reason for the arresting officers to conduct a stop and frisk search on petitioner. Hence, the trial court correctly upheld the reasonableness of the warrantless search on petitioner:

In the present case, the Dingras policemen searched the accused not only because of a tip - a very specific one - that he was at that moment standing in front of the nearby Municipal Tourism Office with a gun on his waist. More importantly, PCI Beniat testified that at a distance of about two to three meters from the accused, he saw the latter's bulging waistline indicating the "distinct peculiar contour"

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

of a firearm tucked on his waist. Citing his experience as a police officer, PCI Beniat testified that he could distinguish a firearm from any other object tucked on the waist of a person. In the language of Justice Panganiban's separate opinion in *People v. Montilla*, the Court finds that the bulging waistline of herein accused constituted "an outward indication" that clearly suggested he was then carrying a firearm.

It should be noted that the firearm recovered from the accused was an ARMSCOR full-size 1911 pistol (GI series) with an overall length of 8.5 inches and a barrel length of 5 inches. Not being a compact pistol, its size made it difficult to conceal. Conceivably, it could be concealed under appropriate clothes like a jacket or an additional piece of clothing. In this case, however, PO1 Caravalla (sic) testified that the accused was at the time of his apprehension merely wearing a white shirt depicted in his photograph at the police station. In other words, the accused was not wearing a jacket or any additional garment that could have masked the contour of a full-sized pistol. Under these circumstances, the Court finds that the size of the pistol and the absence of any other clothing worn by the accused during his apprehension support the testimony of PCI Beniat that his (the accused Larry Manibog's) waistline was then bulging in a manner suggestive of the presence of a firearm.[72] (Emphasis in the original, citations omitted)

Finally, the Regional Trial Court, as affirmed by the Court of Appeals, correctly found petitioner guilty of committing an election offense. It imposed the indeterminate penalty of imprisonment of one (1) year and six (6) months as minimum, and two (2) years as maximum, which finds basis in Section 264 of the Omnibus Election Code:

SECTION 264. Penalties. — Any person found guilty of any election offense under this Code *shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation.* In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not

[72] *Id*. at 55-56.

less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty. . . .

In case of prisoner or prisoners illegally released from any penitentiary or jail during the prohibited period as provided in Section 261, paragraph (n) of this Code, the director of prisons, provincial warden, keeper of the jail or prison, or persons who are required by law to keep said prisoner in their custody shall, if convicted by a competent court, be sentenced to suffer the penalty of *prision mayor* in its maximum period if the prisoner or prisoners so illegally released commit any act of intimidation, terrorism of interference in the election. . . .

Any person found guilty of the offense of failure to register or failure to vote shall, upon conviction, be fined one hundred pesos. In addition, he shall suffer disqualification to run for public office in the next succeeding election following his conviction or be appointed to a public office for a period of one year following his conviction. (Emphasis supplied)

Nonetheless, as petitioner is legally disqualified to apply for probation under Section 264 of the Omnibus Election Code, the penalty should be modified to reflect this.

WHEREFORE, the Petition is **DENIED** for lack of merit. Petitioner Larry Sabuco Manibog is sentenced to an indeterminate penalty of imprisonment from one (1) year and six (6) months as minimum to two (2) years as maximum, and is **DISQUALIFIED** from applying for probation. He is further **DISQUALIFIED** from holding public office and **DEPRIVED** of the right to suffrage. The subject firearm is **CONFISCATED** and **FORFEITED** in favor of the government.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, Jr., A., Hernando*, and *Carandang*,[*] *JJ.*, concur.

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[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 220400. March 20, 2019]

ANNIE TAN, *petitioner, vs.* **GREAT HARVEST ENTERPRISES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED ONLY TO QUESTIONS OF LAW; FACTUAL FINDINGS OF THE APPELLATE COURTS ARE BINDING TO THIS COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— The Rules of Court is categorical that only questions of law may be raised in petitions filed under Rule 45, as this Court is not a trier of facts. Further, factual findings of appellate courts, when supported by substantial evidence, are binding upon this Court. x x x A careful review of the records of this case convinces us that the assailed judgments of the Court of Appeals are supported by substantial evidence.

2. CIVIL LAW; CIVIL CODE; COMMON CARRIERS, DEFINED; REQUIRED TO EXERCISE EXTRAORDINARY DILIGENCE IN VIEW OF THE PUBLIC NATURE OF THEIR BUSINESS; COMMON CARRIERS ARE MANDATED TO INTERNALIZE OR SHOULDER THE COSTS UNDER THE CONTRACT OF CARRIAGE DUE TO POTENTIAL HARM TO PASSENGERS OR SHIPPERS IF THEY EXERCISE LESS THAN EXTRAORDINARY DILIGENCE.— Article 1732 of the Civil Code defines common carriers as "persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public." The Civil Code outlines the degree of diligence required of common carriers in Articles 1733, 1755, and 1756[.] x x x The extraordinary diligence required by the law of common carriers is primarily due to the nature of their business, with the public policy behind it geared toward achieving allocative efficiency between the parties to the transaction. Allocative efficiency is an economic term that describes an optimal market where customers are willing to pay for the goods

produced. Thus, both consumers and producers benefit and stability is achieved. The notion of common carriers is synonymous with public service under Commonwealth Act No. 146 or the Public Service Act. Due to the public nature of their business, common carriers are compelled to exercise extraordinary diligence since they will be burdened with the externalities or the cost of the consequences of their contract of carriage if they fail to take the precautions expected of them. Common carriers are mandated to internalize or shoulder the costs under the contracts of carriage. This is so because a contract of carriage is structured in such a way that passengers or shippers surrender total control over their persons or goods to common carriers, fully trusting that the latter will safely and timely deliver them to their destination. In light of this inherently inequitable dynamics— and the potential harm that might befall passengers or shippers if common carriers exercise less than extraordinary diligence— the law is constrained to intervene and impose sanctions on common carriers for the parties to achieve allocative efficiency.

3. ID.; ID.; ID.; GENERALLY, COMMON CARRIERS ARE FULLY RESPONSIBLE FOR THE GOODS ENTRUSTED TO THEM; EXCEPTIONS, ENUMERATED; NONE PRESENT IN THIS CASE.— Article 1734 of the Civil Code holds a common carrier fully responsible for the goods entrusted to him or her, unless there is enough evidence to show that the loss, destruction, or deterioration of the goods falls under any of the enumerated exceptions: ARTICLE 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only: (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) Act of the public enemy in war, whether international or civil; (3) Act or omission of the shipper or owner of the goods; (4) The character of the goods or defects in the packing or in the containers; (5) Order or act of competent public authority. Nothing in the records shows that any of these exceptions caused the loss of the soya beans. Petitioner failed to deliver the soya beans to respondent because her driver absconded with them. She cannot shift the blame for the loss to respondent's supposed diversion of the soya beans from the loading point to respondent's warehouse, as the evidence has conclusively shown that she had agreed beforehand to deliver

the cargo to respondent's warehouse if the consignee refused to accept it.

4. ID.; ID.; ID.; WHERE THE LOSS OF THE GOODS WAS NOT ATTENDED BY GRAVE OR IRRESISTIBLE THREAT, VIOLENCE, OR FORCE BUT BROUGHT ABOUT BY COMMON CARRIER'S NEGLIGENCE, COMMON CARRIERS CANNOT BE ABSOLVED FROM LIABILITY.— [P]etitioner's reliance on *De Guzman v. Court of Appeals* is misplaced. There, the common carrier was absolved of liability because the goods were stolen by robbers who used "grave or irresistible threat, violence[,] or force" to hijack the goods. *De Guzman* viewed the armed hijack as a fortuitous event[.] x x x In contrast to *De Guzman*, the loss of the soya beans here was not attended by grave or irresistible threat, violence, or force. Instead, it was brought about by petitioner's failure to exercise extraordinary diligence when she neglected vetting her driver or providing security for the cargo and failing to take out insurance on the shipment's value.

APPEARANCES OF COUNSEL

Ortega Bacorro Odulio Calma & Carbonell for petitioner.
Young Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

Common carriers are obligated to exercise extraordinary diligence over the goods entrusted to their care. This is due to the nature of their business, with the public policy behind it geared toward achieving allocative efficiency and minimizing the inherently inequitable dynamics between the parties to the transaction.

This resolves a Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Civil Procedure by Annie Tan (Tan),

[1] *Rollo,* pp. 10-24.

assailing the Court of Appeals March 13, 2015 Decision[2] and September 15, 2015 Resolution[3] in CA-G.R. CV No. 100412. The assailed judgments upheld the Regional Trial Court January 3, 2012 Decision[4] in Civil Case No. Q-94-20745, which granted Great Harvest Enterprises, Inc.'s (Great Harvest) Complaint for sum of money against Tan.

On February 3, 1994, Great Harvest hired Tan to transport 430 bags of soya beans worth P230,000.00 from Tacoma Integrated Port Services, Inc. (Tacoma) in Port Area, Manila to Selecta Feeds in Camarin, Novaliches, Quezon City.[5]

That same day, the bags of soya beans were loaded into Tan's hauling truck. Her employee, Rannie Sultan Cabugatan (Cabugatan), then delivered the goods to Selecta Feeds.[6]

At Selecta Feeds, however, the shipment was rejected. Upon learning of the rejection, Great Harvest instructed Cabugatan to deliver and unload the soya beans at its warehouse in Malabon. Yet, the truck and its shipment never reached Great Harvest's warehouse.[7]

On February 7, 1994, Great Harvest asked Tan about the missing delivery. At first, Tan assured Great Harvest that she would verify the whereabouts of its shipment, but after a series of follow-ups, she eventually admitted that she could not locate

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[2] *Id*. at 26-36. The Decision was penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Victoria Isabel A. Paredes of the Special Sixteenth Division, Court of Appeals, Manila.

[3] *Id*. at 38-39. The Resolution was penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Victoria Isabel A. Paredes of the Former Special Sixteenth Division, Court of Appeals, Manila.

[4] *Id*. at 40-46. The Decision was penned by Judge Santiago M. Arenas of Branch 217, Regional Trial Court, Quezon City.

[5] *Id.* at 27.

[6] *Id*. In other parts of the *rollo,* Cabugatan is spelled "Carugatan "

[7] *Id*.

both her truck and Great Harvest's goods.[8] She reported her missing truck to the Western Police District Anti-Carnapping Unit and the National Bureau of Investigation.[9]

On February 19, 1994, the National Bureau of Investigation informed Tan that her missing truck had been found in Cavite. However, the truck had been cannibalized and had no cargo in it.[10] Tan spent over ₱200,000.00 to have it fixed.[11]

Tan filed a Complaint against Cabugatan and Rody Karamihan (Karamihan), whom she accused of conspiring with each other to steal the shipment entrusted to her.[12] An Information[13] for theft was filed against Karamihan, while Cabugatan was charged with qualified theft.[14]

On March 2, 1994, Great Harvest, through counsel, sent Tan a letter demanding full payment for the missing bags of soya beans. On April 26, 1994, it sent her another demand letter. Still, she refused to pay for the missing shipment or settle the matter with Great Harvest.[15] Thus, on June 2, 1994, Great Harvest filed a Complaint for sum of money against Tan.[16]

In her Answer, Tan denied that she entered into a hauling contract with Great Harvest, insisting that she merely accommodated it. Tan also pointed out that since Great Harvest instructed her driver to change the point of delivery without her consent, it should bear the loss brought about by its deviation from the original unloading point.[17]

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[8] *Id.* at 28.

[9] *Id.* at 52.

[10] *Id.* at 28.

[11] *Id.* at 13. In another part of the *rollo,* Tan reportedly spent P300,000.00.

[12] *Id.* at 52.

[13] *Id.* at 48.

[14] *Id.* at 54.

[15] *Id.* at 28.

[16] *Id.* at 40.

[17] *Id.* at 42.

In its August 4, 2000 Decision,[18] the Regional Trial Court of Manila found Karamihan guilty as an accessory after the fact of theft, and sentenced him to serve a prison sentence between six (6) months of *arresto mayor* maximum to one (1) year of *prision correccional* minimum. He was also ordered to indemnify Tan ₱75,000.00, the amount he had paid Cabugatan for the 430 bags of soya beans.[19]

In its January 3, 2012 Decision,[20] the Regional Trial Court of Quezon City granted Great Harvest's Complaint for sum of money. It found that Tan entered into a verbal contract of hauling with Great Harvest, and held her responsible for her driver's failure to deliver the soya beans to Great Harvest.[21] The dispositive portion of the Decision read:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter:
>
> 1. To pay the sum of ₱230,000.00 with interest thereon at the rate of 12% per annum starting from June 2, 1994 (when the case was filed) and until paid;
> 2. To pay the sum of ₱50,000.00 as Attorney's fees; and
> 3. Costs against the defendant.
>
> SO ORDERED.[22]

Tan moved for reconsideration of the January 3, 2012 Decision, but her Motion was denied by the trial court in its November 21, 2012 Order.[23]

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[18] *Id*. at 48-65. The Decision docketed as Criminal Case No. 94-136947 was penned by Presiding Judge Ricardo G. Bernardo, Jr. of Branch 10, Regional Trial Court, Manila.

[19] *Id*. at 65.

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

[21] *Id.* at 44-45.

[22] *Id*. at 45.

[23] *Id*. at 47. The Order was penned by Judge Santiago M. Arenas of Branch 217, Regional Trial Court, Quezon City.

Tan filed an Appeal, but the Court of Appeals dismissed it in its March 13, 2015 Decision.[24]

In affirming the January 3, 2012 Decision, the Court of Appeals found that the parties' standard business practice when the recipient would reject the cargo was to deliver it to Great Harvest's warehouse. Thus, contrary to Tan's claim, there was no deviation from the original destination.[25]

The Court of Appeals also held that the cargo loss was due to Tan's failure to exercise the extraordinary level of diligence required of her as a common carrier, as she did not provide security for the cargo or take out insurance on it.[26]

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, the premises considered, the instant appeal is hereby **DISMISSED** and the assailed Decision dated January 3, 2012 [is] **AFFIRMED *in toto*.**
>
> **IT IS SO ORDERED.**[27] (Emphasis in the original)

Tan moved for reconsideration, but her Motion was denied by the Court of Appeals in its September 15, 2015 Resolution.[28]

Thus, Tan filed her Petition for Review on Certiorari,[29] maintaining that her Petition falls under the exceptions to a Rule 45 petition since the assailed Court of Appeals Decision was based on a misapprehension of facts.[30]

Petitioner contends that she is not liable for the loss of the soya beans and points out that the agreement with respondent

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[24] *Id*. at 26-36.

[25] *Id*. at 32.

[26] *Id*. at 33-34.

[27] *Id*. at 35.

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

[29] *Id*. at 10-24.

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

Great Harvest was to deliver them to Selecta Feeds, an obligation with which she complied. She claims that what happened after that was beyond her control. When Selecta Feeds rejected the soya beans and respondent directed Cabugatan to deliver the goods to its warehouse, respondent superseded her previous instruction to Cabugatan to return the goods to Tacoma, the loading point. Hence, she was no longer required to exercise the extraordinary diligence demanded of her as a common carrier.[31]

Tan opines that she is not liable for the value of the lost soya beans since the truck hijacking was a fortuitous event and because "the carrier is not an insurer against all risks of travel."[32]

She prayed for: (1) ₱500,000.00 in actual damages to compensate for the expenses she incurred in looking for and fixing her truck; (2) ₱500,000.00 in moral damages for the stress and mental anguish she experienced in searching for her truck and the missing soya beans; (3) ₱500,000.00 in exemplary damages to deter respondent from filing a similar baseless complaint in the future; and (4) ₱200,000.00 as attorney's fees. On the other hand, if she is found liable to respondent, petitioner concedes that her liability should only be pegged at ₱75,000.00, the actual price Karamihan paid for respondent's shipment.[33]

On January 25, 2016,[34] respondent was directed to comment on the petition but it manifested[35] that it was waiving its right to file a comment.

The sole issue for this Court's resolution is whether or not petitioner Annie Tan should be held liable for the value of the stolen soya beans.

The Petition must fail.

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[31] *Id.* at 16-17.

[32] *Id.* at 17.

[33] *Id*. at 18-19.

[34] *Id*. at 66.

[35] *Id*. at 73-74.

The Rules of Court is categorical that only questions of law may be raised in petitions filed under Rule 45, as this Court is not a trier of facts. Further, factual findings of appellate courts, when supported by substantial evidence, are binding upon this Court.[36]

However, these rules do admit of exceptions.[37] In particular, petitioner referred to the exception "[w]hen the judgment is based on a misapprehension of facts"[38] to justify the questions of fact in her Petition for Review on Certiorari.

A careful review of the records of this case convinces us that the assailed judgments of the Court of Appeals are supported by substantial evidence.

Article 1732 of the Civil Code defines common carriers as "persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public." The Civil Code outlines the degree of diligence required of common carriers in Articles 1733, 1755, and 1756:

ARTICLE 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

. . . . . .

ARTICLE 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost

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[36] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division] and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division].

[37] *Medina v. Mayor Asistio*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division].

[38] *Rollo,* p. 15.

[39] Robert D. Cooter, *Economic Theories of Legal Liability*, The Journal of Economic Perspectives, vol. 5, no. 3, 11, 16 (1991).

diligence of very cautious persons, with a due regard for all the circumstances.

ARTICLE 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

Law and economics provide the policy justification of our existing jurisprudence. The extraordinary diligence required by the law of common carriers is primarily due to the nature of their business, with the public policy behind it geared toward achieving allocative efficiency between the parties to the transaction.

Allocative efficiency is an economic term that describes an optimal market where customers are willing to pay for the goods produced.[39] Thus, both consumers and producers benefit and stability is achieved.

The notion of common carriers is synonymous with public service under Commonwealth Act No. 146 or the Public Service Act.[40] Due to the public nature of their business, common carriers are compelled to exercise extraordinary diligence since they will be burdened with the externalities or the cost of the consequences of their contract of carriage if they fail to take the precautions expected of them.

Common carriers are mandated to internalize or shoulder the costs under the contracts of carriage. This is so because a contract of carriage is structured in such a way that passengers or shippers surrender total control over their persons or goods to common carriers, fully trusting that the latter will safely and timely deliver them to their destination. In light of this inherently inequitable dynamics— and the potential harm that might befall passengers or shippers if common carriers exercise less than extraordinary diligence— the law is constrained to

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[40] *De Guzman v. Court of Appeals*, 250 Phil. 613 (1988) [Per *J.* Feliciano, Third Division]. The Decision erroneously wrote Commonwealth Act No. 1416.

intervene and impose sanctions on common carriers for the parties to achieve allocative efficiency.[41]

Here, petitioner is a common carrier obligated to exercise extraordinary diligence[42] over the goods entrusted to her. Her responsibility began from the time she received the soya beans from respondent's broker and would only cease after she has delivered them to the consignee or any person with the right to receive them.[43]

Petitioner's argument is that her contract of carriage with respondent was limited to delivering the soya beans to Selecta Feeds. Thus, when Selecta Feeds refused to accept the delivery, she directed her driver to return the shipment to the loading point. Respondent refutes petitioner's claims and asserts that their standing agreement was to deliver the shipment to respondent's nearest warehouse in case the consignee refused the delivery.

After listening to the testimonies of both parties, the trial court found that respondent was able to prove its contract of carriage with petitioner. It also found the testimony of

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[41] 1 ROBERT COOTER, LAW AND ECONOMICS 225 (4th ed., 2003).

[42] CIVIL CODE, Art. 1733 provides:

ARTICLE 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

[43] CIVIL CODE, Art. 1736 provides:

ARTICLE 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of article 1738.

respondent's witness, Cynthia Chua (Chua), to be more believable over that of petitioner when it came to the details of their contract of carriage:

> Defendant's assertion that the diversion of the goods was done without her consent and knowledge is self-serving and is effectively belied by the positive testimony of witness Cynthia Chua, Account Officer of plaintiff corporation (page 23, TSN, March 26, 1996). Equally self-serving is defendant's claim that she is not liable for the loss of the soyabeans (*sic*) considering that the plaintiff has no existing contract with her. Such a sweeping submission is also belied by the testimony of plaintiff's witness Cynthia Chua who categorically confirmed the existing business relationship of plaintiff and defendant for hauling and delivery of goods as well as the arrangement to deliver the rejected goods to the plaintiff's nearest warehouse in the event that goods are rejected by the consignee with prior approval of the consignor (page 11, TSN, March 26, 1996).[44]

The trial court's appreciation of Chua's testimony was upheld by the Court of Appeals:

> Verily, the testimony alone of appellee's Account Officer, Cynthia Chua, dispels the contrary allegations made by appellant in so far as the nature of their business relationship is concerned. Consistently and without qualms, said witness narrated the details respecting the company's relations with the appellant and the events that transpired before, during and after the perfection of the contract and the subsequent loss of the subject cargo. Said testimony and the documentary exhibits, i.e., the Tacoma waybill and the appellee's waybill, prove the perfection and existence of the disputed verbal contract.
>
> Emphatically, from the aforesaid waybills, it was duly established that while verbal, the parties herein has (sic) agreed for the hauling and delivery of the soya beans from the company's broker to the intended recipient. It was further proven by evidence that appellant had agreed and consented to the delivery of the soya beans to the company's nearest warehouse in case the cargo goods had been rejected by the recipient as it had been the practice between the parties.[45] (Citation omitted)

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[44] *Rollo,* p. 44.

[45] *Id*. at 32.

This Court accords the highest respect to the trial court's assessment of a witness' credibility, as it was in a better position to observe the witness' demeanor while testifying.[46] We see no reason to disturb the factual findings of the lower courts, especially since they were supported by substantial evidence.

Furthermore, Article 1734 of the Civil Code holds a common carrier fully responsible for the goods entrusted to him or her, unless there is enough evidence to show that the loss, destruction, or deterioration of the goods falls under any of the enumerated exceptions:

ARTICLE 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
(2) Act of the public enemy in war, whether international or civil;
(3) Act or omission of the shipper or owner of the goods;
(4) The character of the goods or defects in the packing or in the containers;
(5) Order or act of competent public authority.

Nothing in the records shows that any of these exceptions caused the loss of the soya beans. Petitioner failed to deliver the soya beans to respondent because her driver absconded with them. She cannot shift the blame for the loss to respondent's supposed diversion of the soya beans from the loading point to respondent's warehouse, as the evidence has conclusively shown that she had agreed beforehand to deliver the cargo to respondent's warehouse if the consignee refused to accept it.[47]

Finally, petitioner's reliance on *De Guzman v. Court of Appeals*[48] is misplaced. There, the common carrier was absolved

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[46] *Spouses Bernales v. Heirs of Sambaan,* 624 Phil. 88, 103 (2010) [Per J. Del Castillo, Second Division].

[47] *Rollo,* p. 32.

[48] 250 Phil. 613 (1988) [Per *J*. Feliciano, Third Division].

of liability because the goods were stolen by robbers who used "grave or irresistible threat, violence[,] or force"[49] to hijack the goods. *De Guzman* viewed the armed hijack as a fortuitous event:

> Under Article 1745 (6) above, a common carrier is held responsible — and will not be allowed to divest or to diminish such responsibility — even for acts of strangers like thieves or robbers, except where such thieves or robbers in fact acted "with grave or irresistible threat, violence or force." We believe and so hold that the limits of the duty of extraordinary diligence in the vigilance over the goods carried are reached where the goods are lost as a result of a robbery which is attended by "grave or irresistible threat, violence[,] or force."[50]

In contrast to *De Guzman*, the loss of the soya beans here was not attended by grave or irresistible threat, violence, or force. Instead, it was brought about by petitioner's failure to exercise extraordinary diligence when she neglected vetting her driver or providing security for the cargo and failing to take out insurance on the shipment's value. As the Court of Appeals held:

> Besides, as the records would show, appellant did not observe extra-ordinary (*sic*) diligence in the conduct of her business as a common carrier. In breach of their agreement, appellant did not provide security while the goods were in transit and she also did not pay for the insurance coverage of said goods. These measures could have prevented the hijacking (*sic*) or could have ensured the payment of the damages sustained by the appellee.[51]

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[49] CIVIL CODE, art. 1745 provides:

> ARTICLE 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:
>
> . . . .
>
> (6) That the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished[.]

[50] *De Guzman v. Court of Appeals*, 250 Phil. 613, 622 (1988) [Per *J.* Feliciano, Third Division].

[51] *Rollo,* p. 34.

WHEREFORE, the Petition is **DENIED**. Petitioner Annie Tan is directed to pay respondent Great Harvest Enterprises, Inc. the sum of Two Hundred Thirty Thousand Pesos (₱230,000.00) with interest at the rate of twelve percent (12%) per annum from June 2, 1994 until June 30, 2013, and at the rate of six percent (6%) per annum from July 1, 2013 until its full satisfaction. She is further directed to pay Fifty Thousand Pesos (₱50,000.00) as attorney's fees and the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 221139. March 20, 2019]

HA DATU TAWAHIG (RODERICK D. SUMATRA), TRIBAL CHIEFTAIN, HIGAONON TRIBE, *petitioner, vs.* **THE HONORABLE CEBU CITY PROSECUTOR I LINETH LAPINID, CEBU CITY PROSECUTOR II FERNANDO GUBALANE, ASSISTANT CITY PROSECUTOR ERNESTO NARIDO, JR., CEBU CITY PROSECUTOR NICOLAS SELLON, AND THE HONORABLE JUDGE OF REGIONAL TRIAL COURT BRANCH 12, CEBU CITY ESTELA ALMA SINGCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 PHILIPPINE CONSTITUTION *VIS-À-VIS* INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (R.A. 8371); THE 1987 CONSTITUTION COMMITS TO NOT ONLY

RECOGNIZE, BUT ALSO PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES.— The 1987 Constitution's attitude toward indigenous peoples, with its emphasis on preservation, is a marked departure from regimes under the 1935 and 1973 constitutions, which were typified by integration. Integration, however, was still "like the colonial policy of assimilation understood in the context of a guardian-ward relationship." Like assimilation, it was eager to have indigenous peoples attune themselves to the mainstream. This eagerness inevitably tended to measures that eroded indigenous peoples' identities. x x x The 1987 Constitution reorients the State toward enabling indigenous peoples to maintain their identity. It declines articulating policies of integration and assimilation and transcends the 1973 Constitution's undertaking to "consider." Instead, it commits to not only recognize, but also *promote*, "the rights of indigenous cultural communities." It expressly aims to "preserve and develop their cultures, traditions, and institutions." It elevates to the level of constitutional text terms such as "ancestral lands" and "customary laws." Because the Constitution is the "fundamental and organic law of the land," these terms' inclusion in the Constitution renders them integral to the Republic's being. Through the same inclusion, the State manifestly assents to the distinctiveness of indigenous peoples, and undertakes obligations concomitant to such assent. With the 1987 Constitution in effect, the Indigenous Peoples' Rights Act was adopted precisely recognizing that indigenous peoples have been "resistan[t] to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, [and] became historically differentiated from the majority of Filipinos."

2. ID.; ID.; ID.; SECTIONS 15 AND 65 OF R.A. 8371, CONSTRUED; SECTION 65 MUST BE VIEWED WITHIN THE CONFINES OF HOW IT IS A COMPONENT OF A LARGER MECHANISM FOR SELF-GOVERNANCE, WHICH IS QUALIFIED BY SECTION 15; APPLICATION OF CUSTOMARY LAWS AND PRACTICES IS PERMISSIBLE ONLY IF IT IS IN HARMONY WITH THE NATIONAL LEGAL SYSTEM.— Section 15 limits indigenous peoples' "right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices[.]" It explicitly states that this right is applicable only "within their

respective communities" and only for as long as it is "*compatible with the national legal system* and with internationally recognized human rights." It is a basic rule of statutory construction that "courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious[,] and sensible." Section 65 ought not be read as an all-encompassing, unqualified authorization. Rather, it must be viewed within the confines of how it is a component of a larger mechanism for self-governance. Section 65 is qualified by Section 15. With respect to dispensing justice, resolving conflicts, and peace-building, the application of customary laws and practices is permissible only to the extent that it is in harmony with the national legal system. A set of customary laws and practices is effective only within the confines of the specific indigenous cultural community that adopted and adheres to it.

3. REMEDIAL LAW; SPECIAL CIVIL ACTION; *MANDAMUS*; R.A. 8371 DOES NOT COMPEL COURTS OF LAW TO DESIST FROM TAKING COGNIZANCE OF CRIMINAL CASES INVOLVING INDIGENOUS PEOPLES; NOWHERE IN THE SAID LAW DOES IT STATE THAT COURTS OF LAW ARE TO ABANDON JURISDICTION OVER CRIMINAL PROCEEDINGS IN FAVOR OF MECHANISMS APPLYING CUSTOMARY LAWS; THUS, WRIT OF *MANDAMUS* CANNOT BE ISSUED.— The Indigenous Peoples' Rights Act does not compel courts of law to desist from taking cognizance of criminal cases involving indigenous peoples. It expresses no correlative rights and duties in support of petitioner's cause. Thus, a writ of mandamus cannot be issued. A crime is "an offense against society." It "is a breach of the security and peace of the people at large[.]" x x x The capacity to prosecute and punish crimes is an attribute of the State's police power. It inheres in "the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights." The basic precepts underlying crimes and criminal actions make it improper for the State to yield "disputes" involving criminal

offenses to indigenous peoples' customary laws and practices. To yield criminal prosecution would be to disregard the State and the Filipino people as the objects of criminal offenses. The application of customary laws may enable a measure of reparation for private injuries engendered by criminal offenses, but it will never enable the consummate recompense owed to the State and the Filipino people. Ultimately then, yielding prosecution would mean sanctioning a miscarriage of justice. It was never the Indigenous Peoples' Rights Act's intent to facilitate such miscarriage of justice. Its view of self-governance and empowerment is not myopic, but is one that balances. Preservation is pursued in the context of national unity and is impelled by harmony with the national legal system. Customary laws cannot work to undermine penal statutes designed to address offenses that are an affront to sovereignty. Viewed through the lens of the requisites for issuing a writ of mandamus, there is no right or duty to even speak of here. Nowhere in the Indigenous Peoples' Rights Act does it state that courts of law are to abandon jurisdiction over criminal proceedings in favor of mechanisms applying customary laws.

APPEARANCES OF COUNSEL

Ernesto E. Narido, Jr. for himself and the Office of the City Prosecutor of Cebu City.

Ha Datu Bontito Leon Kilat, tribal customary counsel for petitioner.

D E C I S I O N

LEONEN, *J.*:

The Philippine legal system's framework for the protection of indigenous peoples was never intended and will not operate to deprive courts of jurisdiction over criminal offenses. Individuals belonging to indigenous cultural communities who are charged with criminal offenses cannot invoke Republic Act No. 8371, or the Indigenous Peoples' Rights Act of 1997, to evade prosecution and liability under courts of law.

This resolves a Petition for Mandamus[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioner Roderick D. Sumatra (Sumatra), also known as Ha Datu Tawahig, praying that respondent Judge Estela Alma Singco (Judge Singco) and her co-respondents, all public prosecutors from Cebu City, be compelled to honor a January 3, 2007 Resolution[2] issued by a body known as the "Dadantulan Tribal Court," and be required to put an end to Sumatra's criminal prosecution. The Dadantulan Tribal Court absolved Sumatra, a tribal leader of the Higaonon Tribe, of liability for charges of rape and discharged him from criminal, civil, and administrative liability.

On November 14, 2006, Lorriane Fe P. Igot (Igot) filed a Complaint-Affidavit[3] before the Cebu City Prosecutor charging Sumatra with rape.

In her April 4, 2007 Resolution,[4] Prosecutor I Lineth Lapinid found probable cause to charge Sumatra with rape and recommended filing a corresponding information. After the Information was filed, the case was raffled to Branch 12 of the Regional Trial Court, Cebu City, and docketed as Criminal Case No. CBU-81130.[5]

In her September 13, 2007 Order,[6] Judge Singco directed the issuance of a warrant of arrest against Sumatra, but he would not be arrested until July 2, 2013.[7]

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[1] *Rollo*, pp. 3-32.

[2] *Id.* at 55-63.

[3] *Id.* at 64-68.

[4] *Id.* at 69-74. The Resolution was penned by Prosecutor I Lineth S. Lapinid, recommended by Prosecutor II Fernando K. Gubalane, and approved by City Prosecutor Nicolas C. Sellon of the City Prosecutor's Office, Cebu City.

[5] *Id.* at 12.

[6] *Id.* at 75.

[7] *Id.* at 12.

Following his arrest, Sumatra filed a Motion to Quash and Supplemental Motion to Quash.[8] These motions cited as bases Sections 15[9] and 65[10] of the Indigenous Peoples' Rights Act, and were:

> . . . predicated on the ground that the [Regional Trial Court] ha[d] no jurisdiction over *the person of the accused*, . . . Accused through counsel asserts that the present controversy is purely a dispute involving indigenous cultural communities over which customary laws must apply in accordance with their tribal justice system and under the jurisdiction of the National Commission on Indigenous Peoples.[11] (Emphasis supplied)

In her August 29, 2013 Order,[12] Judge Singco denied the Motion to Quash and Supplemental Motion to Quash. She reasoned that:

> [T]he [Indigenous Peoples' Rights Act] does not apply [to] the prosecution of a "dispute" such as this case as it does not involve claims over ancestral domain nor it relates (sic) to the rights of indigenous communities/people which would require the application of customary laws and practices to resolve the "dispute" between the parties herein.[13]

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[8] *Id*. at 78.

[9] Rep. Act No. 8371 (1997), Ch. IV, Sec. 15 provides:

SECTION 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes*. — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

[10] Rep. Act No. 8371 (1997), Ch. IX, Sec. 65 provides:

SECTION 65. *Primacy of Customary Laws and Practices*. — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

[11] *Rollo*, p. 78.

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

[13] *Id*. at 79.

On May 11, 2015, a certain Vicente B. Gonzales, Jr. (Gonzales), identifying himself as Datu Bontito Leon Kilat[14] and representing himself to be a "customary lawyer,"[15] filed a "Motion to Release the Indigenous Person,"[16] which was founded on grounds substantially the same as the Motion and Supplemental Motion to Quash.

In her June 5, 2015 Order,[17] Judge Singco noted Gonzales' Motion without action as it: (1) did not comply with the requirements of a valid pleading; (2) bore no indication that Igot was notified of the Motion; and (3) contained no notice of hearing. She further directed Gonzales to coordinate with Sumatra's counsel of record and/or secure prior authority from this Court to act as counsel.

In response to the June 5, 2015 Order, Gonzales filed before thej trial court a Motion to allow him to appear as counsel for Sumatra.[18] He later filed a Motion to Issue Resolution[19] asking the trial court to rule on the Motion to allow him to appear for Sumatra.

In a September 11, 2015 Order,[20] Judge Singco reiterated the need for Gonzales to first produce proof of his authority or competence to apt as counsel before a court of law.

Thus, Sumatra filed this Petition for Mandamus[21] on November 11, 2015. He notes that Igot had already brought her accusations against him before the concerned Council of Elders and that the Dadantulan Tribal Court was subsequently formed.[22] He

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[14] *Id*. at 36.

[15] *Id.* at 33.

[16] *Id*. at 33-36.

[17] *Id*. at 37.

[18] *Id*. at 40.

[19] *Id*. at 40-41.

[20] *Id*. at 38.

[21] *Id*. at 3-32.

[22] *Id*. at 11.

adds that on January 3, 2007, the Dadantulan Tribal Court issued a Resolution[23] clearing him and declaring that he "should [be spared] from criminal, civil[,] and administrative liability."[24]

Relying on the Indigenous Peoples' Rights Act and "other related laws concerning cases involving indigenous peoples,"[25] petitioner maintains that a writ of mandamus must be issued to compel respondents to "uphold and respect"[26] the Dadantulan Tribal Court Resolution, and "[t]hereby releas[e] [Sumatra] from jail to stop [his] continued arbitrary detention."[27]

For resolution is the issue of whether or not this Court may issue a writ of mandamus ordering respondents Judge Estela Alma Singco, City Prosecutor II Fernando Gubalane, City Prosecutor I Lineth Lapinid, City Prosecutor Nicolas Sellon, and Assistant City Prosecutor Ernesto Narido, Jr. to desist from proceeding with the rape case against petitioner Roderick D. Sumatra.

This Court denies the Petition.

Petitioner is well-served to disabuse himself of the notion that the Indigenous Peoples' Rights Act will shield him from prosecution and prospective liability for crimes.

I

The 1987 Constitution vests this Court original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.[28] However, it is not only this Court that has the competence to issue writs of certiorari, prohibition, and mandamus. The Court of Appeals and regional trial courts are equally capable of taking cognizance of petitions for such writs.

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[23] *Id*. at 55-63.

[24] *Id*. at 62.

[25] *Id*. at 17.

[26] *Id*. at 29.

[27] *Id*.

[28] CONST., Art. 8, Sec. 5 (1).

Nonetheless, the original jurisdiction this Court shares with the Court of Appeals and regional trial courts is not a license to immediately seek relief from this Court. Petitions for certiorari, prohibition, and mandamus must be filed in keeping with the doctrine of hierarchy of courts.[29]

The doctrine of hierarchy of courts is grounded on considerations of judicial economy. In *Aala v. Mayor Uy*:[30]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."[31] (Citations omitted)

Applying this doctrine is not merely for practicality; it also ensures that courts at varying levels act in accord with their respective competencies. *The Diocese of Bacolod v. Commission on Elections*[32] noted that "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."[33] Thus:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized

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[29] *People v. Cuaresma*, 254 Phil. 418 (1989) [Per J. Narvasa, First Division].

[30] 803 Phil. 36 (2017) [Per *J*. Leonen, *En Banc*].

[31] *Id*. at 54-55

[32] 751 Phil. 301 (2015) [Per *J*. Leonen, *En Banc*].

[33] *Id*. at 329.

into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[34] (Citation omitted)

The doctrine of hierarchy of courts admits of exceptions in *Aala*:[35]

However, the doctrine on hierarchy of courts is not an inflexible rule. In *Spouses Chua v. Ang*, this Court held that "[a] strict application of this rule may be excused when the reason behind the rule is not present in a case[.]" This Court has recognized that a direct invocation of its original jurisdiction may be warranted in exceptional cases as when there are compelling reasons clearly set forth in the petition, or when what is raised is a pure question of law.

In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court

[34] *Id.* at 329-330.

[35] 803 Phil. 36 (2017) [Per *J*. Leonen, *En Banc*].

may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[36] (Emphasis in the original, citations omitted)

It does not escape this Court's attention that an equally effective avenue for relief was available to petitioner through recourse to the Court of Appeals. This Court, however, takes cognizance of the Petition, in the interest of addressing the novel issue of whether the Indigenous Peoples' Rights Act works to remove from courts of law jurisdiction over criminal cases involving indigenous peoples.

It does not.

II

Rule 65, Section 3 of the 1997 Rules of Civil Procedure provides for instances when recourse to a petition for mandamus is proper:

SECTION 3. *Petition for Mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of

[36] *Id*. at 57.

the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Rule 65, Section 3 indicates that a writ of mandamus is available in two (2) alternative situations:

A writ of mandamus may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."[37]

Petitioner asserts that, in light of the Indigenous Peoples' Rights Act, it was respondents' duty to desist from proceeding with the case against him. His plea for relief, therefore, falls under the first situation. For a writ of mandamus to be issued in such a situation, there must be a concurrence between: (1) a clear, duly established legal right pertaining to petitioner; and (2) a correlative, ministerial duty imposed by law upon respondent, which that respondent unlawfully neglects.[38]

Lihaylihay v. Tan[39] scrutinized these twin requirements and their defining components:

The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.

Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim*

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[37] *Lihaylihay v. Tan*, G.R. No. 192223, July 23, 2018, <http://sc.judiciary.gov.ph/jurisprudence/2018/july2018/192223.pdf> 7 [Per *J.* Leonen, Third Division].

[38] *Id*.

[39] G.R. No. 192223, July 23, 2018, <http://sc.judiciary.gov.ph/jurisprudence/2018/july2018/192223.pdf> [Per *J.* Leonen, Third Division].

Toy v. Court of Appeals, this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral*, this Court underscored that a writ of mandamus "never issues in doubtful cases."

Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary. A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:

> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Samson v. Barrios*:

> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . . , when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.[40] (Emphasis in the original, citations omitted)

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[40] *Id*. at 7-8.

Additionally, a writ of mandamus, as with certiorari and prohibition, shall be issued only upon a showing that "there is no other plain, speedy[,] and adequate remedy in the ordinary course of law[.]"[41]

III

Petitioner anchors his plea on Section 65 of the Indigenous Peoples' Rights Act, which reads:

SECTION 65. *Primacy of Customary Laws and Practices*. — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

Falling under Chapter IX of the Indigenous Peoples' Rights Act, Section 65 is part of a larger framework on "Jurisdiction and Procedures for Enforcement of Rights." This framework enables the application of customary laws and practices in dispute resolution for Indigenous peoples.

Section 66[42] builds on Section 65. It indicates that disputes still unresolved despite the exhaustion of remedies under customary laws governing the parties belonging to the same indigenous cultural community may be brought to the National Commission on Indigenous Peoples.[43] Further building on

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[41] RULES OF COURT, Rule 65, Sec. 3.

[42] Rep. Act No. 8371 (1997), Sec. 66 provides:

SECTION 66. *Jurisdiction of the NCIP*. — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however*, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

[43] *Unduran v. Aberasturi* (771 Phil. 536 (2015) [Per J. Peralta, *En Banc*]) settled that:

[P]ursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same

Sections 65 and 66, Section 67 states that "[decisions of the [National Commission on Indigenous Peoples] shall be appealable to the Court of Appeals by way of a petition for review."

The provisions under Chapter IX do not only lend legitimacy to and enable the continuing efficacy and viability of customary laws and practices to maintain order and dispense justice *within* indigenous cultural communities. They also work to segregate customary laws and practices in two (2) respects. First, they make customary laws and practices structurally and operationally distinct from enactments of the legislature and of those upon whom legislative power has been delegated, as well as regulations of general application. Second, they distinguish disputants belonging to the same indigenous cultural communities as the exclusive objects of the application of customary laws and practices.

As such, Chapter IX is a means to effect the overarching right of indigenous peoples to self-governance and empowerment, as spelled out in Chapter IV.

In turn, the Indigenous Peoples' Rights Act's provisions on self-governance and empowerment,[44] along with those on the right to ancestral domains,[45] social justice and human rights,[46] and cultural integrity,[47] collectively reflect and bring to fruition the 1987 Constitution's aims of preservation.

The 1987 Constitution devotes six (6) provisions "which insure the right of tribal Filipinos to preserve their way of life":[48]

ICC/IP, i.e., parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP.

[44] Rep. Act No. 8371 (1997), Ch. IV.

[45] Rep. Act No. 8371 (1997), Ch. III.

[46] Rep. Act No. 8371 (1997), Ch. V.

[47] Rep. Act No. 8371 (1997), Ch. VI.

[48] *J.* Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904 960 (2000) [*Per Curiam, En Banc*].

ARTICLE II
Declaration of Principles and State Policies

SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

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ARTICLE VI
The Legislative Department

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SECTION 5.

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(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, *indigenous cultural communities*, women, youth, and such other sectors as may be provided by law, except the religious sector.[49]

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ARTICLE XII

National Economy and Patrimony

. . . . . .

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

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[49] Const. Art. VI, Sec. 5.

ARTICLE XIII
Social Justice and Human Rights

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SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

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ARTICLE XIV

Education, Science and Technology, Arts, Culture, and Sports Education

. . . . . .

SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

. . . . . .

ARTICLE XVI
General Provisions

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SECTION 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

The Indigenous Peoples' Rights Act echoes the constitutional impetus for preservation. Its declaration of state policies reads:

SECTION 2. *Declaration of State Policies*. — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall *recognize the applicability of customary laws* governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/IPs to *preserve and develop their cultures, traditions and institutions*. It shall consider these rights in the formulation of national laws and policies;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and *guarantee respect for their cultural integrity*, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.[50] (Emphasis supplied)

The 1987 Constitution's attitude toward indigenous peoples, with its emphasis on preservation, is a marked departure from regimes under the 1935 and 1973 constitutions, which were typified by integration. Integration, however, was still "like

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[50] Rep. Act No. 8371 (1997), Ch. I, Sec. 2.

the colonial policy of assimilation understood in the context of a guardian-ward relationship."[51] Like assimilation, it was eager to have indigenous peoples attune themselves to the mainstream. This eagerness inevitably tended to measures that eroded indigenous peoples' identities.

Spanish and American colonial rule was characterized by the "need to impart civilization[.]"[52] In *People v. Cayat*:[53]

> As early as 1551, the Spanish Government had assumed an unvarying solicitous attitude towards these inhabitants, and in the different laws of the Indies, their concentration in so-called "reducciones" (communities) had been persistently attempted with the end in view of according them the "spiritual and temporal benefits" of civilized life. Throughout the Spanish regime, it had been regarded by the Spanish Government as a sacred "duty to conscience and humanity" to civilize these less fortunate people living "in the obscurity of ignorance" and to accord them the "moral and material advantages" of community life and the "protection and vigilance afforded them by the same laws." (Decree of the Governor-General of the Philippines, Jan. 14, 1887.) This policy had not been deflected from during the American period. President McKinley in his instructions to the Philippine Commission of April 7, 1900, said:
>
> > In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government, and under which many of those tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal government should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.[54]

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[51] *J.* Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 957 (2000) [*Per Curiam, En Banc*].

[52] Sedfrey M. Candelaria, *Introducing the Indigenous Peoples' Rights Act*, 47 Ateneo L.J. 571, 573 (2002).

[53] 68 Phil. 12 (1939) [Per *J.* Moran, First Division].

[54] *Id.* at 17.

The 1935 Constitution was silent on indigenous peoples. However, it was under the 1935 Constitution that Republic Act No. 1888, creating the Commission on National Integration, was passed. Its title and declaration of policy reveal a predisposed view of "Non-Christian Filipinos" or "National Cultural Minorities" as uncultivated, and whose advancement depended on the extent to which they were integrated to the mainstream:

REPUBLIC ACT NO. 1888

AN ACT TO EFFECTUATE IN A MORE RAPID AND COMPLETE MANNER THE ECONOMIC, SOCIAL, MORAL AND POLITICAL AND ADVANCEMENT OF THE NON-CHRISTIAN FILIPINOS OR NATIONAL CULTURAL MINORITIES AND TO RENDER REAL, COMPLETE AND PERMANENT THE INTEGRATION OF ALL SAID NATIONAL CULTURAL MINORITIES INTO THE BODY POLITIC, CREATING THE COMMISSION ON NATIONAL INTEGRATION CHARGED WITH SAID FUNCTIONS

SECTION 1. It is hereby declared to be the policy of Congress to foster, accelerate and accomplish by all adequate means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the Non-Christian Filipinos, hereinafter called National Cultural Minorities, and to render real, complete and permanent the integration of all the said National Cultural Minorities into the body politic.[55]

The 1973 Constitution devoted one (1) provision to "national cultural minorities." Its Article XV, Section 11 read:

SECTION 11. The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of State policies.

Section 11 began to deviate from the rigid view that it is indigenous people who must reconcile themselves with the mainstream. It expressly recognized that national cultural minorities were typified by their "customs, traditions, beliefs, and interests[.]" More important, unlike prior legal formulations,

[55] Rep. Act No. 1888 (1957), Sec. 1.

it committed to national cultural minorities the "consider[ation of their] customs, traditions, beliefs, and interests . . . in the formulation and implementation of State policies.

Under the 1973 Constitution, former President Ferdinand E. Marcos enacted Presidential Decree No. 1414, creating the Office of the Presidential Assistant on National Minorities. With its policy of "integrat[ing] into the mainstream . . . groups who seek full integration into the larger community, and at the same time protecting] the rights of those who wish to preserve their original lifeways beside that larger community[,]"[56] Presidential Decree No. 1414 maintained the drive for integration, but conceded that indigenous peoples may want preservation rather than admission.

The 1987 Constitution reorients the State toward enabling indigenous peoples to maintain their identity. It declines articulating policies of integration and assimilation and transcends the 1973 Constitution's undertaking to "consider." Instead, it commits to not only recognize, but also promote, "the rights of indigenous cultural communities."[57] It expressly aims to "preserve and develop their cultures, traditions, and institutions."[58] It elevates to the level of constitutional text terms such as "ancestral lands" and "customary laws." Because the Constitution is the "fundamental and organic law of the land,"[59] these terms' inclusion in the Constitution renders them integral to the Republic's being. Through the same inclusion, the State manifestly assents to the distinctiveness of indigenous peoples, and undertakes obligations concomitant to such assent.

With the 1987 Constitution in effect, the Indigenous Peoples' Rights Act was adopted precisely recognizing that indigenous peoples have been "resistan[t] to political, social[,] and cultural

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[56] Pres. Decree No. 1414 (1978), Sec. 1.

[57] CONST., Art. II, Sec. 22.

[58] CONST., Art. XIV, Sec. 17.

[59] *J.* Francisco, Concurring and Dissenting Opinion in *Aquino v. Commission on Elections*, G.R. No. 120265, September 18, 1995, 248 SCRA400, 438 [Per *J.* Kapunan, *En Banc*].

inroads of colonization,, non-indigenous religions and cultures, [and] became historically differentiated from the majority of Filipinos."[60]

Among the Indigenous Peoples' Rights Act's provisions on self-governance and empowerment is Section 15:

> SECTION 15. *Justice System, Conflict Resolution Institutions, and Peace Building Processes*. — The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and *as may be compatible with the national legal system* and with internationally recognized human rights. (Emphasis supplied)

Section 15 limits indigenous peoples' "right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices[.]" It explicitly states that this right is applicable only "within their respective communities" and only for as long as it is "*compatible with the national legal system* and with internationally recognized human rights."

It is a basic rule of statutory construction that "courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious[,] and sensible."[61]

Section 65 ought not be read as an all-encompassing, unqualified authorization. Rather, it must be viewed within the confines of how it is a component of a larger mechanism for self-governance. Section 65 is qualified by Section 15. With respect to dispensing justice, resolving conflicts, and peace-building, the application of customary laws and practices is permissible only to the extent that it is in harmony with the

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[60] Rep. Act. No. 8371 (1997), Sec. 3 (h).

[61] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, 617 Phil. 358, 367 (2009) [Per *J*. Leonardo-De Castro, *En Banc*] *citing Republic v. Reyes*, 123 Phil. 1035 (1966) [Per *J*. Sanchez, *En Banc*].

national legal system. A set of customary laws and practices is effective only within the confines of the specific indigenous cultural community that adopted and adheres to it.

The impetus, for preservation does not exist in a vacuum. The 1987 Constitution qualifies the State's duty of "recognizing] and promoting] the rights of indigenous cultural communities"[62] as necessarily operating "within the framework of national unity and development."[63] This reference to "national unity" is as much an articulation of an ideal as it is a legal formulation. Thus, it entails the imperative of legal harmony. Customary laws and practices are valid and viable only to the extent that they do not undermine the proper scope and application of legislative enactments, including criminal statutes.

IV

The Indigenous Peoples' Rights Act does not compel courts of law to desist from taking cognizance of criminal cases involving indigenous peoples. It expresses no correlative rights and duties in support of petitioner's cause. Thus, a writ of mandamus cannot be issued.

A crime is "an offense against society."[64] It "is a breach of the security and peace of the people at large[.]"[65]

A criminal action, where "the State prosecutes a person for an act or omission punishable by law,"[66] is thus pursued "to maintain social order."[67] It "punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, . . . isolate[s] him [or her] from society, reform[s] and

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[62] CONST., Art. II, Sec. 22.

[63] CONST., Art. II, sec. 22.

[64] P.J. ORTMEIER, PUBLIC SAFETY AND SECURITY ADMINISTRATION 23 (1999).

[65] *Baviera v. Prosecutor Paglinawan*, 544 Phil. 107, 119 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[66] RULES OF COURT, Rule 1, Sec. 3 (b).

[67] *Ramiscal, Jr. v. Sandiganbayan*, 487 Phil. 384, 405 (2004) [Per *J.* Callejo, Sr., Second Division].

rehabilitate[s] him [or her]."[68] One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission:[69] "a criminal offense is an outrage to the very sovereignty of the State[.]"[70] Accordingly, a criminal action is prosecuted in the name of the "People" as plaintiff. Likewise, a representative of the State, the public prosecutor, "direct[s] and control[s] the prosecution of [an] offense."[71] As such, a public prosecutor is:

> [T]he representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.[72]

The capacity to prosecute and punish crimes is an attribute of the State's police power.[73] It inheres in "the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights."[74]

The basic precepts underlying crimes and criminal actions make it improper for the State to yield "disputes" involving criminal offenses to indigenous peoples' customary laws and practices.

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[68] *Id*.

[69] See P.J. ORTMEIER, PUBLIC SAFETY AND SECURITY ADMINISTRATION 23 (1999).

[70] *Tan, Jr. v. Gallardo*, 165 Phil. 288, 293 (1976) [Per *J*. Antonio, Second Division].

[71] *Baviera v. Paglinawan*, 544 Phil. 107, 119 (2007) [Per *J*. Sandoval-Gutierrez, First Division] *citing Tan, Jr. v. Gallardo*, 165 Phil. 288 (1976) [Per *J*. Antonio, Second Division].

[72] *Suarez v. Platon*, 69 Phil. 556, 564-565 (1940) [Per *J*. Laurel, *En Banc*] *citing* 69 United States Law Review, June, 1935, No. 6, p. 309.

[73] See *People v. Santiago*, 43 Phil. 120 (1922) [Per *J*. Romuladez, *En Banc*].

[74] *U.S. v. Pablo*, 35 Phil. 94, 100 (1916) [Per *J*. Torres, Second Division].

To yield criminal prosecution would be to disregard the State and the Filipino people as the objects of criminal offenses. The application of customary laws may enable a measure of reparation for private injuries engendered by criminal offenses, but it will never enable the consummate recompense owed to the State and the Filipino people. Ultimately then, yielding prosecution would mean sanctioning a miscarriage of justice.

It was never the Indigenous Peoples' Rights Act's intent to facilitate such miscarriage of justice. Its view of self-governance and empowerment is not myopic, but is one that balances. Preservation is pursued in the context of national unity and is impelled by harmony with the national legal system. Customary laws cannot work to undermine penal statutes designed to address offenses that are an affront to sovereignty.

Viewed through the lens of the requisites for issuing a writ of mandamus, there is no right or duty to even speak of here. Nowhere in the Indigenous Peoples' Rights Act does it state that courts of law are to abandon jurisdiction over criminal proceedings in favor of mechanisms applying customary laws.

Petitioner derives no right from the Dadantulan Tribal Court to be spared from criminal liability. The Regional Trial Court is under no obligation to defer to the exculpatory pronouncements made by the Dadantulan Tribal Court. Instead, it must proceed to rule on petitioner's alleged liability with all prudence and erudition.

WHEREFORE, the Petition is **DENIED**. Respondents are directed to proceed with dispatch in the resolution of Criminal Case No. CBU-81130.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, Jr., A., Hernando*, and *Carandang*,[*] *JJ.*, concur.

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[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

SECOND DIVISION

[G.R. No. 222614. March 20, 2019]

HEIR OF PASTORA T. CARDENAS AND EUSTAQUIO CARDENAS, NAMELY REMEDIOS CARDENAS-TUMLOS, REPRESENTED BY HER ATTORNEY-IN-FACT JANET TUMLOS-QUIZON, *petitioner, vs.* **THE CHRISTIAN AND MISSIONARY ALLIANCE CHURCHES OF THE PHILIPPINES, INC., REPRESENTED BY REO REPOLLO AND LEOCADIO DUQUE, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AN ACTION FOR RECOVERY OF POSSESSION MUST BE FOUNDED ON THE PLAINTIFF'S POSITIVE RIGHTS; SUCH POSITIVE RIGHT OF POSSESSION OVER THE SUBJECT PROPERTY WAS SUFFICIENTLY ESTABLISHED BY PETITIONER.— [I]t must be stressed that the instant case is one for recovery of possession and use of real property. Early on, the Court has held that an action for the recovery of possession must be founded on positive rights on the part of the plaintiff and not merely on negative ones, as the lack or insufficiency of title, on the part of the defendant. Hence, it was incumbent upon the Heir of Sps. Cardenas to establish her positive right of possession over the subject property. Upon review of the records of the instant case, the Courts holds that such positive right of possession over the subject property was sufficiently established by the Heir of Sps. Cardenas. As borne by the Pre-Trial Order dated April 12, 2010, it is an admitted fact that "**the property Lot 90, Psd-37322 covered by TCT No. T-6097 is still registered in the names of Pastora T. Cardenas and Eustaquio Cardenas**." In relation to the foregoing admitted fact, it is also not disputed by any party that Remedios, who is being represented by her daughter Janet, is the only daughter and compulsory Heir of Sps. Cardenas. x x x To further support the existence of the Heir of Sps. Cardenas' right of possession over the subject property, it is also an admitted fact that "the

same lot is still declared for tax purposes in the name of the plaintiffs Pastora Cardenas and Eustaquio Cardenas." x x x While Tax Declarations are not conclusive proof of ownership, at the very least they are proof that the holder has a claim of title over the property and serve as sufficient basis for inferring possession.

2. ID.; ID.; BURDEN OF EVIDENCE; SHIFTED TO RESPONDENT TO PROVE THAT WHILE THE SUBJECT PROPERTY WAS STILL REGISTERED IN THE NAMES OF SPOUSES CARDENAS, THE OWNERSHIP THEREOF HAD BEEN VALIDLY TRANSFERRED TO IT THROUGH A CONTRACT OF SALE.— [G]iven the foregoing admitted facts, the burden has then shifted to CAMACOP to provide sufficient evidence establishing that, while the certificate of title covering the subject property is still registered in the names of the Sps. Cardenas, the ownership of the subject property had not remained with the Sps. Cardenas and had been validly transferred to it through a contract of sale in 1962. In asserting that the subject property was sold by Pastora to CAMACOP, the latter relies on the existence of a Deed of Sale purportedly executed in 1962. CAMACOP however maintains that, since all of the copies of this alleged Deed of Sale had been supposedly lost, it had to resort to the presentation of secondary evidence to prove the existence of this Deed of Sale.

3. ID.; ID.; WHEN THE ORIGINAL DOCUMENT IS UNAVAILABLE, ITS CONTENTS MAY BE PROVED BY SECONDARY EVIDENCE; RESPONDENT FAILED TO PRESENT SUFFICIENT SECONDARY EVIDENCE TO PROVE THE SUPPOSED DEED OF SALE OVER THE SUBJECT PROPERTY; NONE OF THE DOCUMENTS PRESENTED CONTAINS A RECITAL OF THE CONTENTS OF THE PURPORTED DEED OF SALE.— According to Section 5, Rule 130 of the Revised Rules on Evidence, when the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by presenting secondary evidence. These secondary evidence pertain to: (1) a copy of the lost document, (2) by a recital of the contents of the lost document in some authentic document, or (3) by a testimony of a witnesses, in the order stated. Hence, in order

for respondent CAMACOP to prove the existence and contents of the purportedly lost Deed of Sale, it was incumbent upon it to present either (1) a copy of the purported Deed of Sale, or (2) an authentic document containing a recital of the contents of the purported Deed of Sale, or (3) a witness who can testify as to the existence and contents of the purported Deed of Sale, in that order. Upon close examination of the evidence on record, the Court holds that CAMACOP was not able to provide any sufficient secondary evidence to establish the existence and contents of the supposed 1962 Deed of Sale covering the subject property. In other words, CAMACOP failed to present sufficient evidence proving that a sale indeed occurred between Pastora and CAMACOP over the subject property. x x x None of these documents contains a recital of the contents of the purported Deed of Sale, as required under the Revised Rules on Evidence. At most, the documents presented merely mention that copies of the purported Deed of Sale were supposedly transmitted to the DANR.

4. ID.; ID.; HOW TO PROVE DUE EXECUTION AND AUTHENTICITY OF PRIVATE DOCUMENTS; WITHOUT PROPER IDENTIFICATION AND AUTHENTICATION, THE DOCUMENTARY EVIDENCE ARE INADMISSIBLE.— According to Section 20, Rule 132 of the Revised Rules on Evidence before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either by (a) anyone who saw the document executed or written or (b) by evidence of the genuineness of the signature or handwriting of the maker. In the instant case, it is readily admitted that Repollo did not personally witness the execution of any of the documents he identified. In fact, Repollo testified that these documents were merely turned over to him by his mother. Nor was Repollo knowledgeable as to the genuineness of the signatures or handwritings found in the documents. Truth be told, Repollo had no participation and knowledge whatsoever as to the preparation, execution, and authenticity of the documents he identified. Otherwise stated, Repollo was totally incompetent to present and testify on these documents. Hence, without proper identification and authentication, the documentary evidence of CAMACOP should not have been admitted into evidence by the RTC.

5. CIVIL LAW; CIVIL CODE; PRESCRIPTION IS UNAVAILING AGAINST THE REGISTERED OWNER AND HIS HEREDITARY SUCCESSORS.— [B]y express provision of Section 47 of P.D. 1529, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession[.] x x x In *Umbay v. Alecha*, the Court explained that the right to recover possession of registered land is imprescriptible on the part of the registered owner because possession is a mere consequence of ownership. Moreover, the Court also explained that prescription is unavailing, not only against the registered owner, but also against his hereditary successors because the latter merely step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor-in-interest.

6. ID.; ID.; LACHES, DEFINED AND DISTINGUISHED FROM PRESCRIPTION.— Laches has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. Laches is different from and applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on a fixed time; laches is not. While a person may not acquire title to the registered property through continuous adverse possession, in derogation of the title of the original registered owner, the heir of the latter, however, may lose his right to recover back the possession of such property and the title thereto, by reason of laches.

7. ID.; ID.; ID.; THE COURT IS NOT CONVINCED THAT THERE WAS CONSIDERABLE DELAY ON THE PART OF PETITIONER AND THAT SHE SLEPT ON HER RIGHTS SO AS TO SUCCESSFULLY INVOKE THE DOCTRINE OF LACHES.— [T]he Heir of Sps. Cardenas testified on the witness stand that it was only in the year 2000 that she discovered CAMACOP's construction activities on

the subject property. Janet also testified under oath that since 2000, "we were meeting already with the barangay regarding this problem" and that since 2000, Janet had already been in contact and had engaged into negotiation with CAMACOP with respect to the dispute. On cross examination, Janet testified that CAMACOP intimated to her in 2000 that they are supposedly in possession of a Deed of Sale. Hence, Janet decided to give CAMACOP sufficient time to produce this document. When it was apparent to Janet that CAMACOP would not be able to produce the purported Deed of Sale, it was then that a formal action for recovery of possession was instituted. Such testimony was left unrebutted by CAMACOP. Hence, based on the unrebutted testimony of Janet, the Court is not convinced that there was considerable delay on her part and that she slept on her rights so as to successfully invoke the doctrine of laches.

APPEARANCES OF COUNSEL

J.M. Estaniel for petitioner.
Eramis-Deluvio Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition under Rule 45 of the Rules of Court filed by the petitioner Heir of Pastora T. Cardenas (Pastora) and Eustaquio Cardenas (Eustaquio) (collectively the Sps. Cardenas), namely Remedios Cardenas-Tumlos (Remedios), who is represented by Janet Tumlos-Quizon (Janet) (referred to as the Heir of Sps. Cardenas), assailing the Decision[2] dated February 16, 2015 (assailed Decision) and Resolution[3] dated December 2, 2015

[1] *Rollo*, pp. 4-32.

[2] *Id*. at 33-43. Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Maria Filomena D. Singh and Pablito A. Perez, concurring.

[3] *Id*. at 52-54.

(assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 02948-MIN.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

> On October 26, 2009, [Remedios], heir of [Sps. Cardenas], represented by her attorney-in-fact, [Janet],[4] filed a Complaint for Recovery of Possession and Use of Real Property and Damages against [respondents] The Christian and Missionary Alliance Churches of the Philippines, Inc. (CAMACOP), Reo Repollo [(Repollo)] and Leocadio Duque, Jr. [(Duque, Jr.)] before the Regional Trial Court (RTC) of Midsayap, Cotabato, Branch 24, docketed as Civil Case No. 09-033.
>
> Janet is the daughter of [Remedios], a widow and a resident of 610 Winthrop Avenue, Glendale Heights, Illinois 601239, United States of America (USA).
>
> CAMACOP is a religious corporation, organized and existing pursuant to the existing laws of the Republic of the Philippines. It is represented by [Repollo and Duque, Jr.]
>
> In her Complaint, Janet alleged that her mother Remedios is the heir of the late [Sps. Cardenas], who are the registered owners of Lot 90, Psd-37322, with an area of 410 square meters, located at Poblacion 6, Midsayap, Cotabato [(subject property)], covered by Transfer Certificate of Title (TCT) No. T-6097 and Tax Declaration No. K-019938 with a [m]arket [v]alue of P550,220.00; and that the subject property is adjacent to Lot 3924-A, Psd-12-013791 owned by CAMACOP where its church is located and constructed.
>
> Janet further alleged that sometime in the year 1962, CAMACOP unlawfully occupied the subject property for their church activities and functions; that CAMACOP continues to unlawfully occupy the subject property to the damage and prejudice of [Janet]; that their repeated oral and written demands fell on deaf ears; and that CAMACOP failed to accede to the demands and continues to occupy

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[4] A Special Power of Attorney dated January 20, 2009 was executed by Remedios in favor of Janet. Records, pp. 168-170.

the subject property. Thus, her mother Remedios, through her, was constrained to file the case before the court *a quo*.

For their part, [the respondents] admitted in their Answer that [Cardenas] is the registered owner of the subject property, which is adjacent to Lot No. 3924-A, Psd-12-013791 owned by the CAMACOP. They further aver in their Answer that their occupation of the subject property is not illegal since **they had lawfully purchased it from its registered owners [(referring to Pastora)], who surrendered the owner's duplicate copy to the representative of the church.**

[The respondents] alleged that on May 31, 1962, Atty. Rodofolo T. Calud (Calud), counsel and representative of CAMACOP, sent the owner's duplicate copy of the subject property to the Secretary of Agriculture and Natural Resources and four (4) copies of the Deed of Sale, signed by the registered owners, for the Secretary's prior approval, pursuant to Commonwealth Act (C.A.) 141. They further asseverate that their continued occupation of the subject property for a period of forty-seven (47) years had reduced the claim as barred by prescription and the inaction of [Janet] for such period of time had rendered their claim as a stale demand which is barred by *laches*.

After the pre-trial conference, trial ensued.

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Thereafter, on June 6, 2012, the [RTC] rendered the assailed Decision[5] dismissing the complaint for lack of merit. [In sum, according to the RTC, CAMACOP was able to provide sufficient documentary and testimonial evidence that the subject property was indeed sold to it by Pastora. Hence, the RTC found as a fact the existence of a sale transaction between CAMACOP and the predecessor-in-interest of Janet and Remedios, *i.e.*, Pastora.]

[On June 27, 2012, Janet filed a Notice of Appeal before the RTC. The appeal was then heard by CA, docketed as CA-G.R. CV No. 02948-MIN.][6] (Emphasis supplied)

The Ruling of the CA

In its assailed Decision, the CA denied Janet's appeal for lack of merit. The dispositive portion of the assailed Decision reads:

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[5] Records, pp. 327-339.

[6] *Rollo*, pp. 34-38.

WHEREFORE, the appeal is DENIED. The Decision dated June 6, 2012 of the Regional Trial Court of Midsayap, Cotabato, Branch 24, rendered in Civil Case No. 09-033 is AFFIRMED.

SO ORDERED.[7]

The CA held that the Heir of Sps. Cardenas "failed to overcome the burden of proving her claim by preponderance of evidence [and found] that the court *a quo* did not err in its appreciation of the evidence and in ruling that there was in fact a sale of the subject property by the late spouses in favor of [CAMACOP.] The failure of [Janet] to prove her claim makes [the] appeal vulnerable to denial."[8]

Heir of Sps. Cardenas filed her Motion for Reconsideration[9] dated March 30, 2015, which was subsequently denied by the CA in its assailed Resolution.

Hence, the instant Petition.

CAMACOP filed its Comment/Opposition[10] to the instant Petition on July 20, 2016, to which the Heir of Sps. Cardenas responded to with her Reply[11] filed on August 10, 2016.

Issue

Stripped to its core, the critical issue is the determination of who between the Heir of Sps. Cardenas (Remedios, as represented by Janet) and CAMACOP has a better right to possess the subject property.

The Court's Ruling

While it is a well-established rule that the Court is not a trier of facts and will not delve into evidentiary matters, the Court can exercise its discretion in undergoing a close

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[7] *Id*. at 43.

[8] *Id*.

[9] *Id.* at 45-51.

[10] *Id*. at 69-74.

[11] *Id*. at 77-84.

examination of the testimonial and documentary evidence on record where the findings of fact of the lower courts are not supported by the record or are so glaringly erroneous as to constitute a serious abuse of discretion.[12]

While both the RTC and CA arrived at a similar finding of fact that a contract of sale was indeed entered into by the Heir of Sps. Cardenas' predecessor-in-interest, *i.e.*, Pastora, and CAMACOP, a review of the evidence on record behooves the Court to carefully reexamine and reconsider the factual finding of the lower courts.

At the outset, it must be stressed that the instant case is one for recovery of possession and use of real property. Early on, the Court has held that an action for the recovery of possession must be founded on positive rights on the part of the plaintiff and not merely on negative ones, as the lack or insufficiency of title, on the part of the defendant.[13] Hence, it was incumbent upon the Heir of Sps. Cardenas to establish her positive right of possession over the subject property.

Upon review of the records of the instant case, the Court holds that such positive right of possession over the subject property was sufficiently established by the Heir of Sps. Cardenas.

As borne by the Pre-Trial Order[14] dated April 12, 2010, it is an admitted fact that "**the property Lot 90, Psd-37322 covered by TCT No. T-6097 is still registered in the names of Pastora T. Cardenas and Eustaquio Cardenas**."[15] In relation to the foregoing admitted fact, it is also not disputed by any party that Remedios, who is being represented by her daughter Janet, is the only daughter and compulsory Heir of Sps. Cardenas.

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[12] *Lim v. Court of Appeals*, 242 Phil. 41, 47 (1988).

[13] *Florentino v. Cortes*, 18 Phil. 281, 283 (1911).

[14] Records, pp. 85-88. Penned by Presiding Judge Lily Lydia A. Laquindanum.

[15] *Id.* at 86; emphasis and underscoring supplied.

As a general rule, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[16]

To further support the existence of the Heir of Sps. Cardenas' right of possession over the subject property, it is also an admitted fact that "the same lot is still declared for tax purposes in the name of the plaintiffs Pastora Cardenas and Eustaquio Cardenas."[17] Certified copies of Tax Declaration No. K-019938[18] dated August 14, 2007 and Real Property Tax Clearance[19] dated December 11, 2009, both in the name of Pastora, were presented by the Heir of Sps. Cardenas. Aside from the foregoing, copies of official receipts[20] showing that real property taxes were paid upon the subject property in 2009 and 2010 under the name of Pastora were offered into evidence. While Tax Declarations are not conclusive proof of ownership, at the very least they are proof that the holder has a claim of title over the property and serve as sufficient basis for inferring possession.[21]

Hence, given the foregoing admitted facts, the burden has then shifted to CAMACOP to provide sufficient evidence establishing that, while the certificate of title covering the subject property is still registered in the names of the Sps. Cardenas, the ownership of the subject property had not remained with the Sps. Cardenas and had been validly transferred to it through a contract of sale in 1962.

In asserting that the subject property was sold by Pastora to CAMACOP, the latter relies on the existence of a Deed of Sale purportedly executed in 1962. CAMACOP however maintains that, since all of the copies of this alleged Deed of Sale had

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[16] *Heirs of Brusas v. Court of Appeals*, 372 Phil. 47, 54 (1999).

[17] Records, p. 86; emphasis and underscoring supplied.

[18] *Id*. at 11.

[19] *Id*. at 175.

[20] *Id*. at 176-178.

[21] *Republic of the Phils. v. Metro Index Realty and Dev't Corp*., 690 Phil. 31, 40 (2012).

been supposedly lost, it had to resort to the presentation of secondary evidence to prove the existence of this Deec of Sale.

According to Section 5, Rule 130 of the Revised Rules on Evidence, when the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by presenting secondary evidence. These secondary evidence pertain to: (1) a copy of the lost document, (2) by a recital of the contents of the lost document in some authentic document, or (3) by a testimony of a witnesses, in the order stated.

Hence, in order for respondent CAMACOP to prove the existence and contents of the purportedly lost Deed of Sale, it was incumbent upon it to present either (1) a copy of the purported Deed of Sale, or (2) an authentic document containing a recital of the contents of the purported Deed of Sale, or (3) a witness who can testify as to the existence and contents of the purported Deed of Sale, in that order.

Upon close examination of the evidence on record, the Court holds that CAMACOP was not able to provide any sufficient secondary evidence to establish the existence and contents of the supposed 1962 Deed of Sale covering the subject property. In other words, CAMACOP failed to present sufficient evidence proving that a sale indeed occurred between Pastora and CAMACOP over the subject property.

First, CAMACOP was not able to present even a photocopy or any other copy of the purported Deed of Sale.

It is alleged by CAMACOP that no copy of the document is available because its counsel, Atty. Calud, submitted to the then Secretary of Agriculture and Natural Resources of the Department of Agriculture and Natural Resources (DANR), now Department of Environment and Natural Resources (DENR), all the copies of the Deed of Sale. To say the least, it is quite unbelievable and extraordinary that not even a single copy of the purported Deed of Sale was retained by CAMACOP or its counsel, considering the grave importance of such a document.

If it is indeed true that the purported documents of sale are in the possession of the then DANR or now the DENR, then it would have been easy for CAMACOP to ask for the issuance of a subpoena to compel the presentation of the said documents before the RTC. Yet, the evidence on record suggest that CAMACOP did not even attempt to do so; it merely relied on the letter correspondence of Atty. Calud.

Second, according to CAMACOP, the purported Deed of Sale is "denominated as Doc. No. 491; Page No. 100; Book No. I; Series of 1962 of the Notarial Register of [Atty. Calud] acting as a notary public."[22] If this is true, then Atty. Calud would have easily been able to produce a copy of the purported Deed of Sale, considering that he was allegedly the notary public who notarized the said document. As a notary public, it was Atty. Calud's duty to keep a record of all the documents that he has notarized. Yet, CAMACOP could not even provide a single shred of credible evidence as to the existence of the purported Deed of Sale in the notarial register of Atty. Calud.

Hence, the Court finds CAMACOP's explanation as to the complete absence of any available copy of the purported Deed of Sale farfetched and implausible.

Third, the secondary evidence presented by CAMACOP, *i.e.*, Letter[23] dated May 31, 1962 of Atty. Calud addressed to the DANR Secretary; Sworn Affidavit[24] of Rev. Leodegario C. Madrigal (Madrigal) dated November 20, 1962; Letter[25] dated May 6, 1963 of Atty. Calud addressed to the DANR Secretary; Letter[26] dated July 23, 1963 of Atty. Calud addressed to the DANR Secretary; Letter[27] dated January 13, 1964 of Atty. Calud

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[22] Records, p. 305.

[23] *Id*. at 31.

[24] *Id*. at 32.

[25] *Id*. at 33.

[26] *Id*. at 34.

[27] *Id*. at 35.

addressed to the DANR Secretary; Letter[28] of Aurora B. Marcos (Marcos), Assistant Chief Legal Officer, for DANR Secretary, addressed to the Director of Lands dated March 2, 1964; Letter[29] dated May 19, 1964 of Atty. Calud addressed to the DANR Secretary; Letter[30] dated July 27, 1964 of Atty. Calud addressed to the Editor of the Philippine Free Press; Letter[31] dated November 21, 1966 of Atty. Calud addressed to the DANR Secretary; Letter[32] dated December 23, 1968 of Atty. Calud addressed to the DANR Secretary; and Letter[33] dated December 2, 1999 of Repollo addressed to Rev. Ferdinand Pabrua (Pabrua), EVP-DAF, are all unavailing.

None of these documents contains a recital of the contents of the purported Deed of Sale, as required under the Revised Rules on Evidence. At most, the documents presented merely mention that copies of the purported Deed of Sale were supposedly transmitted to the DANR.

As for the several letters of Atty. Calud, addressed to the DANR Secretary, such documents are grossly insufficient to prove both the existence and contents of the purported Deed of Sale. These letters are completely self-serving documents. As held by the Court in *Villanueva v. Balaguer*,[34] a man cannot make evidence for himself by writing a letter authored by himself containing the statements that he wishes to prove. Aside from the wholly self-serving letters of Atty. Calud, there is no concrete and believable evidence showing that there were indeed copies of the purported Deed of Sale that were transmitted to the DANR Secretary.

As supposed proof of the transmittal of the copies of the purported Deed of Sale to the DANR Secretary, CAMACOP

[28] *Id*. at 36.

[29] *Id*. at 37.

[30] *Id*. at 38.

[31] *Id*. at 39.

[32] *Id*. at 40.

[33] *Id*. at 41.

[34] 608 Phil. 463, 474 (2009).

presented the supposed Letter dated March 2, 1964 authored by one Marcos, Assistant Chief Legal Officer for the DANR Secretary, addressed to the then Director of Lands. However, there is nothing in the said document that mentioned or acknowledged the transmittal of the documents to the DANR Secretary. The letter merely showed that the DANR Secretary asked the then Director of Lands to look into the matter. In fact, this letter is unsigned, creating much doubt as to its authenticity.

With respect to the Sworn Affidavit of Madrigal dated November 20, 1962 and Letter dated December 2, 1999 of Repollo addressed to Pabrua, EVP-DAF, not only are they in the nature of self-serving statements coming from representatives of CAMACOP, it must also be stressed that they are clearly hearsay evidence with respect to the purpose of proving the existence and contents of the purported Deed of Sale. These individuals have absolutely no personal knowledge as to the preparation and execution of the purported Deed of Sale itself. In fact, these persons do not even claim that they have personally seen the purported Deed of Sale.

Particularly striking is the fact that in the Sworn Affidavit of Madrigal, he mentioned that the property purchased by CAMACOP is the one "particularly described in **Original Certificate of Title No. 1759** of the Province of Cotabato."[35] It must be emphasized that the subject TCT covering the subject property pertain to the area covered by "**Original Certificate of Title No. 1674**."[36] This glaring discrepancy further puts into doubt the position of CAMACOP.

To make matters worse, the secondary evidence presented by CAMACOP are all inauthentic and inadmissible documents.

The records show that the secondary evidence presented by CAMACOP are all mere photocopies. According to the Revised Rules on Evidence, no evidence shall be admissible other than

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[35] Records, p. 310; emphasis supplied.

[36] *Id*. at 10; emphasis supplied.

the original document itself.[37] CAMACOP did not provide any sufficient justification as to its failure to present the original copies of the documents.

Furthermore, the documents were not properly authenticated. All of CAMACOP's documentary evidence, from Exhibits 1 to 11, were identified and authenticated by its first witness, Repollo, who is a member of CAMACOP.

According to Section 20, Rule 132 of the Revised Rules on Evidence before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either by (a) anyone who saw the document executed or written or (b) by evidence of the genuineness of the signature or handwriting of the maker.

In the instant case, it is readily admitted that Repollo did not personally witness the execution of any of the documents he identified. In fact, Repollo testified that these documents were merely turned over to him by his mother.[38] Nor was Repollo knowledgeable as to the genuineness of the signatures or handwritings found in the documents. Truth be told, Repollo had no participation and knowledge whatsoever as to the preparation, execution, and authenticity of the documents he identified. Otherwise stated, Repollo was totally incompetent to present and testify on these documents. Hence, without proper identification and authentication, the documentary evidence of CAMACOP should not have been admitted into evidence by the RTC.

Thus, without any copy of the purported Deed of Sale and any authentic document containing a recital of the contents of the purported Deed of Sale, CAMACOP should have provided a credible, convincing witness to prove the existence and contents of the purported Deed of Sale.

No such witness was provided by CAMACOP.

With respect to CAMACOP's first witness, Repollo, he readily admitted on the witness stand that he did not personally see

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

[38] TSN, February 21, 2011, p. 7, records, p. 197.

any copy of a deed of sale covering the subject property.[39] With respect to CAMACOP's third witness, Pastor Jerry Juarez (Juarez), he testified that he has no personal knowledge as regards the subject property and that certain files were merely handed down to him when he became the Resident Pastor of CAMACOP sometime in May 1992.[40] It is clear that Repollo and Juarez are mere hearsay witnesses who have no personal knowledge as to the circumstances surrounding the alleged contract of sale entered into between CAMACOP and Pastora.

The sole witness presented by CAMACOP who allegedly acquired personal knowledge as to the purported sale transaction between CAMACOP and Pastora is the second witness of CAMACOP, *i.e.*, Eudecia M. Repollo (Eudecia).

According to Eudecia, as the then Secretary-Treasurer of CAMACOP, she was the one who paid One Hundred Twenty Pesos (₱120.00), with Ten Pesos (₱10.00) allotted for attorney's fees, to Pastora as consideration for the sale of the subject property and co-signed the purported Deed of Absolute Sale.[41]

Aside from the testimony being self-serving and uncorroborated, it is highly significant to point out that according to the testimony of Eudecia, the lot purchased by CAMACOP from Pastora refers to a lot measuring **One Hundred Ten (110) square meters only**, located beside Lot 3924-A, Psd-12-01379, which is currently owned and possessed by CAMACOP. To stress, the subject property is a **Four Hundred Ten (410)-square meter lot**.

On cross examination, when asked if she was sure that the property purchased by CAMACOP from Pastora is only One Hundred Ten (110) square meters, Eudecia unequivocally answered: "Yes, sir."[42] The statements made by Eudecia on cross examination leave absolutely no doubt that, if indeed there was a sale that occurred between CAMACOP and Pastora, such was only limited to One Hundred Ten (110) square meters:

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[39] *Id.* at 35, records, p. 225.

[40] TSN, February 20, 2012, pp. 5-6, records, pp. 299-300.

[41] TSN, April 25, 2011, p. 6, records, p. 242.

[42] *Id.* at 11, records, p. 247.

Q When you paid the amount of P110.00, you did not see the title?

A We received the title from Mrs. Pastora Cardenas, it was given to us.

Q Did you see the area?

A Yes, sir.

Q What is the area?

A **110 square meters**.

Q **What you have purchased is 110 square meters?**

A **Yes, sir.**

Q **Are you sure of that, only 110 and not 410**?

A **I am sure 110 square meters only** because the other portion was donated by Mr. Pascual Cocal and when it was resurveyed maybe it was already included.

x x x x x x x x x

Q **As far as you know, you only purchased 110 square meters of Lot 90?**

A **Yes, that's all what I know**.[43]

Hence, the very witness of CAMACOP itself confirmed under oath that if ever there really was a sale covering the subject property entered into by CAMACOP and Pastora, such sale did not cover the entire subject property which they are currently occupying, but only One Hundred Ten (110) square meters out of the entire Four Hundred Ten (410) square meters, which is adjacent to Lot 3924-A, Psd-12-01379 currently owned and occupied by CAMACOP.

Considering the foregoing, the Court finds the Heir of Sps. Cardenas' Complaint for Recovery of Possession and Use of Real Estate[44] meritorious.

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[43] *Id.* At 12-13, Records, pp. 248-249; Emphasis And Underscoring Supplied.

[44] Records, pp. 1-4.

Having said that, the Court does not find that the Heir of Sps. Cardenas has the right to recover possession of the entire subject property.

In the instant Petition, the Heir of Sps. Cardenas unequivocally stated that "**the decision should have been to award to respondent CAMACOP the 110 square meters** and the remaining area after deducting the 110 square meters to be retained by petitioner."[45] In addition, Janet unambiguously and unmistakably admitted in the instant Petition that "**the 110 square meters** x x x **rightfully may be ruled as owned by respondent CAMACOP**."[46] In fact, in her prayer for relief, the Heir of Sps. Cardenas even asks that the One Hundred Ten (110) square meters of the subject property be adjudicated to CAMACOP.[47] Hence, by express admission by Janet as to the sale of the One Hundred Ten (110)-square meter portion of the subject property to CAMACOP, the Court allows the latter to retain possession of the said portion of the subject property.

Lastly, neither can it be argued that CAMACOP has acquired the right to possess the subject property by virtue of prescription or laches.

According to Section 47 of Presidential Decree No. (P.D.) 1529, "[n]o title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." There can be no acquisitive prescription with respect to a titled parcel of land.[48] The Court has explained that, by express provision of Section 47 of P.D. 1529, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession:

> x x x. By express provision of Section 47 of P.D. 1529, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. To declare that

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[45] *Rollo*, p. 20; emphasis supplied.

[46] *Id*. at 21; emphasis supplied.

[47] *Id. at 24.*

[48] *Reyes v. CA*, 328 Phil. 171, 183 (1996).

the decree and its derivative titles is valid but only with respect to the extent of the area described in the decree not possessed by occupants with indefeasible registered titles or to possessors with such lengths of possession which had ripened to ownership is to undermine the people's faith in the torrens titles being conclusive as to all matters contained therein. The certificate serves as evidence of an indefeasible title to the property in favor of the person whose names appear therein. x x x[49]

In *Umbay v. Alecha*,[50] the Court explained that the right to recover possession of registered land is imprescriptible on the part of the registered owner because possession is a mere consequence of ownership.[51] Moreover, the Court also explained that prescription is unavailing, not only against the registered owner, but also against his hereditary successors because the latter merely step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor-in-interest.[52]

With respect to the application of laches, the Court disagrees with the CA in its holding that the doctrine of laches precludes the Heir of Sps. Cardenas from instituting the instant action to recover possession over the subject property.

Laches has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. Laches is different from and applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription

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[49] *Republic of the Phils. v. Court of Appeals*, 281 Phil. 177, 198 (1991).

[50] 220 Phil. 103 (1985).

[51] *Id*. at 107.

[52] *Id*. at 106.

applies at law. Prescription is based on a fixed time; laches is not.[53]

While a person may not acquire title to the registered property through continuous adverse possession, in derogation of the title of the original registered owner, the heir of the latter, however, may lose his right to recover back the possession of such property and the title thereto, by reason of laches.[54]

In *Catholic Bishop of Balanga v. CA*,[55] the Court enumerated the essential elements of laches, namely: (1) Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (2) Delay in asserting complainant's right after he had knowledge of the defendant's conduct and after he has an opportunity to sue; (3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) Injury or prejudice to the defendant in the event relief is accorded to the complainant.

In the instant case, according to the CA, the doctrine of laches finds application because Janet "did not transfer the title of the subject property in her name despite the passage of more than forty (40) years since the demise of her late parents [and] admitted the fact that [CAMACOP] has been in possession of the subject property since 1962 [; but] no formal action was taken by her except in 2009 when she sent demand letters to [CAMACOP]."[56]

However, when asked by the RTC as to when was the first time she gained any knowledge as to CAMACOP's act of constructing a building on the subject property, the Heir of Sps. Cardenas testified on the witness stand that it was only in the year 2000 that she discovered CAMACOP's construction activities on the subject property.[57] Janet also testified under oath that since 2000, "we were meeting already with the barangay regarding this problem"[58] and that since 2000, Janet had already

[53] *Heirs of Lacamen v. Heirs of Laruan*, 160 Phil. 615, 621 (1975).

[54] *Id*. at 622.

[55] 332 Phil. 206, 220 (1996).

[56] *Rollo*, pp. 39-42.

[57] TSN, November 22, 2010, p. 28, records, p. 160.

been in contact and had engaged into negotiation with CAMACOP with respect to the dispute. On cross examination, Janet testified that CAMACOP intimated to her in 2000 that they are supposedly in possession of a Deed of Sale. Hence, Janet decided to give CAMACOP sufficient time to produce this document.[59] When it was apparent to Janet that CAMACOP would not be able to produce the purported Deed of Sale, it was then that a formal action for recovery of possession was instituted. Such testimony was left unrebutted by CAMACOP.

Hence, based on the unrebutted testimony of Janet, the Court is not convinced that there was considerable delay on her part and that she slept on her rights so as to successfully invoke the doctrine of laches.

WHEREFORE, the instant appeal is **GRANTED**. The Decision dated February 16, 2015 and Resolution dated December 2, 2015 of the Court of Appeals in CA-G.R. CV No. 02948-MIN are hereby **REVERSED AND SET ASIDE**. Necessarily, the Decision dated June 6, 2012 rendered by the Regional Trial Court of Midsayap, Cotabato City, Branch 24 is likewise **REVERSED AND SET ASIDE**.

The respondents The Christian and Missionary Alliance Churches of the Philippines, Inc. (CAMACOP), Reo Repollo and Leocadio Duque, Jr. are hereby ordered to **TURN OVER POSSESSION** of the subject property to the Heir of Pastora T. Cardenas and Eustaquio Cardenas, namely petitioner Remedios Cardenas-Tumlos, as represented by petitioner Janet Tumlos-Quizon. The respondents are allowed to **RETAIN POSSESSION** of the One Hundred Ten (110) Square Meters portion of the subject property adjacent to Lot 3924-A, Psd-12-013791 currently owned by CAMACOP.

SO ORDERED.

Carpio (*Acting Chief Justice*),[*] *Perlas-Bernabe, Reyes, Jr., J.,* and *Lazaro-Javier, JJ.*, concur.

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[58] *Id.* at 24, records, p. 156.

[59] *Id.* at 18-19, records, pp. 150-151.

[*] Designated as Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

FIRST DIVISION

[G.R. No. 222974. March 20, 2019]

JEFFREY CALAOAGAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON CERTIORARI; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS ESTABLISHED IN CASE AT BAR.—** As a rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Well-settled is the rule that the Court is not a trier of facts. Its function in petitions for review on certiorari is limited to reviewing errors of law that may have been committed by the lower courts. Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. In this case, two exceptions exist, particularly, that the judgment of the CA was based on misapprehension of facts and that the CA manifestly overlooked certain relevant facts. Thus, as the exception applies, the Court may then entertain a question of fact, such as the existence of the elements of the crimes charged.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 7610 (CHILD ABUSE ACT); SECTION 10 (a) IN RELATION TO SECTION 3 (b) THEREOF; PENALIZES AN ACT WHEN**

CONSTITUTES AS CHILD ABUSE; THE ACT BY DEEDS OR WORDS MUST DEBASE, DEGRADE, OR DEMEAN THE INTRINSIC WORTH OF A CHILD AS A HUMAN BEING; CASE AT BAR.— Sec. 10(a) of R.A. No. 7610 penalizes an act when it constitutes as child abuse. In relation thereto, Sec. 3(b) of the same law highlights that in child abuse, the act by deeds or words must debase, degrade, or demean the intrinsic worth and dignity of a child as a human being. *Debasement* is defined as the act of reducing the value, quality, or purity of something; *degradation,* on the other hand, is a lessening of a person's or thing's character or quality; while *demean* means to lower in status, condition, reputation, or character. When this element of intent to debase, degrade or demean is present, the accused must be convicted of violating Sec. 10(a) of R.A. No. 7610, which carries a heavier penalty compared to that of slight physical injuries under the RPC. x x x In this case, the Court finds that the prosecution did not present any iota of evidence to show petitioner's intent to debase, degrade, or demean the intrinsic worth of the child victim. The records do not show that petitioner's act of hitting the victims had been intended to place the latter in an embarrassing, shameful, and demeaning situation. There was no indication that petitioner had any specific intent to humiliate and degrade AAA and BBB. On the contrary, the Court finds that petitioner inflicted the injuries in the heat of argument. x x x Verily, as the prosecution in this case failed to specify any intent to debase, degrade, or demean the intrinsic worth of AAA and BBB, petitioner cannot be held criminally liable under Sec. 10(a) of R.A. No. 7610.

3. ID.; REVISED PENAL CODE; SLIGHT PHYSICAL INJURIES; WHEN INTENT TO DEBASE, DEGRADE OR DEMEAN IS NOT PROVEN, ACT OF HITTING A PERSON RESULTING IN THE LATTER'S INJURIES REQUIRING MEDICAL ATTENDANCE FOR ONE TO NINE DAYS, OR REQUIRING MEDICAL ATTENDANCE FOR ONE TO NINE DAYS, OR REQUIRING NO MEDICAL ASSISTANCE IS AT ALL, THE CRIME OF SLIGHT PHYSICAL INJURIES IS COMMITTED; CASE AT BAR.— Even though there was no intent to debase, degrade or demean, the Court affirms the findings of the RTC and the CA that petitioner struck AAA with a stone on his shoulder and hit BBB, causing physical injuries. While there may be

some minor inconsistencies in the exact location of the injuries based on the testimonies of AAA and BBB and the medical findings of Dr. Castaños, it was established that petitioner assaulted AAA and BBB. Petitioner even admitted that he swung a bamboo stick towards AAA and BBB in the altercation. In Criminal Case No. 4877-R, petitioner is found guilty of slight physical injuries under the RPC for assaulting AAA. The prosecution was not able to present any evidence of actual incapacity of AAA for labor or of a required medical attendance as a result; nor was there proof as to the period of AAA's incapacity for labor or of a required medical attendance. Nevertheless, under Art. 266 of the RPC, an offender may still commit slight physical injury even if the inflicted injuries did not require medical assistance or there was no proof of the victim's incapacity. On the other hand, in Criminal Case No. 4878-R, the CA found that BBB was no longer a minor on the date of the incident on October 31, 2004, because he was already eighteen (18) years old. However, the CA's finding is incorrect. BBB's Certificate of Live Birth shows that he was born on September 21, 1987. Thus, he was a minor being only seventeen (17) years, one (1) month, and ten (10) days old at the time of the incident. Nonetheless, even if BBB was still a minor, the Court affirms that petitioner is guilty of the crime of slight physical injuries in Criminal Case No. 4878-R because the prosecution failed to prove the specific intent to debase, degrade or demean the intrinsic worth of the child. Petitioner's act of hitting BBB resulted in the latter's injuries requiring medical attendance for one (1) to nine (9) days, which is within the definition of slight physical injuries.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES; MAY BE RECOVERED IN A CRIMINAL OFFENSE RESULTING IN PHYSICAL INJURIES TO COMPENSATE FOR THE MENTAL ANGUISH, SERIOUS ANXIETY, AND MORAL SHOCK SUFFERED BY THE VICTIM AND HIS FAMILY AS BEING A PROXIMATE RESULT OF THE WRONGFUL ACT; CASE AT BAR.— Under par. (1), Art. 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries. Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of

pecuniary loss. Pursuant to prevailing jurisprudence, an award of Five Thousand Pesos (P5,000.00) moral damages is appropriate for less serious, as well as slight physical injuries. In this case, the CA awarded P20,000.00 as moral damages. However, petitioner only committed slight physical injuries against AAA and BBB. Thus, the award of moral damages to AAA and BBB must be reduced to P5,000.00.

5. ID.; ID.; TEMPERATE OR MODERATE 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; CASE AT BAR.— [T]emperate 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. As such, its award is premised on the fact that actual damages could have been recovered were it not for the fact that the precise amount of damages could not be accurately ascertained. In other words, if a party-claimant had not suffered any damages, no damages, either actual nor temperate, are recoverable. In this case, the CA simply awarded temperate damages to BBB because he suffered pecuniary loss for the treatment of his injuries, although the actual amount could not be determined. However, there was no discussion on the facts and circumstances surrounding the alleged pecuniary loss. BBB neither asserted that he suffered any pecuniary loss nor any kind of loss of earning capacity as to justify the temperate damages awarded by the CA. As such, the Court deletes the award of P20,000.00 as temperate damages for lack of factual basis.

APPEARANCES OF COUNSEL

Nestor C. Ifurong, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This appeal by *certiorari* seeks to reverse and set aside the February 9, 2016 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR No. 35518. The CA affirmed the November 5, 2012 Decision[2] of the Regional Trial Court of Rosales, Pangasinan, Branch 53 *(RTC),* finding Jeffrey Calaoagan *(petitioner)* guilty beyond reasonable doubt of violating Sec. 10(a) of Republic Act *(R.A.)* No. 7610[3] in Criminal Case No. 4877-R; and modifying the RTC decision in Criminal Case No. 4878-R finding appellant guilty of slight physical injuries under Article 266(1) of the Revised Penal Code *(RPC).*

Antecedents

Two separate Informations for violation of R.A. No. 7610 were filed against petitioner before the RTC for the alleged physical maltreatment of minors AAA and BBB.[4] The accusatory portions of the informations state:

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[1] *Rollo,* pp. 32-42; penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas-Peralta and Jane Aurora C. Lantion, concurring.

[2] Not attached to the *rollo.*

[3] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[4] The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to R.A. No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; R.A. No. 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES

Criminal Case No. 4877-R:

That on or about the 31st day of October, 2004 at around 12:00 midnight, in [redacted], and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully, feloniously and for no apparent reason[,] physical[ly] maltreat[ed] the complainant AAA, a minor of about 15 years of age[,] by hitting him with a stone on his left shoulder, thus place (sic) him in an embarrasing (sic) and shameful situation in the eyes of the public.

Contrary to Article VI, Section 10(a), Republic Act 7610.[5]

Criminal Case No. 4878-R:

That on or about the 31st day of October, 2004, at around 12:00 o'clock midnight, in [redacted], and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously and for no apparent reason[,] physically maltreat the complainant BBB, a minor of about 17 years of age[,] by punching his face and head, thus place (sic) him in an embarrasing (sic) and shameful situation in the eyes of the public.

Contrary to Article VI, Section 10(a), Republic Act 7610.[6]

Petitioner pleaded not guilty to the charges against him.[7] Thereafter, trial ensued.

THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Sec. 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule onViolence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.,* 729 Phil. 576, 578 (2014), citing *People v. Lomaque,* 710 Phil. 338, 342 (2013). *See also* Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION,AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," issued September 5, 2017.

[5] *Rollo,* p. 33.

[6] *Id*.

[7] *Id*. at 33-34.

Version of the Prosecution

The prosecution presented the private offended parties AAA and BBB, and Dr. Raul Castaños[8] *(Dr. Castaños),* medico-legal officer. Their testimonies established the following:

AAA was born on December 18, 1988, while BBB was born on September 21, 1987[9] They alleged that at around 12:00 midnight on October 31, 2004, they were on their way home to [redacted], when they encountered petitioner accompanied by two persons. Petitioner, seemingly annoyed by AAA and BBB, brought AAA near the church and hit AAA's right shoulder with a stone. BBB followed petitioner and AAA, which prompted petitioner to punch BBB on the right cheek.[10]

Dr. Castaños conducted a medical examination on AAA and BBB. The examination showed that AAA suffered from "confluent abrasion" on the left shoulder and "soft tissue contusion" in the deltoid area; while BBB bore a "soft tissue contusion" on the left periorbital area and on the right occipital parietal area of the head.[11]

Version of the Defense

Petitioner had a different version of the events at midnight of October 31, 2004. He averred that he and his two companions passed by a group of persons which included AAA and BBB. The group shouted *"Hoy!"* at them, which impelled him to shout back *"Hoy!"* at the group. Thereafter, AAA and BBB's group started hurling stones at him and his companions, which made them run to petitioner's house. AAA and BBB's group then pelted stones at petitioner's house, prompting petitioner to call the police. After the police had responded and left, AAA and BBB returned to petitioner's house. Petitioner claimed that

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[8] *Id*.; also spelled Castanos and Costaños in other documents.

[9] *Rollo,* p. 34.

[10] *Id.*

[11] *Id*.

he saw BBB carrying a knife and attempting to attack his sister, Jennifer Malong *(Jennifer).* Consequently, petitioner picked up a bamboo stick and swung it towards AAA and BBB.[12] However, he claimed that he did not know whom he hit while swinging the bamboo stick.[13] Thereafter, when he saw other persons entering his gates, petitioner ran inside his house. After the incident, Jennifer went to the police station to report the incident.[14]

The RTC Ruling

In its November 5, 2012 Decision, the RTC found petitioner guilty beyond reasonable doubt of two (2) counts of Other Acts of Child Abuse, as defined and penalized under Sec. 10, par. (a) of R.A. No. 7610. Accordingly, it sentenced petitioner to suffer the indeterminate penalty of four (4) years, nine (9) months and eleven (11) days of *prision correccional,* as minimum, to six (6) years and eight (8) months and one (1) day of *prision mayor,* as maximum, in each of the two (2) cases.[15]

The RTC held that petitioner physically maltreated AAA and BBB. Thus, it ruled that petitioner committed two (2) counts of violation of Sec. 10(a) of R.A. No. 7610 in Criminal Case Nos. 4877-R and 4878-R. The RTC gave credence to AAA and BBB's straightforward testimonies despite the variance between their testimony and the medical findings.[16]

Aggrieved, petitioner appealed to the CA.

The CA Ruling

In its February 9, 2016 Decision, the CA affirmed petitioner's conviction in Criminal Case No. 4877-R for physically maltreating AAA. It ruled that petitioner had struck AAA, then

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[12] *Id.* at 34-35.

[13] *Id.* at 11.

[14] *Id.*

[15] *Id.* at 35.

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

a minor. It accorded respect to the findings of the RTC in giving merit to the testimonies of AAA and BBB as corroborated by their medical examinations. The CA opined that despite the variance between the testimonies of AAA and BBB and the results of the medical examination, there was no cogent reason to discount AAA and BBB's testimonies. Accordingly, in Criminal Case No. 4877-R, it awarded moral damages in the amount of ₱20,000.00, with an interest rate of 6% *per annum* from the finality of the decision until its full payment.[17]

However, in Criminal Case No. 4878-R, the CA held that petitioner was not liable for violating Sec. 10(a) of R.A. No. 7610 for assaulting BBB. Instead, it ruled that petitioner was only guilty of slight physical injuries under Article 266(1) of the RPC because BBB was allegedly already eighteen (18) years old at the time of the incident. Consequently, in this case, the CA sentenced petitioner to suffer the penalty of *arresto menor* and ordered him to pay ₱20,000.00 as moral damages, and ₱20,000.00 as temperate damages, with an interest rate of 6% *per annum* from the finality of the decision until its full payment.[18]

Hence, this petition.

ISSUES

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S DECISION FINDING PETITIONER GUILTY OF VIOLATION OF R.A. No. 7610 IN CRIM. CASE NO. 4877-R BY GIVING FULL CREDENCE TO THE TESTIMONY OF COMPLAINANT AAA THAT HE WAS MAULED BY THE ACCUSED WHO HIT HIM SEVERAL TIMES ON THE LEFT SIDE OF HIS FACE AND WHO ALSO HIT HIM WITH A STONE ON HIS RIGHT SHOULDER, CONTRARY TO THE MEDICO-LEGAL FINDINGS.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED IN CRIM. CASE NO. 4878-R OF THE CRIME OF PHYSICAL INJURIES, AS DEFINED AND PENALIZED UNDER ARTICLE 266(1) OF THE REVISED

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[17] *Id*. at 39-41.

[18] *Id*. at 40-41.

PENAL CODE, BY GIVING FULL CREDENCE TO THE TESTIMONY OF COMPLAINANT BBB THAT HE WAS PUNCHED BY THE ACCUSED ONCE ON HIS RIGHT CHEEK, CONTRARY TO THE MEDICO-LEGAL CERTIFICATE FINDINGS.[19]

Petitioner argues that the CA erred in affirming the RTC decision because AAA's testimony was not consistent with the results of the medical examination showing that the injury sustained was "confluent abrasion, shoulder left, soft tissue contusion deltoid area." Likewise, he claims that the CA erred in convicting him of slight physical injuries under the RPC because BBB's testimony was contrary to the medical examination findings that the injury sustained was "soft tissue contusion, shoulder left, soft tissue contusion, occipital parietal area head, right."[20]

In its Comment,[21] the Office of the Solicitor General *(OSG),* representing the People of the Philippines, countered that the issues in the petition constitute questions of fact. As such, the petition must be dismissed for being contrary to Rule 45 of the Rules of Court. The OSG also argues that the petition seeks a review of the factual viability of the findings of the courts *a quo* in arriving at their verdicts, without presenting a question of law. Further, it claims that petitioner is guilty of child abuse under Sec. 10(a) of R.A. No. 7610 for hitting AAA, and is likewise guilty of slight physical injuries for striking BBB.

THE COURT'S RULING

The petition is partly meritorious.

Generally, a question of fact cannot be entertained by the Court; exceptions

As a rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.[22]

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[19] *Id*. at 18.

[20] *Id*. at 19-23.

[21] *Id*. at 65-79.

[22] *Anzures v. Spouses Ventanilla,* G.R. No. 222297, July 9, 2018.

Well-settled is the rule that the Court is not a trier of facts. Its function in petitions for review on certiorari is limited to reviewing errors of law that may have been committed by the lower courts.[23]

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[24]

In this case, two exceptions exist, particularly, that the judgment of the CA was based on misapprehension of facts and that the CA manifestly overlooked certain relevant facts. Thus, as the exception applies, the Court may then entertain a question of fact, such as the existence of the elements of the crimes charged.

Sec. 10(a) of R.A. No. 7610 requires a intent to debase, degrade, or demea the intrinsic worth of a child victim.

In Criminal Case No. 4877-R, petitioner was charged with violating Sec. 10(a), Article VI of R.A. No. 7610, which states:

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development. —

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[23] *Gepulle-Garbo v. Spouses Garabato,* 750 Phil. 846, 854-855 (2015).

[24] *Oikonomos Int'l. Resources Corp., v. Navaja, Jr.,* 774 Phil. 457, 467 (2015).

> (a) Any person who shall commit any other acts of **child abuse,** cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period, (emphasis supplied)

On the other hand, child abuse is defined by Sec. 3(b) of Republic Act No. 7610, as follows:

> Section 3. Definition of terms. —
>
> x x x x x x x x x
>
> (b) "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
>
> (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
>
> **(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;**
>
> (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
>
> (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.[25] (emphasis supplied)

Sec. 10(a) of R.A. No. 7610 penalizes an act when it constitutes as child abuse. In relation thereto, Sec. 3(b) of the same law highlights that in child abuse, the act by deeds or words must debase, degrade, or demean the intrinsic worth and dignity of a child as a human being. *Debasement* is defined as the act of reducing the value, quality, or purity of something; *degradation,* on the other hand, is a lessening of a person's or thing's character or quality; while *demean* means to lower in status, condition, reputation, or character.[26]

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[25] "Special Protection of Children Against Abuse, Exploitation and Discrimination Act," Sec. 3(b).

[26] *Jabalde v. People,* 787 Phil. 255, 270 (2016), citing Black's Law

When this element of intent to debase, degrade or demean is present, the accused must be convicted of violating Sec. 10(a) of R.A. No. 7610, which carries a heavier penalty compared to that of slight physical injuries under the RPC.[27]

In *Bongalon v. People,*[28] the petitioner therein was charged under Sec. 10(a) of R.A. No. 7610 because he struck and slapped the face of a minor, which were done at the spur of the moment and in anger. The Court ruled that only when the accused intends to debase, degrade, or demean the intrinsic worth of the child as a human being should it be punished with child abuse under Sec. 10(a) of R.A. No. 7610. Otherwise, the act must be punished for physical injuries under the RPC. It was emphasized therein that the records must establish a specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being as it is the essential element in the crime of child abuse. As the prosecution failed to establish the said intent, the petitioner therein was only convicted of slight physical injuries.

Comparably, in *Jabalde v. People,*[29] the petitioner slapped and struck a minor as an offshoot of the former's emotional rage. In the absence of any intention to debase, degrade, or demean the intrinsic worth of the child victim, the Court declared

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Dictionary 430 (8th ed. 2004) and Webster's Third New International Dictionary 599 (1986).

[27] Under Sec. 10(a) of R.A. No. 7610, the offender shall suffer the penalty of *prision mayor* in its minimum period; while under the RPC, as amended by Republic Act No. 10951, if the offender commits slight physical injuries, he shall suffer the penalty of *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one (1) to nine (9) days, or shall require medical attendance during the same period, or by *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000) and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance, or by *arresto menor* in its minimum period or a fine not exceeding Five thousand pesos (P5,000) when the offender shall ill-treat another by deed without causing any injury.

[28] 707 Phil. 11 (2013).

[29] *Supra* note 26.

that the act of the petitioner was merely slight physical injuries punishable under the RPC, since there was no evidence of actual incapacity of the offended party for labor or of any required medical attendance. Underscored is that the essential element of intent must be established with the prescribed degree of proof required for a successful prosecution under Sec. 10(a) of R.A. No. 7610.

More recently, in *Escolano v. People,*[30] the Court held that the petitioner's act of shouting invectives against private complainants does not constitute child abuse since petitioner had no intent to debase the intrinsic dignity of the child. The Court opined that petitioner's acts therein were done in the heat of anger because sachets of ketchup were thrown at her by the minors involved. As such, the Court held that the petitioner was only guilty of other light threats under the RPC.

On the other hand, in *Lucido v. People,*[31] the petitioner maltreated an eight-year old child through numerous and repeated acts of strangulation, pinching, and beating causing the said child to limp. The Court then held that these acts of abuse were intrinsically cruel and excessive because these impair the child's dignity and worth as a human being and infringe upon the child's right to grow up in a safe, wholesome, and harmonious environment.

Prosecution failed to prove intent to debase, degrade or demean.

In this case, the Court finds that the prosecution did not present any iota of evidence to show petitioner's intent to debase, degrade, or demean the intrinsic worth of the child victim. The records do not show that petitioner's act of hitting the victims had been intended to place the latter in an embarrassing, shameful, and demeaning situation. There was no indication that petitioner had any specific intent to humiliate and degrade AAA and BBB.

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[30] G.R. No. 226991, December 10, 2018.

[31] 834 SCRA 545 (2017).

On the contrary, the Court finds that petitioner inflicted the injuries in the heat of argument. AAA and BBB claim that it was petitioner's group that first annoyed the former's group; while petitioner claims that it was AAA and BBB's group that initiated the shouting match. Nevertheless, it is clear that the altercation between AAA, BBB, and petitioner only occurred when their groups met on the street without any prior confrontation.

As observed in the cases of *Bongalon, Jabalde,* and *Escolano,* when the infliction of physical injuries against a minor is done at the spur of the moment, it is imperative for the prosecution to prove a specific intent to debase, degrade, or demean the intrinsic worth of the child; otherwise, the accused cannot be convicted under Sec. 10(a) of R.A. No. 7610.

Verily, as the prosecution in this case failed to specify any intent to debase, degrade, or demean the intrinsic worth of AAA and BBB, petitioner cannot be held criminally liable under Sec. 10(a) of R.A. No. 7610.

Petitioner committed the crime of slight physical injuries.

Even though there was no intent to debase, degrade or demean, the Court affirms the findings of the RTC and the CA that petitioner struck AAA with a stone on his shoulder and hit BBB, causing physical injuries. While there may be some minor inconsistencies in the exact location of the injuries based on the testimonies of AAA and BBB and the medical findings of Dr. Castaños, it was established that petitioner assaulted AAA and BBB. Petitioner even admitted that he swung a bamboo stick towards AAA and BBB in the altercation.

In Criminal Case No. 4877-R, petitioner is found guilty of slight physical injuries under the RPC for assaulting AAA. The prosecution was not able to present any evidence of actual incapacity of AAA for labor or of a required medical attendance as a result; nor was there proof as to the period of AAA's incapacity for labor or of a required medical attendance. Nevertheless, under Art. 266 of the RPC, an offender may still

commit slight physical injury even if the inflicted injuries did not require medical assistance or there was no proof of the victim's incapacity.

On the other hand, in Criminal Case No. 4878-R, the CA found that BBB was no longer a minor on the date of the incident on October 31, 2004, because he was already eighteen (18) years old. However, the CA's finding is incorrect. BBB's Certificate of Live Birth[32] shows that he was born on September 21, 1987. Thus, he was a minor being only seventeen (17) years, one (1) month, and ten (10) days old at the time of the incident.

Nonetheless, even if BBB was still a minor, the Court affirms that petitioner is guilty of the crime of slight physical injuries in Criminal Case No. 4878-R because the prosecution failed to prove the specific intent to debase, degrade or demean the intrinsic worth of the child. Petitioner's act of hitting BBB resulted in the latter's injuries requiring medical attendance for one (1) to nine (9) days, which is within the definition of slight physical injuries.

The crime of slight physical injuries is punishable under Article 266 of the RPC as amended by R.A. No. 10951,[33] to wit:

> Section 61. Article 266 of the same Act is hereby amended to read as follows:
>
> Art. 266. *Slight physical injuries and maltreatment.*— The crime of slight physical injuries shall be punished:
>
> 1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one (1) day to nine (9) days, or shall require medical attendance during the same period.

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[32] *Supra* note 9.

[33] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED. Signed on August 29, 2017.

2. By *arresto menor* or a fine not exceeding Forty thousand pesos (₱40,000.00) and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.

3. By *arresto menor* in its minimum period or a fine not exceeding Five thousand pesos (₱5,000.00) when the offender shall ill-treat another by deed without causing any injury.

Accordingly, in Criminal Case Nos. 4877-R and 4878-R, petitioner committed two (2) counts of slight physical injuries. Thus, he is sentenced to suffer the straight penalty of *arresto menor* of twenty (20) days for each count.

The award of damages

Under par. (1), Art. 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries. Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of pecuniary loss. Pursuant to prevailing jurisprudence, an award of Five Thousand Pesos (₱5,000.00) moral damages is appropriate for less serious, as well as slight physical injuries.[34] In this case, the CA awarded ₱20,000.00 as moral damages. However, petitioner only committed slight physical injuries against AAA and BBB. Thus, the award of moral damages to AAA and BBB must be reduced to ₱5,000.00.[35]

On the other hand, 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.[36] As such, its award is premised on the fact that actual damages could have

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[34] *Yap v. People,* G.R. No. 234217, November 14, 2018, citing *People v. Villacorta,* 672 Phil. 712, 729 (2011).

[35] *Supra* note 28.

[36] *Imperial v. Heirs of Spouses Bayaban,* G.R. No. 197626, October 3, 2018.

been recovered were it not for the fact that the precise amount of damages could not be accurately ascertained. In other words, if a party-claimant had not suffered any damages, no damages, either actual nor temperate, are recoverable.[37]

In this case, the CA simply awarded temperate damages to BBB because he suffered pecuniary loss for the treatment of his injuries, although the actual amount could not be determined. However, there was no discussion on the facts and circumstances surrounding the alleged pecuniary loss. BBB neither asserted that he suffered any pecuniary loss nor any kind of loss of earning capacity as to justify the temperate damages awarded by the CA. As such, the Court deletes the award of ₱20,000.00 as temperate damages for lack of factual basis.[38]

WHEREFORE, the petition is **PARTIALLY GRANTED.** The February 9, 2016 Decision of the Court of Appeals in CA-G.R. CR No. 35518 is **AFFIRMED** with **MODIFICATION** that petitioner Jeffrey Calaoagan is **GUILTY** beyond reasonable doubt of two (2) counts of the crime of Slight Physical Injuries under paragraph 1, Article 266, of the Revised Penal Code. He is **SENTENCED** to suffer the penalty of 20 days of *arresto menor* for each count and to pay AAA and BBB the amount of ₱5,000.00 each as moral damages for each count, with legal interest at the rate of six percent (6%) *per annum* from the finality of judgment until full payment.

SO ORDERED.

Del Castillo (*Acting Chairperson*),[*] *Carandang,* and *Lazaro-Javier,*[**] *JJ.,* concur

Bersamin, C.J., on official business.

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[37] *Magallanes Watercraft Association, Inc. v. Auguis, et al.,* 785 Phil. 866, 875-876 (2016.)

[38] See *Excellent Essentials International Corp. v. Extra Excel International Philippines, Inc.,* G.R. No. 192797, April 18, 2018, and *People v. Lagman,* 685 Phil. 733 (2012).

[*] Per S.O. No. 2645 dated March 15, 2019.

[**] Designated as additional member in lieu of Associate Justice Francis H. Jardeleza, per raffle dated March 20, 2019.

FIRST DIVISION

[G.R. No. 225511. March 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE VAÑAS Y BALDERAMA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS; ESTABLISHED.—** In Criminal Case No. 6072, the prosecution successfully established the elements of rape by sexual intercourse under paragraph 1, Article 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) such act was accompanied by any of the circumstances enumerated thereunder. Here, it was alleged in the Information that appellant had carnal knowledge of the victim using force, threat and intimidation. The victim testified that appellant inserted his penis into her vagina and threatened to kill her after committing the crime. However, appellant must be convicted of qualified rape under Article 266-B of the RPC in Criminal Case No. 6072 since the Information alleged, and it was proved during trial, that the victim was a 16-year old minor and appellant was the live-in partner or common-law spouse of her mother. Appellant also admitted that he and the victim's mother were living as husband and wife.

2. **ID.; ID.; ID.; CARNAL KNOWLEDGE OF A WOMAN WHO IS SO WEAK IN INTELLECT TO THE EXTENT THAT SHE IS INCAPABLE OF GIVING CONSENT CONSTITUTES RAPE.—** Appellant seeks his exoneration by relying on the victim's admission during her cross-examination that she consented to have sexual intercourse with him. However, such a declaration has no weight in evidence. During the trial, the prosecution adduced evidence to establish that "AAA" was a mental retardate. The psychologist who conducted a mental status examination found her to be suffering from moderately impaired/delayed mental abilities with an IQ of 53 and the mental age of an 8-year old child. The Psychological Report containing this information was submitted to the trial court and formed part of the records in this case. There is therefore

no doubt that the victim was suffering from mild mental retardation. "[C]arnal knowledge of a woman who is so weak in intellect to the extent that she is incapable of giving consent constitutes rape."

3. ID.; ID.; ID.; PROPER IMPOSABLE PENALTY.— For committing the crime of qualified rape in Criminal Case No. 6072, appellant should have been meted the death penalty if not for the proscription in RA 9346. In lieu of the death penalty, appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole. The awards of civil indemnity, moral damages and exemplary damages are proper but their amounts must be modified to ₱100,000.00 each, in line with prevailing jurisprudence.

4. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATORY ACT (REPUBLIC ACT No. 7610); SECTION 5 (B) OF RA 7610; ELEMENTS; A CHILD IS DEEMED EXPLOITED OR SUBJECTED TO OTHER SEXUAL ABUSE, WHEN THE CHILD INDULGES IN SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION, OR UNDER THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP.— In Criminal Case No. 6073, appellant was charged and convicted for violation of Section 5(b) of RA 7610. The elements of this offense are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. An examination of the Information shows the insufficiency of the allegations therein as to constitute the offense of violation of Section 5 of RA 7610 as it does not contain all the elements that constitute the same. To be more precise, there was a complete and utter failure to allege in the Information that the sexual intercourse was "performed with a child exploited in prostitution or subjected to other sexual abuse". "A child is deemed exploited or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration, or (b) under the coercion or influence of any adult, syndicate or group."

5. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION OR COMPLAINT; AN APPELLANT CANNOT BE CONVICTED FOR VIOLATION OF SECTION 5(B) OF RA 7610 WHERE NOT ALL THE ELEMENTS OF THE OFFENSE WERE CLEARLY ALLEGED IN THE INFORMATION, FOR TO CONVICT HIM OF AN OFFENSE NOT PROPERLY ALLEGED IN THE INFORMATION WOULD VIOLATE HIS CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM. THE DEFECT OF A COMPLAINT OR INFORMATION CANNOT BE CURED BY THE FACT THAT ALL THE ELEMENTS OF THE CRIME WERE DULY PROVEN IN TRIAL.— To be sure, the exact phrase "exploited in prostitution or subjected to other abuse" need not be mentioned in the Information. Moreover, "[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient." However, this established legal precept is not satisfied in this case since the Information failed to describe in intelligible terms with such particularity as to apprise the appellant, with reasonable certainty, the offense charged. The Information did not contain words of similar or identical meaning to describe the offense allegedly violated. Thus, appellant cannot be convicted for violation of Section 5(b) of RA 7610 since not all the elements of this offense were clearly alleged in the Information. To convict him of an offense not properly alleged in the Information would violate his constitutional right to be informed of the nature and cause of the accusation against him. An Information that "does not contain all the elements constituting the crime charged cannot serve as a means by which said constitutional requirement is satisfied. Corollarily, the fact that all the elements of the crime were duly proven in trial cannot cure the defect of a Complaint or Information to serve its constitutional purpose."

6. ID.; ID.; ID.; ID.; THE INFORMATION MUST CONTAIN A SPECIFIC ALLEGATION OF EVERY FACT AND CIRCUMSTANCE NECESSARY TO CONSTITUTE THE CRIME CHARGED, THE ACCUSED BEING PRESUMED TO HAVE NO INDEPENDENT KNOWLEDGE OF THE FACTS THAT CONSTITUTE THE OFFENSE, AND THE FAILURE OF THE ACCUSED TO RAISE AN OBJECTION TO THE INSUFFICIENCY OR DEFECT IN THE

INFORMATION WOULD NOT AMOUNT TO A WAIVER OF ANY OBJECTION BASED ON SAID GROUND OR IRREGULARITY.— x x x [T]he [Information] must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged, the accused being presumed to have no independent knowledge of the facts that constitute the offense. Under Section 9 of Rule 117 of the 2000 Revised Rules on Criminal Procedure, [failure of the accused] to raise an objection to the insufficiency or defect in the information would not amount to a waiver of any objection based on said ground or irregularity." In fine, appellant cannot be held liable for violation of Section 5(b) of RA 7610 since the Information therein was legally infirm for failing to state a vital element of the said offense. Neither can appellant be found liable for rape under Article 266-A of the RPC in Criminal Case No. 6073 since the Information did not allege that the rape was committed under any of the following circumstances, to wit: a) through force, threat or intimidation; b) when the offended party is deprived of reason or is otherwise unconscious; c) by means of fraudulent machination or grave abuse of authority; and d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Foregoing considered, appellant can only be convicted of qualified rape in Criminal Case No. 6072. He should be acquitted for violation of Section 5(b) of RA 7610 in Criminal Case No. 6073.

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.*:

Vicente Vañas y Balderama (appellant) appeals the January 29, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R.

[1] CA *rollo*, pp. 194-208; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla.

CR-HC No. 06215, which affirmed with modification the June 7, 2013 Judgment[2] of the Regional Trial Court (RTC) of Ligao City, Albay, Branch 11, in Criminal Case Nos. 6072 and 6073. The RTC found appellant guilty beyond reasonable doubt of the crime of rape committed against "AAA"[3] under Article 266-A of the Revised Penal Code (RPC) in Criminal Case No. 6072, and violation of Section 5 (b) of Republic Act No. (RA) 7610, also committed against "AAA", in Criminal Case No. 6073.

The Information in Criminal Case No. 6072 charged appellant with the crime of rape committed in the following manner:

> That sometime in May 2009 at more or less 3:00 o'clock in the morning x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, thru force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of a 16-year old minor, AAA, against her will and consent, thus causing her pregnancy as a consequence, prejudicial to her development as a child, to her damage and prejudice.
>
> The act of the commission of the rape is attended by the qualifying/aggravating circumstances of minority of herein victim and relationship, herein accused being the live-in partner of the mother of the victim.
>
> ACTS CONTRARY TO LAW.[4]

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[2] Records, Crim. Case No. 6072, pp. 192-207; penned by Presiding Judge Amy Ana L. De Villa-Rosero.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[4] Records, Crim. Case No. 6072, p. 1.

On the other hand, the Information in Criminal Case No. 6073 charged appellant with violation of RA 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discriminatory Act. The accusatory allegations read as follows:

> That on June 15, 2009, at about 6:00 o'clock in the morning, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is an adult, did then and there willfully, unlawfully and feloniously and, taking advantage of the tender age of AAA, a 16 year-old child, commit the act of sexual intercourse with the child, which act debases and demeans the intrinsic worth and dignity of the said child as a human being and prejudicial to her development.
>
> The act of the commission of child abuse is attended by the qualifying/aggravating circumstances of minority of herein victim and relationship, herein accused being the live-in partner of the mother of the victim.
>
> ACTS CONTRARY TO LAW.[5]

When arraigned, appellant pleaded "not guilty" to both Informations. After the termination of the pre-trial conference, trial ensued.

Version of the Prosecution

The prosecution's evidence established that, on two separate occasions, "AAA", then 16 years old, was sexually abused by appellant, the live-in partner of her mother.

The first incident occurred at around 3:00 a.m. sometime in May 2009 when "AAA's" mother went to the market to sell bananas leaving "AAA" sleeping beside appellant. "AAA" was aroused from her sleep by appellant who caressed her legs and touched her private parts. Appellant also exposed his penis after removing his underwear. He threatened to kill "AAA" as he undressed her. He then inserted his penis into "AAA's" vagina and made coital movements. After the appellant consummated his carnal knowledge of "AAA", the latter noted blood in her vagina.

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[5] Records, Crim. Case No. 6073, p. 2.

The second incident happened at around 6:00 a.m. of June 15, 2009. "AAA's" mother was busy in the kitchen while she and appellant were in another room. Appellant removed the victim's clothes, caressed her legs, inserted his penis into her vagina and again did a push and pull movement.

On November 16, 2009, "AAA" underwent a medical examination and discovered that she was pregnant. She informed her brother about her condition and together, they reported the sexual misconduct of appellant to the police. A psychologist of the Department of Social Welfare and Development also conducted a mental status examination of "AAA". Based on the Psychological Report, the results showed "AAA" to be mentally impaired with an intelligence quotient (IQ) of 53. She was considered as moderately retarded with a mental age equivalent to an 8-year old child. During her cross-examination, "AAA" testified that she agreed to have sex with appellant.

Version of the Defense

Appellant admitted being the common-law husband of "AAA's" mother but denied raping the victim. He claimed that he and "AAA" never stayed in the same house. He surmised that the victim filed the charges against him since she and her siblings disapproved of his relationship with their mother.

Ruling of the Regional Trial Court

In its June 7, 2013 Judgment,[6] the RTC found appellant guilty beyond reasonable doubt of rape under Article 266-A of the RPC in Criminal Case No. 6072, and violation of Section 5(b) of RA 7610 in Criminal Case No. 6073. The RTC found "AAA's" testimony to be credible and held that appellant's denial and alibi cannot prevail against "AAA's" positive identification of him as her rapist. The dispositive portion of the Judgment reads as follows:

WHEREFORE, in light of the foregoing, judgment is hereby rendered:

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[6] *Id.* at 192-207.

1.) FINDING accused VICENTE VAÑAS Y BADERAMA guilty beyond reasonable doubt of the crime of Rape defined and penalized under the Revised Penal Code, as amended, in Criminal Case No. 6072, and for Violation of Section 5(b) of Article III of R.A. 7610 in Criminal Case No. 6073, and thereby sentence[s] him to suffer the penalty of Reclusion Perpetua for each case; and

2.) ORDERING accused VICENTE VAÑAS Y BALDERAMA to pay [AAA]:

a.) The sum of One Hundred Thousand Pesos (Php100,000.00) as moral damages for the two (2) cases;

b.) The sum of One Hundred Thousand Pesos (Php100,000.00) as civil indemnity for the two (2) cases; and

c.) The sum of Forty Thousand Pesos (Php40,000.00) as exemplary damages for the two (2) cases.

In the service of his sentence, accused VICENTE VAÑAS *Y* BALDERAMA shall be credited with the period of his preventive detention, subject to the provisions of Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.[7]

Appellant appealed the RTC's Judgment. In his Brief, appellant argued that the testimony of the victim could not be relied upon since it was improbable that he could simultaneously undress her, hold her hands, and insert his penis into her vagina. He claimed that there was no evidence of force, threat and intimidation. Notably, he shifted his defenses from denial and alibi to consensual sex, based on the admission of the victim that she did not object to their sexual congress in both cases.

Ruling of the Court of Appeals

In its Decision[8] dated January 29, 2015, the CA affirmed the conviction of appellant in both cases. It ruled that the

[7] *Id.* at 206-207.

[8] CA *rollo*, pp. 194-208.

prosecution indubitably established the elements of the crime of rape in Criminal Case No. 6072 and violation of Section 5(b) of RA 7610 in Criminal Case No. 6073. The CA did not give credence to appellant's claim that the sexual intercourse with the victim in both cases was consensual since a child cannot give a valid consent to sexual intercourse.

The dispositive portion of the CA's Decision reads as follows:

> WHEREFORE, premises considered, the appealed [Judgment] dated 7 June 2013 of the Regional Trial Court (RTC), Branch 11, Ligao City, Albay is AFFIRMED with MODIFICATIONS:
>
> 1) In Criminal Case No. 6072, accused-appellant Vicente Vañas y Balderam[a] is found GUILTY of rape defined and penalized under [Article] 266-A and 266-B of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay victim AAA the amount[s] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages; and
>
> 2) In Criminal Case No. 6073, accused-appellant Vicente Vañas y Balderam[a] is found GUILTY of sexual abuse defined and penalized under Section 5(b) of R.A. No. 7160 and is hereby sentenced to suffer the indeterminate penalty of 14 years and 8 months of *reclusion temporal* as minimum to 20 years of *reclusion temporal* as maximum. He is likewise ordered to pay victim AAA the amount[s] of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.
>
> Moreover, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of this [Decision] until fully paid. Costs against accused-appellant.
>
> SO ORDERED.[9]

Unperturbed, appellant comes to this Court through this appeal, seeking a reversal of his conviction based on the same arguments that he raised in the CA.

Our Ruling

There is partial merit in the appeal.

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[9] *Id.* at 207-208.

In Criminal Case No. 6072, the prosecution successfully established the elements of rape by sexual intercourse under paragraph 1, Article 266-A of the RPC, to wit: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) such act was accompanied by any of the circumstances enumerated thereunder.[10] Here, it was alleged in the Information that appellant had carnal knowledge of the victim using force, threat and intimidation. The victim testified that appellant inserted his penis into her vagina and threatened to kill her after committing the crime.

However, appellant must be convicted of qualified rape under Article 266-B of the RPC in Criminal Case No. 6072 since the Information alleged, and it was proved during trial, that the victim was a 16-year old minor and appellant was the live-in partner or common-law spouse of her mother. Appellant also admitted that he and the victim's mother were living as husband and wife.

Appellant seeks his exoneration by relying on the victim's admission during her cross-examination that she consented to have sexual intercourse with him. However, such a declaration has no weight in evidence. During the trial, the prosecution adduced evidence to establish that "AAA" was a mental retardate. The psychologist who conducted a mental status examination found her to be suffering from moderately impaired/delayed mental abilities with an IQ of 53 and the mental age of an 8-year old child. The Psychological Report[11] containing this information was submitted to the trial court and formed part of the records in this case. There is therefore no doubt that the victim was suffering from mild mental retardation. "[C]arnal knowledge of a woman who is so weak in intellect to the extent that she is incapable of giving consent constitutes rape."[12]

For committing the crime of qualified rape in Criminal Case No. 6072, appellant should have been meted the death penalty

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[10] *People v. Jastiva*, 726 Phil. 607, 624 (2014).

[11] Records, Crim. Case No. 6072, pp. 105-107.

if not for the proscription in RA 9346.[13] In lieu of the death penalty, appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole.[14]

The awards of civil indemnity, moral damages and exemplary damages are proper but their amounts must be modified to ₱100,000.00 each, in line with prevailing jurisprudence.[15]

In Criminal Case No. 6073, appellant was charged and convicted for violation of Section 5(b) of RA 7610. The elements of this offense are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.[16]

An examination of the Information shows the insufficiency of the allegations therein as to constitute the offense of violation of Section 5 of RA 7610 as it does not contain all the elements that constitute the same. To be more precise, there was a complete and utter failure to allege in the Information that the sexual intercourse was "performed with a child exploited in prostitution or subjected to other sexual abuse". "A child is deemed exploited or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration, or (b) under the coercion or influence of any adult, syndicate or group."[17]

To be sure, the exact phrase "exploited in prostitution or subjected to other abuse" need not be mentioned in the Information. Moreover, "[t]he use of derivatives or synonyms

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[12] *People v. Tablang*, 619 Phil. 757, 771 (2009).

[13] An Act Prohibiting the Imposition of Death Penalty in the Philippines. Approved: June 24, 2006.

[14] See *People v. Alhambra*, 131 Phil. 440, 455 (2014).

[15] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

[16] *People v. Bejim*, G.R. No. 208835, January 19, 2018.

[17] *Caballo v. People*, 710 Phil. 792, 803 (2013).

or allegations of basic facts constituting the offense charged is sufficient."[18] However, this established legal precept is not satisfied in this case since the Information failed to describe in intelligible terms with such particularity as to apprise the appellant, with reasonable certainty, the offense charged.[19] The Information did not contain words of similar or identical meaning to describe the offense allegedly violated.

Thus, appellant cannot be convicted for violation of Section 5(b) of RA 7610 since not all the elements of this offense were clearly alleged in the Information. To convict him of an offense not properly alleged in the Information would violate his constitutional right to be informed of the nature and cause of the accusation against him. An Information that "does not contain all the elements constituting the crime charged cannot serve as a means by which said constitutional requirement is satisfied. Corollarily, the fact that all the elements of the crime were duly proven in trial cannot cure the defect of a Complaint or Information to serve its constitutional purpose."[20]

"In other words, the [Information] must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged, the accused being presumed to have no independent knowledge of the facts that constitute the offense. Under Section 9 of Rule 117 of the 2000 Revised Rules on Criminal Procedure, [failure of the accused] to raise an objection to the insufficiency or defect in the information would not amount to a waiver of any objection based on said ground or irregularity."[21]

In fine, appellant cannot be held liable for violation of Section 5(b) of RA 7610 since the Information therein was legally infirm for failing to state a vital element of the said offense.

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[18] See: *Quimvelv. People*, G.R. No. 214497, April 18, 2017, 823 SCRA 192, 232.

[19] *Id*.

[20] *Guelos v. People*, 811 Phil. 37, 61 (2017).

[21] *Id*. at 63.

Neither can appellant be found liable for rape under Article 266-A of the RPC in Criminal Case No. 6073 since the Information did not allege that the rape was committed under any of the following circumstances, to wit: a) through force, threat or intimidation; b) when the offended party is deprived of reason or is otherwise unconscious; c) by means of fraudulent machination or grave abuse of authority; and d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Foregoing considered, appellant can only be convicted of qualified rape in Criminal Case No. 6072. He should be acquitted for violation of Section 5(b) of RA 7610 in Criminal Case No. 6073.

WHEREFORE, the appeal is **PARTIALLY GRANTED**. Appellant Vicente Vañas y Balderama is found **GUILTY** beyond reasonable doubt of qualified rape in Criminal Case No. 6072 and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay "AAA" the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid. Appellant is **ACQUITTED** in Criminal Case No. 6073.

SO ORDERED.

Peralta, *Gesmundo*, and *Carandang, JJ.*, concur.

Bersamin, C.J., on official leave.

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[*] Per Raffle dated November 29, 2017.

[**] Per Special Order No. 2645 dated March 15, 2019.

SECOND DIVISION

[G.R. No. 228610. March 20, 2019]

FLORO T. TADENA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO QUESTIONS OF LAW; WHETHER OR NOT THERE WAS INORDINATE DELAY IN THE PROSECUTION OF THE CASE IS A QUESTION OF FACT, WHICH IS NOT A PROPER SUBJECT OF A RULE 45 PETITION.—** The issue of whether or not there was inordinate delay in the prosecution of the case raises a question of fact, which is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Although there are exceptions found in jurisprudence, none of them apply in this case as Tadena did not allege and substantiate its application. Thus, the Court shall not entertain a factual issue.

2. **ID.; EVIDENCE; AFFIDAVIT OF DESISTANCE EXECUTED BY PRIVATE COMPLAINANT CANNOT BE A GROUND FOR DISMISSAL OF THE CASE AGAINST PETITIONER.—** As to the issue of Tagorda's desistance as a ground for dismissal of the case, it is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor. An affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge. The OSP commented that in Tagorda's affidavit of desistance, he did not repudiate the material points in the Information referring to the offense of falsification. His main reason for the desistance was to keep the peace in the

municipality. Notably, in his Reply, Tadena did not object or offer counter arguments to the OSP's observations. Thus, the charges in the Information were intact and unaffected by the desistance. The Court concurs with the SB in not dismissing the case based solely on Tadena's contentions. The records contain pieces of evidence that prove Tadena's guilt beyond reasonable doubt.

3. CRIMINAL LAW; REVISED PENAL CODE (RPC); FALSIFICATION BY A PUBLIC OFFICER OF A PUBLIC DOCUMENT; ELEMENTS; FIRST TWO ASPECTS, EVIDENT IN THIS CASE.— In the prosecution of falsification by a public officer, employee, or notary public under Article 171 of the RPC, the following are the elements: a. The offender is a public officer, employee, or notary public; b. The offender takes advantage of his/her official position; c. The offender falsifies a document by committing any of the following acts: x x x **6. Making any alteration or intercalation in a genuine document which changes its meaning;** x x x The first element, that the offender is a public officer, is indisputably present as the parties stipulated during pre-trial that Tadena was the municipal mayor of Sto. Domingo, Ilocos Sur when the falsification took place. The second element is taking advantage of official position in falsifying a document, when (1) the offender has the duty to make, prepare, or intervene in the preparation of a document, or (2) he/she has the official custody of the document which he/she falsifies. These two aspects are evident in this case. x x x With the two aspects both evident in this case, it is unmistakable that Tadena took advantage of his position as municipal mayor when he falsified the municipal ordinance.

4. ID.; ID.; ID.; ID.; REQUIREMENTS OF THE ELEMENT OF MAKING ANY ALTERATION OR INTERCALATION IN A GENUINE DOCUMENT WHICH CHANGES ITS MEANING, ESTABLISHED; THE COURT AFFIRMS PETITIONER'S CONVICTION OF THE OFFENSE OF FALSIFICATION BY A PUBLIC OFFICER OF A PUBLIC DOCUMENT.— The third element is falsification of a document by making any alteration or intercalation in a genuine document which changes its meaning. The case of *Typoco, Jr. v. People* dissected this element and required the following: 1. An alteration (change) or intercalation (insertion) on a document; 2. It was made on a genuine document; 3. The alteration or intercalation

has changed the meaning of the document; and 4. The change made the document speak something false. The first requirement is crystal clear with the x x x alteration or intercalation on the municipal ordinance[.] x x x As for the second requirement, x x x the Second Version of the municipal ordinance is undoubtedly a written official act of the *Sangguniang Bayan* members, who were in the lawful exercise of their mandated official function. The records reveal that a genuine copy of the Second Version was transmitted to the Office of the Municipal Mayor. Tadena admitted to receiving and changing the wordings of the Second Version. Thus, an alteration or intercalation was made on a genuine copy of a public document. Lastly, the alteration changed the meaning of the Second Version of the municipal ordinance and represented a false intention of the local legislative body. x x x [A]fter the alteration, Tadena made it appear that the creation of the municipal administrator's office was independent from the implementation of the mandatory salary increase. Clearly, the alteration departed from the intention of the *Sangguniang Bayan*, removed the condition imposed, and conveyed an untruthful idea. x x x Therefore, the Court resolves to affirm the SB decision convicting Tadena of the offense charged. The pieces of evidence presented support a conviction for falsification by a public officer of a public document.

5. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES TO BE APPRECIATED; ESSENCE OF VOLUNTARY SURRENDER.— For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused is give oneself up and submit to the authorities either because he/she acknowledges his/her guilt or he/she wishes to save the authorities the trouble and expense that may be incurred for his/her search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.

6. ID.; ID.; ID.; ID.; WHERE THE ACCUSED SURRENDERED BECAUSE HIS ARREST IS INEVITABLE, IT CANNOT BE REGARDED AS VOLUNTARY OR SPONTANEOUS.— [T]he records disclose that a warrant of arrest had been issued on August 1, 2014, before Tadena posted bail on August 20, 2014. He also admitted in this petition that upon learning of the issuance of a warrant of arrest against him, he surrendered to the First Division Clerk of Court. With Tadena's arrest being inevitable, his surrender cannot be regarded as voluntary or spontaneous. Therefore, his claim of mitigating circumstance does not deserve merit.

APPEARANCES OF COUNSEL

Castro Castro & Associates for petitioner.

D E C I S I O N

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

A municipal mayor, who changed the wordings of a municipal ordinance, is guilty of falsification by a public officer of a public document.

The Facts

The Court adopts the concise narration of facts of the Sandiganbayan (SB), which is based on documentary and testimonial evidence and stipulations of the parties.

On 17 October 2001, the accused [Floro T. Tadena], then the Municipal Mayor of Sto. Domingo, Ilocos Sur, wrote a letter to the members of the [*Sangguniang Bayan*] requesting for the creation of the position of a Municipal Administrator.

On 10 December 2001, the [*Sangguniang Bayan*] adopted the First Version, for the appropriation of the annual budget of the Municipality of Sto. Domingo, Ilocos Sur, for the fiscal year of 2002. Paragraph (a) of the 4th "Whereas Clause" of said municipal ordinance addressed [Tadena's] request and provided for the creation of the position of a Municipal Administrator as follows:

> "(a) The position "**MUNICIPAL ADMINISTRATOR**" shall not be created unless the proposed needs of all the Offices of the municipality will be satisfied through Supplemental Budgets and provided further that the Mandatory 5% Salary Increase for 2001 be implemented."

[Tadena vetoed the First Version]. In his veto message to the [*Sangguniang Bayan*], [Tadena] declared that the conditions given for the creation of the Office of the Municipal Administrator were unrealistic and demanding. He relayed to them, among others, that the only condition agreed upon during a previous conference of the municipality's heads of offices was that the office of the Municipal Administrator would be created at a later date. Hence, he returned the First Version unacted upon, with a request for the deletion of the conditions imposed therein and to be substituted by the agreement set during the heads of offices conference.

> On 11 January 2002, the [*Sangguniang Bayan*] deliberated on [Tadena's] request and passed the Second Version. Paragraph (a) of the 4th "Whereas Clause" thereof stated that:
>
> "(a) The position "**MUNICIPAL ADMINISTRATOR**" shall not be created unless 2% of the Mandatory 5% Salary Increase for 2002 be implemented"

On 14 January 2002, the [*Sangguniang Bayan's*] Secretary, [Rodel M.] Tagorda [(Tagorda)], transmitted a copy of the Second Version to [Tadena] for his information, approval and appropriate action. On 15 January 2002, the transmittal letter as well as the copy of the Second Version was received by the Office of the Municipal Mayor.

On 23 January 2002, the Office of the Municipal Mayor returned the copy of the Second Version with the [Tadena's] signature but the first page thereof was substituted and an apparent change in paragraph (a) of the 4th "Whereas Clause" was noted, to wit:

> "(a) The position "**MUNICIPAL ADMINISTRATOR**" shall be created and the 2% of the Mandatory 5% Salary Increase for 2002 be implemented."

On 25 January 2002, the [*Sangguniang Bayan*] issued Resolution No. 007 deleting paragraph (a) of the 4th "Whereas Clause" of Municipal Ordinance No. 2001-013. In the same resolution, the [*Sangguniang Bayan*] put on record the changes they observed in the Second Version thereof, thus:

"x x x **WHEREAS**, On 11 January 2002, during our 2nd Special Session, we unanimously approved said Mun. Ordinance No. 2001-013 with modification contained at page one thereof as follows "a) *The position 'MUNICIPAL ADMINISTRATOR' shall not be created unless the 2% of the Mandatory 5% Salary Increase for 2002 be implemented*." The same was transmitted at the Office of the Hon. Mayor FLORO T. TADENA on January 15, 2002;

WHEREAS, On 23 January 2002, the said Office returned said copies of Municipal Ordinance No. 2001-013 for suppose transmittal to the [Sangguniang Panlalawigan] by the [*Sangguniang Bayan*] Secretary, however, it was observed that page one of such was substituted and the provisions contained at paragraph 5 thereof was changed into: "*The position [']MUNICIPAL ADMINISTRATOR[']shall be created and the 2% of the Mandatory 5% Salary Increase for 2002 be implemented.* x x x"

Thereafter, the [*Sangguniang Bayan*] enacted and implemented the Final Version.[1] [The Final Version contained the same matters as the Second Version except the alleged falsified details. The First and Second Versions were not implemented by the municipality but were kept in its records.][2]

This notwithstanding, [*Sangguniang Bayan*] Secretary Tagorda filed a complaint for Falsification of Public Document against [Tadena] with the Office of the Ombudsman. Initially, the Ombudsman dismissed the case. Upon Motion for Reconsideration, the latter reversed its resolution in an Order dated 28 August 2002 and directed the filing of an Information against [Tadena].[3]

On July 4, 2014, the Office of the Special Prosecutor (OSP) of the Office of the Ombudsman (Ombudsman) filed an Information[4] against accused-petitioner (Tadena) and charged

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[1] *Rollo*, pp. 70-72.

[2] *Id.* at 65.

[3] *Id.* at 72.

[4] That on or about January 15, 2002, or sometime prior or subsequent thereto, in the Municipality of Sto. Domingo, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, accused

him of falsification of public document under Article 171, paragraph 6 of the Revised Penal Code (RPC).[5] On arraignment, Tadena pleaded not guilty to the offense charged.[6]

During pre-trial, the parties stipulated on the following facts:

1. That at the time material to the allegations in the Information, accused Tadena was a high-ranking public official, being then the Municipal Mayor of Sto. Domingo, Ilocos Sur[; and]
2. That the private complainant, Rodel Tagorda, was (and still is) the Secretary of the [*Sangguniang Bayan*] of Sto. Domingo, Ilocos Sur, at the time of the incident.[7]

The parties also proposed the following issues for resolution:

1. Whether or not accused Floro T. Tadena changed, altered or intercalated paragraph (a) of the 4th Whereas Clause of the original Municipal Ordinance No. 2001-013 which was

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FLORO T. TADENA, a high-ranking public officer, being the Municipal Mayor of Sto. Domingo, Ilocos Sur received a copy of the Municipal Ordinance No. 2001-013 enacted by the [*Sangguniang Bayan*] of Sto. Domingo, Ilocos Sur which was officially forwarded to him, for his information, approval and/or appropriate action by reason of or in relation to the performance of his official duties as Mayor and, while in possession of said ordinance, taking advantage of his official position, did then and there wilfully, unlawfully and feloniously falsify or cause to be falsified the said Municipal Ordinance No. 2001-013 by changing, altering, intercalating and making it appear in paragraph (a) of the 4th Whereas Clause thereof that: *"(a) The position "MUNICIPAL ADMINISTRATOR" shall be created and the 2% of the Mandatory 5% Salary Increase for 2002 be implemented."*; when in truth and in fact, as accused knew fully well that the afore-quoted paragraph (a) of the said 4th Whereas Clause of the said Municipal Ordinance reads as: *(a) The position "MUNICIPAL ADMINISTRATOR" shall not be created unless 2% of the Mandatory 5% Salary Increase for 2002 be implemented."*; thereby changing the import and meaning of the said Municipal Ordinance without any authority to do so, to the prejudice of public interest. *Id*. at 94-95.

[5] *Id*. at 94.

[6] *Id*. at 63.

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

duly enacted by the [*Sangguniang Bayan*] of Sto. Domingo, Ilocos Sur, thus changing its meaning [; and]

2. Whether or not the accused falsified Municipal Ordinance No. 2001-013 dated January 11, 2002.[8]

On September 15, 2016, the SB rendered a Decision[9] in Criminal Case No. SB-14-CRM-0327, finding Tadena guilty beyond reasonable doubt of the offense charged. The SB discussed that all the elements of the offense were present in this case; thus, a conviction is in order.[10] Tadena moved for reconsideration, which the SB denied in its December 7, 2016 Resolution.[11]

The Issues Presented

Unconvinced, Tadena filed the present Petition for Review on Certiorari[12] before the Court and assigned the following errors:

I. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN NOT DISMISSING THE CASE DESPITE PETITIONER'S MOTION TO DISMISS FOR INORDINATE DELAY IN THE PROSECUTION OF THE CASE.

II. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN DISREGARDING THE JUDICIAL ADMISSION OF THE COMPLAINANT THAT HE LOST INTEREST IN PROSECUTING HIS COMPLAINT AFTER THE OFFICE OF THE OMBUDSMAN DISMISSED THE SAME, BUT WAS LATER REVIVED UPON FILING OF A MOTION FOR RECONSIDERATION BY A LAWYER NOT AUTHORIZED BY SAID COMPLAINANT TO FILE THE

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[8] *Id*. at 64.

[9] Penned by Associate Justice Reynaldo P. Cruz, with Associate Justices Efren N. De La Cruz and Michael Frederick L. Musngi, concurring; *id*. at 62-79.

[10] *Id*. at 73.

[11] *Id*. at 90-93.

[12] *Id*. at 8-61.

SAME AND DESPITE COMPLAINANT'S DECLARATION THAT THE RESPONDENT IN HIS COMPLAINT, HEREIN PETITIONER, HAS NOT COMMITTED ANY FALSIFICATION AS CHARGED.

III. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN HOLDING IN EFFECT, THAT THE DOCUMENT FALSIFIED BY PETITIONER WAS A GENUINE DOCUMENT WHEN IT WAS NOT.

IV. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN NOT FINDING THAT THE CHANGES WHICH PETITIONER MADE IN THE SUBJECT ALLEGED DOCUMENT WERE DONE WITH THE ACTUAL PARTICIPATION AND CONCURRENCE OF THE MAJORITY MEMBERS OF THE *SANGGUNIANG BAYAN* OF STO. DOMINGO, ILOCOS SUR.

V. WITH DUE RESPECT, THE PETITIONER ACTED IN GOOD FAITH AND WITH NO CRIMINAL INTENT IN MAKING THE CHANGES HE MADE IN SAID ALLEGED DOCUMENT.

VI. WITH DUE RESPECT, THE PETITIONER MADE THE CHANGES BEING A PART OF THE LOCAL LEGISLATION PROCESS AND AS SUCH HE WAS AUTHORIZED TO MAKE THE CHANGES BEFORE THE ORDINANCE WAS FINALLY ENACTED INTO LAW.

VII. WITH DUE RESPECT, IF THERE WAS ANY DOUBT THE SAME SHOULD HAVE BEEN RESOLVED IN FAVOR OF THE ACCUSED.

VIII. WITH DUE RESPECT, THE PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE USUALLY ACCORDED BY LAW TO THE ACCUSED IN CRIMINAL CASES.

IX. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN FAILED TO APPRECIATE MITIGATING CIRCUMSTANCES IN FAVOR OF PETITIONER.[13]

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

In its Comment,[14] the People of the Philippines, as represented by the OSP of the Ombudsman, alleged that the SB correctly ruled that Tadena's right to speedy disposition of his case was not violated. This issue was first raised in Tadena's Motion to Quash/Motion to Dismiss. After the SB denied the motion, Tadena did not pursue further relief. Thus, the resolution had attained finality.[15]

The OSP recounted that the Ombudsman completed the preliminary investigation with dispatch, and that the prosecutor acted promptly in filing the Information against Tadena.[16] The OSP averred that the prosecution of the case was not attended with inordinate delay.[17]

The OSP asserted that Tadena is guilty beyond reasonable doubt of falsification of public document because all the elements of the offense are present, and he admitted on record that he made the changes on the municipal ordinance.[18]

Lastly, the OSP maintained that the SB was correct to disregard Tadena's voluntary surrender as a mitigating circumstance since a warrant of arrest had been issued before he posted bail. The OSP argued that the essence of voluntary surrender is spontaneity, and the intent to give oneself up and submit to the authorities because one acknowledges his/her guilt and wishes to save the authorities the trouble and expense that may be incurred for the search and capture. However, when the reason for the surrender is the inevitability of the arrest and to ensure safety, the surrender is not spontaneous and voluntary. Hence, it is not a mitigating circumstance.[19]

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[14] *Id*. at 197-217.

[15] *Id*. at 204-205

[16] *Id*. at 205-206

[17] *Id*. at 206

[18] *Id.* at 210-212.

[19] *Id*. at 213.

In its Reply,[20] Tadena essentially reiterated his arguments in the petition.

The issues to be resolved by the Court can be summarized as:

I. Whether or not the SB erred in ruling that Tadena's right to speedy disposition of his case was not violated;

II. Whether or not the SB erred in finding Tadena guilty beyond reasonable doubt of falsification under Article 171, Paragraph 6 of the RPC, and

III. Whether or not the SB imposed the proper penalty.

The Court's Ruling

The petition is denied.

I.

Tadena contends that the SB should have dismissed the case because (1) of inordinate delay, and (2) private complainant Tagorda desisted from pursuing the case after it was dismissed by the Ombudsman.[21]

The issue of whether or not there was inordinate delay in the prosecution of the case raises a question of fact, which is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Although there are exceptions found in jurisprudence, none of them apply in this case as Tadena did not allege and substantiate its application. Thus, the Court shall not entertain a factual issue.

As to the issue of Tagorda's desistance as a ground for dismissal of the case, it is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor.[22]

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[20] *Id*. at 236-239-A.

[21] *Id*. at 53-54.

[22] *People v. Ballabare*, 332 Phil. 384-410 (1996).

An affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge.[23]

The OSP commented that in Tagorda's affidavit of desistance, he did not repudiate the material points in the Information referring to the offense of falsification.[24] His main reason for the desistance was to keep the peace in the municipality.[25] Notably, in his Reply, Tadena did not object or offer counter arguments to the OSP's observations. Thus, the charges in the Information were intact and unaffected by the desistance. The Court concurs with the SB in not dismissing the case based solely on Tadena's contentions. The records contain pieces of evidence that prove Tadena's guilt beyond reasonable doubt.

II.

In the prosecution of falsification by a public officer, employee, or notary public under Article 171 of the RPC, the following are the elements:

a. The offender is a public officer, employee, or notary public;

b. The offender takes advantage of his/her official position;

c. The offender falsifies a document by committing any of the following acts:

    1. Counterfeiting or imitating any handwriting, signature or rubric;

    2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

    3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

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[23] *Id*. at 399.

[24] *Rollo*, p. 207.

4. Making untruthful statements in a narration of facts

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book. (Emphasis supplied)[26]

The first element, that the offender is a public officer, is indisputably present as the parties stipulated during pre-trial that Tadena was the municipal mayor of Sto. Domingo, Ilocos Sur when the falsification took place

The second element is taking advantage of official position in falsifying a document, when (1) the offender has the duty to make, prepare, or intervene in the preparation of a document, or (2) he/she has the official custody of the document which he/she falsifies.[27] These two aspects are evident in this case.

As for the first aspect, the SB correctly pointed out that Section 54[28] of the Local Government Code (LGC) states that a local

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[25] *Id*.

[26] Art. 171, REVISED PENAL CODE.

[27] *Typoco, Jr. v. People*, G.R. No. 221857; *Reyes v. People*, G.R No. 222020, August 16, 2017.

[28] SEC. 54. *Approval of Ordinances*. — (a) Every ordinance enacted by the [*sangguniang panlalawigan*], [*sangguniang panlungsod*], or [*sangguniang bayan*] shall be presented to the provincial governor or city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the *[sanggunian*], which may proceed to reconsider the same. The [*sanggunian*] concerned

chief executive participates in the enactment of an ordinance either by approval or veto.[29] Either of the acts are connected with the performance of his duties as municipal mayor, and constitute as intervention in enacting an ordinance.

Tadena justifies that he made the changes as part of the local legislation process. The Court strongly disagrees. Section 54 of the LGC limits the participation of a local chief executive in the enactment of ordinance to two acts, either approval or veto. The provision does not include the power to make changes on an ordinance. At most, the local chief executive may veto the ordinance and submit his objections to the *sanggunian*. However, Tadena neither approved nor vetoed the ordinance. He intervened in the process by changing the wordings of the 4th Whereas Clause of the municipal ordinance.

As for the second aspect, Tadena has official custody of the Second Version of Municipal Ordinance 2001-013, because Tagorda transmitted it to his office for appropriate action. Tadena admitted receiving the municipal ordinance in the Statement of Facts in his petition:

> 3. The **SECOND** Municipal Ordinance No. 2001-013 xxx which was deliberated and transmitted to the Mayor for his **APPROVAL WAS NOT ACTUALLY ADOPTED AND FINALLY ENACTED BY THE *SANGGUNIANG BAYAN* BECAUSE HEREIN PETITIONER TEMPORARILY HELD IT IN HIS OFFICE AND CALLED FOR A CONFERENCE OR MEETING WITH THE MEMBERS OF THE SANGGUNIANG BAYAN REGARDING SOME CHANGES HE MADE IN THE ORDINANCE.**[30]

With the two aspects both evident in this case, it is unmistakable that Tadena took advantage of his position as municipal mayor when he falsified the municipal ordinance.

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may override the veto of the local chief executive by two-thirds (2/3) vote of all its members, thereby making the ordinance or resolution effective for all legal intents and purposes. x x x LOCAL GOVERNMENT CODE OF 1991, Republic Act No. 7160, October 10, 1991.

[29] *Rollo*, p. 74.

[30] *Id*. at 51.

The third element is falsification of a document by making any alteration or intercalation in a genuine document which changes its meaning. The case of *Typoco, Jr. v. People*[31] dissected this element and required the following:

1. An alteration (change) or intercalation (insertion) on a document;
2. It was made on a genuine document;
3. The alteration or intercalation has changed the meaning of the document; and
4. The change made the document speak something false.

The first requirement is crystal clear with the following alteration or intercalation on the municipal ordinance:

ORIGINAL SECOND VERSION	ALTERED SECOND VERSION
(a) The position MUNICIPAL ADMINISTRATOR shall **not** be created **unless** 2% of the Mandatory 5% Salary Increase for 2002 be implemented. (Emphasis supplied.)[32]	(a) The position MUNICIPAL ADMINISTRATOR shall be created **and the** 2% of the Mandatory 5% Salary Increase for 2002 be implemented. (Emphasis supplied.)[33]

As for the second requirement, Section 31, Rule 132 of the Revised Rules on Evidence provides how to present alteration in a document.

Sec. 31. *Alteration in document, how to explain*. — The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocent made, or that the alteration did not change the

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[31] *Supra* note 27.

[32] *Id*. at 95.

[33] *Id*.

meaning or language of the instrument. If he fails to do that, the document shall not be admissible in evidence.

Here, the prosecution presented the original Second Version of the municipal ordinance (Exhibit E), the altered Second Version (Exhibit F), and Resolution 007 (Exhibit G), which contains the *Sangguniang Bayan's* observation that the first page of the municipal ordinance was substituted and the Whereas Clause was altered. The defense admitted the existence, due execution and truthfulness of Exhibits E to G.[34]

The prosecution also presented Tagorda and his judicial affidavit. Tagorda testified that it is his duty as *Sangguniang Bayan* Secretary to: (1) attend sessions and meetings of the *Sangguniang Bayan*; (2) keep minutes and journal of the proceedings; (3) attest approved Resolutions and Ordinances; (4) act as custodian of records of the *Sangguniang Bayan*; and (5) other functions as provided by the Local Government Code, laws, and ordinances.[35]

The SB narrated that *[w]hen the signed Second Version was returned to the Sangguniang Bayan, Vice-Mayor Anthony Que x x x noticed that the first page was substituted and paragraph (a) of the 4th "Whereas Clause" was changed, x x x. [T]he alteration was made known to the Sangguniang Bayan, [and] they decided to adopt Resolution No. 007 to delete the provision on the creation of [the] Municipal Administrator.*[36] (Italics supplied)

The combined testimonial and documentary evidence prove that alteration and intercalation were made on the Second Version of the municipal ordinance. Hence, the second requirement was complied with.

Further, the SB correctly explained that Section 19,[37] Rule 132 of the Revised Rules on Evidence identifies public

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[34] Pre-Trial Order, *id*. at 120.

[35] *Id*. at 64.

[36] *Id*. at 65.

[37] Sec. 19. *Classes of Documents*. — For the purpose of their presentation in evidence, documents are either public or private.

documents, and one of them includes 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 a foreign country. Here, the Second Version of the municipal ordinance is undoubtedly a written official act of the *Sangguniang Bayan* members, who were in the lawful exercise of their mandated official function.[38] The records reveal that a genuine copy of the Second Version was transmitted to the Office of the Municipal Mayor. Tadena admitted to receiving and changing the wordings of the Second Version. Thus, an alteration or intercalation was made on a genuine copy of a public document.

Lastly, the alteration changed the meaning of the Second Version of the municipal ordinance and represented a false intention of the local legislative body. The SB correctly observed that the *Sangguniang Bayan* originally wanted the creation of the municipal administrator's office to be dependent on the implementation of the 2% of the 5% mandatory salary increase for 2002. However, after the alteration, Tadena made it appear that the creation of the municipal administrator's office was independent from the implementation of the mandatory salary increase.[39] Clearly, the alteration departed from the intention of the *Sangguniang Bayan*, removed the condition imposed, and conveyed an untruthful idea.

The Court disputes Tadena's excuse that he acted with the concurrence of the majority of the *Sangguniang Bayan* members.

Public documents are:

(a) The 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

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

[38] *Rollo*, p. 75.

[39] *Id.* at 78.

The SB found that Tadena did not offer proof that the *Sangguniang Bayan* members agreed with the changes he made.[40] His bare and self-serving claim is insufficient to reverse his conviction.

The Court also rejects Tadena's justification that he acted in good faith in changing the wordings of the municipal ordinance.

In *Civil Service Commission v. Maala*,[41] the Court explained that good faith is a state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. It is an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, we can ascertain a person's intention by relying not on his own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts.

Here, Tadena's actuations cannot be considered as done in good faith. The records show that Tadena initiated the creation of the municipal administrator's office. The*sanggunian* convened and included the creation of the municipal administrator's office in the First Version of the municipal ordinance. Tadena vetoed the ordinance and wrote the *sanggunian* expressing his objections. The *sanggunian* again convened and issued the Second Version. This time, instead of expressing his objections in a veto, Tadena took it upon himself to change the wordings of the municipal ordinance, and returned it to the sanggunian. At this point, the vice mayor noticed that the first page was substituted and the wordings of the ordinance were altered.

From the narration of facts, it is obvious that Tadena took advantage of his position as municipal mayor to alter the wordings

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[40] *Id*. at 77-78.

[41] 504 Phil. 646, 654 (2005).

of the municipal ordinance, create the municipal administrator's office without condition/s, and pass it as though it was the original version of the sanggunian.

The Court also observed that Tadena had inconsistent defenses. During trial in the SB, he averred that he inadvertently signed the Second Version due to volume of work, but he later called for a meeting with the *Sangguniang Bayan* members to correct the errors.[42] In this petition, he alleges that the changes he made were with the concurrence of the majority of the *sanggunian* members.[43] He also asserts good faith as he was trying to save his constituents from expenses which could not be funded by the municipality's budget.[44] The Court finds that Tadena's conduct in taking advantage of his position and his varying defenses show that his state of mind is inconsistent with good faith.

Therefore, the Court resolves to affirm the SB decision convicting Tadena of the offense charged. The pieces of evidence presented support a conviction for falsification by a public officer of a public document.

III.

Tadena claims that the SB erred in not appreciating the mitigating circumstance of voluntary surrender, which he did before the First Division Clerk of Court upon learning of the criminal case against him.[45]

For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused is give oneself up and submit to the authorities

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[42] *Rollo* at p. 69.

[43] *Id* at 55.

[44] *Id* at 56.

[45] *Id*. at 58.

either because he/she acknowledges his/her guilt or he/she wishes to save the authorities the trouble and expense that may be incurred for his/her search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[46]

Here, the records disclose that a warrant of arrest had been issued on August 1, 2014, before Tadena posted bail on August 20, 2014.[47] He also admitted in this petition that upon learning of the issuance of a warrant of arrest against him, he surrendered to the Firt Division Clerk of Court.[48] With Tadena's arrest being inevitable, his surrender cannot be regarded as voluntary or spontaneous. Therefore, his claim of mitigating circumstance does not deserve merit.

WHERFORE, premises considered, the petition is **DENIED**. The Decision dated September 15, 2016 and the December 7, 2016 Resolution of the Sandiganbayan in SB-14-CRM-0327 are **AFFIRMED.**

SO ORDERED.

Carpio (Acting Chief Justice), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ.*, concur.

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[46] *Belbis, Jr. v. People*, 698 Phil. 706, 724 (2012).

[47] *Rollo*, p. 213.

[48] *Id.* at 58.

THIRD DIVISION

[G.R. No. 228765. March 20, 2019]

MINDA TOPINIO CADAVAS, *petitioner, vs.* **COURT OF APPEALS, CAGAYAN DE ORO CITY, TWENTY-THIRD DIVISION, AND DAVAO DOCTORS HOSPITAL AND/OR RAYMUNDO DEL VAL, PRESIDENT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE PROPER RECOURSE OF THE AGGRIEVED PARTY FROM THE DECISION OF THE COURT OF APPEALS IS A PETITION FOR REVIEW ON *CERTIORARI;* A PETITION FOR *CERTIORARI* SHALL BE TREATED AS A PETITION FOR REVIEW ON *CERTIORARI* IN THE INTEREST OF JUSTICE.— As pointed out by respondent DDH, petitioner Cadavas availed of the wrong remedy in assailing the decision of the Court of Appeals by filing this petition for *certiorari* under Rule 65 of the Rules of Court. The proper recourse of the aggrieved party from the decision of the Court of Appeals is a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, this petition should not be dismissed on a mere technicality. In *People's Security, Inc. v. NLRC,* the Court held that the dismissal of an appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on its merits. The rules of procedure ought not to be applied in a very rigid technical sense; rules of procedure are used only to help secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated. Hence, in the interest of justice, this petition for *certiorari* shall be treated as a petition for review on *certiorari.*

2. ID.; ID.; ID.; ID.; THE COURT DOES NOT REVIEW QUESTIONS OF FACT, BUT ONLY QUESTIONS OF LAW EXCEPT WHERE THE FINDINGS OF THE COURT OF APPEALS AND OF THE LABOR TRIBUNALS ARE CONTRADICTORY.— As a rule, the Court does not review

questions of fact, but only questions of law, in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, the rule is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory. In this case, the findings and conclusion of the Labor Arbiter differ from those of the NLRC and the Court of Appeals. Hence, the Court reviewed the records of the case and hereby affirms the Court of Appeals' decision.

3. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; DISMISSAL ON GROUND OF LOSS OF TRUST AND CONFIDENCE; REQUISITES TO BE VALID.— Under Article 282 of the Labor Code, an employer may terminate an employment for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." The requisites for dismissal on the ground of loss of trust and confidence are: 1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. In addition to these, such loss of trust relates to the employee's performance of duties.

4. ID.; ID.; ID.; ID.; TWO CLASSES OF POSITIONS OF TRUST EXPLAINED.— *Bristol Myers Squibb (Phils.), Inc. v. Baban* explained the two classes of positions of trust, thus: There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff.

5. ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE TO BE A VALID CAUSE FOR DISMISSAL MUST BE

BASED ON A WILLFUL BREACH OF TRUST AND FOUNDED ON CLEARLY ESTABLISHED FACTS.— x x x [T]he second requisite for dismissal is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. The basis for the dismissal must be clearly and convincingly established , but proof beyond reasonable doubt is not necessary.

6. ID.; ID.; ID.; ID.; MERE EXISTENCE OF BASIS FOR BELIEVING THAT THE EMPLOYEE HAS BREACHED THE TRUST AND CONFIDENCE OF THE EMPLOYER IS SUFFICIENT AND DOES NOT REQUIRE PROOF BEYOND REASONABLE DOUBT; AN EMPLOYER CANNOT BE COMPELLED TO CONTINUE THE EMPLOYMENT OF AN EMPLOYEE IN WHOM THERE HAS BEEN A LEGITIMATE LOSS OF TRUST AND CONFIDENCE.— As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature requires the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Since the requisites for dismissal due to loss of trust and confidence have been met, respondent DDH validly dismissed petitioner. While the State can regulate the right of an employer to select and discharge his employees, an employer cannot be compelled to continue the employment of an employee in whom there has been a legitimate loss of trust and confidence.

7. ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING; COMPLIED WITH.— The Court agrees with the Court of Appeals that petitioner was not denied due process. The twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. As to the requirement of notice, the employer must furnish the worker with two written notices before termination of employment can

be legally effected: (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. With regard to the requirement of a hearing, this Court has held that the essence of due process is simply an opportunity to be heard, and not that an actual hearing should always and indispensably be held. In this case, respondent DDH complied with the twin requirements of notice and hearing.

8. **ID.; ID.; ID.; ID.; A VALIDLY DISMISSED EMPLOYEE FOR WILLFUL BREACH OF TRUST CANNOT BE GRANTED SEPARATION PAY.—** In PLDT v. NLRC, the Court disallowed the grant of separation pay to the respondent employee therein, a traffic operator of PLDT, who was held validly dismissed for dishonesty x x x. The Court thus declared: **We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.** x x x. The ruling in *PLDT* has to be taken together with the later ruling of the Court in *Central Philippines Bandag Retreaders, Inc.* v. *Diasnes*, thus: x x x. **To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family ¯ grounds under Art. 282 of the Labor Code that sanction dismissal of employees**. x x x Based on the foregoing, as petitioner was validly dismissed for willful breach of trust under Article 282 of the Labor Code, she cannot be granted separation pay.

APPEARANCES OF COUNSEL

Jao Law Office for petitioner.
Nitorreda Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* assailing the Decision[1] of the Court of Appeals dated December 4, 2015, which affirmed the Resolution of the National Labor Relations Commission *(NLRC),* dismissing petitioner Minda T. Cadavas' complaint for illegal dismissal.

The facts are as follows:

Petitioner Minda Cadavas was hired as a Staff Nurse by respondent Davao Doctors Hospital *(DDH)* on January 16, 1989. She was promoted to Nurse Supervisor in the course of her employment until her dismissal on May 11, 2012.[2]

Sometime in February 2012, petitioner Cadavas' aunt, Shirley Aninion, was confined at DDH for breast cancer, stage four. To help lessen the hospital expenses of her aunt, Cadavas, with the help of some hospital staff, was able to obtain supplies and medicines used in her aunt's operation from the Emergency Department and Operating Room Central Supply Service without being entered in the records so that the said supplies and medicines would not be charged to her aunt's bill, but Cadavas would replace these items (purchased at a lower price outside the hospital). The items taken were valued at ₱6,000.00, more or less, and were eventually replaced by Cadavas.[3]

On April 16, 2012, respondent DDH, through the Director of Nursing Service, sent petitioner Cadavas a notice[4] to explain the incident of February 25, 2012 when she allegedly got supplies and drugs from the Emergency Department and Operating Room

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[1] The Decision was penned by Associate Justice Maria Filomena D. Singh, and concurred in by Associate Justices Edgardo T. Lloren and Ronaldo B. Martin; *rollo,* pp. 191-198.

[2] *Id.* at 29.

[3] *Id.*

[4] Records, Volume 1, p. 21.

Central Supply Service and why no disciplinary action would be taken against her for the grave offense of willful abuse of hospital property.

In her letter-explanation[5] dated April 18, 2012, petitioner Cadavas stated that after the STAT chest tube insertion procedure of her aunt, she asked Nursing Aide Madellen Añasco if the supplies and medicines used by her aunt could be replaced, and Añasco agreed; hence, the items were not charged to her aunt. Moreover, after the VATS operation of her aunt on March 10, 2012, the staff clerk of the Operating Room Central Supply Service did not charge to her aunt's account the Thoraset used because they had an agreement that it would be replaced. The said supplies and medicines were eventually replaced. Cadavas said that there was no intention on her part to abuse the hospital's property or supplies, as she merely intended to help her aunt lessen her hospital expenses that reached ₱254,000.00. She stated that she may have committed some mistakes, but they were not done secretly on her own to evade detection, but with the consent and knowledge of some hospital staff.

On May 2, 2012, an administrative hearing was conducted regarding the complaint against petitioner Cadavas. In the said hearing, Cadavas reiterated that she asked Nursing Aide Añasco if the supplies used on her aunt could be replaced, with the intention to help lessen the hospital expenses of her aunt. Cadavas admitted that she was aware of the hospital policy that they are not allowed to purchase medicines outside the hospital and that employees are not allowed to borrow supplies for personal use, but it has long been a practice that employees are allowed to replace supplies or medicines from the emergency room, instead of charging them to the patient.[6] She admitted that she violated the rules because she was only thinking of helping her aunt at that time.[7] She was not able to ask approval from her director, but the people around the emergency room were

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[5] *Id.* at 22-23.

[6] *Id.* at 44-45

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

aware of the borrowed items.[8] She stated that she had already replaced the items

Thereafter, Cadavas received a Memorandum[9] dated May 9, 2012, informing her that her employment was being terminated for dishonesty and loss of trust and confidence, thus:

> In your letter of explanation dated 18 April 2012, you admitted getting medicines and supplies from Emergency Room and OR CSS which were used [in the] STAT chest tube insertion performed by Dr. Rizbon Yana on patient Shirley Aninion, whom you admitted is your aunt. The items are as follows[:]
>
> | | |
> |---|---|
> | Thora bottle | Ketorolac #1 |
> | Thoracic Cath (size 32) | Nubain #1 |
> | Sterile Gloves size 7 #1 | Demerol #1 |
> | Sterile Gloves size 7 #2 | Mersilk O |
>
> You alleged that Nursing Aide Madellen Añasco prepared the abovementioned items. You further alleged that you asked Ms. Añasco if you could just replace the items instead of charging the cost thereof to the patient and she agreed. Based on said agreement, the items were not charged to the patient but were later replaced.
>
> x x x x x x x x x
>
> Investigation disclosed that the abovementioned medicines and supplies used were not recorded in the detailed listing of charges because you told Nursing Aide Añasco and OR CSS clerk that you will just replace the items. Being your subordinates, the said employees naturally complied with your instruction. As a result, the items were not charged to the patient and for which reason the Hospital suffered damages by way of lost income.
>
> Your abovementioned act of getting medicines and supplies without having the transaction recorded is against hospital policy and practice. It is an act of dishonesty. As a supervisor, it is your duty and obligation to set the example to your subordinates and ensure that hospital policies, rules and regulations are enforced. Sadly, you violated the policy and, worse, even influenced your subordinates to violate policy.

[8] *Id.* at 46.

[9] *Id.* at 49.

Obviously, the employees involved would not have agreed to the commission of the violation if you had not given them the instruction. Thus, you clearly abused your authority and position.

In view of your dishonesty, Management has no more trust and confidence in you. Accordingly, your employment is terminated effective immediately.[10]

On May 16, 2012, Cadavas filed a Complaint[11] for illegal dismissal and other monetary claims against DOH with the Regional Arbitration Branch No. XI, NLRC in Davao City. Cadavas claimed that her dismissal from service was too harsh for her act of violating company rules, considering that it was her first offense in her 23 years of service to the hospital. She also alleged that she was denied due process as she was not assisted by counsel during the administrative hearing conducted by DDH.

In its defense, respondent DDH claimed that complainant Cadavas was dismissed for just cause. It argued that Cadavas' dismissal was justified because she violated a hospital policy, thereby breaching the trust and confidence it reposed in her. DDH stated that Cadavas admitted having withdrawn items for a procedure performed on her aunt, who was a patient in the hospital, and the said items were not charged to the patient upon her request and assurance that they would be replaced. She also admitted that the said act is in violation of DDH's policy, although she insisted that it is being practiced in the hospital. Even assuming that replacement of items withdrawn from the Central Supply Service is being practiced, it does not justify Cadavas' admitted violation of existing policy. Cadavas is a supervisor, which is a position of responsibility; hence, she is expected to enforce DDH's policies and rules and regulations. Moreover, DDH said that the policy requiring recording of all withdrawals of supplies and medicines was established in order to prevent pilferage and dishonesty. If enforcement of the said policy would be relaxed, it would

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[10] *Id.*

[11] *Id.* at 1.

encourage the evil being sought to be prevented. Further, DDH stated that Cadavas was afforded due process because she was given a notice to explain, informing her of the offense charged against her; a hearing was conducted to give her an opportunity to explain and to present her defense; and a notice of termination was served on her.

On October 12, 2012, the Labor Arbiter rendered a Decision[12] in favor of complainant-herein petitioner Cadavas. Although the Labor Arbiter agreed with respondent DDH that Cadavas committed some lapses in participating in the open practice of borrowing and replacing later the hospital supplies and medicines used during the operation/treatment of a hospital staff or the staffs relative, the Labor Arbiter held that the penalty of dismissal is not commensurate to the offense committed. According to the Labor Arbiter, Cadavas' 23 years of service, wherein she received merit, recognition, commendation and loyalty awards from DDH, should not be obliterated by a single lapse of judgment. The Labor Arbiter cited *Conti v. National Labor Relations Commission,*[13] which held that violation of a rule or policy, which in its implementation has oftentimes been relaxed, may not lawfully give rise to termination of employment of the violator.[14] The Labor Arbiter stated that it holds true in this case. The *fallo*of the Decision reads:

> WHEREFORE, judgment is hereby rendered declaring the dismissal of complainant MINDA TOPINIO-CADAVAS illegal and ordering respondent DAVAO DOCTORS' HOSPITAL, thru RAYMUND DEL VAL, President, to pay complainant her separation pay in the total amount of SEVEN HUNDRED SIXTY-SIX THOUSAND TWO HUNDRED SIXTY EIGHT PESOS (₱766,268.00).[15]

Respondent DDH appealed the Labor Arbiter's Decision

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[12] *Rollo,* pp. 73-80

[13] 337 Phil. 560 (1997)

[14] Records, Volume 2, p. 152.

[15] *Rollo,* p. 80.

before the NLRC, Cagayan de Oro City.

On February 28, 2013, the NLRC rendered a Resolution in favor of respondent DDH. The *fallo* of the Resolution[16] reads:

> IN VIEW OF ALL THE FOREGOING, the appeal is GRANTED. The appealed decision is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the case for lack of merit.[17]

The NLRC stated that complainant-herein petitioner Cadavas was the Nurse Supervisor in the Nursing Service Department of respondent DDH and, thus, held a position of trust and confidence. Hence, the betrayal of this trust is the essence of the offense for which the employee is penalized.[18]

The NLRC said that the records showed that Cadavas admitted that she withdrew hospital supplies and medicines for her aunt and she asked Nursing Aide Añasco if she could replace the items withdrawn to which Añasco agreed. In effect, as a Nurse Supervisor, she was directing the latter not to record the transaction, thereby prejudicing respondent DDH. Cadavas knew all along that there was a policy against the purchase of hospital supplies and medicines outside of respondent DDH's pharmacy even if such items were replaced, but she insisted in doing so. While the NLRC commiserated with Cadavas regarding her intention to help alleviate her aunt's misery, nonetheless, it stated that as a supervisory employee, Cadavas was expected to exercise her judgment and discretion with utmost care and conce1n for her employer's business. She was tasked to perform key functions and, unlike ordinary rank and file employees, she was bound by a more exacting work ethics. The NLRC said that in doing what she did, Cadavas rendered herself absolutely unworthy of the trust and confidence demanded by her position. Hence, DDH could not be faulted for losing trust

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[16] *Id.* at 115-121.

[17] *Id.* at l21.

[18] Citing *Santos v. San Miguel Corp.,* 447 Phil. 264, 277 (2003).

and confidence in Cadavas and in refusing to retain her as its employee.

Cadavas' motion for reconsideration was denied by the NLRC in a Resolution[19] dated May 7, 2013.

Cadavas filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC gravely abused its discretion in (1) reversing and setting aside the Decision of the Labor Arbiter and in dismissing her complaint; and (2) ignoring that she was denied due process.[20]

The Court of Appeals denied the petition.

The appellate court stated that loss of trust and confidence will validate an employee's dismissal only upon compliance with certain requirements, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. And in order to constitute a just cause for dismissal, the act complained of must be work-related such as would show the employee concerned to be unfit to continue working for the employer.[21]

In this case, the Court of Appeals found the above requirements for dismissal on the ground of loss of trust and confidence present:

(1) Petitioner Cadavas was DDH's Nurse Supervisor, which position is imbued with trust and confidence as she is charged with the delicate task of overseeing the staff nurses in the Nursing Service Department of DDH;

(2) Petitioner Cadavas, as Nurse Supervisor, requested another hospital staff member, a subordinate employee, not to record the supplies and medicines she took from the Emergency Department and Operating Room Central Supply Service so

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[19] *Rollo,* pp. 131-132.

[20] *Id.* at 194.

[21] Citing *Vilchez v. Free Port Service Corp., et al.,* 763 Phil. 32, 39 (2015).

that these items would not be reflected in her aunt's hospital bill. This act was plainly dishonest and it was admitted by Cadavas herself. Evidently, Cadavas, by her act, breached the trust and confidence reposed in her by DDH. Holding a supervisory position, Cadavas was expected to set an example for other hospital employees to be faithful to the hospital rules and policies. Instead, Cadavas committed a dishonest, if not illegal, act and, to achieve her goal, even directed a subordinate employee to participate in the dishonesty. Even if the items taken were replaced by Cadavas, this did not exempt her from liability for her offense.

Further, the Court of Appeals held that petitioner Cadavas was not denied due process. She was neither barred from being heard nor deprived of her right to be assisted by a counsel. Evidence showed that she was given ample time to prepare for her defense. She was first notified on April 16, 2012 about the charge against her and was given time to explain. She then gave her written explanation on April 18, 2012. The hearing was conducted on May 2, 2012, which gave her two weeks, more or less, to engage the services of a counsel.

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution[22] dated May 31, 2016.

Hence, petitioner filed this petition for *certiorari,* alleging the following:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT UPHELD THE HAPHAZARD CONCLUSION OF THE NLRC THAT THE ALLEGED "LOSS OF TRUST AND CONFIDENCE" WAS JUSTIFIED, FAILING TO CONSIDER THE PARTICULAR CIRCUMSTANCES OF PETITIONER'S POSITION AND THE OTHER CIRCUMSTANCES SURROUNDING THE ACT COMPLAINED OF.

II.

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[22] *Rollo,* pp. 207-208.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE ALLEGED "LOSS OF TRUST AND CONFIDENCE" WAS A SUFFICIENT GROUND FOR THE PENALTY OF DISMISSAL, WITHOUT DUE REGARD TO THE HARSHNESS OF THE PENALTY *VIS-A-VIS* THE NATURE AND EFFECT OF THE INFRACTION.

III.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT DDH SATISFIED THE REQUIREMENTS OF DUE PROCESS IN TERMINATING PETITIONER'S EMPLOYMENT, FAILING TO CONSIDER THE IRREGULARITIES IN THE SUPPOSED PROCEEDINGS.

IV.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT UPHELD THE REVERSAL BY THE NLRC OF THE RULING OF THE LABOR ARBITER, IN VIOLATION AND UTTER DISREGARD OF THE PRINCIPLES OF SOCIAL AND COMPASSIONATE JUSTICE ESPOUSED BY NO LESS THAN THE CONSTITUTION.[23]

Petitioner's Arguments

Petitioner Cadavas averred that at the time of the incident, she was the Nurse Supervisor at the Delivery Room Operating Room *(OR-DR),* Neonatal Intensive Care Unit *(ICU),* and Hemodialysis Departments. As such, she was tasked with the scheduling of the staff nurses within her departments and overseeing the bedside care being delivered by her staff.

On the other hand, the supplies used in her aunt's procedure were from the Emergency Room Central Supplies, under the control, charge and supervision of Head Nurse Julie Balagtas and Supervisor-in-Charge Jarilyn Bastasa of the Emergency

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

Department.

Petitioner Cadavas contends that even if she was a Nurse Supervisor, her position alone should not be deemed as one imbued with trust and confidence insofar as the act complained of is concerned. The Thoraset used for her aunt's chest tube insertion was the charge and responsibility of another employee from another department. Moreover, petitioner's functions and duties as a Nurse Supervisor in another department did not grant her any direct access to the supplies or to the recording thereof for billing purposes. Based on her explanation letter, she merely asked Añasco, a nursing aide from the Emergency Department, whether it would be possible for her to replace the Thoraset used. It was Añasco who confirmed that it was possible, that it has been the usual practice among employees, and she even volunteered information as to how to make it happen.

Petitioner stressed that the employees from whom she inquired at the Emergency Room Central Supplies were not her subordinates and she did not exercise any form of authority or supervision over them. Hence, she did not abuse her position of responsibility in a manner that would justify the alleged loss of trust and confidence. The staff at the Emergency Room Central Supplies had the last say and discretion over their responsibilities. To impute all the blame to petitioner for her colleagues' direct actions, letting her bear the brunt of respondent DDH's disciplinary action and upholding such act of respondent DDH as correct and proper, is an arbitrary and whimsical exercise of the appellate court's jurisdiction.

Moreover, petitioner contends that the act complained of was not work-related as she was not performing an act related to her duties and functions as a Nurse Supervisor of the OR-DR, Neonatal ICU, and Hemodialysis Departments. In addition, the act complained of has been a long-standing practice within the Emergency Department that has been tolerated by DDH's management, such that when petitioner availed of the same,

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[24] *Supra* note 13.

the penalty of dismissal imposed upon her has become unjustifiable. She cited the case of *Conti v. National Labor Relations Commission,*[24] wherein it was held that violation of a rule or policy which in its implementation has oftentimes been relaxed may not lawfully give rise to termination of employment of the violator.[25] She asserted that she had already replaced all the supplies that were used in her aunt's procedure. There were no actual losses to respondent DDH, since the replacement supplies were used and charged to the bill of other patients.

Further, petitioner argues that the Court of Appeals disregarded the fact that she was denied both substantive and procedural due process. Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause. According to petitioner, the supposed loss of trust and confidence is not justified in this case. Thus, there is actually no just cause for her termination.

Lastly, petitioner contends that the Court of Appeals gravely abused its discretion in failing to apply the precedent established in *Bristol Myers Squibb (Phils.), Inc. v. Baban,*[26] wherein the Court found the supervisory employee therein to have misappropriated company property for his own use and found his dismissal to be valid, but granted him separation pay because it was his first infraction in his several years of service.

In its Comment, respondent DDH prays for the denial of the petition for *certiorari,* it being the wrong mode of appeal. Respondent DDH contends that petitioner should have filed a petition for review on *certiorari* under Section 1, Rule 45 of the Rules of Court, thus:

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

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[25] Records, Volume 2, p. 152.

[26] 594 Phil. 620 (2008).

~~Trial Court or other courts whenever authorized by law, may file~~ with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

The Ruling of the Court

As pointed out by respondent DDH, petitioner Cadavas availed of the wrong remedy in assailing the decision of the Court of Appeals by filing this petition for *certiorari*under Rule 65 of the Rules of Court. The proper recourse of the aggrieved party from the decision of the Court of Appeals is a petition for review on *certiorari* under Rule 45 of the Rules of Court.[27]

However, this petition should not be dismissed on a mere technicality. In *People's Security, Inc. v. NLRC*[28] the Court held that the dismissal of an appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on its merits. The rules of procedure ought not to be applied in a very rigid technical sense; rules of procedure are used only to help secure, not override substantial justice.[29] If a technical and rigid enforcement of the rules is made, their aim would be defeated.[30]

Hence, in the interest of justice, this petition. for *certiorari* shall be treated as a petition for review on *certiorari.*

The main issue is whether or not petitioner Cadavas was validly dismissed for willful breach of the trust reposed in her by her employer, respondent DDH.

As a rule, the Court does not review questions of fact, but

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[27] See *Land Bank of the Phils. v. Court of Appeals,* 456 Phil. 755, 787 (2003).

[28] 297 Phil. 157, 163 (1993), citing *Tamargo v. Court of Appeals,* 285 Phil. 72, 77 (1992).

[29] *Id*

[30] *Id.*

[31] *Alaska Milk Corporation v. Ponce,* G.R. Nos. 228412 and 228439, July 26, 2017, 833 SCRA 332, 347.

only questions of law, in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, the rule is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.[31] In this case, the findings and conclusion of the Labor Arbiter differ from those of the NLRC and the Court of Appeals. Hence, the Court reviewed the records of the case and hereby affirms the Court of Appeals' decision.

Based on the notice[32] of termination, respondent DDH terminated petitioner Cadavas on the ground of loss of trust and confidence for her act of dishonesty in getting medicines and supplies from the Emergency Department and Operating Room Central Supply Service without having the transaction recorded, which is against the hospital's policy and practice.

Under Article 282 of the Labor Code, an employer may terminate an employment for "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative."

The requisites for dismissal on the ground of loss of trust and confidence are: 1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[33] In addition to these, such loss of trust relates to the employee's performance of duties.[34]

Bristol Myers Squibb (Phils.), Inc. v. Baban[35] explained the two classes of positions of trust, thus:

> There are two (2) classes of positions of trust. The first class consists of managerial employees. They are defined as those vested with the powers or prerogatives to lay down management policies and to hire,

[32] Records, Volume 1, p. 25.

[33] *Central Azucarera De Bais, et al. v. Heirs of Zuelo Apostol,* G.R. No. 215314, March 14, 2018.

[34] *Id.*

[35] *Supra* note 26.

[36] *Id.* at 628.

transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. They are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[36] (Citations omitted.)

Managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff.[37]

In this case, petitioner Cadavas was a managerial employee. Petitioner was the Nurse Supervisor of the OR-DR, Neonatal ICU, and Hemodialysis Departments at the time of the incident; hence, she held a position of trust and confidence as she managed the said departments, having been tasked with the scheduling of the staff nurses within her departments and overseeing the quality of bedside care being delivered by her staff.

To reiterate, the second requisite for dismissal is that there must be an act that would justify the loss of trust and confidence.[38] Loss of trust and confidence to be a valid cause for dismissal must be based on a willful breach of trust and founded on clearly established facts.[39] Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[40] The basis for the dismissal must be clearly and convincingly established, but proof beyond reasonable doubt is not necessary.[41]

The act for which respondent DDH terminated petitioner for

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[37] *Josephine Casco v. NLRC, etc., et al.,* G.R. No. 200571, February 19, 2018.

[38] *Id.*

[39] *Id.*

[40] *Bluer Than Blue Joint Ventures Company, et al. v. Esteban,* 731 Phil. 502, 513 (2014).

[41] *Bristol Myers Squibb (Phils.), Inc. v. Baban, supra* note 26, at 629.

loss of trust and confidence is stated in its notice of termination, thus:

> **Your abovementioned act of getting medicines and supplies without having the transaction recorded is against hospital policy and practice.** It is an act of dishonesty. As a supervisor, it is your duty and obligation to set the example to your subordinates and ensure that hospital policies, rules and regulations are enforced. Sadly, you violated the policy and, worse, even influenced your subordinates to violate policy. Obviously, the employees involved would not have agreed to the commission of the violation if you had not given them the instruction. Thus, you clearly abused your authority and position.[42] (Emphasis and underscore supplied.)

In the Minutes[43] of the Administrative Hearing conducted by respondent DDH, petitioner admitted that there is no policy that employees can borrow supplies for personal use.[44] She also admitted that she was aware of the hospital's policy against the purchase of medicines outside the hospital.[45] She apologized for buying medicines and supplies outside the hospital (to replace the ones used by her aunt). Thus, it is clear that despite knowing that there is a policy against the purchase of supplies and medicines outside the hospital, petitioner chose to violate the policy by asking Nursing Aide Añasco if she could replace the supplies and medicines used by her aunt. As Añasco acceded to petitioner's request, the medicines and supplies used by petitioner's aunt were not recorded and charged to her per the agreement that petitioner would replace the said medicines and supplies. In effect, petitioner caused the transaction not to be recorded. Although petitioner was not then performing her duties and functions as Nurse Supervisor in her departments; nevertheless, as an employee and Nurse Supervisor of respondent DDH, she was covered by the policy against the use of hospital medicines and supplies without recording such use, and purchasing medicines and supplies outside of respondent hospital to replace hospital medicines and supplies already used. Notably,

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[42] Records, Volume 1, p. 25.

[43] *Id.* at 45-48.

petitioner was aware of such hospital policy, but she still violated it. As a Nurse Supervisor holding a position of trust, petitioner was expected to enforce and observe hospital policies. Clearly, petitioner breached the trust and confidence reposed in her by respondent DDH by her willful violation of the said hospital policy, causing loss of income to respondent DDH.

As a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature requires the employer's full trust and confidence.[46] Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt.[47]

Since the requisites for dismissal due to loss of trust and confidence have been met, respondent DDH validly dismissed petitioner. While the State can regulate the right of an employer to select and discharge his employees, an employer cannot be compelled to continue the employment of an employee in whom there has been a legitimate loss of trust and confidence.[48]

The Court agrees with the Court of Appeals that petitioner was not denied due process. The twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees.[49] As to the requirement of notice, the employer must furnish the worker with two written notices before termination of employment can be legally effected: (a)

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[44] *Id.* at 46.

[45] *Id.*

[46] *Bristol Myers Squibb (Phils.), Inc. v. Bahan, supra* note 26, at 631.

[47] *Id.* at 631-632.

[48] *Id.* at 631.

[49] *Conti v. National Labor Relations Commission, supra* note 13, at 565.

[50] *Id.* at 565-566.

[51] *Id.* at 566.

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.[50] With regard to the requirement of a hearing, this Court has held that the essence of due process is simply an opportunity to be heard, and not that an actual hearing should always and indispensably be held.[51] In this case, respondent DDH complied with the twin requirements of notice and hearing.

Petitioner argues that in *Conti v. National Labor Relations Commission,*[52] the Court held that violation of a rule or policy which, in its implementation, has oftentimes been relaxed may not lawfully give rise to termination of employment of the violator.[53] She asserted that she already replaced all the supplies that were used in her aunt's procedure and that there were no actual losses to respondent DDH, since the replacement supplies were used and charged to the bill of other patients.

The Court finds the cited ruling in *Conti* inapplicable to this case.

In *Conti,* the services of the complainants-petitioners therein, Amor Conti and Leopoldo Cruz, were terminated by their employer Corfarm Holdings Corporation (*Corfarm)*due to (1) the expiration of their respective employment contracts, which were coterminous with the management contract between Corfarm and MERALCO; and (2) the ongoing evaluation of their past performances and investigation by the internal auditor of Corfarm of certain anomalous transactions involving them (petitioners therein). However, petitioners therein were held illegally dismissed because they were denied due process, as their employer Corfarm failed to comply with the twin requirements of notice and hearing. Moreover, the Court found that the said management contract was extended; hence, the respective employment contracts of petitioners therein likewise

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[52] *Supra* note 13.

[53] Records, Volume 2, p. 152.

remained in force.

Further, the Court found that Corfarm failed to controvert therein petitioners' testimony that they were never apprised of any policy on procurement that they allegedly violated. Thus, the Court stated that assuming *arguendo* that petitioners therein had indeed violated a company policy, "[i]t has been held that the dismissal of an employee due to an alleged violation of a company policy, where it was found that the violation was acquiesced in by said employee's immediate superiors and the policy violated had not always been adhered to by the management, is an act not amounting to a breach of trust; therefore, it is not a justification for said employee's dismissal."[54]

In *Conti,* the Court stated that therein petitioner Amor Conti, during her direct examination, testified that since the time of her employment with Corfarm, no written policies governed their purchasing activity, nor was she required to prepare a canvass sheet for every purchase. Furthermore, the Court noted the fact that the questioned purchase orders had been approved and signed by therein petitioners' immediate superiors was uncontroverted. Therefore, Corfarm and its officials' allegations of negligence and violation of company policy, made without substantial proof, could not justify the dismissal of petitioners therein.

In contrast to the lack of a written policy and the approval of the questioned purchase orders by therein petitioners' immediate superiors in *Conti,* in the instant case, petitioner Cadavas was well aware of the policy she admittedly violated and she also admitted[55] that she did not ask for approval from her superior/director if she could replace the medicines and supplies used by her aunt.

Further, the replacement of the medicines and supplies obtained in violation of a policy by petitioner Cadavas cannot erase the betrayal of the trust and confidence reposed in her by

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[54] *Conti v. National Labor Relations Commission, supra* note 13, at 567-568.

[55] Records, Vol. 1, p. 46.

[56] *Supra* note 26.

her employer, respondent DDH. Contrary to the allegation of petitioner, respondent DDH suffered loss of income for the medicines and supplies merely replaced by petitioner.

In addition, the Court finds the ruling in *Bristol Myers Squibb (Phils.) Inc. v. Baban,*[56] wherein the Court granted separation pay to a validly dismissed employee who was holding a position of trust, to be inapplicable to this case.

In *Bristol Myers Squibb (Phils.) Inc. v. Baban,*[57] respondent employee therein, who held a position of trust and confidence, gave out therein petitioner's medical samples as a token of gratitude to the supporters of his father who lost in the May 11, 1998 elections. He was held validly dismissed on the ground of loss of trust and confidence, but the Court granted him separation pay as an equitable relief in consideration of past services rendered, since his dismissal was for a cause other than serious misconduct or those that negatively reflected on his moral character, citing *Philippine Long Distance Telephone Company (PLDT) v. NLRC.*[58]

In *PLDT v. NLRC,*[59] the Court disallowed the grant of separation pay to the respondent employee therein, a traffic operator of PLDT, who was held validly dismissed for dishonesty because she demanded and received ₱3,800.00 in consideration of her promise to facilitate approval of therein complainants' applications for telephone installation. The Court thus declared:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed

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[57] *Id.* at 632.

[58] 247 Phil. 641 (1988).

[59] *Id.*

employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.[60] (Emphasis supplied.)

The ruling in *PLDT* has to be taken together with the later ruling of the Court in *Central Philippines Bandag Retreaders, Inc. v. Diasnes,*[61] thus:

As may be noted, *PLDT* declared that separation pay or financial assistance should be denied a legally separated employee when the cause for dismissal is for an act constituting serious misconduct or that reflects on the employee's moral character. *PLDT,* however, did not go further to state that the grant or award of separation pay or financial assistance is automatically awarded when the dismissal is for a cause other than that contemplated in said case. This *PLDT* doctrine was later expanded in *Toyota Motors Phils. Corp. Workers Association v. National Labor Relations Commission (Toyota),* where we held that:

> In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. **We, therefore, find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282, like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee.**
>
> In analogous causes for termination, like inefficiency, drug use, and others, the NLRC or the courts may opt to grant separation pay anchored on social justice in consideration of length of service of the employee, the an1ount involved, whether the act is the first offense, the performance of the employee and the like, using guideposts enunciated in PLDT on the propriety of the award of separation pay. x x x

To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award of separation pay based on

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[60] *Id.* at 649.

[61] 580 Phil. 177 (2008).

social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family — grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[62] (Emphases and underscores supplied; citation omitted.)

Based on the foregoing, as petitioner was validly dismissed for willful breach of trust under Article 282 of the Labor Code, she cannot be granted separation pay.

WHEREFORE, the petition is denied. The Decision of the Court of Appeals dated December 4, 2015 and its Resolution dated May 31, 2016 in CA-G.R. SP No. 05635-MIN are hereby **AFFIRMED.**

SO ORDERED.

Leonen, Reyes, Jr., A., Hernando, and *Carandang,*[*] *JJ.,* concur.

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[62] *Id.* at 188-189.

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 233777. March 20, 2019]

MARVIN PORTERIA *y* MANEBALI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; A WARRANT DULY ISSUED ON THE BASIS OF PROBABLE CAUSE IS REQUIRED FOR A SEARCH AND SEIZURE TO BE VALID; EXCEPTIONS.— Our constitution guarantees the inviolable right of every person to be secure in his or her persons, houses, papers, and effects, against unreasonable searches and seizures for whatever nature and for any purpose. Thus, there should be a warrant duly issued on the basis of probable cause, in order to consider these searches and seizures as valid. This notwithstanding, there are several circumstances which the Court recognizes as exceptions to the requirement of a warrant: (a) a warrantless search incidental to a lawful arrest; (b) seizure of evidence in plain view; (c) search of a moving vehicle; (d) consented warrantless search; (e) customs search; (f) stop-and-frisk; and (g) the existence of exigent and emergency circumstances.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; INSTANCES WHERE AN ARREST WITHOUT A WARRANT MAY BE VALID; ELEMENTS THAT MUST CONCUR FOR AN *IN FLAGRANTE DELICTO* ARREST.— Since Marvin was arrested without a warrant, his apprehension may only be considered valid under the three (3) instances provided in Section 5, Rule 113 of the Rules of Court, *to wit*: (a) the arrest of a suspect *in flagrante delicto*; (b) the arrest of a suspect where, based on the personal knowledge of the arresting officer, there is probable cause that the suspect was the perpetrator of a crime that had just been committed, or a "hot pursuit" arrest; and (c) the arrest of a prisoner, who has escaped from custody, or has escaped while being transferred from one confinement to another. For the case at bar, the last circumstance for a valid warrantless

arrest obviously cannot apply. An *in flagrante delicto* arrest requires the concurrence of two (2) elements: (a) the person arrested must execute an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime; and (b) the overt act was done in the presence or within the view of the arresting officer. Meanwhile, for a hot pursuit arrest, there must be an offense that was just committed, and the arresting officer had personal knowledge of facts indicating that the accused committed it.

3. ID.; ID.; ID.; ID.; ID.; FAILURE TO ESTABLISH ANY OVERT ACT WHICH COULD LEAD TO PETITIONER'S *IN FLAGRANTE DELICTO* ARREST RENDERS THE SEARCH ON HIM AS WELL AS HIS ARREST ILLEGAL.— Upon a careful review of the records of this case, the Court holds that Marvin was not validly arrested without a warrant. The prosecution failed to establish any overt act which could lead to Marvin's *in flagrante delicto* arrest. There was also no evidence that the arresting officers, or SPO4 Pequiras in particular, knew of an offense that was just committed and that Marvin was the perpetrator of the offense. x x x [T]he Court cannot determine Marvin's overt actions, which led SPO4 Pequiras to believe that Marvin was illegally in possession of firearms. There is a dearth of evidence describing how Marvin committed a crime, was committing, or was about to commit a crime in the presence of the arresting officers. SPO4 Pequiras merely testified that after receiving the information regarding the presence of a suspicious person, they verified the report, and this eventually resulted in the arrest of Marvin. It was not established that Marvin had a firearm visibly tucked in his waist, or that he behaved in a manner which would elicit a reasonable suspicion that he committed an offense. Clearly, the trial court and the CA grievously erred in agreeing with the prosecution. The prosecution established only a suspicion that a crime was committed—nothing more—prior to the arrest of Marvin. x x x There being no valid warrantless arrest, the search conducted on Marvin's body and belongings is likewise unjustified. The law requires that there should be a lawful arrest prior to the search. The process cannot be reversed. "[W]here a person is searched without a warrant, and under circumstances other than those justifying a warrantless arrest x x x **upon a mere suspicion that he has embarked on some criminal activity, and/or for the purpose of discovering if indeed a crime [was] committed**

by him, then the search x x x of such person as well as his arrest are deemed illegal." The CA thus committed a reversible error in deeming the search valid without making a prior determination of the legality of the arrest.

4. ID.; EVIDENCE; THE WAIVER OF AN ILLEGAL WARRANTLESS ARREST DOES NOT RENDER THE EVIDENCE SEIZED DURING THE ILLEGAL WARRANTLESS ARREST ADMISSIBLE.— When there is an irregularity in the arrest of an accused, the accused must object to the validity of his arrest *before* arraignment. Otherwise, the objection is deemed waived. Here, Marvin may no longer raise the issue regarding the validity of his arrest, especially after participating in the proceedings before the trial court. Nonetheless, this does not preclude Court from ruling against the admissibility of the evidence obtained from the illegal warrantless arrest. As such, the OR and CR allegedly found in the bag of Marvin after he was arrested for illegal possession of firearms are inadmissible. The Court cannot consider the documents supposedly seized from Marvin's possession as part of the circumstantial evidence for the prosecution.

5. ID.; LAW ON THE RIGHTS OF THE PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION (R.A. 7438); REQUIREMENTS FOR VALIDITY OF EXTRAJUDICIAL CONFESSIONS MADE BY A PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION; RATIONALE.— Under [Section 2 of R.A. No. 7438], extrajudicial confessions made by a person arrested, detained or under custodial investigation must fulfill the following requirements: (d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; **otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding**. x x x These safeguards are intended to prevent the practice of extracting coerced confessions, no matter how slight, which could lead the accused to make false admissions. They are meant to insulate the accused from "coercive psychological, if not physical,

atmosphere of [a custodial] investigation."

6. ID.; EVIDENCE; WHERE THE TOTALITY OF CIRCUMSTANTIAL EVIDENCE DOES NOT CORROBORATE THE EXTRAJUDICIAL CONFESSION OF THE ACCUSED, THE DOUBTS AS TO HIS GUILT ARE MORE THAN REASONABLE, WHICH WARRANTS HIS ACQUITTAL.— The Court emphasizes that an extrajudicial confession is not a sufficient ground for conviction, unless it is corroborated by either direct or circumstantial evidence. If it is the latter, the accused may be convicted when: (a) there is more than one circumstance; (b) the facts from which the inferences are derived and proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Unfortunately for the prosecution, most of the circumstantial pieces of evidence are inadmissible as evidence against Marvin. The only remaining circumstance is the recovery of the stolen motorcycle in Sta. Rosa, Laguna. Yet notably, the police officers did not recover the motorcycle through the information Marvin allegedly provided to either P/Supt. Villamer or Virgie. It was neither found in the possession of a certain Felix as Marvin supposedly told P/Supt. Villamer, or with "*Insan Joy*," in the address given to Virgie. **Rather, the police officers of the Sta. Rosa City Police Station chanced upon the stolen motorcycle when they set-up a checkpoint at the Barangay Road of Kaingin, Sta. Rosa, Laguna. The driver of the stolen motorcycle was Albert, not the petitioner in this case. Marvin was not even present at the time Albert was driving the motorcycle.** For these reasons, the totality of the evidence does not corroborate the extrajudicial confession of Marvin. His conviction rests on tenuous grounds—the OR and CR were products of an illegal search, the admission to P/Supt. Villamer was in violation of his right to counsel, and the Court cannot determine the voluntariness and veracity of Marvin's oral confession of guilt to Virgie. The doubts as to the guilt of Marvin are, therefore, more than reasonable, which warrants his acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[2] dated May 12, 2017 and the Resoluto[3] dated August 16, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 37273. The challenged issuances of the CA affirmed the Judgment[4] dated December 5, 2014 of the Regional Trial Court (RTC) of Naga City, Branch 26, in Crim. Case No. 2011-0501, which found petitioner Marvin Porteria y Manebali (Marvin) guilty beyond reasonable doubt of violating Section 2(2) of Republic Act (R.A.) No. 6539,[5] as amended, otherwise known as the "Anti-Carnapping Act of 1972."

Factual Antecedents

Wilfredo Christian P. Mien (Christian) is the registered owner of a blue Honda motorcycle, 2004 model, with Engine No. KPH125ME-8005271, Chassis No. KPH12-03X-005271, and Plate No. EL5401.[6]

According to the prosecution, Christian used his motorcycle on December 10, 2010, at about 6:00 a.m., when he went to work at St. John Hospital in Panganiban Drive, Naga City. He parked his motorcycle in front of the hospital, in the parking area of the Nazareno Drug Store.[7]

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[1] *Rollo*, pp. 12-23.

[2] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting, concurring; *id*. at 28-37.

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

[4] Rendered by Judge Filemon B. Montenegro; *id*. at 57-62.

[5] Approved on August 26, 1972.

[6] Records, p. 14.

[7] TSN, February 7, 2012, pp. 3-4.

After finishing his shift at about 2:00 p.m., Christian discovered that his motorcycle was no longer in its parking spot. Unable to find his motorcycle, Christian went to the Philippine National Police (PNP) Naga City Police Office, Police Precinct No. 2 to report that his motorcycle was stolen.[8] The police recorded the incident in the Daily Record of Events.[9]

The following day, Christian and his brother, Wilfredo Angelus Mien, went to the PNP Provincial Highway Patrol Group (HPG) 5-Camarines Sur to report the incident again.[10] He filled out an Alarm Sheet and a Complaint Sheet.[11] Afterwards, Christian was asked to submit certain documents, such as the original copies of the Official Receipt (OR) of registration and the Certificate of Registration (CR), the police blotter, the certificate of ownership, the relevant Deed of Sale, if any, and the duplicate copy of the motorcycle's key. Christian complied with the requirements of the PNP HPG.[12]

On February 1, 2011, the police officers of Ocampo, Camarines Sur supposedly received a report that there was a suspicious person with something tucked in his waist.[13] The Chief of Police of the Ocampo Police Station, Police Inspector Samuel De Asis Villamer (P/Insp. Villamer), dispatched a team to verify the report.[14]

The report eventually resulted in the arrest of Marvin along me highway of Barangay San Francisco, Ocampo, Camarines Sur, for the illegal possession of firearm. He was, thereafter, subjected to a search of his body and of the bag allegedly found in his possession. Inside the bag, the arresting officer found an

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[8] *Id*.

[9] Records, p. 34.

[10] TSN, February 7, 2012, p. 6.

[11] Records, pp. 35-36.

[12] TSN, February 7, 2012, p. 7.

[13] TSN, July 24, 2012, p. 7; TSN, September 26, 2012, p. 9.

[14] TSN, September 26, 2012, pp. 8-11.

assortment of documents, including photocopies of the OR and CR of Christian's stolen motorcycle.[15]

At the Ocampo Police Station, Marvin was asked regarding the documents discovered in his bag. P/Insp. Villamer stated that Marvin responded voluntarily, informing the police that the motorcycle was in the possession of a certain Felix Maratas (Felix) in Sta. Rosa, Laguna.[16] Later on, P/Insp. Villamer sent a text message to Christian's brother, notifying Him that Marvin was arrested, and that they found the registration of the stolen motorcycle in his possession. Christian and his brother then went to the Ocampo Police Station, where they were advised thait Marvin has been transferred to the Naga City District Jail (NCDJ).[17]

On February 5, 2011, the mother of Christian, Virgie P. Mien (Virgie), went to the NCDJ, intending to talk to Marvin.[18] She asked Marvin about the registration of the subject motorcycle found in his possession, to which Marvin apparently replied by confessing his guilt. Virgie testified that Marvin admitted taking Christian's motorcycle and going on a road trip to Quezon. Marvin also allegedly told Virgie that he left the motorcycle with a certain "*Insan Joy*," whose address is Phase 5, Southville Subdivision, Sta. Rosa, Laguna.[19]

That night, Virgie called her friend, who was a police officer, to relay the information she obtained from Marvin. This friend of hers, Police Superintendent Teodorico Bolitic, called her a week later to inform her that the motorcycle was not at the address Marvin provided.[20]

On March 11, 2011, at around 3:00 p.m., a checkpoint was placed at the road of Barangay Kaingin, Sta. Rosa, Laguna.

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[15] TSN, July 24, 2012, pp. 3-7.

[16] TSN, September 26, 2012, pp. 7-8.

[17] TSN, February 7, 2012, pp. 7-8.

[18] TSN, February 28, 2012, p. 7.

[19] *Id*. at 11-13.

[20] *Id*. at 17-22.

Senior Police Officer 3 Jaime A. Cariaso (SPO3 Cariaso) and several other police officers were manning the checkpoint-at that time. By 3:20 p.m., a blue motorcycle approached the checkpoint. Seeing that the driver was not wearing a helmet, the police flagged down the motorcycle, who refused to stop and continued to pass the checkpoint. The police officers chased the motorcycle using their police car, and finally caught up with the driver at around 3:30 p.m.[21]

The police officers asked the driver of the motorcycle for his license, and for the registration documents of the motorcycle. The driver, later identified as Albert Orino (Albert), was unable to present any document. The police officers, thus, brought Albert to the barangay hall to record the incident in the barangay blotter. He was thereafter taken to the police station of Sta. Rosa, Laguna, together with the motorcycle.[22]

At the police station, Albert supposedly told the police officers that he does not own the motorcycle. According to SPO3 Cariaso, Albert stated that a certain Marvin left him the motorcycle. The police then charged Albert with a traffic violation for driving without a license.[23] After verifying the ownership of the motorcycle, the police notified Christian regarding its recovery.[24]

Marvin, for his part, denied the accusations of the prosecution. According to him, he met a friend at Barangay San Francisco, Ocampo, Camarines Sur on February 1, 2011. His friend, a certain Francis Aguilar, was driving a motorcycle and carrying a bag. His friend left the area, leaving behind the motorcycle, with the bag on top of it.[25] Several moments later, police officers approached Marvin and invited him to go to the police station. The invitation was purportedly pursuant to a report of a suspicious

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[21] TSN, November 20, 2012, pp. 2-5.

[22] *Id*. at 6-7.

[23] *Id*. at 8.

[24] TSN, February 7, 2012, pp. 10-12.

[25] TSN, December 9, 2013, p. 3.

person in the area. Marvin refused, but the police officers forced him to go with them.[26]

The police officers brought him to the Ocampo Police Station, where he was interrogated and detained. At no point was Marvin informed of his rights.[27] When the police officers told him about a gun recovered inside his bag, Marvin denied owning the bag, much less its contents.[28]

On October 27, 2011, the Information against Marvin, Albert, and Felix, was filed with the RTC of Naga City, charging them with violation of R.A. No. 6539, *viz.*:

> That on or about December 16, 2010, in the City of Naga, Philippines and within the jurisdiction of the Honorable Court, the above named accused, conspiring, confederating together and mutually helping each other, with intent of gain, did then and there, willfully, unlawfully and criminally take and steal, the motorcycle, with plate no. EL-5401, belonging to and owned by herein complaining witness WILFREDO CHRISTIAN P. MIEN, without his consent, while same was parked along Panganiban Avenue, Naga City, to his damage and prejudice.
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> ACTS CONTRARY TO LAW.[29]

In an Order dated November 2, 2011, the RTC scheduled Marvin's arraignment on November 15, 2011, and directed the issuance of a warrant of arrest against both of his co-accused, Felix and Albert.[30] During his arraignment, Marvin pleaded not guilty.[31]

Trial proceeded and the prosecution presented the following witnesses: (a) Christian, the complainant; (b) Virgie, the complainant's mother; (c) SPO4 Jaime Pequiras (SPO4 Pequiras),

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[26] *Id.* at 4-5.

[27] *Id.* at 7-8.

[28] TSN, February 4, 2014, pp. 4-6.

[29] Records, p. 1.

[30] *Id.* at 21.

[31] *Id.* at 31.

the arresting officer; (d) P/Insp. Villamer, the Chief of Police of Ocampo, Camarines Sur; and (e) SPO3 Cariaso, the police officer manning the checkpoint in Sta. Rosa, Laguna.[32]

On the other hand, the defense presented Marvin as its sole witness. The defense also intended to present SPO3 Cariaso. However, instead of testifying again, both parties agreed on the following stipulations with respect to his testimony: (a) at the time of Albert's apprehension, Marvin was not with him; and (b) the carnapped motorcycle was found in the possession of Albert only.[33]

Ruling of the RTC

The trial court failed to obtain jurisdiction over the persons of Marvin's co-accused, including Albert, the person in whose possession he motorcycle was found. Nonetheless, in its Judgment[34] promulgated on December 5, 2014, the trial court found Marvin guilty beyond reasonable doubt of the crime of carnapping, punishable under R.A. No. 6539, thus:

> WHEREFORE, in view of the foregoing, [Marvin] is found GUILTY beyond reasonable doubt for Violation of [R.A. No.] 6539 otherwise known as the Anti-Carnapping Act of 1972, as amended, and is hereby sentenced to suffer imprisonment of fourteen (14) years, eight (8) months and one (1) day, as minimum, to fifteen (15) years, as maximum. The period of accused['s] preventive detention shall be credited in his favor.
>
> The instant case as against the two other accused [Felix] and [Albert] are hereby ordered sent to the files of ARCHIVED cases pending the arrest of said accused. Accordingly, let an alias warrant of arrest be issued for their immediate apprehension to stand trial before this Court.
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> SO ORDERED.[35]

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[32] *Id*. at 59, 61, 104, 116, and 123.

[33] TSN, July 29, 2013, p. 3.

[34] *Rollo*, pp. 57-62.

[35] *Id*. at 62.

The trial court found that the circumstantial evidence presented in this case was sufficient to hold Marvin guilty beyond reasonable doubt. The RTC considered the following circumstances: (a) Marvin was apprehended on February 1, 2011, in possession of the registration documents of the stolen motorcycle; (b) P/Insp. Villamer testified that Marvin voluntarily answered their query as to the whereabouts of the motorcycle, which he left with a certain Felix in Sta. Rosa, Laguna; (c) Virgie's testimony that Marvin confessed to stealing the motorcycle, which he then drove all the way to Sta. Rosa, Laguna; and (d) the stolen motorcycle eventually being found in Sta. Rosa, Laguna on March 11, 2011.[36] These circumstances, according to the RTC, constitute an unbroken chain that leads to the fair and reasonable conclusion that Marvin indeed committed the crime.

Aggrieved, Marvin filed a Notice of Appeal on January 5, 2015.[37] The RTC, in its Order[38] dated January 6, 2015, allowed the appeal and elevated the records of the case to the CA.

Ruling of the CA

After the parties filed their respective briefs,[39] the CA rendered its Decision[40] dated May 12, 2017, affirming Marvin's conviction, thus:

> WHEREFORE, foregoing considered, appeal is DENIED. The Decision of the [RTC] dated December 5, 2014 in Criminal Case No. 2011-0501, is hereby AFFIRMED with modification.
>
> Accused-appellant, [Marvin], is found GUILTY beyond reasonable doubt for Violation of [R.A. No.] 6539 otherwise known as the Anti-Carnapping Act of 1972, as amended, and as modified, is hereby sentenced to suffer imprisonment of fourteen years (14) years (sic),

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[36] *Id*. at 61.

[37] Records, p. 212.

[38] *Id*. at 214.

[39] CA *rollo*, pp. 35-50 and 64-80.

[40] *Rollo*, pp. 28-37.

eight (8) months as minimum, to fifteen (15) years, as maximum. The period of accused-appellant's preventive detention shall be credited to his favor.

SO ORDERED.[41]

The CA held that the circumstantial evidence relied upon by the trial court sufficiently supported the conviction of Marvin. It painted an unbroken series of events, which eventually resulted in the recovery of the motorcycle in Sta. Rosa, Laguna. Furthermore, the CA anchored its findings on the fact that during the course of Marvin's arrest for illegal possession of firearms, the police found the registration documents of the stolen motorcycle in his possession.[42] His extrajudicial confession also corroborated the evidence of the prosecution.[43]

Unsatisfied with the decision of the CA, Marvin moved for its reconsideration on June 9, 2017.[44] The CA denied this motion in its Resolution[45] dated August 16, 2017. Hence, Marvin filed the present petition before the Court.

Marvin alleges that the trial court and the CA should not have considered the supposed discovery of the stolen motorcycle's OR and CR in his possession because the search was not legal. He further argues that the extrajudicial confession he made to Virgie was not freely and voluntarily made.[46] Based on these grounds, Marvin asserts that his conviction does not hold water.

Ruling of the Cour

The Court grants the petition. The circumstantial pieces of evidence of the prosecution are not sufficient to find Marvin guilty beyond reasonable doubt of the crime of carnapping.

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

[42] *Id*. at 34-35.

[43] *Id*. at 35.

[44] CA *rollo*, pp. 99-102.

[45] *Rollo*, pp. 39-40.

[46] *Id*. at 20.

The search of Marvin's body and belongings, as an incident to his warrantless arrest, was not valid.

Our constitution guarantees the inviolable right of every person to be secure in his or her persons, houses, papers, and effects, against unreasonable searches and seizures for whatever nature and for any purpose.[47] Thus, there should be a warrant duly issued on the basis of probable cause, in order to consider these searches and seizures as valid. This notwithstanding, there are several circumstances which the Court recognizes as exceptions to the requirement of a warrant: (a) a warrantless search incidental to a lawful arrest; (b) seizure of evidence in plain view; (c) search of a moving vehicle; (d) consented warrantless search; (e) customs search; (f) stop-and-frisk; and (g) the existence of exigent and emergency circumstances.[48]

In this case, the CA found that the discovery of the stolen motorcycle's OR and CR in the possession of Marvin was the product of a valid search incidental to a lawful arrest.[49] For the search to become valid under this exception, the inquiry of the Court should focus on the legality of the arrest. The arrest must not be used as a mere pretext for conducting the search, and the arrest, to be lawful, must precede the search. Assuming that there was a valid arrest, the arresting officer may only search the arrestee and the area within which he or she may reach for a weapon, or for evidence to destroy. The arresting officer may also seize any money or property used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee the means of escaping or committing violence.[50]

Since Marvin was arrested without a warrant, his apprehension may only be considered valid under the three (3) instances

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[47] 1987 CONSTITUTION, Article III, Section 2.

[48] *People v. Aruta*, 351 Phil. 868, 879 (1998).

[49] *Rollo*, p. 35.

[50] *Sanchez v. People*, 747 Phil. 552, 567 (2014), citing *Malacat v. CA*, 341 Phil. 462, 480 (1997).

provided in Section 5, Rule 113 of the Rules of Court, *to wit*: (a) the arrest of a suspect *in flagrante delicto*; (b) the arrest of a suspect where, based on the personal knowledge of the arresting officer, there is probable cause that the suspect was the perpetrator of a crime that had just been committed, or a "hot pursuit" arrest; and (c) the arrest of a prisoner, who has escaped from custody, or has escaped while being transferred from one confinement to another.[51] For the case at bar, the last circumstance for a valid warrantless arrest obviously cannot apply.

An *in flagrante delicto* arrest requires the concurrence of two (2) elements: (a) the person arrested must execute an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime; and (b) the overt act was done in the presence or within the view of the arresting officer.[52] Meanwhile, for a hot pursuit arrest, there must be an offense that was just committed, and the arresting officer had personal knowledge of facts indicating that the accused committed it.[53]

Upon a careful review of the records of this case, the Court holds that Marvin was not validly arrested without a warrant. The prosecution failed to establish any overt act which could lead to Marvin's *in flagrante delicto* arrest. There was also no evidence that the arresting officers, or SPO4 Pequiras in particular, knew of an offense that was just committed and that Marvin was the perpetrator of the offense.

According to P/Insp. Villamer, the radio operator at the Ocanipo Police Station received a telephone call from a concerned citizen regarding a suspicious person with something bulging in his body. This report constrained P/Insp. Villamer to send a team to verify the report.[54] One of the police officers, SPO4

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[51] *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

[52] *Id*., citing *People v. Villareal*, 706 Phil. 511, 517-518 (2013), further citing *Valdez v. People*, 563 Phil. 934, 947 (2007)

[53] *Id*., citing *People v. Villareal, id.* at 517, further citing *People v. Cuizon*, 326 Phil. 345, 360 (1996).

[54] TSN, September 26, 2012, pp. 9-10.

Pequiras, verified the report, which resulted in the arrest of Marvin. However, he did not specify the reason why Marvin was arrested, other than the fact that there was a report of a suspicious person, thus:

[*Direct examination of SPO4 Pequiras by Prosecutor Alan Fernando*]

Q: Could you tell us now Mr. Witness why did you search the bag of this accused and found out inside his bag these 2 documents?
A: Because on February 1, 2011 when we apprehended the accused for illegal possession of firearm[,] we also searched his bag to secure the firearm inside his bag.

Q: And you said you have apprehended the accused for illegal possession of firearm and incident thereto you made a search on the bag whether there is a concealed firearm or explosive, is that what you mean to say?
A: Yes, sir.

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[*Cross-examination of SPO4 Pequiras by Atty. Ernesto Mendiola*]

Q: Were you the one or you were present when this accused was apprehended for illegal possession of firearm?
A: I was present.

x x x x x x x x x

Q: Because you arrested the accused while he was in possession of that firearm you likewise bodily searched him. [C]orrect?
A: After we saw the firearm.

Q: You mean to say your search is valid?
A: Yes, sir.

Q: **What is your purpose in conducting the search on his body and his bag that he was carrying?**
A: **On February 1, 2011[,] we received information that a certain person was seen with a suspicious thing tucked on his waist.**[55] (Emphasis ours)

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[55] TSN, July 24, 2012, pp. 4-7.

From this testimony, the Court cannot determine Marvin's overt actions, which led SPO4 Pequiras to believe that Marvin was illegally in possession of firearms. There is a dearth of evidence describing how Marvin committed a crime, was committing, or was about to commit a crime in the presence of the arresting officers. SPO4 Pequiras merely testified that after receiving the information regarding the presence of a suspicious person, they verified the report, and this eventually resulted in the arrest of Marvin. It was not established that Marvin had a firearm visibly tucked in his waist, or that he behaved in a manner which would elicit a reasonable suspicion that he committed an offense. Clearly, the trial court and the CA grievously erred in agreeing with the prosecution. The prosecution established only a suspicion that a crime was committed—nothing more—prior to the arrest of Marvin.

In the same manner, the present circumstances do not suffice to fulfill the requirements for a hot pursuit arrest. The prosecution did not allege and prove that SPO4 Pequiras and the arresting officers have personal knowledge of facts that Marvin had just committed an offense. Neither does the anonymous report of a suspicious person operate to vest personal knowledge on the police officers about the commission of an offense. In *Veridiano v. People*,[56] the Court ruled on the validity of the warrantless arrest made pursuant to a report of illicit or suspicious activity:

> Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm. In *Cogaed*, the warrantless arrest was invalidated as an *in flagrante delicto* arrest because the accused did not exhibit an overt act within the view of the police officers suggesting that he was in possession of illegal drugs at the time he was apprehended.
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> x x x x x x x x x
>
> In this case, petitioner's arrest could not be justified as an *in flagrante delicto arrest* under Rule 113, Section 5 (a) of the Rules of Court. He was not committing a crime at the checkpoint. Petitioner was merely a passenger who did not exhibit any unusual conduct in

[56] G.R. No. 200370, June 7, 2017, 826 SCRA 382.

the presence of the law enforcers that would incite suspicion. In effecting the warrantless arrest, the police officers relied solely on the tip they received. **Reliable information alone is insufficient to support a warrantless arrest absent any overt act from the person to be arrested imdicating thet a crime has just been committed, was being committed, or is about to be committed.**

The warrantless arrest cannot likewise be justified under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure. The law enforcers had no personal knowledge of any fact or circumstance indicating that petitioner had just committed an offense.

A hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that the person sought to be arrested has just committed a crime. This is what gives rise to probable cause that would justify a warrantless search under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure.[57] (Emphases ours and citations omitted)

There being no valid warrantless arrest, the search conducted on Marvin's body and belongings is likewise unjustified. The law requires that there should be a lawful arrest prior to the search. The process cannot be reversed.[58] "[W]here a person is searched without a warrant, and under circumstances other than those justifying a warrantless arrest x x x **upon a mere suspicion that he has embarked on some criminal activity, and/or for the purpose of discovering if indeed a crime [was] committed by him**, then the search x x x of such person as well as his arrest are deemed illegal."[59] The CA thus committed a reversible error in deeming the search valid without making a prior determination of the legality of the arrest.

The waiver of an illegal warrantless arrest does not carry the admissibility of evidence seized during the illegal warrantless arrest.

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[57] *Id*. at 400-405.

[58] *Sanchez v. People*, *supra* note 50.

[59] *People v. Cuizon*, *supra* note 53, at 358-359.

When there is an irregularity in the arrest of an accused, the accused must object to the validity of his arrest *before* arraignment. Otherwise, the objection is deemed waived.[60] Here, Marvin may no longer raise the issue regarding the validity of his arrest, especially after participating in the proceedings before the trial court. Nonetheless, this does not preclude Court from ruling against the admissibility of the evidence obtained from the illegal warrantless arrest.[61]

As such, the OR and CR allegedly found in the bag of Marvin after he was arrested for illegal possession of firearms are inadmissible. The Court cannot consider the documents supposedly seized from Marvin's possession as part of the circumstantial evidence for the prosecution.

Neither was the search of Marvin's body and belongings valid as a stop-and-frisk search.

One of the arresting officers, SPO4 Pequiras, further muddled his testimony when he stated that the search on Marvin and his bag was due to the "information [they received] that a certain person was seen with a suspicious thing tucked [in] his waist."[62] Verily, the factual circumstances were ambiguous as to whether the arrest preceded the search, or if Marvin was stopped and frisked pursuant to the anonymous report the police received regarding a suspicious person. Regardless, the warrantless search is still unjustifiable as a stop-and-frisk search.

A stop-and-frisk search is defined as "the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband."[63] Searches under stop-and-frisk are limited to the protective search of outer clothing for weapons.[64] For purposes of searching a person's clothing for

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[60] *People v. Divina*, 558 Phil. 390, 395 (2007).

[61] *Homar v. People*, 768 Phil. 195, 203 (2015).

[62] TSN, July 24, 2012, p. 7.

[63] *People v. Chua*, 444 Phil. 757, 773-774 (2003).

[64] *Malacat v. CA*, *supra* note 50.

concealed weapons, the police officer is required to introduce himself properly, make initial inquiries, approach and then restrain the person manifesting unusual and suspicious conduct.[65]

In order to be considered valid, a stop and frisk search must be premised on the manifest overt acts of an accused, which give law enforcers a "genuine reason" to conduct the search. Jurisprudence has refined the standard to less than probable cause, but more than mere suspicion. The search cannot be based on a suspicion or a hunch.[66] Their suspicion is formed on the basis of the law enforcers' prior experience with criminals and their behavior, as well as the surrounding circumstances of the case.[67]

In some cases, the Court has also required the presence of more than one activity which, when taken together, gives a reasonable inference of criminal activity.[68] This is determined on a case-to-case basis, as when a man with reddish eyes, walking in a swaying manner, avoided the police officers approaching him,[69] or when a person was seen placing a heat-sealed plastic sachet containing a white substance inside a cigarette case.[70] For this particular case, however, the Court cannot discern any circumstance that would give SPO4 Pequiras a genuine reason to stop-and-frisk Marvin.

The prosecution stated that Marvin was arrested and searched because the police received a report regarding a suspicious person with something tucked in his waist. **But in his testimony, SPO4 Pequiras did not specify the actions or behavior of Marvin, or the factual circumstances occurring prior to his arrest and search. He simply stated that Marvin was arrested due**

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[65] *People v. Chua*, *supra*.

[66] *Veridiano v. People*, *supra* note 56.

[67] *Comerciante v. People*, *supra* note 51, at 640.

[68] *Sanchez v. People*, *supra* note 50, at 573, citing *Manalili v. CA*, 345 Phil. 632, 643-644 (1997).

[69] *Manalili v. CA*, *id*.

[70] *Esquillo v. People*, 643 Phil. 577 (2010).

to the anonymous tip. SPO4 Pequiras did not even state how they were able to identify Marvin as the suspicious person referred to in the concerned citizen's report. Evidently, these are not enough to create a reasonable inference of criminal activity.

From the foregoing, the Court finds that Marvin was illegally searched. Following the exclusionary principle, the items seized as a result of this unlawful search are inadmissible as evidence. Again, the OR and CR of the subject motorcycle, allegedly discovered as a result of the invalid search of Marvin, cannot be used as evidence against him.

Marvin's alleged admissions of guilt do not suffice to convict him for carnapping.

Section 12, Article III of the 1987 Constitution states that persons under investigation for the commission of an offense should be informed of their right to remain silent, and their right to counsel. These rights may not be waived, except in writing and in the presence of a counsel. *Any* confession or admission obtained in violation of this provision is inadmissible as evidence against the accused.[71]

This principle is further reiterated in Section 2 of R.A. No. 7438.[72] Under this statute, extrajudicial confessions made by a person arrested, detained or under custodial investigation must fulfill the following requirements:

(d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence,

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[71] *See People v. Cabanada*, G.R. No. 221424, July 19, 2017, 831 SCRA 485, 493; *People v. Cabintoy*, 317 Phil. 528, 540 (1995); *People v. Basay*, 292 Phil. 413, 430 (1993); and *People v. Javar*, 297 Phil. 111, 117 (1993).

[72] AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF (Approved on April 27, 1992).

upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; **otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding**. (Emphasis ours)

These safeguards are intended to prevent the practice of extracting coerced confessions, no matter how slight, which could lead the accused to make false admissions. They are meant to insulate the accused from "coercive psychological, if not physical, atmosphere of [a custodial] investigation."[73]

The trial court, in convicting Marvin for the crime of carnapping, relied on several circumstantial pieces of evidence. There include his supposed voluntary admission to P/Insp. Villamer that the motorcycle is in the possession of a certain Felix.[74] This admission, as shown in he following testimony of P/Insp. Villamer, was given after Marvin was arrested and taken to the police station for further investigation:

[*Direct examination of P/Insp. Villamer by Prosecutor Alan Fernando*]

Q: Could you tell us your Memorandum with respect to the accused, [Marvin], explain to us (sic)?
A: This was addressed to the Chief of Police of Sta[.] Rosa City because on February 1, 2011[,] we apprehended [Marvin].

Q: For what crime?
A: For Illegal Possession of Firearms.

Q: Then what happened?
A: Upon verification and inspection to him (sic) we found out several registration of motorcycle and it so happened that during the inventory, one of my investigators found out the registration of the motorcycle of [Christian].

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Q: Please tell us your investigation on [Marvin]?
A: When we asked him regarding the registration of motorcycle

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[73] *People v. Janson*, 448 Phil. 726, 746 (2003).

[74] *Rollo*, p. 61.

of Mr. Mien, he told us voluntarily that the motorcycle subject matter of this case was in the possession of [Felix] of Olivia [Subdivision,] Sta. Rosa City.

x x x x x x x x x

Q: And according to you, [Marvin] told the investigators that the motorcycle is in the possession of [Felix] and because of this information given to the office of [Marvin] (sic), you sent this Memorandum addressed to the Chief of Police of Sta. Rosa City.

A: Yes, Sir.[75]

At that time, Marvin was already under custodial investigation, having been placed in the custody of the police, or deprived of his freedom of action in a significant manner.[76] Thus, when the police officers asked Marvin regarding the discovery of the motorcycle's registration documents in his possession, Marvin's right to counsel automatically attached. Furthermore, his answer constitutes an implied admission of guilt, which should have been done in writing, with the assistance of his counsel, or after a valid waiver of these rights.

Remarkably, neither P/Insp. Villamer nor SPO4 Pequiras testified that Marvin was informed of his rights, much less granted the opportunity to obtain a counsel of his own choice. Marvin, on the.other hand, narrated in his direct examination that he was not informed of his rights:

[*Direct examination of the petitioner by Atty. Jopito Agualada*]

Q: The policemen presented to you the Original PLeceipt and the Certificate of Registration of the motorcycle of [Christian] yet you said that you do not know from where they recovered the same. And you also said that after that you were put under detention. Did they inform you Mr. witness the grounds of putting you under detention?

A: No, Sir.

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[75] TSN, September 26, 2012, pp. 5-8.

[76] *People v. De La Cruz*, 344 Phil. 653, 660-661 (1997).

Q: Did they inform you that they were able to recover a gun inside the bag of Francis Aguilar?
A: Yes, Sir.

Q: And upon being informed that a gun was found inside the bag of Francis Aguilar, what did they do to you?
A: I was put me (sic) inside the detention cell, Sir.

Q: Did they tell you that they are arresting you because of a gun that was found inside the bag of Francis Aguilar?
A: Yes, Sir.

Q: Did they show you the gun?
A: Yes, Sir.

Q: Where did they show you the gun?
A: I was moved-out of the detention cell and I returned to the office of the Chief, Sir.

Q: The Chief you are referring to the Chief of Police of Ocampo, Camarines Sur?
A: Yes, Sir.

Q: And that Office of the Chief of Police of Ocampo is at the Municipal Police Station of Ocampo, Camarines Sur?
A: Yes, Sir.

Q: Q: When they show[ed] you a gun at [the] Municipal Police Station of Ocampo, Camarines Sur[,] was that the first time that you saw that gun that they allegedly recovered from the bag of Francis Aguilar?
A: Yes, Sir.

Q: Now, because of that, they incarcerated you because they found the gun inside the bag of Francis Aguilar?
A: Yes, Sir.

Q: They did not detain you because of their discovery of the [Official] Receipt and Certificate of Registration of the motorcycle of [Christian]?
A: No, Sir.

x x x x x x x x x

Q: At the Police Station, did they inform you that they are putting you under arrest because of the recovered gun inside the

bag of Francis Aguilar?
A: Yes, Sir.

Q: **Did they inform you that you have a right to a lawyer?**
A: **No, Sir.**

Q: **Did they inform you that you have the right to remain silent?**
A: **No, Sir.**

Q: But you are sure that it was at the Police Station that they arrested you?
A: Yes, Sir.[77] (Emphases ours)

At this point, it bears reiterating that when the police officers of Ocampo, Camarines Sur began questioning Marvin about the items found in his possession, there should have been a counsel present to assist Marvin. Without the assistance of a counsel, and in the absence of a valid waiver of this right, Marvin's "voluntary" answer to P/Insp. Villamer is inadmissible as evidence of his guilt.

Another circumstantial evidence considered by the trial court is the alleged confession of Marvin to Virgie, the mother of the complainant. Unlike Marvin's admission to P/Insp. Villamer, the confession to Virgie, a private party, is not within the scope of the constitutional and statutory limitations on extrajudicial confessions.[78]

This notwithstanding, the Court should still inquire upon the voluntariness of the confession. The prosecution must establish that the accused spoke freely, without inducement of any kind, and fully aware of the consequences of the confession. This may be inferred from the language of the confession, as when the accused provided details known only to him or her.[79]

In the present case, the Court cannot determine the voluntariness of Marvin's supposed confession to Virgie because

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[77] TSN, February 4, 2014, pp. 3-6.

[78] *People v. Ochoa*, 511 Phil. 682, 695 (2005).

[79] *People v. Satorre*, 456 Phil. 98, 107 (2003).

it was not reduced into writing or recorded in another manner. The Court can only rely on the testimony of Virgie as to the substance of Marvin's confession. Aside from her testimony, there is no independent evidence that establishes the voluntariness and substance of Marvin's alleged extrajudicial confession.[80]

The testimony of Virgie as to the supposed confession of Marvin may, nonetheless, be admitted as an independently relevant statement, which proves only the fact that such statement was made. The admission of this testimony does not necessarily mean that the Court is persuaded. Virgie is competent to testify only as to the substance of what she heard—not the truth thereof. Her testimony, by itself, is not sufficient proof of its veracity.[81] As the Court explained in *People v. Satorre*:[82]

At any rate, an extrajudicial confession forms but a *prima facie* case against the party by whom it is made. Such confessions are not conclusive proof of that which they state; it may be proved that they were uttered in ignorance, or levity, or mistake; and hence, they are, at best, to be regarded as only cumulative proof which affords but a precarious support and on which, when uncorroborated, a verdict cannot be permitted to rest.

Main prosecution witness Castañares testified that after appellant's alleged oral confession, she brought the latter to the office of the police at the Municipal Hall of Carcar, Cebu. At the police station, Castañares was investigated, after which she executed her sworn statement. Also at the police station, appellant allegedly admitted before policemen that he killed Pantilgan. His statement was not taken nor was his confession reduced into writing. This circumstance alone casts some doubt on the prosecution's account that appellant freely and voluntarily confessed killing Pantilgan. It raises questions not only as to the voluntariness of the alleged confession, but also on whether appellant indeed made an oral confession.[83] (Emphasis ours and citations omitted)

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[80] *Id*. at 106.

[81] *People v. Silvano*, 431 Phil. 351, 363 (2002).

[82] 456 Phil. 98 (2003).

[83] *Id*. at 108-109.

The Court emphasizes that an extrajudicial confession is not a sufficient ground for conviction, unless it is corroborated by either direct or circumstantial evidence.[84] If it is the latter, the accused may be convicted when: (a) there is more than one circumstance; (b) the facts from which the inferences are derived and proven; and (c) the combination of jail the circumstances is such as to produce a conviction beyond reasonable doubt.[85]

Unfortunately for the prosecution, most of the circumstantial pieces of evidence are inadmissible as evidence against Marvin. The only remaining circumstance is the recovery of the stolen motorcycle in Sta. Rosa, Laguna.

Yet notably, the police officers did not recover the motorcycle through the information Marvin allegedly provided to either P/Supt. Villamer or Virgie. It was neither found in the possession of a certain Felix as Marvin supposedly told P/Supt. Villamer, or with "*Insan Joy*," in the address given to Vergie.[86] **Rather, the police officers of the Sta. Rosa City Police Station chanced upon the stolen motorcycle when they set-up a checkpoint at the Barangay Road of Kaingin, Sta. Rosa, Laguna. The driver of the stolen motorcycle was Albert, not the petitioner in this case.**[87] **Marvin was not even present at the time Albert was driving the motorcycle.**

For these reasons, the totality of the evidence does not corroborate the extrajudicial confession of Marvin. His conviction rests on tenuous grounds—the OR and CR were products of an illegal search, the admission to P/Supt. Villamer was in violation of his right to counsel, and the Court cannot determine the voluntariness and veracity of Marvin's oral confession of guilt to Virgie. The doubts as to the guilt of Marvin are, therefore, more than reasonable, which warrants his acquittal

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[84] RULES of Court, Rule 133, Section 3.

[85] *People v. Quitola*, 790 Phil. 75, 87-88 (2016).

[86] *See* TSN, February 28, 2012, pp. 20-22.

[87] TSN, November 20, 2012, pp. 3-8.

WHEREFORE, premises considered, the present petition is **GRANTED**. The Decision dated May 12, 2017 and Resolution dated August 16, 2017 of the Court of Appeals in CA-G.R. CR No. 37273, which in turn affirmed the Judgment dated December 5, 2014 of the Regional Trial Court of Naga City, Branch 26, in Crim. Case No. 2011-0501, are **REVERSED** and **SET ASIDE**.

Petitioner Marvin Porteria y Manebali is **ACQUITTED** based on reasonable doubt. The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of the petitioner, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Carandang*, *JJ.*, concur.

SECOND DIVISION

[G.R. No. 239077. March 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARRY BRIONES *y* ESPINA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); PROCEDURE WHICH THE POLICE OFFICERS MUST STRICTLY FOLLOW TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED DRUGS.— Section 21,

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* Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.

2. ID.; ID.; ID.; THE REQUIREMENT OF INVENTORY AND PHOTOGRAPHING IMMEDIATELY AFTER THE SEIZURE AND CONFISCATION OF THE ITEMS, EXPLAINED; CONSIDERING THAT THE BUY-BUST OPERATION IS, BY ITS NATURE, A PLANNED ACTIVITY, THE REQUIREMENT ON THE PRESENCE OF THE REQUIRED WITNESSES CAN BE EASILY COMPLIED WITH BY THE BUY-BUST TEAM.— 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. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — 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**. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

3. ID.; ID.; ID.; THE BUY-BUST TEAM FAILED TO COMPLY WITH THE MANDATORY REQUIREMENTS UNDER SECTION 21 AND DID NOT OFFER EXPLANATION FOR THEIR NON-COMPLIANCE; THE BELATED PARTICIPATION OF THE WITNESSES AFTER THE ARREST OF THE ACCUSED AND SEIZURE OF THE DRUGS DEFEATS THE PURPOSE OF THE LAW IN HAVING THESE WITNESSES PRESENT AT THE PLACE OF APPREHENSION.— In the instant case, the buy-bust team failed to comply with the mandatory requirements under Section 21, which thus creates reasonable doubt as to the identity and integrity of the seized drug from Garry. x x x It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose - to prevent or insulate against the planting of drugs. In the instant case, the belated participation of the two witnesses after the arrest of the accused and seizure of the drug defeats the aforementioned purpose of the law in having these witnesses present at the place of apprehension. Moreover, the buy-bust team did not offer any explanation for its failure to strictly comply with the requirements of Section 21. x x x [T]he police officers gave no such explanation. They merely "called-in" the mandatory witnesses after the buy-bust operation was already accomplished although it is obvious that they had no excuse to do so. The buy-bust team had enough time to secure the presence of the required witnesses at the place of arrest and seizure.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THE PRESUMPTION OF INNOCENCE OF THE ACCUSED PREVAILS OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; IN VIEW OF THE BUY-BUST TEAM'S BLATANT DISREGARD OF THE PROCEDURES UNDER SECTION 21 OF R.A. 9165, THE PRESUMPTION OF REGULARITY CANNOT STAND IN CASE AT BAR.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime

or for any other crime necessarily included therein. Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

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.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated August 17, 2016 of the Court of Appeals, Tenth Division (CA) in CA-G.R. CR-HC No. 07216, which affirmed the Judgment[3] dated December 10, 2014 rendered by the Regional Trial Court, Branch 84, Batangas City (RTC) in Criminal Case No. 18040, finding herein accused-appellant Garry Briones y Espina (Garry) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA)

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[1] See Notice of Appeal dated September 15, 2016, *rollo*, p. 24.

[2] *Rollo*, pp. 2-23. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles, concurring.

[3] CA *rollo*, pp. 62-68. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The Information[5] filed against Garry for violation of Section 5, Article II of RA 9165 pertinently reads:

> That on or about April 16, 2013 at around 11:50 in the morning at Brgy. Gulod Labac, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally sell, dispense[,] or deliver one (1) transparent plastic sachet of Methamphetamine Hydrochloride, more commonly known as Shabu, a dangerous drug, weighing 0.15 gram, which is a clear violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

Upon arraignment, Garry pleaded not guilty to the offense charged.[7]

Version of the Prosecution

The facts of the case, as culled from the records and the Decision of the CA, are as follows:

> On April 16, 2013 at around 10:00 o'clock in the morning, PO1 Carandang was on duty at the office of the Station Anti-Illegal Drugs Special Operation Task Force of the Batangas City Police Station. His asset arrived at the police station and reported that there was a person who was selling shabu on a consignment basis. PO1 Carandang relayed the information to SPO1 de Chavez, SPO1 Yap and PO2 Ponciano Asilo. SPO1 de Chavez, acting as team leader, decided to

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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" (2002).

[5] Records, p. 1.

[6] *Id*.

[7] *Rollo*, p. 3.

conduct a buy-bust operation against the drug pusher who the asset referred to as "Garry." SPO1 Pepito Adelantar prepared the coordination form and the pre-operation report while SPO1 de Chavez coordinated with the PDEA. Upon receipt of their coordination forms, PDEA provided them with the control number 0413-00087.

During the briefing, PO1 Carandang was assigned to act as the poseur-buyer, accompanied by the asset during the purchase of the illegal drug. Thereafter, the team, together with the asset, boarded the tinted car of SPO1 de Chavez. Before they left the police station for the buy-bust operation, desk officer PO2 Adora recorded their departure in Entry No. 010317 date 4/16/13 at 11:15 a.m. They proceeded to the barangay hall of Brgy. Gulod Labac, Batangas City before going to the place of transaction. SPO1 de Chavez coordinated with the barangay officials and had the buy-bust operation recorded in the barangay blotter. Afterwards, the team proceeded to the Fil Oil Gasoline Station in Brgy. Gulod Labac, Batangas City.

When they reached the gasoline station, PO1 Carandang and the asset alighted from the car and waited at a vacant lot nearby. SPO1 de Chavez and SPO1 Yap parked the car in front of PO1 Carandang and the asset. After five (5) minutes, a man referred to by the asset as alias "Garry" arrived. The asset and Garry talked while PO1 Carandang stood just beside both of them. Then, Garry handed the asset a plastic sachet and uttered, "point three yan, two five yan." The asset immediately passed the plastic sachet to PO1 Carandang. Thereafter, PO1 Carandang arrested Garry.

SPO1 Yap and SPO1 de Chavez were parked about two (2) meters [a]way from PO1 Carandang, the asset and the accused. When SPO1 Yap and SPO1 de Chavez saw the transaction take place, they alighted from the car. PO2 Asilo also approached the trio when he saw that his team members alighted from the car. SPO1 de Chavez frisked the accused, who identified himself as Garry Briones y Espina, but did not recover any other illegal item. Then, PO1 Carandang marked the plastic sachet with his initials "RBC" and the date of arrest 04/16/13. Pictures were taken while PO1 Carandang was marking the evidence.

From the place of arrest, the team brought the accused to the barangay hall of Brgy. Gulod Labac, Batangas City as evidenced by an entry in the barangay blotter. SPO1 de Chavez called up SPO1 Adelantar and Fiscal Bien Patulay for the conduct of inventory. He tried to call a media representative but no one arrived. Upon arrival

of SPO1 Adelantar and the DOJ representative, the inventory of confiscated items was conducted. Pictures were also taken while the inventory was being conducted. A Certificate of Inventory was prepared by SPO1 Adelantar and signed by SPO1 de Chavez, DOJ Representative Fiscal Bien Patulay and Brgy. Councilor Danilo Alcones. PO1 Carandang was in possession of the plastic sachet of shabu from the time it was confiscated until it was turned over to SPO1 Adelantar after the inventory was conducted. Both PO1 Carandang and SPO1 Adelantar signed the Chain of Custody Form to record the turn-over of evidence. Thereafter, they proceeded back to the police station.

At the police station, the team's arrival was recorded by desk officer PO2 Adora under Entry No. 013027. SPO1 Adelantar prepared the request for laboratory examination and for drug test. Then, he delivered the documents and the confiscated item with markings "RBC 04/16/13" to the Batangas Provincial Crime Laboratory Office. SPO3 Lito Vargas received the letter request and the specimen. Immediately after SPO3 Vargas received the confiscated item, he turned it over to Forensic Chemist PCI Herminia Llacuna, who then conducted the laboratory examination. As shown in the Chemistry Report No. BD 204-2013, the specimen tested positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.[8]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

On April 16, 2013, between 9:00 o'clock and 10:00 o'clock in the morning, accused was at home. His mother asked him to buy viand at the carinderia in front of their house. When he reached the carinderia, he decided to stay and eat there. While he was there, police officers Chavez and Yap arrived and handcuffed him. The two police officers were looking for Garry's neighbor, Ranie, who was in Mindoro at that time. Accused was brought to the police station where he learned that he was charged with violation of R.A. 9165.

Accused testified that prior to his arrest, he knew SPO1 de Chavez and SPO1 Yap because he saw them at the cockpit. Occasionally, PO1 Carandang, who was also known as "Buttercup," joined the

[8] *Id.* at 5-7.

two at the cockpit. Accused did not have any altercation with the police officers prior to his arrest.[9]

Ruling of the RTC

In the assailed Judgment dated December 10, 2014, the RTC held that it is immaterial that no consideration or payment was given by the asset to the accused upon receipt of the plastic sachet of shabu since the evidence adduced by the prosecution adequately proved that the accused personally passed the plastic sachet of shabu to the asset.[10] It further ruled that the identity of the subject dangerous drug was established by the prosecution.[11] Lastly, it held that the prosecution sufficiently established that the accused was guilty of the crime charged in the information.[12]

The dispositive portion of the Judgment reads:

> **WHEREFORE**, judgment is hereby rendered finding the accused GARRY BRIONES Y Espina @ "Garry" **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and sentencing him to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (PhP 500,000.00).**
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> x x x x x x x x x
>
> **SO ORDERED.**[13]

Aggrieved, Garry appealed to the CA.

Ruling of the CA

In the assailed Decision dated August 17, 2016, the CA affirmed in toto Garry's conviction. The dispositive portion of the Decision reads:

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[9] *Id*. at 7.

[10] CA *rollo*, p. 67.

[11] *Id.* at 67-A.

[12] I*d.* at 67-A-68.

[13] *Id*. at 68.

WHEREFORE, in view of the foregoing, the appeal is **DENIED** The Judgment dated December 10, 2014 is **AFFIRMED**.

SO ORDERED.[14]

The CA ruled that although Garry could not be convicted of the crime of illegal sale of dangerous drugs due to lack of consideration or payment, nevertheless, he may still be held liable for violation of Section 5, Article II of RA 9165.[15] Section 5, Article II of R.A. No. 9165 does not only punish illegal sale of dangerous drugs, but also punishes illegal delivery of dangerous drugs.[16] Verily, all the elements of illegal delivery of dangerous drugs were established by the prosecution.[17]

It further ruled that the procedural lapses alleged by Garry were minor and did not affect the integrity and evidentiary value of the confiscated drug.[18] The failure to secure the attendance of the media representative was sufficiently explained.[19] Moreover, the failure of the police officers to strictly comply with the provisions of Section 21, paragraph 1 of Article II of RA 9165 did not prevent the presumption of regularity in the performance of duty being applied to the instant case.[20]

Hence, the instant appeal.

Issue

Whether Garry's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

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[14] *Rollo*, p. 23.

[15] *Id*. at 14.

[16] *Id*.

[17] *Id*. at 15.

[18] *Id*. at 22.

[19] *Id.*

[20] *Id*.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[21] and the fact of its existence is vital to sustain a judgment of conviction.[22] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[23] Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[24]

In this regard, Section 21, Article II of RA 9165,[25] the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed

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[21] *People v. Sagana*, G.R. No 208471, August 2, 2017, 834 SCRA 225, 240.

[22] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[23] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

[24] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[25] The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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[.]

immediately after seizure or confiscation; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.[26]

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. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[27] **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — 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**. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[28] and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However,

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[26] See RA 9165, Art. II, Sec. 21(1) and (2).

[27] IRR of RA 9165, Art. II, Sec. 21 (a).

[28] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[29] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[30] Without any justifiable explanation, which must be proven as a fact,[31] the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[32]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the instant case, the buy-bust team failed to comply with the mandatory requirements under Section 21, which thus creates reasonable doubt as to the identity and integrity of the seized drug from Garry.

Based on the testimony of PO1 Ruther Carandang (PO1 Carandang), the police officers only tried to contact the three mandatory witnesses when they were already at the barangay hall after the arrest of the accused and seizure of the drug at the crime scene. Verily, due to their delayed action, only a DOJ representative and a barangay official were able to go to the police station to witness the inventory and photography of the seized drug. Neither did they offer any sufficient explanation as to the absence of the media representative. As PO1 Carandang testified:

Q: And After the barangay blotter entry was made in the Barangay Hall, what happened next if any?

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[29] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[30] *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[31] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

A: Then we called for an investigator SPO1 Adelantar and we also called for a DOJ representative, Fiscal Patulay.

Q: And after you called for the investigator and DOJ representative, what happened next if any?

x x x x x x x x x

A: Our team leader contacted [a] representative from [the] media but nobody arrived, Sir.[33] (Emphasis supplied)

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose - to prevent or insulate against the planting of drugs.[34] In the instant case, the belated participation of the two witnesses after the arrest of the accused and seizure of the drug defeats the aforementioned purpose of the law in having these witnesses present at the place of apprehension.

Moreover, the buy-bust team did not offer any explanation for its failure to strictly comply with the requirements of Section 21.

The Court has consistently held that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.[35] As the Court en bane unanimously held in the recent case of *People v. Lim*,[36]

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**

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[33] TSN, November 14, 2013, pp. 12-13.

[34] See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, pp. 11-12.

[35] *People v. Musor*, G.R. No. 231843, November 7, 2018; *People v. Bricero*, G.R. No. 218428, November 7, 2018.

[36] G.R. No. 231989, September 4, 2018.

> **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.**[37] (Emphasis in the original and underscoring supplied)

In the case at bar, the police officers gave no such explanation. They merely "called-in" the mandatory witnesses after the buy-bust operation was already accomplished although it is obvious that they had no excuse to do so. The buy-bust team had enough time to secure the presence of the required witnesses at the place of arrest and seizure. PO1 Carandang testified that Garry has been under surveillance and has been in the watch list since 2010 and that his co-police officers already knew him.[38] His informant, who has been his asset for more or less five months already, informed him about the transaction at 10:00 a.m. Thereafter, they left the police station at 11:15 a.m. and coordinated with the barangay officials and had the buy-bust operation recorded in the barangay blotter.[39] Therefore, based on these facts, they had more than sufficient time to contact the required witnesses prior to the buy-bust operation.

In addition, the Court notes that PO1 Carandang has been a member of the Station Anti-Illegal Drugs Special Operations Task Force since May 3, 2012 and he has already previously

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[37] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[38] TSN, February 13, 2014, p. 6.

[39] *Rollo*, p. 5.

conducted surveillance and monitoring, and has arrested persons involved in illegal drugs operations. Verily, he and his team already knew the standard procedure in a buy-bust operation and the mandatory requirements under Section 21. Hence, they should have had the foresight to do all the necessary preparations for it.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[40] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[41]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves ire affirmative proofs of irregularity.[42] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[43] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[44]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[45] that it will not presume to set an

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[40] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[41] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[42] *People v. Mendoza*, 736 Phil. 749, 769-770. (2014).

[43] *Id*.

[44] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[45] 393 Phil. 68, 133 (2000).

a priori basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized item according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Garry.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[46]

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated August 17, 2016 of the Court

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[46] *People v. Jugo*, G.R. No. 231792, January 29, 2018.

of Appeals, Tenth Division in CA-G.R. CR-HC No. 07216, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **GARRY BRIONES y ESPINA** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, 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.

Carpio (*Acting Chief Justice*), *Perlas-Bernabe, Reyes, Jr., J.,* and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 241247. March 20, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNOLD MONSANTO *y* FAMILARAN/ PAMILARAN,**[*] *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF THE MINOR VICTIM AS BOLSTERED BY TESTIMONIES OF OTHER WITNESSES

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[*] Designated as Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

[*] Also named as Reynold Monsanto *y* Familiran in the Amended Information in Crim. Case No. 15-14082 and in the Information in Crim. Case No. 15-314083.

SUFFICIENT TO PRODUCE A CONVICTION.— We affirm the RTC's valuation of AAA's testimony, as affirmed by the CA, in light of its spontaneity, steadfastness and consistency on material points. Moreover, while the incriminating facts were chiefly anchored on the testimony of AAA, there is no merit in the claim that the RTC relied solely on AAA's testimony. Apart from accused-appellant's attempt to downplay his role in enticing AAA to live with him and her sexual exploitation, his testimony jibes with that of AAA. The testimonies of the *barangay kagawad* and Dr. Hernandez also bolster the truthfulness of AAA's testimony. Although both the *barangay kagawad* and Dr. Hernandez had no personal knowledge on the prostitution activities of AAA or on accused-appellant's part in it, they had personal knowledge on the circumstances of its discovery which led to accused-appellant's arrest. Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused.

2. **ID.; ID.; MINORITY OF THE VICTIM AT THE TIME WHEN THE OFFENSE WAS COMMITTED, SUFFICIENTLY PROVED.—** Without a doubt, AAA was a minor when she was enticed by accused-appellant to live with him, and was still a minor when she was compelled to engage in prostitution up to the time of accused-appellant's arrest. Her minority was expressly alleged in the Information and sufficiently established by the prosecution.

3. **CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. 9208), AS EXPANDED BY R.A. 10364; TRAFFICKING IN PERSONS; ELEMENTS, REITERATED.—** In *People v. Casio*, this Court derived the elements of trafficking in persons, namely: (1) The **act** of "recruitment, *obtaining, hiring, providing, offering*, transportation, transfer, *maintaining*, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;" (2) The **means** used include "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;" and (3) The **purpose** of trafficking includes "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."

4. ID.; ID.; ID.; ALL THE ELEMENTS OF HUMAN TRAFFICKING ARE PRESENT IN THIS CASE; THE GRAVAMEN OF THE OFFENSE IS THE ACT OF RECRUITING OR USING, WITH OR WITHOUT CONSENT, A FELLOW HUMAN BEING FOR SEXUAL EXPLOITATION.— All the elements of human trafficking, relating to the act, the means, and the purpose, are present in this case. Accused-appellant makes much of the fact that there is no evidence that he transacted directly with AAA's clients. Examining the aforecited elements of human trafficking, however, readily reveal that the offering or providing of persons using any of the enumerated means for the purpose of exploitation, is only one among several ways of committing the offense. In *People v. Rodriguez*, the Court also clarified that the gravamen of the crime of human trafficking is not so much the offer of a woman or child; it is the act of recruiting or using, with or without consent, a fellow human being for sexual exploitation. Here, AAA transferred from Valenzuela City to move in with accused-appellant in Manila with the expectation that he would provide for her studies and because they were already lovers. As it turned out, accused-appellant manipulated and coerced AAA into engaging in prostitution with foreign men, from which income he also benefited.

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

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

This is an appeal[1] from the Decision[2] of the Court of Appeals (CA) dated January 31, 2018 in CA-G.R. CR-HC No. 08986,

[1] *Rollo*, pp. 35-36, 38.

[2] Penned by Associate Justice Celia C. Librea-Leagogo and concurred

which upheld the Decision[3] dated November 15, 2016 of the Regional Trial Court (RTC) of Manila, Branch 5, finding Reynold Monsanto y Familaran/Pamilaran (accused-appellant) guilty beyond reasonable doubt of child trafficking.

Accused-appellant was charged under three separate Informations in the following manner:

Criminal Case No. 14-30408
For: Violation of Section 5 (a-1) of R.A. No. 7610[4]

That in or about and/or for sometime during the period comprised between February, 2013 and March 4, 2014, in the City of Manila, Philippines, the said accused, for money, profit or any other consideration, or due to coercion or influence, did then and there willfully, unlawfully and feloniously engage in or promote child prostitution, by then and there acting as a procurer of AAA, a 16-year-old child prostitute, thereby gravely endangering her survival and normal growth and development, to the damage and prejudice of the said AAA.

Contrary to law.[5]

Criminal Case No. 15-31408
For: Violation of Section 4 (a) & (e) in relation to Section 6 (a) of R.A. No. 9208[6] **as amended by R.A. No. 10364**[7]

That sometime in or before February 2013, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully

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in by Associate Justice Maria Elisa Sempio Diy and Associate Justice Jhosep Y. Lopez; *id*. at 2-34;

[3] Penned by Presiding Judge Emily L. San Gaspar-Gito; CA *rollo*, pp. 57-81.

[4] Otherwise known as the SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT, approved on June 17, 1992.

[5] Records 14-304088, p. 1, dated March 10, 2014.

[6] Otherwise known as the ANTI-TRAFFICKING IN PERSONS ACT OF 2003.

[7] Otherwise known as THE EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2012.

and knowingly, for purposes of prostitution, pornography or sexual exploitation, in consideration of price, reward or promise, recruit and transport to Manila AAA, a minor, 16 years old, under the pretext of living-in together with the accused and with the promise that he would be sending her to school.

That the crime is committed with the qualifying circumstances that the trafficked person is below 18 years old and the aggravating circumstances of having committed the crime in consideration of price, reward or promise.

Contrary to law.[8] (Underscoring in the original)

Criminal Case No. 15-31408
For: Violation of Section 5 (a) of R.A. No. 7610[9]

That sometime in February, 2013, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly, acting as procurer of a child prostitute, where she is required to go out with foreign men, and in return, give monetary consideration with intent to engage and actually engage in prostitution, minor AAA, a minor 16 years old, against her will and consent, to her damage and prejudice.

Contrary to law.[10]

On April 17, 2015, the foregoing criminal cases were consolidated,[11] thus, the evidence, stipulations and proceedings in Crim. Case No. 14-304088 were adopted in Crim. Case Nos. 15-314082 and 15-314083.

We recount the facts as borne by the records.

The private complainant, AAA,[12] met accused-appellant on December 5, 2012, in Valenzuela City, at the house of a certain

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[8] Records (Criminal Case No. 15-314082-83), p. 63.

[9] *Supra* note 4.

[10] Records (Criminal Case No. 15-314082-83), p. 4.

[11] *Id*. at 16.

[12] The real name of the minor victim is withheld and replaced with fictitious initials to protect her privacy, conformably with Sec. 7 of R.A. No. 9208, as amended by R.A. No. 10364.

Kristine and Reynante, a couple AAA had been living with as their house helper. On the occasion of Kristine's birthday, accused-appellant who is a friend of Reynante, was introduced to AAA.

Accused-appellant and AAA became textmates, which led to a romantic and sexual relationship. Accused-appellant promised AAA, an orphan with no known relatives who at that time was only fourteen (14) years old, that he would send her to school. This enticed AAA to live together with accused-appellant at his rented room in Pandacan, Manila, in February of 2013. Accused-appellant worked as a part-time waiter for food caterings. For a time, AAA also joined accused-appellant as an on-call waitress to augment his income.

As testified by AAA, the first time that accused-appellant brought her to Robinsons Mall in Ermita, Manila, accused-appellant called her attention to the sight of foreigners in the company of local women. AAA said she was surprised as it was her first time to see foreigners. Accused-appellant pointed to a foreigner whom AAA was told to approach and say "hi." AAA was further instructed to accept an invitation to the foreigner's hotel room. When AAA asked what she would be doing at the hotel, accused-appellant replied that she and the foreigner would just converse.[13]

AAA did as she was told. While accused-appellant observed from a distance of about two (2) meters,[14] AAA sat down beside the foreigner, conversed and shared a meal with the latter, then agreed when invited to the hotel. At the hotel room, the foreigner asked AAA to hold his penis. AAA asked why and the foreigner replied, "You don't know? You came with me, yet you don't know?" The foreigner then held AAA's hand, held her when she cried, and they subsequently had sex twice.[15]

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[13] TSN, June 13, 2014, pp. 17-19; TSN, June 26, 2014, p. 13.

[14] TSN, June 26, 2013, p. 17.

[15] TSN, June 13, 2014, pp. 20-22.

Afterwards, the foreigner accompanied AAA back to Robinsons Mall where the accused-appellant was waiting. They used the money that AAA received from the foreigner to buy food and to pay their electric bill. AAA later told the accused-appellant that she thought she would only have to dine with the foreigner, but did not expect to have sex with the latter. This allegedly made accused-appellant angry and jealous.[16]

Nonetheless, accused-appellant brought AAA again to Robinsons Mall the following day. This time, accused-appellant instructed AAA to look for a foreigner and to do the same as she did the day before, but she should first ask for the "price" before going with the foreigner to a hotel. AAA did as she was instructed, had sex with a foreigner and was paid for it. AAA then gave the money to accused-appellant. The same thing happened many times. AAA would sometimes have sex with two (2) foreigners in one (1) day.[17]

In February of 2014, after about a year of living together, accused-appellant and AAA quarreled when the latter complained that she couldn't sleep because their bed was wet. Accused-appellant opened AAA's mouth and urinated in it, which caused AAA to run away and take refuge at a customer's place where she stayed for a number of days.[18]

To persuade AAA to return, accused-appellant sent AAA a text message saying he would give back her laptop computer. When AAA returned, accused-appellant told her that she could only get back her laptop if she would not leave him. AAA pleaded with accused-appellant and insisted on getting her laptop back, but the latter shoved and choked her. AAA kicked accused-appellant and ran. Witnesses helped AAA and sought the assistance of *barangay* officials.[19]

As the arresting officer on record, *barangay kagawad* Estella Rebenito (Rebenito) testified that she responded to a report at

[16] *Id*. at 23-25.

[17] *Id.* at 25-26.

[18] *Id*. at 28.

[19] *Id*. at 29.

about 4:00 p.m. on March 4, 2014, about a quarrel wherein accused-appellant placed a pedicab boarded by AAA in the middle of the road to be run over by trucks. With the help of *barangay tanods*, Rebenito brought accused-appellant and a shaking and visibly frightened AAA to the *barangay* hall for investigation.[20] Before the *barangay* chairperson and Rebenito, AAA disclosed that she was sixteen (16) years old, and that the 43-year-old accused-appellant was her live-in partner, as well as her pimp.[21] Consequently, Rebenito brought AAA and accused-appellant to the Women and Children Protection Section of the United Nations Avenue police station, where PO3 Thelma Samudio prepared the booking sheet and arrest report, and assisted Rebenito and AAA in the preparation of their respective affidavits.[22]

On March 5, 2014, AAA underwent an ano-genital examination by Dr. Sandra Stuart Hernandez (Dr. Hernandez), a medical doctor assigned to the Child Protection Unit of the Philippine General Hospital. Dr. Hernandez further testified[23] that she issued a Medico-Legal Report[24] finding a healed laceration at the 4:00 o'clock position and absence of hymenal tissue between the 6:00 and 8:00 o'clock positions, which are diagnostic of blunt force or penetrating trauma.[25]

Social worker Clementino Dumdum, Jr. (Dumdum), to whom AAA's case was assigned, caused the dental examination of AAA upon order of the court to determine her age.[26] On September 23, 2014, the dentist/orthodontist of the Department of Social Welfare and Development (DSWD), Dr. Michael

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[20] TSN, July 3, 2014, pp. 3-4.

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

[22] Records (Criminal Case No. 14-304088), pp. 91-92.

[23] TSN dated June 6, 2014.

[24] Records, 14-304088, p. 59.

[25] TSN, June 6, 2014, pp. 7-9; Medico-Legal Report, Records (Criminal Case No. 14-304088), p. 59.

[26] Records (Criminal Case No. 14-304088), p. 106.

Puertollano (Dr. Puertollano), found that all of AAA's wisdom teeth have not yet erupted and concluded that she was at least sixteen (16) years of age and a minor.[27]

In his defense, accused-appellant denies any part in AAA's prostitution activities. Accused-appellant claims he was surprised when he later discovered that AAA had been going to Robinsons Mall whenever he was not at home. AAA allegedly explained that she just strolled around the mall, but accused-appellant became suspicious when he saw AAA talking to different foreigners on her mobile device.[28]

As to the March 4, 2014 incident that led to his arrest, accused-appellant claimed that he and AAA quarreled over money because AAA spent it all when she celebrated her birthday.[29] He shouted at AAA inside a pedicab, which made AAA cry. This prompted some people to call for *barangay* officials who brought them to the *barangay* hall. When barangay officials heard that AAA was sixteen (16) years old, social workers from the DSWD and police officers were called. They then advised AAA to file a case against accused-appellant.[30]

In its November 15, 2016 Decision,[31] the RTC did not find enough basis to convict accused-appellant as charged under Republic Act (R.A.) No. 7610 because there was no evidence that he himself transacted directly or spoke with any of AAA's clients, even if he taught her the tricks of the flesh trade.[32] However, for having enticed AAA to live with him by taking advantage of her vulnerability, facilitating her entry into prostitution and benefiting from it, the RTC convicted the accused-appellant as charged under R.A. No. 9208.[33] As disposed:

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[27] *Id*. at 107.

[28] TSNs dated February 17, 2016, pp. 8-10; TSN, August 16, 2016, pp. 9-10.

[29] TSN, June 21, 2016, pp. 2-3.

[30] *Id.* at 5-7.

[31] *Supra* note 3.

[32] *Id*. at 72.

[33] *Id*. at 74-75.

WHEREFORE, in view of the foregoing disquisition, the Court finds accused REYNOLD MONSANTO y FAMILARAN/ PAMILARAN guilty beyond reasonable doubt in Criminal Case No. 15-314082 of the offense of violation of *Section 4 (a) in relation to Section 6 (a)* of Republic Act No. 9208. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT, to PAY THE FINE of ₱2,000,000.00, and to pay the costs.

He is further adjudged to PAY AAA moral damages of ₱500,000.00 and exemplary damages of P100,000.00, pursuant to the Supreme Court's rulings in *People v. Hadja Jarma Lalli* and *People v. Nufrasir Hashim*.

He is however ACQUITTED of the charges for *Violation of Section 5 (a-1)* and 5 (a) of *Republic Act No. 7610* in Criminal Cases Nos. 14-304088 and 15-314083, on the ground of reasonable doubt.

SO ORDERED.[34] (Citation omitted)

On appeal, the CA also ruled that the evidence adduced by the prosecution established beyond reasonable doubt accused-appellant's guilt under the charge of child trafficking. Additionally imposing interest on the damages awarded, the dispositive portion of its January 31, 2018 Decision[35] reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 15 November 2016 of the Regional Trial Court of Manila, Branch 5 in *Crim. Case No. 15-314082* finding accused-appellant Reynold Monsanto *y* Familaran/Pamilaran guilty beyond reasonable doubt of violation of Section 4(a) in relation to Section 6(a) of Republic Act No. 9208, as amended by Republic Act No. 10364, imposing upon accused-appellant the penalty of life imprisonment and a fine in the amount of Php2,000,000.00 plus costs, and ordering him to pay private complainant AAA the amount of Php500,000.00 as moral damages and Php100,000.00 as exemplary damages is **AFFIRMED**. In addition, interest at the rate of 6% *per annum* is imposed on the said damages, from the date of finality of this Decision until fully paid.

SO ORDERED.[36]

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[34] CA *rollo*, pp. 80-81.

[35] *Supra* note 2.

[36] *Rollo*, pp. 30-31.

Undaunted, accused-appellant now appeals his conviction before this Court.[37]

In a letter[38] dated November 9, 2018, the Superintendent of the New Bilibid Prison confirmed accused-appellant's confinement. For its part, the Public Attorney's Office manifested on November 27, 2018, that it is adopting the Brief for the Accused-Appellant dated July 3, 2017 as its supplemental brief.[39] In turn, on December 10, 2018, the Office of the Solicitor General asked that it be excused from filing a supplemental brief as the issues raised by the accused-appellant were fully addressed in the November 3, 2017 Appellee's Brief.[40]

The Issues

To recapitulate, accused-appellant argued that the RTC erred in giving credence to AAA's testimony and in according weight on the medical certificate to prove that AAA engaged in prostitution or that he had a direct hand in it.[41] Accused-appellant further asserted that AAA's minority was not sufficiently proven.[42]

On the other hand, the plaintiff-appellee countered that AAA is a credible witness and her testimony is sufficient to convict accused-appellant.[43] Moreover, AAA's minority, her sexual exploitation, and all the elements of trafficking in persons were duly established by the prosecution.[44]

The foregoing arguments may be distilled to the sole issue of whether or not the prosecution was able to prove beyond

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[37] *Supra* note 1.

[38] *Rollo*, p. 42.

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

[40] *Id*. at 50-51.

[41] CA *rollo*, p. 34.

[42] *Id*.

[43] *Id*. at 100.

[44] *Id*. at 107-111.

reasonable doubt accused-appellant's guilt under the child trafficking charge.

This Court's Ruling

We sustain the conviction.

The Court's general inclination to accord respect to the trial court's appreciation of the testimonies of witnesses was thoroughly explained in *People v. Ocdol*,[45] as follows:

> It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in the transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."[46]

We affirm the RTC's valuation of AAA's testimony, as affirmed by the CA, in light of its spontaneity, steadfastness

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[45] 741 Phil. 701 (2014), citing *People v. Sapigao, Jr.*, 614 Phil. 589, 599 (2009).

[46] *Id.* at 714-715.

and consistency on material points. Moreover, while the incriminating facts were chiefly anchored on the testimony of AAA, there is no merit in the claim that the RTC relied solely on AAA's testimony.

Apart from accused-appellant's attempt to downplay his role in enticing AAA to live with him and her sexual exploitation, his testimony jibes with that of AAA. The testimonies of the *barangay kagawad* and Dr. Hernandez also bolster the truthfulness of AAA's testimony. Although both the *barangay kagawad* and Dr. Hernandez had no personal knowledge on the prostitution activities of AAA or on accused-appellant's part in it, they had personal knowledge on the circumstances of its discovery which led to accused-appellant's arrest. Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused.[47]

As reiterated in *People v. Ortega*:[48]

> It bears emphasis that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true. x x x[49]

The stigma that AAA risked exposing herself to in disclosing how a person whom she thought truly cared for her, manipulated and compelled her into prostitution, may be gleaned from her response on cross-examination:

x x x x x x x x x

Q *Di ba seryoso siya sa iyo dahil ibinabahay ka niya?*

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[47] *People v. Pareja*, 724 Phil. 759, 776 (2014), citing *People v. Manalili*, 716 Phil. 762, 772 (2013).

[48] 680 Phil. 285 (2012), citing *People v. Ponsica*, 433 Phil. 365 (2002).

[49] *Id.* at 299.

A *Nung una po.*

Q *Pero kahit ganyan siya[,] hindi ka niya inutusan magpagalaw sa* foreigner?

A *Nung una po sinabi ko[,]* ***kailangan bang magpagalaw ako sa foreigner? Hindi ka ba nandidiri? Sabi niya okay lang yung [sic] kasi wala tayong pambayad ng bahay***.[50] (Emphasis supplied)

x x x x x x x x x

Accused-appellant insists that the prosecution failed to prove that AAA was a minor during the alleged period when the offense was committed. His argument is based on the weight given by the RTC on the result of AAA's dental ageing examination because Dr. Puertollano, who conducted it, was not presented and established as an expert witness. The prosecution and the defense merely stipulated on the intended testimony of social worker Dumdum, which included his having caused the dental ageing examination of AAA and the result thereof.

The CA, nonetheless, upheld the finding of minority because AAA testified on such fact, and the same was expressly and clearly admitted by accused-appellant. During her direct testimony on June 13, 2014, AAA stated that she was sixteen (16) years old.[51]

Notably, both accused-appellant and Dr. Hernandez confirmed her minority. As testified by accused-appellant himself -

Q [D]o you know that [AAA] was only 16 years of age during that time?

A **When we met in 2012, she was only 14 years old.**[52] (Emphasis supplied)

On the continuation of his direct examination, he stated:

Q Now by the way, do you know for a fact that [AAA] is a minor when you decided to live with her?

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[50] TSN, June 26, 2014, p. 16.

[51] TSN, June 13, 2014, p. 3.

[52] TSN, February 17, 2016, p. 10.

A **Yes, I knew that she was just 16 years old**, she told me "don't feel sorry for me, just love me."[53] (Emphasis supplied)

During cross-examination, accused-appellant again said:

Q How old was she then when you first met her?

A **14 years old**.[54] (Emphasis supplied)

Finally, even Dr. Hernandez, whose expertise was duly established, declared on the witness stand:

Q Upon examining the patient, could you tell us what you mean by tanner stage and what is meant by estrogenized redundant type of hymen as indicated in your report?

A **The tanner staging is the maturity rating.** It is a criteria of a ratings [sic] scale that we use to assess if the development of a child is consistent with her age in terms of having reached puberty, because certain changes takes [sic] place when the child enters puberty. She gets her menstruation and her breast becomes more developed, then hair developed [sic]. **This tanner stage 4 is consistent with her age. For a 16-year old.**[55] (Emphasis supplied)

Without a doubt, AAA was a minor when she was enticed by accused-appellant to live with him, and was still a minor when she was compelled to engage in prostitution up to the time of accused-appellant's arrest. Her minority was expressly alleged in the Information and sufficiently established by the prosecution.

To recall, accused-appellant was charged and convicted for violation of Section 4 (a) and (e), in relation to Section 6 (a) of R.A. No. 9208 or the *Anti-Trafficking in Persons Act of 2003*, as expanded in 2012 by R.A. No. 10364. The pertinent provisions state:

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[53] TSN, June 21, 2016, p. 8.

[54] TSN, August 16, 2016, p. 4.

[55] TSN, June 6, 2014, p. 8.

Section 4. *Acts of Trafficking in Persons*. - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

x x x x x x x x x

(e) To maintain or hire a person to engage in prostitution or pornography;

x x x x x x x x x

Section 6. *Qualified Trafficking in Persons.* - The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

x x x x x x x x x

In *People v. Casio*,[56] this Court derived the elements of trafficking in persons, namely:

(1) The **act** of "recruitment, *obtaining, hiring, providing, offering*, transportation, transfer, *maintaining*, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;"

(2) The **means** used include "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;" and

(3) The **purpose** of trafficking includes "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."[57] (Emphases supplied, italics in the original)

All the elements of human trafficking, relating to the act, the means, and the purpose, are present in this case. Accused-

[56] 749 Phil. 458 (2014).

[57] *Id*. at 474.

appellant makes much of the fact that there is no evidence that he transacted directly with AAA's clients. Examining the aforecited elements of human trafficking, however, readily reveal that the offering or providing of persons using any of the enumerated means for the purpose of exploitation, is only one among several ways of committing the offense. In *People v. Rodriguez*[58] the Court also clarified that the gravamen of the crime of human trafficking is not so much the offer of a woman or child; it is the act of recruiting or using, with or without consent, a fellow human being for sexual exploitation.[59]

Here, AAA transferred from Valenzuela City to move in with accused-appellant in Manila with the expectation that he would provide for her studies and because they were already lovers. As it turned out, accused-appellant manipulated and coerced AAA into engaging in prostitution with foreign men, from which income he also benefited.

Regarding the means employed in the trafficking of minors, *People v. Villanueva*[60] emphasized that:

> The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall still be considered "trafficking in persons" even if it does not involve any of the means set forth in the first paragraph of Sec. 3(a) of R.A. No. 9208. Given that the person allegedly trafficked in the case at bar is a child, we may do away with discussions on whether or not the second element was actually proven.[61] (Citation omitted)

As already clarified by the Court:

> x x x x A child exploited in prostitution may seem to consent to what is being done to her or him and may appear not to complain. However, we have held that a child who is a person below eighteen years of age or those unable to fully take care of themselves or protect

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[58] G.R. No. 211721, September 20, 2017, 840 SCRA 388.

[59] *Id*. at 402-403.

[60] 795 Phil. 349 (2016).

[61] *Id*. at 360.

themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition is incapable of giving rational consent x x x[62]

Accused-appellant himself admitted that his earnings were not enough to support himself and AAA when he took her under his wing. Despite the fact that they could barely afford to pay their rent and basic necessities, AAA eventually acquired an iPad and a laptop computer. The Court finds it incredible that accused-appellant was turning a blind eye to the source of these items, or that he also had no hand in AAA's engagement in prostitution. Initiation into the flesh trade with foreign clients requires a level of familiarity with its ways and inner workings that an untrained minor, particularly one living under the same roof and under the economic control of her middle-aged lover, would not have stumbled into on her own.

To echo *Delantar*,[63] the forfeiture of the right to live free in society is the due requital for peddling a child to sexual servitude.[64]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated January 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08986, upholding the conviction of accused-appellant Reynold Monsanto *y* Familaran/Pamilaran in Crim. Case No. 15-314082 for violation of Section 4(a) in relation to Section 6(a) of Republic Act No. 9208, as amended by Republic Act No. 10364, respectively known as the *"Anti-Trafficking in Persons Act of 2003*" and the "*Expanded Anti-Traffic king in Persons Act of 2012*," is **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ*., concur.

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[62] *People v. Delantar*, 543 Phil. 107, 124 (2007).

[63] *Id*.

[64] *Id.* at 110.

SECOND DIVISION

[A.C. No. 10697. March 25, 2019]

LARRY C. SEVILLA, *complainant, vs.* **ATTY. MARCELO C. MILLO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; SHOULD ENCOURAGE THEIR CLIENTS TO AVOID, END, OR SETTLE A CONTROVERSY IF IT WILL ADMIT OF A FAIR SETTLEMENT.— It is well to stress that lawyers owe fidelity to the cause of their clients and are expected to serve the latter with competence and diligence. Consequently, lawyers are entitled to employ every honorable means to defend the cause of their clients and secure what is due them. However, professional rules set limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications. In this regard, Canon 1 of the CPR provides that lawyers "shall uphold the Constitution, obey the laws of the land and promote respect for law and of legal processes." In furtherance thereto, Rule 1.04 of the CPR mandates lawyers to "encourage [their] clients to avoid, end, or settle a controversy if it will admit of a fair settlement." Guided by the foregoing, the Court agrees with the findings of the Investigating Commissioner, as affirmed by the IBP Board of Governors, that respondent indeed fell short of what is expected of him, despite his avowed duties as officer of the court. Records reveal that respondent did not endeavor to initiate the settlement of the publication fee being charged by complainant. x x x Ultimately, respondent's acts, which are violative of Rule 1.04, Canon 1 of the CPR, prejudiced his clients as they resulted in the non-completion of the foreclosure proceedings, since complainant did not issue the affidavit of publication nor provide copies of the issues where the notice of auction sale was actually printed.

2. ID.; ID.; SUSPENSION; APPRORIATE WHEN A LAWYER KNOWS THAT HE IS VIOLATING A COURT ORDER OR RULE, AND THERE IS INJURY OR POTENTIAL INJURY TO A CLIENT OR PARTY, OR INTERFERENCE

OF POTENTIAL INTERFERENCE WITH A LEGAL PROCEEDING.— Anent the proper penalty to be imposed on respondent, under the circumstances and considering that this is his first offense, the Court finds it appropriate to impose on respondent the penalty of suspension from the practice of law for a period of one (1) month. x x x [T]he Court has held that suspension is appropriate when a lawyer knows that he is violating a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding, as in this case.

3. ID.; ID.; A LAWYER IS REQUIRED TO OBSERVE THE LAW AND BE MINDFUL OF HIS ACTIONS WHETHER ACTING IN A PUBLIC OR PRIVATE CAPACITY, AND THE COURT WILL NOT HESITATE TO IMPOSE THE NECESSARY PENALTY TO A LAWYER WHOSE CONDUCT FALLS SHORT OF THE EXACTING STANDARDS EXPECTED OF HIM AS A MEMBER OF THE BAR.— [I]t must be emphasized that membership in the legal profession is a privilege burdened with conditions. A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity. Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the legal profession as a whole. As such, the Court will not hesitate to impose the necessary penalty to a lawyer whose conduct falls short of the exacting standards expected of him as a member of the Bar.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] filed on November 14, 2014 by complainant Larry C. Sevilla (complainant), before the Office of the Bar Confidant,[2] against respondent Atty. Marcelo C. Millo (respondent), charging the

[1] Dated November 12, 2014. *Rollo*, pp. 2-4.

[2] Initially, the same complaint was filed before the Office of the Court Administrator on October 24, 2014, which was forwarded to and received by the Office of the Bar Confidant on October 28, 2014 (see *id*. at 7-9).

latter of harassment, misconduct, obstruction of justice and ignorance of the law.

The Facts

Complainant alleged that he is the publisher of Pampango Footprints (Pampango), a provincial newspaper circulated in Tarlac Province.[3] Sometime in April 2014, he issued a statement of account[4] in the amount of P33,120.00 to Spouses Avelino and Melendrina Manalo (Sps. Manalo) as fee for the publication of the notice of auction sale relative to Sps. Manalo's petition for foreclosure of mortgage, which was published in three (3) consecutive issues of Pampango.[5] Claiming that the publication fee was "exorbitant and shocking," respondent, as Sps. Manalo's counsel, refused to settle the account, threatened complainant that he would petition for the disqualification of Pampango, and thereafter, wrote an undated letter[6] to the Executive Judge of the Regional Trial Court of Tarlac City in furtherance of such threat.[7] Consequently, complainant filed this administrative complaint against respondent.

During the pendency of this complaint, Sps. Manalo negotiated for a discount of fifty percent (50%), to which complainant agreed. Yet, respondent intervened and forbade his clients to pay. For this reason, complainant called respondent, but instead of explaining his side, respondent shouted, "I am busy I don't want to talk to you!" and banged his cellphone.[8]

For his part,[9] respondent denied administrative liability, averring that he merely acted on behalf of his clients, who found

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[3] See *id*. at 1-2.

[4] *Id*. at 28.

[5] See *id*. at 3 and 64.

[6] *Id.* at 5.

[7] See *id*. at 2-3 and 64.

[8] *Id*. at 64. See also complainant's Verified Position Paper dated April 5, 2017; *id*. at 48-49.

[9] See respondent's comment dated May 27, 2015 (*id*. at 15-18); and Position Paper for the Respondent dated March 6, 2017 (*id* at 45-47).

the fee "exorbitant and shocking."[10] He also claimed that after the Executive Judge advised them to just settle the matter with complainant, he withdrew as Sps. Manalo's counsel to give way to the said settlement.[11] Finally, he maintained that complainant's non-issuance of an affidavit of publication and non-submission of copies of the issues where the notice of auction sale was printed caused the non-completion of the foreclosure proceedings.[12]

In a Resolution[13] dated July 4, 2016, the Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP's Report and Recommendation

In a Report[14] dated May 4, 2017, the Investigating Commissioner found respondent administratively liable for violation of Rule 1.04,[15] Canon 1 of the Code of Professional Responsibility (CPR), and accordingly, recommended the penalty of reprimand or one (1)-month suspension.[16]

The Investigating Commissioner found that the matter simply involves a misunderstanding in the collection of publication fee which could have easily been settled if respondent did not prevent the settlement. In this relation, the Investigating Commissioner pointed out that Sps. Manalo had already successfully negotiated for a settlement, but the same did not push through because of respondent.[17] Further, the Investigating

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[10] See *id*. at 16 and 45.

[11] See *id*. at 17 and 45.

[12] See *id*. at 17.

[13] *Id*. at 36. Signed by the Division Clerk of Court (now Clerk of Court En Banc) Edgar O. Aricheta.

[14] *Id*. at 64-66. Signed by Commissioner Narciso A. Tadeo.

[15] Rule 1.04 - A lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement.

[16] *Rollo*, p. 66.

[17] See *id*. at 65.

Commissioner noted that the respondent's claim of withdrawal as Sps. Manalo's counsel was belied by complainant's allegation that respondent intervened and forbade his clients to pay, which respondent did not deny.[18]

In a Resolution[19] dated February 22, 2018, the IBP Board of Governors adopted the Investigating Commissioner's Report, with modification lowering the recommended penalty of suspension from the practice of law for a period of one (1) month to mere reprimand.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

The Court concurs and affirms the findings of the IBP Board of Governors with modification as to the penalty.

It is well to stress that lawyers owe fidelity to the cause of their clients and are expected to serve the latter with competence and diligence. Consequently, lawyers are entitled to employ every honorable means to defend the cause of their clients and secure what is due them.[20] However, professional rules set limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications.[21] In this regard, Canon 1 of the CPR provides that lawyers "shall uphold the Constitution, obey the laws of the land and promote respect for law and of legal processes." In furtherance thereto, Rule 1.04 of the CPR mandates lawyers to "encourage [their] clients to avoid, end, or settle a controversy if it will admit of a fair settlement."

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[18] See *id*.

[19] See Notice of Resolution in CBD Case No. 16-5191 issued by Assistant National Secretary Doroteo B. Aguila; *id*. at 70-71.

[20] See *Avida Land Corporation v. Argosino*, 793 Phil 210, 222 (2016).

[21] *Id*.

Guided by the foregoing, the Court agrees with the findings of the Investigating Commissioner, as affirmed by the IBP Board of Governors, that respondent indeed fell short of what is expected of him, despite his avowed duties as officer of the court. Records reveal that respondent did not endeavor to initiate the settlement of the publication fee being charged by complainant. Disagreeing with the statement of account, respondent chose not to pay and immediately referred the matter to the Executive Judge, instead of negotiating and discussing the matter with complainant. Remarkably, respondent's obstinate refusal to settle culminated in forbidding his clients, Sps. Manalo, to pay the reduced publication fee, which the latter secured for themselves. He even shouted at and ignored complainant when the latter called him up in an effort to finally settle. Ultimately, respondent's acts, which are violative of Rule 1.04, Canon 1 of the CPR, prejudiced his clients as they resulted in the non-completion of the foreclosure proceedings, since complainant did not issue the affidavit of publication nor provide copies of the issues where the notice of auction sale was actually printed.

Anent the proper penalty to be imposed on respondent, under the circumstances and considering that this is his first offense, the Court finds it appropriate to impose on respondent the penalty of suspension from the practice of law for a period of one (1) month. This is in line with the Court's ruling in *Caspe v. Mejica*,[22] where respondent therein was suspended for violating Rule 1.04, Canon 1 of the CPR, among others. Similarly, the Court has held that suspension is appropriate when a lawyer knows that he is violating a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding,[23] as in this case.

As a final note, it must be emphasized that membership in the legal profession is a privilege burdened with conditions. A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity. Any

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[22] See 755 Phil. 312 (2015).

[23] See *Avida Land Corporation v. Argosino*, *supra* note 20, at 225-226.

transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the legal profession as a whole.[24] As such, the Court will not hesitate to impose the necessary penalty to a lawyer whose conduct falls short of the exacting standards expected of him as a member of the Bar.[25]

WHEREFORE, respondent Atty. Marcelo C. Millo (respondent) is hereby **SUSPENDED**from the practice of law for a period of one (1) month, with a **STERN WARNING** that a repetition of the same or similar act will be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt of this Decision by respondent. He 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 Decision be furnished the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa, Reyes, Jr., J.,* and *Lazaro-Javier, JJ.*, concur.

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[24] See *Nulada v. Paulma*, 784 Phil. 309, 317 (2016).

[25] See *id.* at 317-318.

SECOND DIVISION

[G.R. No. 197494. March 25, 2019]

COCA-COLA[*] BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **CCBPI STA. ROSA PLANT EMPLOYEES UNION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; COLLECTIVE BARGAINING AGREEMENT (CBA); WHERE THE CBA IS CLEAR AND UNAMBIGUOUS, IT BECOMES THE LAW BETWEEN THE PARTIES AND COMPLIANCE THEREWITH IS MANDATED BY THE EXPRESS POLICY OF THE LAW.— It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order, or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law. Verily, the force and effect of the CBA is that of a law, requiring that parties thereto yield to its provisions; otherwise, the purpose for which the same was executed would be rendered futile. x x x A plain reading of the CBA provision provides for the commitment of the petitioner to process SSS salary loans, in particular, of its employees. The only limitation is the application of SSS rules and regulations pertaining to the same. Undoubtedly, the company policy is not an SSS rule or regulation. Hence, it is important to discuss whether said company policy is sanctioned under SSS rules and regulations. The Terms and Conditions of a Member Loan Application, pursuant to Social Security Commission Regulation No. 669, is stipulated at the back of every SSS loan application. It specifies for the requirements for eligibility of the member and the responsibilities of an employer relative to loan application

[*] Also referred to as "Coca Cola" in the petition.

x x x. [I]t appears that the qualification of a member-borrower is dependent on the amount of loan to be taken, updated payment of his contributions and other loans, and age, which should be below 65 years. On the other hand, the responsibility of an employer is limited to the collection and remittance of the employee's amortization to SSS as it causes the deduction of said amortizations from the employee's salary. Based on said terms and conditions, it does not appear that the employer has the prerogative to impose other conditions which does not involve its duty to collect and remit amortizations. The 50% net take home pay requirement, in effect, further adds a condition for an employee to obtain an SSS salary loan, on top of the requirements issued by the SSS. Hence, when petitioner requires that the employee should have at least 50% net take home pay before it processes a loan application, the same violates the CBA provision when a qualified employee chooses to apply for an SSS loan.

2. **ID.; ID.; WAGES; NON-INTERFERENCE IN DISPOSAL OF WAGES; THE IMPLEMENTATION OF THE LIMITATION IN THE AVAILMENT OF LOANS IN CASE AT BAR RESTRICTS AN EMPLOYEE'S CHOICE TO DISPOSE OF HIS SALARY THROUGH PAYMENT OF MONTHLY AMORTIZATIONS WHICH CONTRAVENES THE PROHIBITION ON INTERFERING WITH THE DISPOSAL OF WAGES.—** While petitioner's cause for putting a limitation on the availment of loans, *i.e.,* to promote the welfare of the employees and their families by securing that the salary of the concerned employee shall be taken home to his family, is sympathetic, we cannot subscribe to the same for being in contravention with the prohibition on interfering with the disposal of wages under Article 112 of the Labor Code x x x. With the implementation of the company policy, an employee, who is qualified to avail an SSS salary loan and chooses to dispose of his salary through payment of monthly amortizations, may not be able to do so should such amortizations be over the 50% cap. In carrying out the 50% cap policy, petitioner effectively limits its employees on the utilization of their salaries when it is apparent that as long as the employee is qualified to avail the same, he/she may apply for an SSS loan. The demands of each household varies; and the management of each household differs. Whether it is beneficial for an employee to retain sufficient money to supply the needs of his family at the end

of each month is immaterial. The needs of one's family is relative; one household may find comfort in taking loans to meet urgent needs. Petitioner's contention that an employee's dependency on indebtedness will affect his productivity is at best speculative.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Nenita C. Mahinay for respondent.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated January 27, 2011 and the Resolution[3] dated June 23, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 113138, which affirmed the ruling of the Voluntary Arbitrator.

Relevant Antecedents

Coca-Cola Bottlers Philippines, Inc. (CCBPI, hereinafter referred to as petitioner) is engaged in the business of manufacturing, distributing, and marketing beverage products while CCBPI Sta. Rosa Plant Employees' Union (respondent Union) is a recognized labor union organized and registered with the Department of Labor and Employment (DOLE) and the sole representative of all regular daily paid employees and monthly paid non-commission earning employees within petitioner's Sta. Rosa, Laguna plant.[4]

A dispute arose when petitioner implemented a policy which limits the total amount of loan which its employees may obtain

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[1] *Rollo*, pp. 3-25.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino, concurring; *id*. at 33-39.

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

[4] *Id*. at 34.

from the company and other sources such as the Social Security System (SSS), PAG-IBIG, and employees' cooperative to 50% of their respective monthly pay.

Respondent Union interpreted such policy as violative of a provision in the Collective Bargaining Agreement (CBA), which states that petitioner shall process all SSS loans of its employees, in spite of any outstanding company loan of said employees, subject to SSS rules and regulations.[5]

After conciliation efforts failed, respondent Union submitted the matter before the Voluntary Arbitrator on October 5, 2009.[6]

Petitioner anchored on its stand and argued that the company policy is in compliance with the Labor Code considering that it ensures that the employees' wages are directly paid to the employees themselves and not to third party creditors.[7]

In a Decision[8] dated February 12, 2010, the Voluntary Arbitrator ruled in favor of the respondent Union. The Voluntary Arbitrator maintained that Section 2, Article 14 of the CBA is clear when it provided that petitioner shall process all SSS loans, subject only to SSS rules and regulations. As there was no modification of said stipulation, petitioner was ordered to implement said provision without restrictions, viz.:

> **WHEREFORE**, in light of the foregoing facts and [evidence] and circumstances, decision is hereby rendered in favor of the complainant union[.] Respondent is hereby ordered to immediately implement Article 14, Sec. 2 without restrictions and in its literal meaning.
>
> SO ORDERED.[9]

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[5] *Id*.

[6] *Id*.

[7] *Id*. at 75.

[8] Penned by Voluntary Arbitrator Hon. Bienvenido E. De Vera; *id*. at 74-81.

[9] *Id*. at 80.

Unsatisfied, petitioner elevated the matter before the CA via Rule 43 of the Rules of Court.

On appeal, petitioner insisted that it did not violate the CBA in enforcing the company policy as the limitation was aimed to protect and promote the welfare of the employees and prevent them from becoming saddled with indebtedness.[10]

Affirming the Decision of the Voluntary Arbitrator, the CA rendered the assailed Decision[11] dated January 27, 2011. The CA observed that such company policy is violative of the CBA in the absence of any SSS regulation supporting the same. The *fallo*thereof reads:

> **WHEREFORE**, premises considered, the petition is **DENIED** for lack of merit. Accordingly, the Decision of the Voluntary Arbitrator dated February 12, 2010 is hereby **AFFIRMED**.
>
> **SO ORDERED.**[12]

Petitioner filed a Motion for Reconsideration which was denied in the assailed Resolution[13] dated June 23, 2011.

The Issue

In the main, the issue in this case is whether or not petitioner's company policy which limits the availment of loans depending on the average take home pay of its employees violates a provision in the CBA.

The Court's Ruling

It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions.[14] As in all contracts, the parties in

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[10] *Id*. at 35.

[11] *Supra* note 2.

[12] *Id*. at 38.

[13] *Supra* note 3.

[14] *Goya, Inc. v. Goya, Inc. Employees Union-FFW*, 701 Phil. 645, 659 (2013).

a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order, or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.[15]

Verily, the force and effect of the CBA is that of a law, requiring that parties thereto yield to its provisions; otherwise, the purpose for which the same was executed would be rendered futile.

The resolution of this instant case would inevitably delve into a reading of the CBA in relation to the company policy, which allegedly translated into a violation of the former.

The concerned CBA provision provides:

Article XIII

x x x x x x x x x

SECTION 2. SSS Salary Loans. The COMPANY:shall process all SSS loan applications, notwithstanding the fact that the employee concerned may have outstanding COMPANY loans, subject to SSS rules and regulations.[16]

On the other hand, the company policy puts a cap relative to the loan availment by the employees depending on the employees' monthly basic net pay. In other words, petitioner shall disapprove the loan application of an employee whose net take home pay falls below 50% of his average monthly basic pay. Petitioner cited an illustration[17] to exemplify the policy's application:

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[15] *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*, 499 Phil. 174, 179-180 (2005).

[16] *Rollo*, p. 116.

[17] *Id.* at 9.

Average monthly basic pay	₱26,365.00
Average monthly standard and statutory deductions (e.g. tax, SSS contribution, etc.)	₱4,160.00
Average monthly non-standard deductions (e.g. union dues, insurance premium, etc.)	₱8,508.76
Average monthly net pay	₱13,696.24
% of total deductions over basic pay	48.05%
Monthly net disposable income based on the 50% salary cap	₱513.74

Thus, ZZZ may secure a loan from other sources provided that the monthly amortization does not exceed P513.74, considering that any amortization exceeding such net disposable income would exceed the 50% limitation of net take home pay. Stated otherwise, the net take home pay would be less than 50% of the average monthly basic pay if ZZZ would still be allowed to secure loans from any sources with monthly amortizations exceeding ₱513.74.[18]

A plain reading of the CBA provision provides for the commitment of the petitioner to process SSS salary loans, in particular, of its employees. The only limitation is the application of SSS rules and regulations pertaining to the same. Undoubtedly, the company policy is not an SSS rule or regulation. Hence, it is important to discuss whether said company policy is sanctioned under SSS rules and regulations.

The Terms and Conditions of a Member Loan Application, pursuant to Social Security Commission Regulation No. 669, is stipulated at the back of every SSS loan application. It specifies for the requirements for eligibility of the member and the responsibilities of an employer relative to loan application, to wit:

A. SALARY LOANS

ELIGIBILITY REQUIREMENTS

1. AN EMPLOYED, CURRENTLY PAYING SELF-EMPLOYED OR VOLUNTARY MEMBER (SE/VM) WHO

[18] *Id*.

HAS 6 POSTED MONTHLY CONTRIBUTIONS FOR THE LAST 12 MONTHS PRIOR TO THE MONTH OF FILING OF APPLICATION.

2. FOR A ONE-MONTH LOAN, THE MEMBER-BORROWER MUST HAVE 36 POSTED MONTHLY CONTRIBUTIONS PRIOR TO THE MONTH OF FILING OF APPLICATION.

3. FOR A TWO-MONTH LOAN, THE MEMBER-BORROWER MUST HAVE 72 POSTED MONTHLY CONTRIBUTIONS PRIOR TO THE MONTH OF FILING OF APPLICATION.

4. IF THE MEMBER-BORROWER IS EMPLOYED, HIS EMPLOYER MUST BE UPDATED IN CONTRIBUTIONS AND LOAN REMITTANCES.

5. THE MEMBER-BORROWER MUST BE UPDATED/ CURRENT IN THE PAYMENT OF HIS OBLIGATIONS IN HIS OTHER MEMBER LOANS, WHICH INCLUDE EDUCATIONAL, STOCK INVESTMENT, MADE & HOUSING LOANS GRANTED UNDER THE UNIFIED HOUSING LOAN PROGRAM (UHLP) OR DIRECT FROM SSS.

6. THE MEMBER-BORROWER HAS NOT BEEN GRANTED FINAL BENEFIT (TOTAL PERMANENT DISABILITY, RETIREMENT AND DEATH).

7. THE MEMBER-BORROWER MUST BE UNDER SIXTY-FIVE (65) YEARS OF AGE AT THE TIME OF APPLICATION (SSC RES. NO. 434 DATED 09 NOVEMBER 2005).

8. THE MEMBER-BORROWER HAS NOT BEEN DISQUALIFIED DUE TO FRAUD COMMITTED AGAINST THE SSS.

x x x x x x x x x

EMPLOYER

4. THE EMPLOYER SHALL BE RESPONSIBLE FOR THE COLLECTION AND REMITTANCE TO THE SSS OF THE AMORTIZATION(S) DUE ON THE MEMBER-BORROWER'S SALARY LOAN THROUGH PAYROLL DEDUCTION.

5. THE EMPLOYER SHALL REQUIRE NEW EMPLOYEES TO SECURE FROM THE SSS AN UPDATED STATEMENT OF ACCOUNT;

6. THE NEW EMPLOYER SHALL CONTINUE THE DEDUCTION AND SHALL BE ACCOUNTABLE FOR THE REMITTANCE TO THE SSS;

7. IN CASE THE MEMBER-BORROWER IS SEPARATED VOLUNTARILY, (E.G. RETIREMENT OR RESIGNATION) OR INVOLUNTARILY, (E.G. TERMINATION OF EMPLOYMENT OR CESSATION OF OPERATIONS OF THE COMPANY), THE EMPLOYER SHALL BE REQUIRED TO DEDUCT THE TOTAL BALANCE OF THE LOAN FROM ANY BENEFIT(S) DUE TO THE EMPLOYEE AND SHALL REMIT THE SAME IN FULL TO SSS;

8. IF THE BENEFIT(S) DUE TO THE EMPLOYEE OR THE AMOUNT THEREOF LEGALLY AVAILABLE FOR OFFSET OF OBLIGATIONS OF THE EMPLOYEE IS INSUFFICIENT TO FULLY REPAY THE LOAN, THE EMPLOYER SHALL REPORT THE UNPAID LOAN BALANCE TO SSS.

Based on the foregoing, it appears that the qualification of a member-borrower is dependent on the amount of loan to be taken, updated payment of his contributions and other loans, and age, which should be below 65 years. On the other hand, the responsibility of an employer is limited to the collection and remittance of the employee's amortization to SSS as it causes the deduction of said amortizations from the employee's salary. Based on said terms and conditions, it does not appear that the employer has the prerogative to impose other conditions which does not involve its duty to collect and remit amortizations. The 50% net take home pay requirement, in effect, further adds a condition for an employee to obtain an SSS salary loan, on top of the requirements issued by the SSS. Hence, when petitioner requires that the employee should have at least 50% net take home pay before it processes a loan application, the same violates the CBA provision when a qualified employee chooses to apply for an SSS loan.

With these, we rule that the company policy violated the provision of the CBA as it imposes a restriction with respect to the right of the employees under the CBA to avail SSS salary loans.

While petitioner's cause for putting a limitation on the availment of loans, *i.e.,* to promote the welfare of the employees and their families by securing that the salary of the concerned employee shall be taken home to his family, is sympathetic, we cannot subscribe to the same for being in contravention with the prohibition on interfering with the disposal of wages under Article 112 of the Labor Code:

> Art. 112. Non-interference in disposal of wages. **No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages.** He shall not in any manner force, compel, or oblige his employees to purchase merchandise, commodities or other property from any other person, or otherwise make use of any store or services of such employer or any other person.

With the implementation of the company policy, an employee, who is qualified to avail an SSS salary loan and chooses to dispose of his salary through payment of monthly amortizations, may not be able to do so should such amortizations be over the 50% cap. In carrying out the 50% cap policy, petitioner effectively limits its employees on the utilization of their salaries when it is apparent that as long as the employee is qualified to avail the same, he/she may apply for an SSS loan.

The demands of each household varies; and the management of each household differs. Whether it is beneficial for an employee to retain sufficient money to supply the needs of his family at the end of each month is immaterial. The needs of one's family is relative; one household may find comfort in taking loans to meet urgent needs. Petitioner's contention that an employee's dependency on indebtedness will affect his productivity is at best speculative.

To further advance its argument, petitioner cited a letter[19] from the SSS which answered its inquiry regarding its right to disapprove loans to comply with company policy, to wit:

> A salary loan is not a benefit but only a privilege granted by the Social Security System to its covered employees. However, member/borrower who is currently employed should secure a consent from his/her respective employer before he can apply for SSS Salary loan, the employer being a co-maker. Further, the employer or his authorized representative and the member affix their signature that they agree to the terms and conditions of the loan as enumerated at the back of the salary loan application. And one of the conditions is, the employer shall be responsible for the collection and remittance to the SSS [of] the amortization due from the member/employee.
>
> Therefore, *it is the prerogative of the company to allow or not their employees to obtain SSS loans since your records will show if they are still capable to pay their loan*. (Italics in the original)

The letter by the SSS adds no merit to petitioner's argument. The letter hardly provides for an SSS rule or regulation which may affect the processing of an SSS loan by an employer. The statement which states the employer's prerogative to allow or disallow its employees to obtain SSS loans is merely dependent on the employee's *capacity* to pay, not on any other matter. There was no ceiling as to the amount of net take home monthly pay that the employee should be credited for before he/she may apply for an SSS salary loan.

Considering the foregoing, the implementation of the company policy is not a valid exercise of management prerogative, which must be exercised in good faith and with due regard to the rights of labor.[20] Its violation of a provision in the CBA demerits the presence of good faith.

In the absence of an SSS rule or regulation which limits the qualification of employees to obtain a loan, petitioner has the

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[19] *Rollo*, p. 21.

[20] *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines, Inc.*-Cebu Plant, 709 Phil. 350, 364 (2013).

obligation to process the same so as to comply with the provisions of the CBA.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated January 27, 2011 and the Resolution dated June 23, 2011 of the Court of Appeals in CA-G.R. SP No. 113138 are **AFFIRMED *in toto***.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 200676. March 25, 2019]

SPOUSES LUIS G. BATALLA AND SALVACION BATALLA, *petitioners, vs.* **PRUDENTIAL BANK, NAGATOME AUTO PARTS, ALICIA RANTAEL, AND HONDA CARS SAN PABLO, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF LAW; EXCEPTIONS. –– It is axiomatic that petitions for review on *certiorari* under Rule 45 of the Rules of Court are limited to questions of law. Questions of fact are beyond the ambit of a petition under Rule 45 because the Court is not a trier of facts and it is not its function to examine, review or evaluate evidence all over again. Nevertheless, the following are exceptions to the rule that only questions of law may be raised in a petition for review on *certiorari*, to wit: (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.

2. **ID.; EVIDENCE; RULES OF ADMISSIBILITY; OPINION OF EXPERT WITNESS; VALUATION THEREOF IS DISCRETIONARY TO THE TRIAL COURT. —** Under Rule 130, Section 48 of the Rules of Court, the opinion of a witness on a matter requiring special knowledge, skill, experience or training **which he is shown to possess,** may be received in evidence. In turn, the determination of the credibility of the expert witnesses and the evaluation of their testimony is left to the discretion of the trial court whose ruling is not reviewable in the absence of abuse of discretion.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALE; OBLIGATIONS OF THE VENDOR; IMPLIED WARRANTY AGAINST HIDDEN DEFECTS; CONDITIONS FOR APPLICATION. ––** Article 1561 of the Civil Code provides for an implied warranty against hidden defects in that the vendor shall be responsible for any hidden defects which render the thing sold unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price. In an implied warranty against hidden defects, vendors cannot raise the defense of ignorance as they are responsible to the vendee for any hidden defects even if they were not aware of its existence. In order for the implied warranty against hidden defects to be applicable, the following conditions must be met: a. **Defect is Important or Serious** i. The thing sold is unfit for the use which it is intended

ii. Diminishes its fitness for such use or to such an extent that the buyer would not have acquired it had he been aware thereof b. Defect is Hidden c. **Defect Exists at the time of the sale** d. Buyer gives Notice of the defect to the seller within reasonable time. In case of a breach of an implied warranty against hidden defects, the buyer may either elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case.

4. ID.; ID.; A CONTRACT OF LOAN IS DISTINCT AND SEPARATE FROM A CONTRACT OF SALE. — A contract of loan is one where one of the parties delivers money or other consumable thing upon the condition that the same amount of the same kind and quality shall be paid. It is perfected upon delivery of the object of the contract. On the other hand, a contract of sale is a special contract whereby the seller obligates himself to deliver a determinate thing and to transfer its ownership to the buyer. The same is perfected by mere consent of the parties. Thus, it is readily apparent that a contract of loan is distinct and separate from a contract of sale. In a loan, the object certain is the money or consumable thing borrowed by the obligor, while in a sale the object is a determinate thing to be sold to the vendee for a consideration. In addition, a loan agreement is perfected only upon the delivery of the object *i.e.*, money or another consumable thing, while a contract of sale is perfected by mere consent of the parties.

APPEARANCES OF COUNSEL

The Law and Notarial Office of Ian Ll. Macasinag and Associates for petitioners.

Bernabe Law Office for respondent Prudential Bank.

Ramiro B. Borres, Jr. and Glen V. Jaymalin for respondents Rantael and Honda Cars San Pablo Inc.

D E C I S I O N

J. REYES, JR., *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 October 10, 2011 Decision[1] and February 1, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 92097, which affirmed with modification the July 23, 2008 Decision[3] of the Regional Trial Court, Branch 4, Legazpi City (RTC).

In March 1998, petitioner Spouses Luis G. Batalla and Salvacion Batalla (Spouses Batalla) purchased a brand new Honda Civic from respondent Honda Cars San Pablo, Inc. (Honda). Respondent Alicia Rantael (Rantael), then acting manager of Pilipinas Bank, now merged with respondent Prudential Bank (Prudential), brokered the deal.[4]

To finance the purchase of the said motor vehicle, Spouses Batalla applied for a car loan with Prudential. On March 23, 1998, they executed a promissory note for the sum of ₱292,200.00 payable within 36 months. On May 29, 1998, the Car Loan Agreement[5] was approved. As such, Prudential issued a Manager's Check in the said amount payable to Honda.[6]

For their part, Spouses Batalla paid ₱214,000.00 corresponding to the remaining portion of the purchase price for the Honda Civic. In addition, they also paid ₱11,000.000.00 for delivery cost and the installation of a remote control door mechanism, and ₱28,333.56 for insurance.[7]

On April 21, 1998, Spouses Batalla received the car after Rantael informed them that it was parked near Prudential. However, after three days, the rear right door of the car broke down. The Spouses Batalla consulted a certain Jojo Sanchez

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 36-50.

[2] *Id*. at 59-61.

[3] Penned by Judge Edgar L. Armes; *id*. at 88-109.

[4] *Id.* at 14.

[5] *Id*. at 69-74.

[6] *Id*. at 15 and 93.

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

(Sanchez), who claimed that the power lock of the rear right door was defective and that the car was no longer brand new because the paint of the roof was merely retouched.[8]

On May 3, 1998, Spouses Batalla sent a letter to the manager of Prudential notifying it of the said defects and demanding the immediate replacement of the motor vehicle. On August 27, 1998, they took the car to the Auto Body Shop for a thorough evaluation of the status of the vehicle. According to Arturo Villanueva (Villanueva), the vehicle was no longer brand new because the rooftop was no longer shiny in appearance. Thereafter, the manager of Prudential, together with two individuals from Honda, met Spouses Batalla and offered to repair the vehicle. Spouses Batalla rejected it because they wanted the car to be replaced with a brand new one without hidden defects.[9]

Unable to secure a brand new car in replacement of the alleged defective vehicle, Spouses Batalla filed a Complaint for Rescission of Contracts and Damages[10] against Prudential and Honda.

The RTC Decision

In its July 23, 2008 Decision, the RTC dismissed the Spouses Batalla's complaint. The trial court ruled that the car sold to Spouses Batalla was a brand new one and that any perceived defects could not be attributed to Honda. It highlighted that Spouses Batalla failed to prove that the defects in the car door were due to the fault of Honda and that the car was merely repainted to make it appear brand new. In addition, the RTC expounded that the perceived defects were minor defects which did not diminish the fitness of the car for its intended use. On the other hand, it posited that Spouses Batalla must pay the loan amount to Prudential as they admitted that they have not paid the same. The RTC disposed:

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[8] *Id*. at 16-17 and 90.

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

[10] *Id*. at 80-87.

WHEREFORE, premises considered, judgment is hereby rendered in favor of defendants Prudential Bank, Honda Cars San Pablo, Inc., and Alicia Rantael, on the one hand and against the plaintiffs spouses Luis G. Batalla and Salvacion Batalla, on the other hand, as follows:

1. The Complaint is hereby ordered DISMISSED for lack of cause of action;

2. The plaintiffs are hereby ordered to pay the defendants as follows;

    a. To defendant Prudential Bank - Two Hundred Ninety Two Thousand Two Hundred Pesos (P292,200.00), Philippine currency, plus 30% interest per annum from April 23 1998 until fully paid;

    b. To defendant Honda Cars San Pablo, Inc., - One Hundred Seventy Five Thousand Five Hundred Pesos (₱175,500.00), Philippine currency, for attorney's fees and travelling expenses of counsel;

    c. To defendant Alicia Rantael - Twenty Five Thousand Pesos (₱25,000.00), Philippine currency, for attorney's fees.

    3. The cross-claim of defendant Prudential Bank against defendant Honda Cars San Pablo, Inc., is ordered DISMISSED for being moot and academic.

SO ORDERED.[11]

Undeterred, Spouses Batalla appealed to the CA.

The CA Decision

In its October 10, 2011 Decision, the CA affirmed with modification the RTC decision. The appellate court ruled that Spouses Batalla cannot rescind the promissory note and car loan agreement on account of the car's alleged defects because they are distinct from the contract of sale entered into with Honda. In any case, it found that the documentary evidence, which Spouses Batalla never disputed, presented by Honda, proved that the motor vehicle was brand new with no signs of

[11] *Id*. at 108-109.

alteration and tampering. The CA, however, reduced the attorney's fees in favor of Honda from ₱175,000.00 to ₱30,000.00. Thus, it ruled:

> **WHEREFORE**, premises considered, the instant appeal is Denied. Accordingly, the Judgment of the Regional Trial Court, Branch 4 of Legazpi City, Albay in Civil Case No. 9995 dated July 23, 2008 is hereby **AFFIRMED** with the modification of reducing the attorney's fees in the sum of ₱30,000.00 awarded in favor of appellee Honda Motors, San Pablo, Inc.
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> **SO ORDERED.**[12]

Unsatisfied, Spouses Batalla moved for reconsideration but it was denied by the CA in its February 1, 2012 Resolution.

Hence, this present petition raising:

The Issues

I

WHETHER THE MOTOR VEHICLE DELIVERED BY HONDA HAD HIDDEN DEFECTS; AND

II

WHETHER SPOUSES BATALLA MAY RESCIND THE CONTRACT OF SALE, CAR LOAN AGREEMENT AND PROMISSORY NOTE DUE TO THE DEFECTS OF THE MOTOR VEHICLE SOLD.

Spouses Batalla argued that the car loan it obtained from Prudential was for the purchase of a brand new motor vehicle. They lamented that what was delivered to them was a defective vehicle as manifested by Honda's offer to repair the vehicle. Spouses Batalla assailed that because of the breach of the implied warranty against hidden defects, they were entitled to rescind the contract of sale, together with the car loan and the promissory note.

In its Comment[13] dated May 27, 2013, Prudential countered that the car loan and promissory note are distinct transactions

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[12] *Id*. at 49.

[13] *Id.* at 126-138.

from the contract of sale. It explained that while Rantael may have assisted in the acquisition of the motor vehicle, it does not change the fact that the transaction of Spouses Battala with it was for a loan and not a sale of a motor vehicle. Thus, Prudential averred that it cannot be held liable for any breach of warranty because it was never a party to the sale. In their Comment dated May 14, 2013,[14] Rantael and Honda also posited that the contract between Spouses Batalla and Prudential was different from the contract between Honda and them.

In their Joint Reply[15] dated March 25, 2015, Spouses Batalla reiterated that they were entitled to the remedy of rescission of contract because the motor vehicle delivered to them was not brand new and had hidden defects. They were constrained to pursue such action because respondents refused to replace the car with a brand new one.

The Court's Ruling

The petition is without merit.

It is axiomatic that petitions for review on *certiorari* under Rule 45 of the Rules of Court are limited to questions of law.[16] Questions of fact are beyond the ambit of a petition under Rule 45 because the Court is not a trier of facts and it is not its function to examine, review or evaluate evidence all over again.[17] Nevertheless, the following are exceptions to the rule that only questions of law may be raised in a petition for review on*certiorari*, to wit:

(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;

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[14] *Id*. at 116-119.

[15] *Id*. at 153-159.

[16] *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, 840 SCRA 37, 52.

[17] *Co v. Vargas*, 676 Phil. 463, 470 (2011).

(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.[18]

In the case at bench, none of the exceptions are present. The courts *a quo* have consistently found that the motor vehicle delivered to Spouses Batalla was brand new. In addition, they ruled that if there were defects, it could not be attributed to Honda, or, were minor defects that could have been easily repaired. Moreover, these findings of fact are sufficiently supported by the evidence on record.

Even if this procedural issue is set aside, the petition of Spouses Batalla still deserves scant consideration.

Spouses Batalla anchored their complaint for rescission of contract against Prudential and Honda on the allegation that the car delivered to them was not brand new and that it contained hidden defects. In support of their allegations, they presented Villanueva who testified that the car was no longer brand new because the roof was no longer shiny and appeared to be only

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[18] *Pascual v. Burgos*, 116 Phil. 167, 182-183 (2016), citing *Medina v. Asistio, Jr.*, 269 Phil. 225, 226-227 (1990).

repainted — he also testified that the rear door was damaged. Spouses Batalla also offered in evidence computer printouts from the Land Transportation Office (LTO) where it was indicated that the car was first registered on April 25, 1994.

As correctly observed by the RTC, however, the evidence of the respondents outweighed the evidence presented by Spouses Batalla. The trial court noted that several documentary evidence attest to the fact that the car was brand new. In addition, the purported printout from the LTO was a mere photocopy and was never authenticated. Further, the document's credibility is seriously in doubt, especially as to the entry that the car was first registered in 1994, because the car model that Spouses Batalla bought was manufactured only in 1998.

In the present case, the RTC gave little credence to the testimony of Villanueva that the car delivered to Spouses Batalla was not brand new on account of the condition of its rooftop painting. As pointed out by the trial court, Villanueva only had limited formal training in painting and that his assessment as to the condition of the car paint was made only after a visual examination. As such, the RTC cannot be faulted if it was left unconvinced of Villanueva's testimony for lack of certainty and technical basis.

Under Rule 130, Section 48 of the Rules of Court, the opinion of a witness on a matter requiring special knowledge, skill, experience or training **which he is shown to possess,** may be received in evidence. In turn, the determination of the credibility of the expert witnesses and the evaluation of their testimony is left to the discretion of the trial court whose ruling is not reviewable in the absence of abuse of discretion.[19] Here, the RTC found that Villanueva had no special knowledge or training with regards to car painting and that his method of examination of Spouses Batalla's vehicle was wanting as it was limited to a mere visual examination rendering its results inconclusive.

Neither could the alleged defects of the car door be sufficient basis to prove that what was delivered to Spouses Batalla was

[19] *People v. Basite*, 459 Phil. 191, 207 (2003).

a second hand car. As they admitted, they immediately had a remote control door mechanism installed. It could not be readily ascertained whether the defects in the car door were existing at the time of the car's manufacture or was caused by the installation of the remote control door system. Thus, the defects in the car door or in the paint, neither establish that the car was second hand nor could it be attributed, to the fault of Honda.

Even assuming that the car delivered to Spouses Batalla had a defective car door, they still do not have any grounds for rescinding the contract of sale.

Article 1561 of the Civil Code provides for an implied warranty against hidden defects in that the vendor shall be responsible for any hidden defects which render the thing sold unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price. In an implied warranty against hidden defects, vendors cannot raise the defense of ignorance as they are responsible to the vendee for any hidden defects even if they were not aware of its existence.[20]

In order for the implied warranty against hidden defects to be applicable, the following conditions must be met:

a. Defect is Important or Serious

i. The thing sold is unfit for the use which it is intended

ii. Diminishes its fitness for such use or to such an extent that the buyer would not have acquired it had he been aware thereof

b. Defect is Hidden

c. Defect Exists at the time of the sale

d. Buyer gives Notice of the defect to the seller within reasonable time.[21] (Emphasis supplied)

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[20] CIVIL CODE. Art. 1566.

[21] *Geromo v. La Paz Housing and Development Corporation*, 803 Phil. 506, 516 (2017).

In case of a breach of an implied warranty against hidden defects, the buyer may either elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case.[22] Here, Spouses Batalla opted to withdraw from the contract of sale after their demand for a replacement car was not granted.

As can be seen, the redhibitory action pursued by Spouses Batalla was without basis. For one, it was not sufficiently proven that the defects of the car door were important or serious. The hidden defect contemplated under Article 1561 of the Civil Code is an imperfection or defect of such nature as to engender a certain degree of importance and not merely one of little consequence.[23] Spouses Batalla failed to prove that such defect had severely diminished the roadworthiness of the motor vehicle. In fact, they admitted that they had no problem as to the road worthiness of the car.[24]

In addition, it cannot be ascertained whether the defects existed at the time of the sale. As previously mentioned, a remote control door mechanism was immediately installed after the car was delivered to Spouses Batalla. The modification made to the motor vehicle raises the possibility that the defect could have been caused or had occurred after the installation of the remote control door system. As the party alleging hidden defects, Spouses Batalla had the burden to prove the same. Unfortunately, they failed to do so considering that they did not present as witnesses, the persons who had actually examined the car door and found it defective. Their testimony could have shed light on the origin of the said defect and whether it was of such extent that the motor vehicle was unfit for its intended use or its fitness had been greatly diminished. Thus, other than Spouses Batalla's own testimony claiming that the car doors were defective, no other evidence was presented to establish the severity of the said defects and whether they had persisted at the time of the sale.

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[22] Art. 1567, *supra*.

[23] *Moles v. Intermediate Appellate Court,* 251 Phil. 711, 724 (1989).

[24] *Rollo*, p. 103.

Loan agreement independent of the contract of sale

Other than rescission of the contract of sale, Spouses Batalla also sought for the rescission of the car loan agreement and promissory note with Prudential. They believed that they had ground to rescind the car loan agreement and promissory note they executed with Prudential. Spouses Batalla surmised that the object of these documents was the delivery of a brand new car without hidden defects, and because of the alleged defects of the vehicle, there was no valid object for the contract.

A contract of loan is one where one of the parties delivers money or other consumable thing upon the condition that the same amount of the same kind and quality shall be paid.[25] It is perfected upon delivery of the object of the contract.[26] On the other hand, a contract of sale is a special contract whereby the seller obligates himself to deliver a determinate thing and to transfer its ownership to the buyer.[27] The same is perfected by mere consent of the parties.[28]

Thus, it is readily apparent that a contract of loan is distinct and separate from a contract of sale. In a loan, the object certain is the money or consumable thing borrowed by the obligor, while in a sale the object is a determinate thing to be sold to the vendee for a consideration. In addition, a loan agreement is perfected only upon the delivery of the object *i.e.*, money or another consumable thing, while a contract of sale is perfected by mere consent of the parties.

Under this premise, it is not hard to see the absurdity in the position of Spouses Batalla that they could rescind the car loan agreement and promissory note with Prudential on the ground

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[25] Art. 1933, *supra*.

[26] *Spouses Palada v. Solidbank Corporation*, 668 Phil. 172, 182 (2011), citing Art. 1934, supra.

[27] *Cabrera v. Ysaac,* 747 Phil. 187, 205 (2014).

[28] *Ace Foods, Inc. v. Micro Pacific Technologies., Co., Ltd.*, 723 Phil. 742, 751 (2013).

of alleged defects of the car delivered to them by Honda. The transactions of Spouses Batalla with Prudential and Honda are distinct and separate from each other. From the time Spouses Batalla accepted the loan proceeds from Prudential, the loan agreement had been perfected. As such, they were bound to comply with their obligations under the loan agreement regardless of the outcome of the contract of sale with Honda. Even assuming that the car that Spouses Batalla received was not brand new or had hidden defects, they could not renege on their obligation of paying Prudential the loan amount.

Spouses Batalla erroneously relies on *Supercars Management & Development Corporation v. Flores*[29] as basis to rescind the loan agreement with Prudential on account of the perceived defects of the car delivered to them. In the said case, only the contract of sale with the car dealer was rescinded on account of breach of contract for delivering a defective vehicle. While therein lendee-bank was originally impleaded for rescission of contract, the trial court dropped it as party-defendant because the breach of contract pertained to the contract of sale and not to the car loan agreement. In the same vein, Spouses Batalla's recourse in case of defects in the motor vehicle delivered to them was limited against Honda and does not extend to Prudential as it merely lent the money to purchase the car.

WHEREFORE, the petition is **DENIED**. The October 10, 2011 Decision and February 1, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 92097 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ.*, concur.

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[29] 487 Phil. 259, 268-269 (2004).

SECOND DIVISION

[G.R. No. 210607. March 25, 2019]

SPOUSES EDILBERTO & EVELINE POZON; EDILBERTO POZON, DECEASED, SUBSTITUTED BY HIS HEIRS, NAMELY, WIFE EVELINE POZON AND DAUGHTERS GERALDINE MICHELLE POZON AND ANGELICA EMILIA POZON, *petitioners, vs.* **DIANA JEANNE[*] LOPEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTION IN *PERSONAM*; A JUDGMENT IN *PERSONAM* IS BINDING ONLY UPON THE PARTIES PROPERLY IMPLEADED THEREIN.— At the outset, a perusal of the RTC, Branch 147's Decision reveals that the issue of ownership was not discussed and resolved; **the right of ownership over the subject property was not at all an issue in the Specific Performance Case**. In fact, in the said Decision, it was made clear that petitioners Sps. Pozon did not pray that they be declared the owners of the subject property. x x x Analogous to the instant case, in *Spouses Yu v. Pacleb*, petitioners therein argued that since a previous action for specific performance and damages was granted in their favor compelling performance by the seller under a contract to sell to accept the full payment of the purchase price and to execute a deed of absolute sale over the subject property therein in their favor, such decision is already conclusive as to their ownership over the subject property therein and binding to the therein respondent, even if the latter was not impleaded in the case. Finding the therein petitioners' argument unmeritorious, the Court held that an action for specific performance praying for the execution of an instrument in connection with an undertaking in a contract to sell, which is precisely similar to the Specific Performance Case invoked by petitioners Sps. Pozon in the instant case, is an **action *in personam***. And being a judgment *in personam*, **the judgment is binding ONLY upon the parties properly impleaded**

[*] Spelled as "Jean" in some parts of the record.

therein. Since it is beyond dispute that respondent Lopez was NOT impleaded in the Specific Performance Case, then, contrary to the assertion of petitioners Sps. Pozon, it cannot bind and affect respondent Lopez and her claim of ownership over the subject property.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; THE ISSUE FOR RESOLUTION IN AN EJECTMENT CASE IS PHYSICAL OR MATERIAL POSSESSION, AND WHEN THE PARTIES TO AN EJECTMENT CASE RAISE THE ISSUE OF OWNERSHIP, THE COURTS MAY PASS UPON THAT ISSUE ONLY FOR THE PURPOSE OF DETERMINING WHO BETWEEN THE PARTIES HAS THE BETTER RIGHT TO POSSESS THE PROPERTY.— It simply does not follow that since the Ejectment Case was ruled in favor of petitioners Sps. Pozon, the latter are conclusively deemed the owners of the subject property. It is an elementary rule that since the only issue for resolution in an ejectment case is physical or material possession, where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue only for the purposes of determining who between the parties has the better right to possess the property. Where the issue of ownership is inseparably linked to that of possession, adjudication of ownership is not final and binding, but merely for the purpose of resolving the issue of possession. In fact, ironically, in the same Decision by the Court in the Ejectment Case heavily invoked by petitioners Sps. Pozon, and contrary to their assertion, the Court held that despite the resolution of the Ejectment Case, respondent Lopez may thresh out the issue of ownership in the appropriate proceeding, *i.e.*, the Quieting of Title Case filed before the RTC, Branch 142 x x x.

3. ID.; ID.; APPEALS; APPEAL *VIA CERTIORARI*; QUESTIONS OF FACT CANNOT BE RAISED THEREIN; QUESTION OF FACT, DEFINED.— At the outset, it should be stressed that petitioners Sps. Pozon themselves, in the instant Petition, acknowledge that the arguments made in their submissions essentially involve questions of x x x [fact] and that the resolution of their Petition would necessarily entail that the Court act as a "trier of facts." A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration. The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence

presented in the proceedings below. A question of x x x [fact] exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. Petitioners Sps. Pozon's submission that the court *a quo* supposedly misappreciated evidence and that respondent Lopez allegedly failed to establish by preponderance of evidence her claim of ownership over the subject property obviously calls for the recalibration, reexamination, and reassessment of evidence, the credibility of witnesses, as well as the existence and relevancy of specific surrounding circumstances. While petitioners Sps. Pozon are correct in their insistence that the Court may, in the interest of justice, review evidence if the inference drawn by the appellate court from the facts is manifestly mistaken, based on the Court's examination of the CA's assailed Decision, as well as the records of the instant case, it does not find any manifest and patent error in the court *a quo*'s findings.

APPEARANCES OF COUNSEL

Roberto F. Del Castillo for petitioners.
Bernas Law Offices for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Spouses Edilberto and Eveline Pozon (collectively, petitioners Sps. Pozon) assailing the Decision[2] dated July 8, 2013 (assailed Decision) and Resolution[3] dated November 27, 2013 (assailed

[1] *Rollo*, pp. 14-35, including attachments.

[2] *Id.* at 366-383. Penned by then Associate Justice Noel G. Tijam (now retired Member of this Court), with Associate Justices Leoncia R. Dimagiba and Ramon A. Cruz concurring.

[3] *Id.* at 401-402.

Resolution) issued by the Court of Appeals, Special Seventh Division and Former Special Seventh Division (CA), respectively, in CA-G.R. CV No. 95280, which affirmed the Decision[4] dated March 29, 2010 of the Regional Trial Court of Makati City (RTC), Branch 142 in Civil Case No. 96-692, which granted respondent Diana Jeanne Lopez's (respondent Lopez) Petition for Quieting of Title with Damages.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

> On May 16, 1996, [respondent] Diana Jeanne Lopez (Lopez) filed a petition for quieting of title and damages[5] before the RTC of Makati[, Branch 142] against [petitioners Sps. Pozon, Tradex Realty Development Corporation (Tradex), Estate of Oscar Beltran[, Sr.], the Register of Deeds of Makati (RD), George Raymundo (Raymundo), Zosimo Cuasay (Cuasay), Cesar Diomampo (Diomampo), and Liserio Evangelista (Evangelista)]. The petition sought to declare void the Transfer Certificate of Title (TCT) No. 151522[6] issued to [Tradex], covering a parcel of land with improvement located at 2149 Paraiso St., Dasmarinas Village, Makati City (subject property). In a Supplemental Complaint, [respondent Lopez] also sought the declaration of nullity of TCT No. 212133 subsequently issued in the name of [petitioners Sps. Pozon.]
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> Sometime in 1980, [respondent] Lopez, as assisted by her business associate, Rodolfo Cuenca [Cuenca], purchased from Mr. Enrique Zobel [Zobel] the subject property. The sale was brokered by [Raymundo], a real estate broker. After the sale of the subject property, [respondent] Lopez immediately took possession and occupied the same. [Respondent] Lopez and Cuenca then sought the assistance of Beltran Cuasay Law Office (Law Office) regarding the documentation of the sale and the transfer of the title from Mr. Zobel to [respondent] Lopez. The Law Office was instructed by them to organize a corporation named *Paraiso Realty Corporation* (Paraiso) which is to be owned by [respondent] Lopez with the end in view of reflecting

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[4] *Id.* at 100-148. Penned by Presiding Judge Dina Pestaño Teves.

[5] *Id.* at 36-45.

[6] *Id.* at 97-99.

that Paraiso acquired the subject property from Mr. Zobel. Atty. Oscar Beltran, Sr. [(Beltran, Sr.)] and [Evangelista] closely coordinated with Cuenca and [respondent] Lopez for the purpose of complying with the said instructions.

However, contrary to [respondent] Lopez and Cuenca's instruction, the Law Office, acting thru Beltran[, Sr.] and Evangelista, organized Paraiso but they made themselves and their nominees as the exclusive stockholders thereof, totally excluding [respondent] Lopez from ownership over the subject property. The Law Office made it appear that the subject property was acquired by Raymundo, instead of Paraiso, from Mr. Zobel. Thereafter, Raymundo purportedly sold and transferred the title of the subject property to Paraiso. Subsequently, the Law Office, thru Evangelista, who was acting on behalf of Paraiso, prepared a Deed of Absolute Sale over the subject property to one Lino Nep[o]m[u]ceno [Nepomuceno], said to be another collaborator of Beltran, Sr. Later, another Deed of Sale was executed where Nepomuceno sold to [Tradex] the subject property, resulting to the issuance of TCT No. 143835 in the name of the latter. [Respondent] Lopez claimed that all stockholders of [Tradex], namely: Diomampo, Messrs. Salter Han, Indah Ana Mohammad and Romeo De Guzman, were intimate colleagues of Beltran[, Sr.] [Respondent] Lopez claimed that the said chain of events was only discovered when she sought assistance of her counsel.

Sometime in 1987, [respondent] Lopez was informed that the [petitioners Sps. Pozon] wanted to inspect the subject property. Later, she discovered that the title of the subject property was in the name of [Tradex] and was never transferred in her name. She also learned that Raymundo was brokering the sale of the subject property to [petitioners Sps. Pozon] on behalf of [Tradex]. [Respondent] Lopez claimed that she told Raymundo and [petitioners Sps. Pozon] that she owned the subject property and it was not for sale. [Respondent] Lopez also refused them entry into the subject property for inspection. Despite [respondent] Lopez's warning, [Tradex], thru Diomampo, sold the subject property to [petitioners Sps. Pozon.] Nonetheless, [Tradex] could not deliver possession of the subject property, [as respondent Lopez was still in possession of the subject property], prompting the [petitioners Sps. Pozon] to file an action for Specific Performance with Damages, docketed as Civil Case No. 17358, before the RTC of Makati City, Branch 147. [Respondent] Lopez was not impleaded as a party thereto.

[Respondent] Lopez claimed that Beltran, Sr., Zosimo Cuasay, Evangelista and Raymundo conspired in perpetrating fraud as they all knew that the subject property is owned by her. She argued that [petitioners Sps. Pozon] were not buyers in good faith.

[In the Quieting of Title Case, s]ummons were served upon the [therein] defendants. [Tradex] and the Estate of Beltran were declared in default by the RTC [, Branch 142] for their failure to file their respective answers to the petition within the required period.

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In their Amended Answer, [petitioners Sps. Pozon] claimed that [respondent] Lopez has no cause of action against them. The subject property was offered to them for sale by Raymundo. However, they were advised that they cannot inspect the subject property as the occupant did not allow them to do so. Raymundo assured them that [respondent] Lopez will eventually vacate the subject property. [Petitioners Sps. Pozon] claimed that they agreed that the purchase price shall be paid in [two (2)] installments, first upon execution of the contract, then upon delivery of possession of the subject property. They contended that upon presentation of the draft of the contract to sell, [petitioners Spouses Pozon] verified the title of the subject property and found out that it was in the name of [Tradex] and no encumbrance was annotated therein. When [Tradex] failed to deliver possession of the subject property as stipulated in the contract, [petitioners Sps. Pozon] were compelled to file a case for specific performance and damages docketed as Civil Case No. 17358, against [Tradex], et al. They contended that [Tradex] demanded that [respondent] Lopez vacate the subject property but she refused. Furthermore, [petitioners Sps. Pozon] claimed that [respondent] Lopez' cause of action had already prescribed as the latter, despite knowledge of the pendency of Civil Case No. 17358, did not intervene to defend her right of ownership over the subject property.

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During the trial of the case [for Quieting of Title before RTC, Branch 142], [respondent] Lopez presented the following witnesses, namely: Diomampo, Mamerto Rodriguez, Cuenca, Anette Isabel Tamayo, [petitioner Eveline (as hostile witness)], Oscar Beltran, Jr., Atty. Jose Bernas and herself.

[Petitioners Sps. Pozon] and Raymundo filed their respective demurrer to evidence but both were denied by the RTC [, Branch

142]. As a consequence, [petitioner Edilberto] took the witness stand. In view of the repeated non-appearances of Cuasay, Evangelista and Beltran, Sr. during the scheduled hearings for their respective presentation of evidence, they were deemed to have waived their right to present evidence. After submitting the required memoranda, the case was submitted for decision.

On March 29, 2010, the RTC[, Branch 142] rendered a Decision declaring [respondent] Lopez as the lawful owner of the subject property, the dispositive portion of the said decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1. Declaring the plaintiff to be the true, lawful, and sole owner of the subject property at No. 2149 Paraiso Street, Dasmariñas Village, Makati City;
>
> 2. Directing the defendant Register of Deeds to cancel the registration of T.C.T. No. 212133 in the name of the defendants-spouses Edilberto and Eveline Pozon and to issue a new T.C.T. in the name of the plaintiff, free from any liens or encumbrance[s];
>
> 3. Ordering the defendants Estate of Beltran, Tradex Realty Development Corporation, Z[o]simo Cuasay, Cesar Diomampo, Li[s]erio Evangelista, Lino Nepomuceno and Estate of George Raymundo to jointly and severally pay the petitioner:
>
>   a. Attorney's fees and litigation expenses in the amount of Three Hundred Thousand Pesos (Php300,000.00); and
>
>   b. Costs of the suit.
>
> SO ORDERED.[7]

[In declaring petitioners Sps. Pozon as purchasers in bad faith, RTC, Branch 142 held that:

> On the testimony of the defendant Eveline Pozon, when testifying as an adverse witness for the plaintiff, defendant Eveline Pozon admitted that she never met any director or officer

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[7] *Id.* at 142-143.

of defendant TRADEX prior to the alleged purchase, since her only contact was defendant Raymundo, and that there was no power of attorney or board resolution that authorizes defendant Raymundo to act on behalf of defendants (sic) TRADEX and she relied on defendant Raymundo who presented the agreement to purchase and sell which was duly signed by defendant Diomampo as President of TRADEX. If the defendants-spouses Pozon were, because of the information relayed by defendant Raymundo to them, hesitant to purchase the property in question, then why did defendant Eveline Pozon make her two (2) checks payable to David Raymundo, even if defendant Raymundo possessed no power of attorney or board resolution that authorized him to act on behalf of defendant TRADEX? How could she know that the "Agreement to Purchase and Sell" was duly signed by defendant Diomampo as President of TRADEX, even if she never met any director or officer of defendant corporation? For the defendants-spouses Pozon to have been engaged in the real estate business since 1986, yet purchased the subject property ten (10) years later by climbing up a ladder to view only the backyard and swimming pool or the exterior and the surrounding garden, and the purchase being started by a downpayment of two (2) checks made payable to the son of the broker and the broker presented no power of attorney or board resolution to act on behalf of the seller corporation TRADEX, prevents the defendants-spouses Pozon from laying any claim that they have discharged the burden of proving the status of a purchaser in good faith.

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x x x However, this Court initially notes that defendant Edilberto Pozon did not deny having handwritten his contact numbers on the dorsal side of the Petitioner's Exhibit "V" so that, as the plaintiff testified, she could call the former. What likewise deserves this Court's attention is why the counsel for the defendants-spouses Pozon did not during [the] cross-examination of the plaintiff and of her witnesses mention the meeting between defendant Edilberto Pozon and Maryjane, the daughter of Rudy Cuenca. What finally swings the pendulum in the plaintiffs favor is the Decision in Civil Case No. 17358, which declares:

> "Subsequently, Miss Lopez talked with Mr. Pozon in Hongkong. Miss Lopez told him that she is not a tenant

> in the premises in question, that there was no lease agreement whatsoever and that the properties were given to her as a gift; that she is not moving out of the house and that it is not true that she is buying another house in order to move out.
>
> Disturbed by the statement of Miss Lopez, Edilberto Pozon went back to the Philippines and sought defendant Raymundo telling the latter that he could no longer wait. x x x"][8]

Aggrieved by the RTC[, Branch 142's] Decision, [petitioners Sps. Pozon] and Evangelista filed their joint [appeal] before [the CA].[9]

The Ruling of the CA

In its assailed Decision, the CA denied the joint appeal filed by petitioners Sps. Pozon and Evangelista, affirming the RTC, Branch 142's Decision dated March 29, 2010. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED**. The assailed Decision, dated March 29, 2010 of the Regional Trial Court (RTC) of Makati City, Branch 142 in Civil Case No. 96-692, is hereby **AFFIRMED**.

SO ORDERED.[10]

In sum, the CA found that based on the evidence on record, respondent Lopez was able to convincingly prove her equitable title/interest over the subject property. The CA likewise found that the overwhelming evidence solidifies the fact that petitioners Sps. Pozon were not innocent purchasers for value of the subject property.

On July 31, 2013, petitioners Sps. Pozon filed their Motion for Reconsideration,[11] which was denied by the CA in its assailed Resolution.

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[8] *Id*. at 134-138.

[9] *Id*. at 367-372.

[10] *Id*. at 382.

[11] *Id*. at 384-399.

Hence, the instant Petition.

On August 4, 2014, respondent Lopez filed her Comment (on the Petition for Review on Certiorari)[12] of even date.

On August 18, 2014, petitioners Sps. Pozon filed their Reply[13] dated August 14, 2014.

On December 22, 2014, respondent Lopez filed her *Ad Cautelam* Memorandum[14] dated December 19, 2014.

Issues

In the instant Petition, petitioners Sps. Pozon raise two issues for the Court's consideration:

1. Whether or not the CA erred in disregarding the previous rulings of this Honorable Court on the same subject matter; and

2. Whether or not the conclusions made by the CA are substantiated by the evidence and can be legally sustained.[15]

The Court shall discuss the two aforementioned issues in seriatim.

The Court's Ruling

I. *The alleged conclusiveness of Civil Case No. 17358 and Civil Case No. 69262 with respect to the issue of ownership over the subject property*

With respect to the first issue raised by petitioners Sps. Pozon, it is argued that the CA, in affirming RTC, Branch 142's granting of respondent Lopez's Petition for Quieting of Title, committed a grave error in disregarding two previously decided cases resolved in favor of them that supposedly touched upon the

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[12] *Id*. at 441-462.

[13] *Id*. at 467-472.

[14] *Id*. at 528-570.

[15] *Id.* at 17.

same subject matter as in the Quieting of Title case.[16] In essence, petitioners Sps. Pozon posit that the two decided cases they cited are conclusive upon the court *a quo* with respect to their ownership over the subject property.

A close examination of both cases referred to by petitioners Sps. Pozon reveal that such argument is erroneous. The final and executory decisions identified by them are not in any way conclusive as to the issue of ownership over the subject property.

The First Case: Civil Case No. 17358 (The Specific Performance Case)

The first case cited by petitioners Sps. Pozon is Civil Case No. 17358, titled *Spouses Edilberto G. Pozon and Eveline Z. Pozon vs. Tradex Realty Development Corporation, J. H. Pajara Construction Corporation, Cesar Diomampo, and Fausto George Raymundo* (Specific Performance Case). The said case was filed by petitioners Sps. Pozon before the RTC of Makati City, Branch 147.

In the Specific Performance Case, by virtue of a contract to sell titled *Agreement to Purchase and to Sell* dated December 9, 1986 entered with Tradex, petitioners Sps. Pozon prayed that the subsequent Deed of Sale entered into by Tradex with another purchaser, *i.e.*, J.H. Pajara Construction Corporation, be declared null and void, and that Tradex be ordered to execute the appropriate instrument to convey the subject property to petitioners.[17]

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[16] *Id*. at 19-22.

[17] "On December 9, 1986, Tradex Development Corporation ("Tradex") and respondents spouses Edilberto and Eveline Pozon ([Sps.] Pozon, for brevity) entered into an Agreement to Purchase and to Sell whereby the former agreed to sell to the latter a house and lot located on Paraiso Street, Dasmariñas Village, Makati City ("Paraiso property", for brevity). Tradex failed to comply with its obligation to deliver the Paraiso property to the Pozons, unilaterally rescinded the Agreement to Purchase and to Sell on June 30, 1987 and sold the Paraiso property to J.H. Pajara Construction Corporation, a few days before informing the Pozons of the rescission." [*Lopez v. Sps. Pozon and Court of Appeals*, 469 Phil. 808, 810 (2004)].

In a Decision[18] dated July 18, 1990, RTC, Branch 147 issued its Decision granting petitioners Sps. Pozon's prayer for specific performance, declaring the sale over the subject property made by Tradex to J.H. Pajara Construction Corporation null and void, as well as ordering Tradex to execute a deed of conveyance in favor of petitioners Sps. Pozon.

The RTC, Branch 147's Decision was upheld by the CA Second Division in its Decision[19] dated November 29, 1995 and by the Court[20] in its Resolution[21] dated September 18, 1996.

Petitioners Sps. Pozon maintain that the resolution of the Specific Performance Case in their favor should have compelled the CA to deem them as the owners of the subject property.

The argument is mistaken.

At the outset, a perusal of the RTC, Branch 147's Decision reveals that the issue of ownership was not discussed and resolved; **the right of ownership over the subject property was not at all an issue in the Specific Performance Case**.

In fact, in the said Decision, it was made clear that petitioners Sps. Pozon did not pray that they be declared the owners of the subject property. Instead, their prayer was limited only to the nullification of the sale entered into by Tradex with J.H. Pajara Construction Corporation and to compel Tradex to execute an instrument conveying the subject property to them.[22]

Further, it must be emphasized that the Specific Performance Case did not dwell whatsoever on the issues surrounding respondent Lopez's claim of ownership over the subject property. In fact, it must be stressed that **respondent Lopez was not even impleaded in the Specific Performance Case**.

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[18] *Rollo*, pp. 52-65. Penned by Judge Teofilo L. Guadiz, Jr.

[19] *Id*. at 67-93. Penned by Associate Justice Fermin A. Martin, Jr. with Associate Justices Fidel P. Purisima and Conchita Carpio Morales concurring.

[20] Third Division.

[21] *Rollo*, pp. 94-96.

[22] *Id*. at 52.

This leads the Court to its second point on the Specific Performance Case. Even assuming *arguendo* that the Specific Performance Case had dwelled on the issue of ownership over the subject property, which it did not, such case cannot bind respondent Lopez as she was not impleaded therein.

The Court's pronouncement in *Spouses Yu v. Pacleb*[23] is instructive:

> Petitioner spouses argue that the decision of the Regional Trial Court in Civil Case No. 741-93 as to the rightful owner of the Langcaan Property is conclusive and binding upon respondent even if the latter was not a party thereto since it involved the question of possession and ownership of real property, and is thus not merely an action *in personam* but an action *quasi in rem*.
>
> In *Domagas v. Jensen*, we distinguished between actions *in personam* and actions *quasi in rem*.
>
> > The settled rule is that the aim and object of an action determine its character. Whether a proceeding is *in rem*, or *in personam*, or *quasi in rem* for that matter, is determined by its nature and purpose, and by these only. **A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court.** The purpose of a proceeding *in personam*is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant. Of this character are suits to compel a defendant to specifically perform some act or actions to fasten a pecuniary liability on him. **An action *in personam* is said to be one which has for its object a judgment against the person, as distinguished from a judgment against the propriety (sic) to determine its state.**It has been held that an action *in personam* is a proceeding to enforce personal rights or obligations; such action is brought against the person.
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[23] 599 Phil. 354 (2009).

> On the other hand, a proceeding *quasi in rem* is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed. **In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property.** Actions *quasi in rem*deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action.

Civil Case No. 741-93 is an action for specific performance and damages filed by petitioner spouses against Javier to compel performance of the latter's undertakings under their Contract to Sell. As correctly held by the Court of Appeals, its object is to compel Javier to accept the full payment of the purchase price, and to execute a deed of absolute sale over the Langcaan Property in their favor. The obligations of Javier under the contract to sell attach to him alone, and do not burden the Langcaan Property.

We have held in an unbroken string of cases that an action for specific performance is an action *in personam*. In *Cabutihan v. Landcenter Construction and Development Corporation*, we ruled that an action for specific performance praying for the execution of a deed of sale in connection with an undertaking in a contract, such as the contract to sell, in this instance, is an action *in personam*.

Being a judgment *in personam*, Civil Case No. 741-93 is binding only upon the parties properly impleaded therein and duly heard or given an opportunity to be heard. Therefore, it cannot bind respondent since he was not a party therein. Neither can respondent be considered as privy thereto since his signature and that of his late first wife, Angelita Chan, were forged in the deed of sale.[24]

Analogous to the instant case, in *Spouses Yu v. Pacleb*, petitioners therein argued that since a previous action for specific performance and damages was granted in their favor compelling performance by the seller under a contract to sell to accept the full payment of the purchase price and to execute a deed of

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[24] *Id*. at 366-368. Emphasis in the original.

absolute sale over the subject property therein in their favor, such decision is already conclusive as to their ownership over the subject property therein and binding to the therein respondent, even if the latter was not impleaded in the case.

Finding the therein petitioners' argument unmeritorious, the Court held that an action for specific performance praying for the execution of an instrument in connection with an undertaking in a contract to sell, which is precisely similar to the Specific Performance Case invoked by petitioners Sps. Pozon in the instant case, is an **action *in personam***. And being a judgment *in personam*, **the judgment is binding ONLY upon the parties properly impleaded therein**.

Since it is beyond dispute that respondent Lopez was NOT impleaded in the Specific Performance Case, then, contrary to the assertion of petitioners Sps. Pozon, it cannot bind and affect respondent Lopez and her claim of ownership over the subject property.

The Second Case: Civil Case No. 69262
(The Ejectment Case)

Moving now to the second case invoked by petitioners Sps. Pozon, the records reveal that on February 8, 2000, they filed a Complaint for Ejectment against respondent Lopez, docketed as Civil Case No. 69262 before the Metropolitan Trial Court of Makati City, Branch 61 (MeTC).[25]

In its Decision[26] dated December 23, 2000, the MeTC ruled that petitioners Sps. Pozon were entitled to the possession of the subject property based on the sale entered into by Tradex with them.

The said Decision was eventually affirmed by the RTC, CA, and the Court in *Lopez v. Sps. Pozon and Court of Appeals*.[27]

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[25] *Lopez v. Sps. Pozon and Court of Appeals, supra* note 17 at 811.

[26] *Rollo, pp. 303-308*. Penned by Judge Selma Palacio Alaras.

[27] *Lopez v. Sps. Pozon and Court of Appeals*, *supra* note 17.

Petitioners Sps. Pozon assert that the fact that the Ejectment Case was successfully resolved in their favor should have convinced the CA that they are the true owners of the subject property.

As well, this argument is unmeritorious.

It simply does not follow that since the Ejectment Case was ruled in favor of petitioners Sps. Pozon, the latter are conclusively deemed the owners of the subject property.

It is an elementary rule that since the only issue for resolution in an ejectment case is physical or material possession, where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue only for the purposes of determining who between the parties has the better right to possess the property. Where the issue of ownership is inseparably linked to that of possession, adjudication of ownership is not final and binding, but merely for the purpose of resolving the issue of possession.[28]

In fact, ironically, in the same Decision by the Court in the Ejectment Case heavily invoked by petitioners Sps. Pozon, and contrary to their assertion, the Court held that despite the resolution of the Ejectment Case, respondent Lopez may thresh out the issue of ownership in the appropriate proceeding, *i.e.*, the Quieting of Title Case filed before the RTC, Branch 142:

> [If respondent] Lopez believes that she is entitled to relief, **it may be secured from the action for quieting of title pending before another branch of the RTC**. x x x
>
> It is also not difficult to see that [respondent] Lopez wants this Court to take cognizance of circumstances which she believes would support her alleged ownership of the [subject] property and cast doubt on the [petitioners Sps. Pozon's] manner of acquisition, and then rule on these competing claims, especially since she refuses to accept the determination of the courts below in the ejectment case that, based on the TCT in their name, the [petitioners Sps.] Pozon have a better right to possess the [subject] property.

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[28] *Spouses Santiago v. Northbay Knitting, Inc.*, G.R. No. 217296, October 11, 2017, 842 SCRA 502, 511.

This Court is not a trier of facts nor can it take cognizance of facts alleged by [respondent] Lopez that have yet to be proven **in an appropriate proceeding, such as Civil Case No. 96-692 pending in the RTC[, Branch 142.]**[29]

Hence, considering the foregoing, the Court finds the first issue raised by petitioners Sps. Pozon in the instant Petition unmeritorious.

II. *The alleged failure of respondent Lopez to establish her claim of ownership over the subject property with preponderance of evidence*

In essence, the second issue raised by petitioners Sps. Pozon in the instant Petition centers on the supposed misappreciation of evidence committed by the CA, alleging that respondent Lopez purportedly failed to establish by preponderance of evidence her claim of ownership over the subject property.[30]

At the outset, it should be stressed that petitioners Sps. Pozon themselves, in the instant Petition, acknowledge that the arguments made in their submissions essentially involve questions of facts and that the resolution of their Petition would necessarily entail that the Court act as a "trier of facts."[31]

A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration.[32] The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.[33]

A question of facts exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites

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[29] *Lopez v. Sps. Pozon and Court of Appeals*, *supra* note 17 at 818; emphasis and underscoring supplied.

[30] *Rollo*, pp. 23-26.

[31] *Id*. at 17-19.

[32] See *Bautista v. Puyat Vinyl Products, Inc*., 416 Phil. 305, 309 (2001).

[33] *Republic of the Philippines v. Sandiganbayan, et al.*, 426 Phil. 104, 110 (2002).

calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[34]

Petitioners Sps. Pozon's submission that the court *a quo* supposedly misappreciated evidence and that respondent Lopez allegedly failed to establish by preponderance of evidence her claim of ownership over the subject property obviously calls for the recalibration, reexamination, and reassessment of evidence, the credibility of witnesses, as well as the existence and relevancy of specific surrounding circumstances.

While petitioners Sps. Pozon are correct in their insistence that the Court may, in the interest of justice, review evidence if the inference drawn by the appellate court from the facts is manifestly mistaken,[35] based on the Court's examination of the CA's assailed Decision, as well as the records of the instant case, it does not find any manifest and patent error in the court *a quo*'s findings.

Conversely, the assailed Decision's findings that respondent Lopez established her equitable title/interest over the subject property and that petitioners Sps. Pozon were not purchasers in good faith are well-founded and well-substantiated.

As pointed out by the CA, contrary to petitioners Sps. Pozon's argument that respondent Lopez's claim of ownership was anchored primarily on her own testimony,[36] respondent Lopez was able to provide strong evidence establishing her claim of ownership, such as official receipts for payment of association dues and garbage dues, records of the Dasmariñas Village Association, water bills, tax declarations and receipts of payment, the corroborating testimony of Cuenca, and a Letter dated May 21,1993 signed by Beltran, Jr. and Diomampo acknowledging

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[34] *Id*.

[35] *Heirs of Spouses Tanyag v. Gabriel, et al.*, 685 Phil. 517, 533 (2012).

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

respondent Lopez's ownership over the subject property, among others.[37]

In fact, striking is the CA's reference to the judicial admission made by petitioners Sps. Pozon themselves in their Memorandum dated March 15, 1990 (in the Specific Performance Case), wherein they stated unequivocally that "[t]he inability of defendants to comply with their obligation and their subsequent fraudulent scheme can be traced to one fact - **the defendant Tradex did not actually own the property although it is registered in its name**."[38] Hence, the CA was correct in finding that petitioners Sps. Pozon indeed knew that the subject property was not owned by Tradex, from whom they acquired their supposed title over the subject property.

With respect to the status of petitioners Sps. Pozon as purchasers in bad faith, it must be noted that even in the Resolution[39] dated September 18, 1996 issued by the Court in relation to the Specific Performance Case, which they invoked to further their argument, the Court, citing the court a quo's Decision, found that:

> [t]here is no dispute that [petitioners Sps. Pozon] were informed from the start by defendant Raymundo of [respondent Lopez'] occupancy of the [subject property]; that [petitioners Sps. Pozon] were not able to inspect the premises except to view it from the outside atop a ladder; that as a result, [petitioners Sps. Pozon] initially expressed misgivings about buying the property; that [Edilberto] Pozon had occasion to meet [respondent] Lopez in Hongkong; and that up to the present, the [subject] property remains in the possession of [respondent] Lopez.[40]

For the following reasons, petitioners Sps. Pozon's argument that there was a misappreciation of evidence committed by the CA and that respondent Lopez purportedly failed to establish

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[37] *Id*. at 374-375.

[38] *Id*. at 375; emphasis supplied.

[39] *Id*. at 94-96.

[40] *Id*. at 95.

by preponderance of evidence her claim of ownership over the subject property is not well-taken.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated July 8, 2013 and Resolution dated November 27, 2013 issued by the Court of Appeals, Special Seventh Division and Former Special Seventh Division, respectively, in CA-G.R. CV No. 95280 are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 212674. March 25, 2019]

CENTRAL VISAYAS FINANCE CORPORATION, *petitioner, vs.* **SPOUSES ELIEZER[*] S. ADLAWAN AND LEILA ADLAWAN, AND SPOUSES ELIEZER[*] ADLAWAN, SR. AND ELENA ADLAWAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; A PARTY IS ENTITLED ONLY TO SUCH RELIEF CONSISTENT WITH AND LIMITED TO THAT SOUGHT BY THE PLEADINGS OR INCIDENTAL THERETO. A TRIAL COURT WOULD BE ACTING BEYOND ITS JURISDICTION IF IT GRANTS RELIEF TO A PARTY BEYOND THE SCOPE OF THE PLEADINGS.— x x x [P]etitioner's prayer for relief in its

[*] Also spelled as Eliezar/Eleazar in some parts of the records.

complaint in Civil Case No. CEB-22294 was in the alternative, and not cumulative or successive, to wit: recover possession of the dump truck, or, if recovery is no longer feasible, a money judgment for the outstanding loan amount. Petitioner did not pray for both reliefs cumulatively or successively. "The rule is that a party is entitled only to such relief consistent with and limited to that sought by the pleadings or incidental thereto. A trial court would be acting beyond its jurisdiction if it grants relief to a party beyond the scope of the pleadings." By praying for recovery of possession with a money judgment as a mere alternative relief in Civil Case No. CEB-22294, and when it did not pursue a claim for deficiency ***at any time during the proceedings in said case, including appeal***, petitioner led the courts to believe that it was not interested in suing for a deficiency so long as it recovered possession of the dump truck; after all, the basis of its alternative relief for collection of the outstanding loan is the same as that of its prayer for replevin - the respondents' unpaid obligation in the amount of Php2,604,604.97, plus interest and penalty. Its actions were thus consistent with and limited to the allegations and relief sought in its pleadings. This consistency in action carried on until the dump truck was foreclosed and sold at auction.

2. ID.; ID.; ACTIONS; CAUSE OF ACTION; IN A LOAN SECURED BY A MORTGAGE, THE CREDITOR'S SINGLE CAUSE OF ACTION AGAINST THE DEBTOR CONSISTS IN THE RECOVERY OF THE CREDIT WITH EXECUTION UPON THE SECURITY. THE CREDITOR CANNOT SPLIT HIS SINGLE CAUSE OF ACTION BY FILING A COMPLAINT ON THE LOAN, AND THEREAFTER ANOTHER SEPARATE COMPLAINT FOR FORECLOSURE OF THE MORTGAGE. IF HE DOES SO, THE FILING OF THE FIRST COMPLAINT WILL BAR THE SUBSEQUENT COMPLAINT.— In case of a loan secured by a mortgage, the creditor has a single cause of action against the debtor - the recovery of the credit with execution upon the security. The creditor cannot split his single cause of action by filing a complaint on the loan, and thereafter another separate complaint for foreclosure of the mortgage. This is the ruling in the case of *Bachrach Motor Co., Inc. v. Icarangal*, where the Court held: For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the

recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. Plaintiff, then, by applying the rules above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor.

3. ID.; ID.; JUDGMENTS; A JUDGMENT IN A REPLEVIN CASE BARS A SUBSEQUENT ACTION FOR DEFICIENCY JUDGMENT; THE JUDGMENT IN THE REPLEVIN CASE IS, WITH RESPECT TO THE MATTER DIRECTLY ADJUDGED OR AS TO ANY OTHER MATTER THAT COULD HAVE BEEN RAISED IN RELATION THERETO, CONCLUSIVE BETWEEN THE PETITIONER AND RESPONDENTS.— In *PCI Leasing and Finanace, Inc. v. Dai* cited by respondents, the specific issue of whether a judgment in a replevin case would bar a subsequent action for deficiency judgment was raised. The Court resolved the question in the affirmative, thus: x x x. **Since petitioner had extrajudicially foreclosed the chattel mortgage over the vessel even before the pre-trial of the case, it should have therein raised as issue during the pre-trial the award of a deficiency judgment. After all. The basis of its above-stated alternative prayer was the same as that of its prayer for replevin – the default of respondents in the payment of the monthly installments of their loan. But it di not**. x x x. Contrary to petitioner's stance, the pronouncements in *Bachrach Motor Co., Inc. v. Icarangal* and *PCI Leasing & Finance, Inc. v. Dai* apply to the instant case. Particularly, the *PCI Leasing* case is squarely applicable; the CA committed no error in

invoking the ruling in said case. By failing to seek a deficiency judgment in Civil Case No. CEB-22294 after its case for recovery of possession was resolved, petitioner is barred from instituting another action for such deficiency. Pursuant to Section 47, Rule 39 of the 1997 Rules of Civil Procedure, on the effect of judgments or final orders cited in the *PCI Leasing* case, the judgment in Civil Case No. CEB-22294 is, with respect to the matter directly adjudged *or as to any other matter that could have been raised in relation thereto*, conclusive between the petitioner and respondents.

4. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; A CONTRACT OF GUARANTY IS A MERE ACCESSORY TO THE LOAN OBLIGATION THAT CANNOT SURVIVE AFTER THE EXTINGUISHMENT OF THE LATTER.— Petitioner's final claim to reversal is that there could be no identity of causes of action between Civil Case No. CEB-22294 and Civil Case No. CEB-24841 since the latter case was instituted for the specific purpose of recovering the deficiency from respondents Eliezer, Sr. and Elena Adlawan, who were supposedly liable as guarantors on the continuing guaranty that accompanied the loan agreement between petitioner and respondents Eliezer and Leila Adlawan. However, with the final resolution of Civil Case No. CEB-22294, petitioner's cause of action against respondents Eliezer, Sr. and Elena Adlawan is likewise barred. The contract of guaranty is merely accessory to a principal obligation; it cannot survive without the latter. Under Article 2076 of the Civil Code, "(t)he obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations." The resolution of Civil Case No. CEB-22294 and the consequent satisfaction of petitioner's claim therein bars further recovery via a deficiency judgment as against respondents Eliezer and Leila Adlawan, who are deemed to have paid their loan obligation. For this reason, their obligation has been extinguished which should, in turn, operate to the benefit of their co-respondents, Eliezer, Sr. and Elena Adlawan whose liability is based on guaranty, a mere accessory contract to the loan obligation that cannot survive after the extinguishment of the latter.

APPEARANCES OF COUNSEL

M.b. Mahinay & Associates for petitioner.
Renato P. Maamo for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the February 15, 2013 Decision[2] and April 24, 2014 Resolution[3] of the Court of Appeals (CA) which denied the appeal in CA-G.R. CEB-C.V. No. 02899 and affirmed the July 31, 2008 Order[4] of the Regional Trial Court of Cebu City, Branch 8 (RTC), in Civil Case No. CEB-24841.

Factual Antecedent

In 1996, respondents Eliezer and Leila Adlawan obtained a Php3,669,685.00 loan from petitioner Central Visayas Finance Corporation covered by a Promissory Note,[5] Chattel Mortgage[6] over a Komatsu Highway Dump Truck, and a Continuing Guaranty[7] executed by respondents Eliezer, Sr. and Elena Adlawan.

Eliezer and Leila Adlawan failed to pay the loan, prompting petitioner to file an action against respondents for replevin before

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

[2] *Id*. at 30-37; penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court) and concurred in by Associate Justices Carmelita Salandanan-Manahan and Maria Elisa Sempio Diy.

[3] *Id*. at 38-39; penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court) and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

[4] *Id*. at 64-66; penned by Presiding Judge Macaundas M. Hadjirasul.

[5] *Id*. at 49.

[6] *Id*. at 50-51.

[7] *Id*. at 52.

Branch 58 of the Cebu Regional Trial Court, docketed as Civil Case No. CEB-22294.

In a June 22, 1999 decision, the trial court ruled in petitioner's favor, and respondents were ordered to deliver possession of the dump truck to petitioner. Petitioner then foreclosed on the chattel mortgage and caused the sale at public auction of the dump truck, which was then sold to it as the highest bidder for Php500,000.00.[8]

Ruling of the Regional Trial Court

In 2000, petitioner commenced a second case before the RTC - Civil Case No. CEB-24841 - this time for collection of sum of money and/or deficiency judgment relative to respondents' supposed unpaid balance on their loan, which petitioner claimed to be at Php2,104,604.97 - less the value of dump truck - with damages. This time, petitioner in its Amended Complaint[9] sought to hold respondents Eliezer, Sr. and Elena Adlawan liable on their continuing guaranty.

On July 31, 2008, the RTC issued an Order, decreeing as follows:

> This resolves the affirmative defenses of (a) *res judicata*; (b) violation of the rule against forum shopping; and (c) estoppel, pleaded by the defendants in their answer[10] and for which they were preliminarily heard as if a motion to dismiss had been filed.
>
> x x x x x x x x x
>
> Contending that defendants Eliezer and Leila still have a balance of ₱2,104,604.97 as of July 12, 1999, exclusive of interest, penalty, attorney's fees, cost of the suit and collection expenses, it filed the instant case, to which the defendants pleaded the subject affirmative defenses.
>
> The Court agrees with the defendants that the instant complaint is barred by *res judicata* under Section 47(b), Rule 39 of the Rules of Court.

[8] *Id*. at 46, 53.

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

[10] *Id*. at 54-63.

The judgment of the 58th Branch of this Court in Civil Case No. CEB-22294, which involves, as in this case, the same parties, subject matter and cause of action, i.e., non-payment of the loan, secured by a mortgage over the above vehicle, obtained by defendants Eliezer and Leila from the plaintiff, was one on the merits, rendered by a court that had jurisdiction over the subject matter thereof and the parties therein, and had become final.

The plaintiffs remedy should have been to appeal from the above judgment for its alleged failure to consider defendants Eliezer and Leila's whole obligation. If, for the sake of argument, the amount of said defendants' whole obligation to the plaintiff was not actually raised in said case, hence, the failure of the 58thBranch of this Court to consider it, it is still covered and barred by *res judicata* under the above-cited Rule because it is one that could have been raised therein.

WHEREFORE, the plaintiffs complaint having been barred by *res judicata*, this case is hereby ordered DISMISSED.

SO ORDERED.[11]

Petitioner moved to reconsider, but was rebuffed.

Ruling of the Court of Appeals

Petitioner appealed the above Order of the trial court before the CA, claiming that the trial court erred in ruling that *res judicata* applied, in that there is no identity of cause of action between Civil Case No. CEB-22294 and Civil Case No. CEB-24841, as the first was one for the recovery of personal property used as collateral in the loan, while the latter case was one for deficiency judgment and based on the continuing guaranty executed by Eliezer, Sr. and Elena Adlawan.

On February 15, 2013, the CA issued the assailed Decision, which contains the following pronouncement:

Under the doctrine of *res judicata*, a complaint may be dismissed when, upon the comparison of the two actions, there is (1) an identity between the parties or at least such as representing the same interest in both actions; (2) a similarity of rights asserted and relief prayed for (that is, the relief is founded on the same facts); and (3) identity

[11] *Id*. at 64-66.

in the two actions is such that any judgment which may be rendered in the other action will, regardless of which party is successful, fully adjudicate or settle the issues raised in the action under consideration.

x x x x x x x x x

A reading of the reliefs prayed for in Civil Case No. 22294 would show that the principal relief was for the recovery of the possession of the dump truck, which was used as a collateral in the mortgage contract between the parties. In the event that delivery thereof cannot be effected, plaintiff stated an alternative prayer, that is, for the defendants to pay the amount of Php2,604,604.97 which represented the outstanding obligation of the defendants. Since the first relief was granted by the trial court, which is the delivery of the dump truck, was it necessary for the trial court to pronounce the full monetary liability of the defendants in the said action? Moreover, may the plaintiff still recover the deficiency of the monetary obligation incurred by the defendants?

The issue presented in this case is not novel. The instant case has similar facts and circumstances with that of the case of *PCI Leasing v. Dai*.[12] In this case, the Supreme Court ruled that an action for replevin, which is both an action *in personam* and *in rem*, bars the deficiency suit because the deficiency could well be raised in the replevin case. x x x

x x x x x x x x x

Plaintiff also asserts that there is no identity of parties because Elena Adlawan was not sued in the first case. It is based on the *Continuing [Guaranty]* executed by Elena Adlawan for which she was sued. Hence, it is plaintiffs postulate that had the proceeds of the first action been sufficient, there would have been no need to file the second case against Elena Adlawan to enforce her guaranty.

However, it should be stressed that only substantial identity is necessary to warrant the application of *res judicata* and the addition or elimination of some parties would not even alter the situation. There is substantial identity of parties when there is a community of interest between the party in the first case and a party in the second case albeit the latter was not impleaded in the first case. In this case,

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[12] 560 Phil. 84, 92-96 (2007).

there is no question that Elena Adlawan, acting as a guarantor, has the same interest and defenses as that of the principal debtors Spouses Eliezar and Leilani Adlawan. Her exclusion in the first case is therefore of no moment, *res judicata* still applies.

As to the damages and other fees being claimed by the defendants, We are inclined to deny it. It is the plaintiff-appellant's belief that it has a right to institute a deficiency judgment against the defendants and there should be no premium on its right to litigate however erroneous such presumption can be. Moreover, bad faith was not raised as an issue and none is evident in this case.

There being no reversible error committed by the trial court, We find no cogent reason to reverse its findings, thus, warranting the dismissal of this appeal

WHEREFORE, this appeal is DENIED. The *Order* dated July 31, 2008 rendered by the Regional Trial Court, Branch 8, Cebu City dismissing Civil Case No. CEB-24841 is AFFIRMED. Costs against the plaintiff-appellant.

SO ORDERED.[13]

Petitioner moved to reconsider, but in its April 24, 2014 Resolution, the CA stood its ground. Thus, the instant Petition.

Issues

In an August 24, 2015 Resolution,[14] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE DOCTRINE OF RES JUDICATA TO THE AMENDED COMPLAINT OF PETITIONER FOR DEFICIENCY JUDGMENT UNDER CIVIL CASE NO. 24841 CONSIDERING THE ABSENCE OF IDENTITY OF PARTIES AND SIMILARITY OF CAUSES OF ACTION IN THE EARLIER COMPLAINT FOR REPLEVIN IN CIVIL CASE NO. 22294.

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[13] *Rollo*, pp. 34-37.

[14] *Id*. at 114-115.

II.

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE DECISION OF THIS HONORABLE COURT IN PCI LEASING VS. DAI, G.R. NO. 148980, SEPTEMBER 21, 2007 TO THE CASE OF HEREIN PETITIONER.[15]

Petitioner's Arguments

In praying that the assailed CA dispositions be set aside and that, instead, respondents be adjudged solidarity liable for its monetary claims in Civil Case No. CEB-24841, petitioner pleads in its Petition and Reply[16] that the CA erred in ruling that *res judicata* applies to the subsequent case for collection of deficiency against Eliezer, Sr. and Elena Adlawan as guarantors in the loan agreement between petitioner and respondents Eliezer and Leila Adlawan; that the causes of action, parties, and reliefs prayed for in Civil Case No. CEB-22294 - the case for replevin - are not identical or similar to the causes of action, parties, and reliefs prayed for in Civil Case No. CEB-24841 - which is a collection case founded on the liability on the continuing guaranty executed by respondents Eliezer, Sr. and Elena Adlawan; that the cause of action in Civil Case No. CEB-24841 arose only after the foreclosure sale of the dump truck recovered in the replevin case, when it became apparent that the proceeds from the auction sale were not enough to satisfy the outstanding obligation on the loan; and that the cited case of *PCI Leasing and Finance, Inc. v. Dai* does not apply to the instant case because there is no identity of causes of action and parties in the two cases - Civil Case No. CEB-22294 and Civil Case No. CEB-24841 - since petitioner in the latter case was seeking to hold respondents liable on the continuing guaranty executed by Eliezer, Sr. and Elena Adlawan, who were not parties to the replevin case.

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[15] *Id*. at 17.

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

[17] *Id*. at 104-107.

Respondents' Arguments

Respondents, on the other hand, counter in their Comment[17] that the Petition is a mere rehash of the arguments presented in the trial and appellate courts; that the CA is correct in finding that *res judicata* applies in the subsequent case - Civil Case No. CEB-24841 - filed by petitioner; that the pronouncement in the *PCI Leasing* case applies, in that an action for replevin - which is both an action *in personam* and *in rem* - bars a deficiency suit because the deficiency could have been raised in the replevin case; and that it was erroneous for petitioner to have filed a collection/deficiency case, as it should have appealed the trial court's decision instead.

Our Ruling

The Court denies the Petition.

For reference and emphasis, we reproduce petitioner's prayer in Civil Case No. CEB-22294, or the case for replevin which is the first action filed by petitioner, *viz.*;

a. to forthwith issue a writ of replevin ordering the seizure of the motor vehicle, with all its accessories and equipment, together with the registration certificate thereof, and direct the delivery thereof to plaintiff in accordance with law, and after due hearing, declare that plaintiff is entitled to the possession of the motor vehicle and confirm its seizure and delivery to plaintiff;

b. or, in the event that manual delivery of the motor vehicle cannot be effected, to render judgment in favor of the plaintiff and against the defendants ordering them to pay to plaintiff, the sum of Php2,604,604.97 plus interest and penalty thereon from June 3, 1998 until fully paid as provided in the promissory note;

c. In either case, to order defendant to pay jointly and severally:

1. The sum of Php651,151.24 as attorney's fees and liquidated damages, plus bonding fees and other expenses incurred in the seizure of the said motor vehicle; and

2. costs of suit.[18]

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[18] *Id.* at 35.

Clearly, petitioner's prayer for relief in its complaint in Civil Case No. CEB-22294 was in the alternative, and not cumulative or successive, to wit: recover possession of the dump truck, or, if recovery is no longer feasible, a money judgment for the outstanding loan amount. Petitioner did not pray for both reliefs cumulatively or successively. "The rule is that a party is entitled only to such relief consistent with and limited to that sought by the pleadings or incidental thereto. A trial court would be acting beyond its jurisdiction if it grants relief to a party beyond the scope of the pleadings."[19]

By praying for recovery of possession with a money judgment as a mere alternative relief in Civil Case No. CEB-22294, and when it did not pursue a claim for deficiency ***at any time during the proceedings in said case, including appeal***, petitioner led the courts to believe that it was not interested in suing for a deficiency so long as it recovered possession of the dump truck; after all, the basis of its alternative relief for collection of the outstanding loan is the same as that of its prayer for replevin - the respondents' unpaid obligation in the amount of Php2,604,604.97, plus interest and penalty. Its actions were thus consistent with and limited to the allegations and relief sought in its pleadings. This consistency in action carried on until the dump truck was foreclosed and sold at auction.

In case of a loan secured by a mortgage, the creditor has a single cause of action against the debtor - the recovery of the credit with execution upon the security. The creditor cannot split his single cause of action by filing a complaint on the loan, and thereafter another separate complaint for foreclosure of the mortgage. This is the ruling in the case of *Bachrach Motor Co., Inc. v. Icarangal*,[20] where the Court held:

> For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands,

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[19] *Spouses Gonzaga v. Court of Appeals*, 483 Phil. 424, 437 (2004).

[20] 68 Phil. 287, 293-294 (1939).

the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. Plaintiff, then, by applying the rules above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor.

In *PCI Leasing and Finance, Inc. v. Dai*[21] cited by respondents, the specific issue of whether a judgment in a replevin case would bar a subsequent action for deficiency judgment was raised. The Court resolved the question in the affirmative, thus:

For *res judicata* to apply, four requisites must be met: (1) the former judgment or order must be final; (2) it must be a judgment or an order on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second actions, identity of parties, of subject matter and cause of action.

Petitioner denies the existence of identity of causes of action between the replevin case and the case for deficiency judgment or collection of sum of money. x x x

x x x x x x x x x

Petitioner's position fails.

Petitioner ignores the fact that it prayed in the replevin case that in the event manual delivery of the vessel could not be effected, the court render judgment in its favor by ordering [herein respondents] to pay ... the sum of ₱3,502,095.00 plus interest and penalty thereon

[21] *Supra* note 12.

from October 12, 1994 until fully paid as provided in the Promissory Note.

Since petitioner had extrajudicially foreclosed the chattel mortgage over the vessel even before the pre-trial of the case, it should have therein raised as issue during the pre-trial the award of a deficiency judgment. After all, the basis of its above-stated alternative prayer was the same as that of its prayer for replevin - the default of respondents in the payment of the monthly installments of their loan. But it did not.

Section 49 of Rule 39 of the 1964 Rules of Court, which governed petitioner's complaint for replevin filed on October 27, 1994, and which Section is reproduced as Section 47 of the present Rules, reads:

> SEC. 49. Effect of judgments or final orders. - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> (a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;
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> **(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and**
>
> **(c) In any other litigation between the same parties or their successors-in-interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.**

Paragraph (a) is the rule on *res judicata* in judgments *in rem*. Paragraph (b) is the rule on *res judicata* in judgments *in personam*. Paragraph (c) is the rule on collusiveness of judgment.

Petitioner contends that Section 9 of Rule 60 of the 1997 Rules of Court which reads:

> Sec. 9. Judgment. - After trial of the issues, the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs,

does not authorize the court to render judgment on the deficiency after foreclosure, citing *BA Finance Corp. v. CA*.

But replevin is, as the above-cited *BA Finance Corp.* case holds, usually described as a mixed action.

> **Replevin, broadly understood, is both a form of principal remedy and of a provisional relief. It may refer either to the action itself, i.e., to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it *pendente lite*. The action is primarily possessory in nature and generally determines nothing more than the right of possession. Replevin is so usually described as a mixed action, being partly *in rem* and partly *in personam* — *in rem*insofar as the recovery of specific property is concerned, and *in personam* as regards to damages involved. As an action *in rem*, the gist of the replevin action is the right of the plaintiff to obtain possession of specific personal property by reason of his being the owner or of his having a special interest therein.**

Petitioner's complaint for replevin was doubtless a mixed action - *in rem* with respect to its prayer for the recovery of the vessel, and *in personam* with respect to its claim for damages. And it was, with respect to its alternative prayer, clearly one *in personam*.

Following paragraph (b) of Section 49, Rule 39 of the 1964 Rules of Court, now [Section] 47 of Rule 39 of the present Rules,

petitioner's second complaint is unquestionably barred by *res judicata*.[22] (Emphasis supplied; citations omitted)

The *Bachrach Motor Co., Inc. v. Icarangal* and *PCI Leasing & Finance, Inc. v. Dai* rulings were reiterated in *Allandale Sportsline Inc. v. The Good Development Corporation*,[23] where this Court ruled that -

By causing the auction sale of the mortgaged properties, respondent effectively adopted and pursued the remedy of extra-judicial foreclosure, using the writ of replevin as a tool to get hold of the mortgaged properties. **As emphasized in *Bachrach*, one effect of respondent's election of the remedy of extra-judicial foreclosure is its waiver of the remedy of collection of the unpaid loan.**

x x x x x x x x x

However, another effect of its election of the remedy of extra-judicial foreclosure is that whatever deficiency remains after applying the proceeds of the auction sale to the total loan obligation may still be recovered by respondent.

But to recover any deficiency after foreclosure, the rule is that a mortgage creditor must institute an independent civil action. However, in *PCI Leasing & Finance, Inc. v. Dai*[,] the Court held that the claim should at least be included in the pre-trial brief. In said case, the mortgage-creditor had foreclosed on the mortgaged properties and sold the same at public auction during the trial on the action for damages with replevin. After judgment on the replevin case was rendered, the mortgage-creditor filed another case, this time for the deficiency amount. The Court dismissed the second case on the ground of *res judicata*, noting that:

> **Petitioner ignores the fact that it prayed in the replevin case that in the event manual delivery of the vessel could not be effected, the court render judgment in its favor by ordering [herein respondents] to pay x x x the sum of P3,502,095.00 plus interest and penalty thereon from October 12, 1994 until fully paid as provided in the Promissory Note.**

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[22] *Id*. at 92-96.

[23] 595 Phil. 265, 280-282 (2008).

> **Since petitioner had extrajudicially foreclosed the chattel mortgage over the vessel even before the pre-trial of the case, it should have therein raised as issue during the pre-trial the award of a deficiency judgment. After all, the basis of its above-stated alternative prayer was the same as that of its prayer for replevin - the default of respondents in the payment of the monthly installments of their loan. But it did not.** (Emphasis and underscoring supplied; citations omitted)

Finally, in *Marilag v. Martinez*,[24] the Bachrach ruling was once more referenced, and the Court therein ruled, as follows:

> Petitioner's contention that the judicial foreclosure and collection cases enforce independent rights must, therefore, fail because the Deed of Real Estate Mortgage and the subject PN both refer to one and the same obligation, i.e., Rafael's loan obligation. As such, there exists only one cause of action for a single breach of that obligation. **Petitioner cannot split her cause of action on Rafael's unpaid loan obligation by filing a petition for the judicial foreclosure of the real estate mortgage covering the said loan, and, thereafter, a personal action for the collection of the unpaid balance of said obligation not comprising a deficiency arising from foreclosure, without violating the proscription against splitting a single cause of action, where the ground for dismissal is either *res judicata* or *litis pendentia***, as in this case.
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> x x x x x x x x x
>
> Further on the point, the fact that no foreclosure sale appears to have been conducted is of no moment because the remedy of foreclosure of mortgage is deemed chosen upon the filing of the complaint therefor. In *Suico Rattan & Buri Interiors, Inc. v. CA*, it was explained:
>
> x x x **In sustaining the rule that prohibits mortgage creditors from pursuing both the remedies of a personal action for debt or a real action to foreclose the mortgage, the Court held in the case of *Bachrach Motor Co., Inc. v. Esteban Icarangal, et al.* that a rule which would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not**

[24] 764 Phil. 576, 589-590 (2015).

only in multiplicity of suits so offensive to justice and obnoxious to law and equity, but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies. Hence, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provisions of Rule 68 of the Rules of Court As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118.

As petitioner had already instituted judicial foreclosure proceedings over the mortgaged property, she is now barred from availing herself of an ordinary action for collection, regardless of whether or not the decision in the foreclosure case had attained finality. In fine, the dismissal of the collection case is in order. (Emphasis supplied; citations omitted)

Contrary to petitioner's stance, the pronouncements in *Bachrach Motor Co., Inc. v. Icarangal* and *PCI Leasing & Finance, Inc. v. Dai* apply to the instant case. Particularly, the *PCI Leasing* case is squarely applicable; the CA committed no error in invoking the ruling in said case. By failing to seek a deficiency judgment in Civil Case No. CEB-22294 after its case for recovery of possession was resolved, petitioner is barred from instituting another action for such deficiency. Pursuant to Section 47, Rule 39 of the 1997 Rules of Civil Procedure, on the effect of judgments or final orders cited in the *PCI Leasing* case, the judgment in Civil Case No. CEB-22294 is, with respect to the matter directly adjudged *or as to any other matter that could have been raised in relation thereto*, conclusive between the petitioner and respondents.

Petitioner's final claim to reversal is that there could be no identity of causes of action between Civil Case No. CEB-22294 and Civil Case No. CEB-24841 since the latter case was instituted for the specific purpose of recovering the deficiency from respondents Eliezer, Sr. and Elena Adlawan, who were

supposedly liable as guarantors on the continuing guaranty that accompanied the loan agreement between petitioner and respondents Eliezer and Leila Adlawan. However, with the final resolution of Civil Case No. CEB-22294, petitioner's cause of action against respondents Eliezer, Sr. and Elena Adlawan is likewise barred. The contract of guaranty is merely accessory to a principal obligation; it cannot survive without the latter. Under Article 2076 of the Civil Code, "(t)he obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations." The resolution of Civil Case No. CEB-22294 and the consequent satisfaction of petitioner's claim therein bars further recovery via a deficiency judgment as against respondents Eliezer and Leila Adlawan, who are deemed to have paid their loan obligation. For this reason, their obligation has been extinguished which should, in turn, operate to the benefit of their co-respondents, Eliezer, Sr. and Elena Adlawan whose liability is based on guaranty, a mere accessory contract to the loan obligation that cannot survive after the extinguishment of the latter.

WHEREFORE, the Petition is **DENIED**. The February 15, 2013 Decision and April 24, 2014 Resolution of the Court of Appeals in CA-G.R. CEB-C.V. No. 02899 are **AFFIRMED**.

SO ORDERED.

Bersamin, C. J., Gesmundo, and *Carandang, JJ.*, concur.

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 217428. March 25, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **OSCAR S. REYES, IN HIS CAPACITY AS PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE MANILA ELECTRIC COMPANY (MERALCO), SIMEON KEN R. FERRER, IN HIS CAPACITY AS CORPORATE SECRETARY OF MERALCO, OR THEIR SUCCESSORS-IN-INTEREST, AND MANILA ELECTRIC COMPANY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; SIGNIFIES NOT ONLY A WILLFUL DISREGARD OR DISOBEDIENCE OF THE COURT'S ORDERS, BUT SUCH CONDUCT WHICH TENDS TO BRING THE AUTHORITY OF THE COURT AND THE ADMINISTRATION OF LAW INTO DISREPUTE OR IN SOME MANNER TO IMPEDED THE DUE ADMINISTRATION OF JUSTICE.—** Contempt of court is broadly defined as disregard of, or disobedience to the rules or orders of a judicial body; whereas, restrictively, it means despising the authority, justice, or dignity of the court. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party litigants or their witnesses during litigation.

2. **ID.; CLASSIFICATION.—** Contempt of court can be classified as either direct or indirect contempt. Direct contempt is committed "in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn in or to answer as a witness, or to subscribe an affidavit

or deposition when lawfully required to do so." On the other hand, there is indirect contempt when any of the following acts enumerated in Section 3, Rule 71 of the Rules of Court has been committed: (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions; (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (c) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming to be an attorney or an officer of a court, and acting as such without authority; (f) Failure to obey a subpoena duly served; [and](g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

3. ID.; POWER TO PUNISH FOR CONTEMPT IS INHERENT IN ALL COURTS AND IS ESSENTIAL TO THE PRESERVATION OF ORDER IN JUDICIAL PROCEEDINGS AND TO THE ENFORCEMENT OF JUDGMENTS, ORDERS, AND MANDATES OF THE COURT, AND CONSEQUENTLY, TO THE DUE ADMINISTRATION OF JUSTICE; INDIRECT CONTEMPT, NOT ESTABLISHED IN CASE AT BAR.— In *Bank of the Philippine Islands v. Calanza,* the Court declared: The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice.

However, such power should be exercised on the preservative, not on the vindictive, principle. Only occasionally should the court invoke its inherent power in order to retain that respect, without which the administration of justice will falter or fail. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice. Petitioner charges the respondents with indirect contempt for their failure to fully comply with the Court's Decision in *LBP v. Suntay*. x x x While it is true that the necessary consequence of the Court's Decision in *LBP v. Suntay* is the return to petitioner of the MERALCO shares of stock transferred to Lubrica, nowhere in the aforecited dispositive portion did the Court order MERALCO to cancel the certificates of stock issued to Lubrica. It was RARAD Casabar who directed MERALCO to cancel the stock certificates issued to Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to petitioner and to record the restoration in MERALCO's stock and transfer book. The Court merely affirmed such order. As the decision did not command the respondents to do anything, they could not be held guilty of disobedience of, or resistance to a lawful writ, process, order, judgment or command of a court. x x x [W]hether or not respondents' action in complying with the Court's Decision was proper is not an issue in this contempt case. Contempt of court has been defined as a **willful** disregard or disobedience of a public authority. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. Here, petitioner failed to show any circumstance which would lead the Court to believe that MERALCO willfully refused to turn over the remaining 3,366,800 shares.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez And Gatmaitan for respondents.
LBP Legal Services Group for Land Bank of the Philippines.

D E C I S I O N

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

Petitioner Land Bank of the Philippines (petitioner) filed this petition to charge Oscar S. Reyes, Simeon Ken R. Ferrer and Manila Electric Company [MERALCO] (respondents) with indirect contempt of court for allegedly failing to comply with the Court's Decision dated December 14, 2011 issued in G.R. No. 188376 entitled *Land Bank of the Philippines v. Federico Suntay, as represented by his Assignee, Josefina Lubrica (LBP v. Suntay)*.[1]

The Antecedents

Petitioner owns 42,002,750 shares of stock in respondent MERALCO acquired through the exercise of its proprietary functions as a regular banking or financial institution, separate and distinct from its mandate as the administrator of the Agrarian Reform Fund (ARF). Under Executive Order (E.O.) No. 267, petitioner is mandated to segregate its corporate funds as a financial banking institution from those of the ARF which are earmarked for payment of just compensation.[2]

For purposes of paying the value of the expropriated land owned by Federico Suntay (Suntay), situated in Sta. Lucia, Sablayan, Occidental Mindoro with a total area of 3,682.0285 hectares, petitioner's MERALCO shares of stock were levied and sold at a public auction by virtue of the September 14, 2005 Alias Writ of Execution and October 30, 2008 Order of the former Department of Agrarian Reform (DAR) Regional Agrarian Reform Adjudicator Conchita Miñas (RARAD Miñas) in the Department of Agrarian Reform Adjudication Board (DARAB) Case No. V-0405-0001-00. Josefina S. Lubrica (Lubrica) was the winning bidder in the auction sale.

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[1] 678 Phil. 879 (2011).

[2] Petition; *rollo*, pp. 4-5.

Consequently, MERALCO cancelled petitioner's shares of stock and issued new certificates in favor of Lubrica.[3]

Thereafter, petitioner filed a Petition for Review on *Certiorari* before the Court to assail the levy and sale of petitioner's shares of stock in MERALCO. Thus, the Court, in its December 14, 2011 Decision in *LBP v. Suntay*,[4] declared that the immediate and indiscriminate levy by the DARAB Sheriffs of Land Bank's MERALCO shares, without first determining whether or not such assets formed part of the ARF, disregarded petitioner's proprietary rights in its own funds and properties.

The Court further stated that Section 21 of Republic Act No. 9700 expressly provided that "all just compensation payments to landowners, including execution of judgments therefor, shall only be sourced from the Agrarian Reform Fund;" and that "just compensation payments that cannot be covered within the approved annual budget of the program shall be chargeable against the debt service program of the national government, or any unprogrammed item in the General Appropriations Act."[5]

Thus, the Court ruled that the enactments of the Legislature decreed that the money to be paid to the landowner as just compensation for the taking of his land is to be taken only from the ARF. Consequently, Land Bank is liable only as the administrator of the ARF. In fact, Section 10, Rule 19 of the 2003 DARAB Rules of Procedure, reiterates that the satisfaction of a judgment for just compensation by writ of execution should be from the ARF in the custody of Land Bank.[6] The dispositive portion reads:

WHEREFORE, we *GRANT* the petition for review on *certiorari*, and *REVERSE* the Decision promulgated [on] June 5, 2009 in CA-G.R. SP No. 106104.

ACCORDINGLY, the Court:

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[3] *Id.* at 5.

[4] *Supra* note 1.

[5] *Id.* at 918-919.

[6] *Id.* at 919.

(a) DIRECTS the Regional Trial Court, Branch 46, in San Jose, Occidental Mindoro to continue the proceedings for the determination of the just compensation of Federico Suntay's expropriated property in Agrarian Case No. R-1241;

(b) QUASHES and *NULLIFIES* the orders issued in DARAB Case No. V-0405-0001-00 on September 14, 2005 (granting Suntay's *ex parte* motion for the issuance of an *alias* writ of execution) and October 30, 2008 by RARAD Conchita C. Miñas (directing the DARAB sheriffs "to resume the interrupted execution of the *Alias* Writ in this case on September 14, 2005"), and all acts performed pursuant thereto;

(c) AFFIRMS and *REITERATES* the order issued on October 25, 2005 by RARAD Miñas (deeming to be quashed and of no force and effect "all actions done in compliance or in connection with" the writ of execution issued by her), and the order issued on December 17, 2008 by RARAD Marivic Casabar (directing MERALCO to cancel the stock certificates issued to Josefina Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to Land Bank and to record the restoration in MERALCO's stock and transfer book; and the Philippine Stock Exchange, Philippine Depository and Trust Corporation, Securities Transfer Services, Inc., and the Philippine Dealing System Holdings Corporation and Subsidiaries (PDS Group), and any stockbroker, dealer, or agent of MERALCO shares to stop trading or dealing on the shares);

(d) DECLARES Land Bank fully entitled to all the dividends accruing to its levied MERALCO shares of stocks as if no levy on execution and auction were made involving such shares of stocks;

(e) COMMANDS the Integrated Bar of the Philippines to investigate the actuations of Atty. Conchita C. Miñas in DARAB Case No. V-0405-0001-00, and to determine if she was administratively liable as a member of the Philippine Bar; and

(f) ORDERS the Department of Agrarian Reform Adjudication Board to conduct a thorough investigation of the sheriffs who participated in the irregularities noted in this Decision, and to proceed against them if warranted.

Costs against the respondent.

SO ORDERED.[7]

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[7] *Id.* at 928-929.

The Decision became final and executory on September 11, 2012. Then, on April 1, 2013, the Office of the Regional Adjudicator Region IV-B (MIMAROPA) issued an Order directing the issuance of a Writ of Execution. Thereafter, the Sheriff of the Regional Adjudicator Region IV-B (MIMAROPA) issued to MERALCO the April 12, 2013 Demand to Comply.[8]

Consequently, MERALCO, in partial compliance to such Writ of Execution and Demand to Comply, delivered to petitioner 38,635,950 shares of stock, including cash dividends in the total amount of ₱1,206,955,617.77 and property dividends consisting of 108,884,212 shares of stock in Rockwell Land Corporation.[9]

On January 24, 2014, the Sheriff of the Regional Adjudicator Region IV-B (MIMAROPA) issued a report on MERALCO's partial compliance of the Supreme Court Decision.[10]

MERALCO, however, failed to deliver to petitioner the remaining 3,366,800 shares of stock out of the 42,002,750, shares illegally transferred to Lubrica. In addition, MERALCO has not yet paid petitioner the following dividends:

a. Cash dividends amounting to [₱]161,303,388.00 due on the undelivered 3,366,800 MERALCO shares of stock as of September 30, 2014, and all subsequent dividends declared thereon until the full delivery of the 3,366,800 MERALCO shares of stock;

b. Cash dividends [as of September 30, 2014] amounting to [₱]8,145,009.73 due on the 38,635,950 MERALCO shares of stock earlier delivered to petitioner; and

c. Property dividends in the form of 9,488,349 shares of stock in Rockwell Land Corporation due on the undelivered 3,366,800 MERALCO shares of stock.[11]

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[8] Petition; *supra* note 2, at 6-7.

[9] *Id*. at 7.

[10] *Id*.

[11] *Id*. at 7-8.

For their part, respondents aver that the 3,366,800 shares have already been traded in the Philippine Stock Exchange (PSE) and settled through the Securities Clearing Corporation of the Philippines (SCCP). The 3,366,800 shares are now in the hands of the investing public and are no longer owned by Lubrica. Thus, MERALCO and its officers cannot be accused of deliberately refusing to return the 3,366,800 shares to petitioner. MERALCO and its officers have complied to the extent permitted by the facts and the law, as petitioner itself admits that MERALCO has caused the return to petitioner of 38,635,950 shares or 91.98% of all the shares previously transferred to Lubrica.[12]

Respondents narrated that on October 30, 2008, RARAD Miñas ordered the resumption of execution in DARAB Case No. V-0405-0001-00 which allowed the DARAB Sheriffs to conduct an auction sale over petitioner's MERALCO shares. On November 4, 2008, Emmanuel R. Sison (Sison), then Corporate Secretary of MERALCO, received a Demand to Comply from the DARAB Sheriffs directing the immediate transfer of ownership or registration over 42,002,750 shares to Lubrica. On the same date, Sison also received two Certificates of Sale covering petitioner's MERALCO Stock Certificates Nos. 87265, 664638, 707447, and 707448.[13]

Respondents emphasized that there was no injunction against the DARAB personnel and that there was also no suit impleading MERALCO and its officers to enjoin their compliance with the writs and orders of the DARAB affecting petitioner's MERALCO shares. Thus, in compliance with the Demand to Comply, Sison sent a letter dated November 10, 2008 to the Securities Transfer Services, Inc. (STSI), the custodian of MERALCO's stock and transfer book, instructing the latter to cancel petitioner's stock certificates, to issue new ones in the name of Lubrica and to record this transfer of ownership in the stock and transfer book.[14]

[12] Comment; *id*. at 130.

[13] *Id*. at 130-131.

[14] *Id*. at 131.

On November 20, 2008, the Bureau of Internal Revenue (BIR) issued a Certificate Authorizing Registration (CAR) No. CAR 2008-00096023 permitting the transfer of shares from petitioner to Lubrica.[15]

On November 28, 2008, in view of the BIR's issuance of the CAR, and still in the absence of any judicial restraint or any suit impleading MERALCO to enjoin enforcement, Sison directed STSI to cancel the 42,002,750 shares of stock in petitioner's name and transfer them to Lubrica.[16]

Thereafter, on December 15, 2008, RARAD Marivic Casabar (RARAD Casabar) issued an Order nullifying the October 30, 2008 Order of RARAD Miñas. As a response to this, SCCP issued a Memorandum dated December 16, 2008 where it suspended the clearing and settlement of MERALCO shares until further notice. Likewise, the PSE suspended trading of MERALCO shares effective December 17, 2008 until further notice. Thus, clearing and trading of MERALCO shares was not halted until 18 days after MERALCO, in compliance with the DARAB Sheriffs' Demand to Comply, had already cancelled the petitioner's shares and issued them in Lubrica's name.[17]

Of the total 42,002,750 shares issued to Lubrica, 40,600,000 shares were lodged by Lubrica in the Philippine Depository & Trust Corp. (PDTC) while 1,402,750 shares were not lodged. Of the lodged shares, 3,366,800 shares were traded in the PSE and settled through the SCCP, and were no longer in the lodging brokers' accounts maintained with PDTC. The remaining 37,233,200 shares remained in depository accounts of lodging brokers. Thus, of the total 42,002,750 shares transferred to Lubrica's name, 38,635,950 shares were restored to petitioner. Only 3,366,800 shares were not transferred back to petitioner. Once the contested shares were traded and settled, and in the hands, of new owners, MERALCO was no longer empowered

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[15] *Id*.

[16] *Id*.

[17] *Id*. at 133.

to simply cancel such shares unilaterally and return them to petitioner.[18]

Under the 1999 PSE Trading and Settlement Rules (1999 PSE Rules), which were in force in November through December 2008 when the trading of the contested shares took place, cancellation of a marched order could not be done except in cases of computer errors or evident mistakes. Even after the suspension of trading by the PSE, MERALCO was not empowered to cancel the matched orders on its own shares, since there was neither computer error nor evident mistake that warranted such action. Under the 1999 PSE Rules, an evident mistake refers only to a trader's error which must be reported to the proper PSE officials the same day as its occurrence.[19]

The Issue

The sole issue for resolution is whether respondents are guilty of indirect contempt.

The Court's Ruling

The Court rules in the negative.

Contempt of court is broadly defined as disregard of, or disobedience to the rules or orders of a judicial body; whereas, restrictively, it means despising the authority, justice, or dignity of the court.[20] It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[21] Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as

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[18] *Id*. at 134.

[19] *Id*. at 134-135.

[20] *Rizal Commercial Banking Corporation v. Serra,* G.R. No. 216124, July 19, 2017; 831 SCRA 422, 434.

[21] *Lee v. Regional Trial Court of Quezon City, Br. 85*, 496 Phil. 421, 433 (2005).

tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party litigants or their witnesses during litigation.[22]

Contempt of court can be classified as either direct or indirect contempt. Direct contempt is committed "in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so."[23] On the other hand, there is indirect contempt when any of the following acts enumerated in Section 3, Rule 71 of the Rules of Court has been committed:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1[, Rule 71 of the Rules of Court];

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served; [and]

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[22] *Tokio Marine Malayan Insurance Company Inc. v. Valdez*, 566 Phil. 443, 455 (2008).

[23] RULES OF COURT, Rule 71, Section 1.

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

In *Bank of the Philippine Islands v. Calanza,*[24] the Court declared:

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice. However, such power should be exercised on the preservative, not on the vindictive, principle. Only occasionally should the court invoke its inherent power in order to retain that respect, without which the administration of justice will falter or fail. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

Petitioner charges the respondents with indirect contempt for their failure to fully comply with the Court's Decision in *LBP v. Suntay*. To reiterate, the dispositive portion of *LBP v. Suntay* reads:

WHEREFORE, we *GRANT* the petition for review on *certiorari*, and *REVERSE* the Decision promulgated June 5, 2009 in CA-G.R. SP No. 106104.

ACCORDINGLY, the Court:

(a) DIRECTS the Regional Trial Court, Branch 46, in San Jose, Occidental Mindoro to continue the proceedings for the determination of the just compensation of Federico Suntay's expropriated property in Agrarian Case No. R-1241;

(b) QUASHES and *NULLIFIES* the orders issued in DARAB Case No. V-0405-0001-00 on September 14, 2005 (granting Suntay's *ex parte* motion for the issuance of an *alias* writ of execution) and October 30, 2008 by RARAD Conchita C. Miñas (directing the DARAB sheriffs "to resume the interrupted execution of the Alias Writ in this case on September 14, 2005"), and all acts performed pursuant thereto;

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[24] 647 Phil. 507, 514 (2010).

(c) ***AFFIRMS*** **and** ***REITERATES*** **the order issued on October 25, 2005 by RARAD Miñas (deeming to be quashed and of no force and effect "all actions done in compliance or in connection with" the writ of execution issued by her), and the order issued on December 17, 2008 by RARAD Marivic Casabar (directing MERALCO to cancel the stock certificates issued to Josefina Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to Land Bank and to record the restoration in MERALCO's stock and transfer book; and the Philippine Stock Exchange, Philippine Depository and Trust Corporation, Securities Transfer Services, Inc., and the Philippine Dealing System Holdings Corporation and Subsidiaries (PDS Group), and any stockbroker, dealer, or agent of MERALCO shares to stop trading or dealing on the shares);**

(d) DECLARES Land Bank fully entitled to all the dividends accruing to its levied MERALCO shares of stocks as if no levy on execution and auction were made involving such shares of stocks;

(e) COMMANDS the Integrated Bar of the Philippines to investigate the actuations of Atty. Conchita C. Miñas in DARAB Case No. V-0405-0001-00, and to determine if she was administratively liable as a member of the Philippine Bar; and

(f) ORDERS the Department of Agrarian Reform Adjudication Board to conduct a thorough investigation of the sheriffs who participated in the irregularities noted in this Decision, and to proceed against them if warranted.

Costs against the respondent.

SO ORDERED.[25] (Emphasis supplied)

While it is true that the necessary consequence of the Court's Decision in *LBP v. Suntay* is the return to petitioner of the MERALCO shares of stock transferred to Lubrica, nowhere in the aforecited dispositive portion did the Court order MERALCO to cancel the certificates of stock issued to Lubrica. It was RARAD Casabar who directed MERALCO to cancel the stock certificates issued to Lubrica and to any of her transferees or assignees, and to restore the ownership of the shares to petitioner

[25] *Supra* note 1, at 928-929.

and to record the restoration in MERALCO's stock and transfer book. The Court merely affirmed such order. As the decision did not command the respondents to do anything, they could not be held guilty of disobedience of, or resistance to a lawful writ, process, order, judgment or command of a court.[26]

Nevertheless, petitioner admitted that of the total 42,002,750 shares transferred to Lubrica's name, 38,635,950 shares were restored to petitioner. Only 3,366,800 shares were not transferred back to petitioner's account. This fact alone belies the imputation of disobedience, much less contemptuous acts, against the respondents. Moreover, MERALCO was unable to return to petitioner the 3,366,800 shares not because of plain stubborn refusal, but because these shares had been lodged with the PDTC, validly traded through the PSE, and settled by the SCCP even prior to the suspension of trading, with title over those shares passing to third persons.[27] Hence, unlike the 37,233,200 lodged shares which remained in the brokers' account, as well as the 1,402,750 shares not lodged with the PDTC,[28] MERALCO could not have easily cancelled the certificates of stock pertaining to the 3,366,800 traded shares which could have already been passed on to several persons. In fact, petitioner itself recognized that the 3,366,800 shares were traded and settled.[29] Under Section 46 of the Securities Regulation Code, "[T]he registration of a transfer of a security into the name of and by a registered clearing agency or its name of or by a registered clearing agency or its nominee shall be final and conclusive unless the clearing agency had notice of an adverse claim before the registration was made x x x."

At any rate, whether or not respondents' action in complying with the Court's Decision was proper is not an issue in this

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[26] *Barrete v. Āmila*, 300 Phil. 217, 221-222 (1994).

[27] Letter dated January 15, 2009 of MERALCO to the PDTC; *rollo,* pp. 157-160.

[28] *Id*. at 284.

[29] Letter dated January 5, 2009 of LBP to the Securities and Exchange Commission; *id*. at 221.

contempt case. Contempt of court has been defined as a **willful** disregard or disobedience of a public authority. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[30] Here, petitioner failed to show any circumstance which would lead the Court to believe that MERALCO willfully refused to turn over the remaining 3,366,800 shares.

Considering that condemnation for contempt should not be made lightly, and that the power to punish contempt should be exercised on the preservative and not on the vindictive principle, the Court finds that the e was no willful disregard or defiance of its Decision in *LBP v. Suntay*.

WHEREFORE, the petition for indirect contempt is **DISMISSED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Lazaro-Javier, JJ.*, concur.

THIRD DIVISION

[G.R. No. 221780. March 25, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **V.Y. DOMINGO JEWELLERS, INC.,** *respondent.*

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[30] *Lorenzo Shipping Corp. v. Distribution Management Association of the Philippines*, 672 Phil. 1, 16 (2011).

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 8424 OR THE TAX REFORM ACT OF 1997, AS AMENDED; PROTESTING OF ASSESSMENT; TAXPAYER'S OPTIONS TO DISPUTE AN ASSESSMENT.— x x x [S]ection 228 of R.A. No. 8424 or *The Tax Reform Act of 1997*, as amended, implemented by Revenue Regulations No. 12-99, provides for the procedure to be followed in issuing tax assessments and in protesting the same. x x x. It is clear from the said provisions of the law that a protesting taxpayer like V.Y. Domingo has only three options to dispute an assessment: 1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest; 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest; 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

2. ID.; ID.; ID.; WHERE A TAXPAYER QUESTIONS AN ASSESSMENT AND ASKS THE COLLECTOR TO RECONSIDER OR CANCEL THE SAME BECAUSE THE TAXPAYER BELIEVES HE IS NOT LIABLE THEREFOR, THE ASSESSMENT BECOMES A DISPUTED ASSESSMENT THAT THE COLLECTOR MUST DECIDE, AND THE TAXPAYER CAN APPEAL TO THE COURT OF TAX APPEALS ONLY UPON RECEIPT OF THE DECISION OF THE COLLECTOR ON THE DISPUTED ASSESSMENT.— That V.Y. Domingo believed that the PCL "undeniably shows" the intention of the CIR to make it as its final "decision" did not give it cause of action to disregard the procedure set forth by the law in protesting tax assessments and act prematurely by filing a petition for review before the courts. The word "decisions" in the aforementioned provision of R.A. No. 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments. Definitely, said word does not signify the

assessment itself. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the CTA only upon receipt of the decision of the Collector on the disputed assessment.

3. ID.; AN ACT CREATING THE COURT OF TAX APPEALS (REPUBLIC ACT No. 1125, AS AMENDED); THE COURT OF TAX APPEALS CAN TAKE COGNIZANCE ONLY OF MATTERS THAT ARE CLEARLY WITHIN ITS JURISDICTION; EXCLUSIVE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS; THE COURT OF TAX APPEALS HAS NO JURISDICTION TO ENTERTAIN THE PETITION FOR REVIEW WHERE THE CASE DOES NOT INVOLVE A DISPUTED ASSESSMENT.— [I]t bears emphasis that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, specifically provides: SEC. 7. *Jurisdiction*. — **The CTA shall exercise:** (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided: (1) **Decisions of 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; (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; x x x. x x x Admitting for the sake of argument the claim of V.Y. Domingo in its Comment — that its case does not involve an appeal from a decision of the CIR on a disputed assessment since in the first place, there is no disputed assessment to speak of — admits the veracity of petitioner CIR's claim: there being no disputed assessment to speak of when V.Y. Domingo filed its petition for review before the CTA First Division, the latter had no jurisdiction to entertain the same.

Thus, the latter's dismissal of the petition for review was proper.

4. ID.; NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC); APPEALS TO THE COURT OF TAX APPEALS; TAXPAYERS ARE REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES PRIOR TO RESORT TO THE COURT OF TAX APPEALS TO GIVE THE COMMISSIONER THE OPPORTUNITY TO RE-EXAMINE ITS FINDINGS AND CONCLUSIONS AND TO DECIDE THE ISSUES RAISED WITHIN HER COMPETENCE.— [V].Y. Domingo's immediate recourse to the CTA First Division was in violation of the doctrine of exhaustion of administrative remedies. Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. 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 CTA precisely to give the Commissioner the opportunity to "re-examine its findings and conclusions" and to decide the issues raised within her competence.

5. ID.; ID.; ID.; THE DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) ON THE PROTEST OF THE TAXPAYER AGAINST THE ASSESSMENTS ARE APPEALABLE TO THE COURT OF TAX APPEALS; A PETITION FOR REVIEW ON *CERTIORARI* BEFORE THE CTA SHOULD BE DISMISSED WHERE THERE WAS NO PROTEST RULING BY THE CIR WHEN THE PETITION WAS FILED BY THE TAXPAYER.— What is evident in the instant case is that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 have not been disputed by V.Y. Domingo at the administrative level without any valid basis therefor, in violation of the doctrine of exhaustion of administrative remedies. To reiterate, what is appealable to the CTA are decisions of the CIR on the protest of the taxpayer against the assessments. There being no protest ruling by the CIR when V.Y. Domingo's petition for review was filed, the dismissal of the same by the CTA First Division was proper. As correctly put by Associate Justice Roman G.

Del Rosario in his Dissenting Opinion, "(C)learly, petitioner did not exhaust the administrative remedy provided under Section 228 of the MRC of 1997, as amended, and RR No. 12-99 which is fatal to its cause. Consequently, the non-filing of the protest against the FLD led to the finality of the assessment."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Nicolas & De Vega Law Offices for respondent.

D E C I S I ON

PERALTA, *J.*:

This is petition for review on *certiorari* under Rule 45 seeking to reverse and set aside the Court of Tax Appeals (*CTA*) *En Banc* Decision[1] dated July 1, 2015 in CTA EB Case No. 1170, which granted respondent V.Y. Domingo Jewellers, Inc.'s (*V.Y. Domingo*) petition for review, and ordered the remand of the case to the CTA First Division for further proceedings; and the Resolution[2] dated December 3, 2015 which denied petitioner Commissioner of Internal Revenue's (*CIR*) motion for reconsideration.

The facts are as follows:

On September 9, 2009, the Bureau of Internal Revenue (*BIR*) issued a Preliminary Assessment Notice[3] (PAN) against V.Y. Domingo, a corporation primarily engaged in manufacturing

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[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban concurring, with Presiding Justice Roman G. Del Rosario, and Associate Justices Erlinda P. Uy, and Cielito N. Mindaro-Grulla dissenting; *rollo*, pp. 37-51.

[2] *Id.* at 56-62.

[3] *Rollo*, pp. 63-64.

and selling emblematic jewelry, assessing the latter the total amount of ₱2,781,844.21 representing deficiency income tax and value-added tax, inclusive of interest, for the taxable year 2006.

V.Y. Domingo filed a Request for Re-evaluation/Re-investigation and Reconsideration[4] dated September 17, 2009 with the Regional Director of BIR - Revenue Region No. 6, requesting a "thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the Preliminary Assessment Notice."

V.Y. Domingo then received a Preliminary Collection Letter[5] (*PCL*) dated August 10, 2011 from the Revenue District Office (*RDO*) No. 28 - Novaliches, informing it of the existence of Assessment Notice No. 32-06-IT-0242 and Assessment Notice No. 32-06-VT-0243, both dated November 18, 2010, for collection of its tax liabilities in the amounts of ₱1,798,889.80 and ₱1,365,727.63, respectively, for a total amount of ₱3,164,617.43. The PCL likewise stated:

> If you want to know the details and/or settle this assessment, may we invite you to come to this office, within ten (10) days from receipt of this notice. However, if payment had already been made, please send or bring us copies of the receipts of payment together with this letter to be our basis for canceling/closing your liability/ies.
>
> We will highly appreciate if you can give this matter your preferential attention, otherwise we shall be constrained to enforce the collection thereof thru Administrative Summary Remedies provided for by the law, without further notice.[6]

On September 12, 2011, V.Y. Domingo sent a letter to the BIR Revenue District Office No. 28 in Quezon City, requesting certified true copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243. Upon receipt of the requested copies of the notices on September 15, 2011, V.Y. Domingo filed on

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[4] *Id.* at 66.

[5] *Id.* at 68.

[6] *Id.*

[7] *Id.* at 69-89.

September 16, 2011 a Petition for Review[7] with the CTA in Division, under Section 7(1) of RA No. 1125 and Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals (*RRCTA*), praying that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 and the PCL dated August 10, 2011 be declared null and void, cancelled, withdrawn, and with no force and effect, for allegedly having been issued beyond the prescriptive period for assessment and collection of internal revenue taxes.

During trial, the CIR filed her Motion to Dismiss[8] the petition for lack of jurisdiction. She argued that under Republic Act (*R.A.*) No. 1125 ("*An Act Creating the Court of Tax Appeals*"), as amended, and the RRCTA, it is neither the assessment nor the formal letter of demand that is appealable to the CTA but the decision of the CIR on a disputed assessment. Claiming that V.Y. Domingo's petition was anchored on its receipt of the PCL, which it treated as a denial of its Request for Re-evaluation/Re-investigation and Reconsideration, the CIR further argued that there was no disputed assessment to speak of, and that the CTA had no jurisdiction to entertain the said Petition for Review.

In a Resolution[9] dated January 29, 2014, the CTA First Division granted the CIR's motion and dismissed V.Y. Domingo's Petition for Review. It held that it was without jurisdiction to entertain the petition, as the rule is that for the CTA to acquire jurisdiction, as assessment must first be disputed by the taxpayer and either ruled upon by the CIR to warrant a decision, or denied by the CIR through inaction. The CTA First Division ruled that what were appealed to it were the subject assessments, not a decision or the CIR's denial of its protest; thus, the said assessments had attained finality, and the CTA in Division was without jurisdiction to entertain the appeal.

V.Y. Domingo's motion for reconsideration having been

[8] *Id.* at 92-99.

[9] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Roman G. Del Rosario an Cielito N. Mindaro-Grulla concurring, *id.* at 105-115.

denied in a Resolution dated April 23, 2014, it filed on May 30, 2014 a petition for review before the CTA *En Banc*. It argued that the CTA First Division erred when it upheld the CIR's position that V.Y. Domingo should have administratively protested the Assessment Notices first before filing its Petition for Review. Furthermore, V.Y. Domingo claimed that it was denied due process when the CIR failed to send the Notice of Final Assessment to it.

In its Decision dated July 1, 2015, the CTA *En Banc* granted V.Y. Domingo's Petition for Review, reversing and setting aside the January 29, 2014 and April 23, 2014 Resolutions of the CTA First Division. It remanded the case to the CTA First Division for further proceedings to afford the CIR full opportunity to present her evidence. It held —

> Petitioner's case did not fall within the usual procedure in the issuance of an assessment as respondent failed to serve or send the FAN to petitioner. Section 228 of the NIRC of 1997, as amended, and Section 3 of Revenue Regulations No. 12-99 are silent as to the procedure to be followed in case the taxpayer did not receive the FAN but instead receives a preliminary collection letter or a warrant of distraint/levy or similar communications, informing the taxpayer of the existence of a FAN for the first time. Understandably, this would cause some confusion as to what the next step it. Hence, petitioner cannot be faulted for not filing an administrative protest before filing a petition for review before the Court in Division since it did not receive the FAN and the language of the PCL shows that the respondent is already demanding payment from petitioner presupposing that the assessment has become final.[10]

Thus, the present petition raising the sole issue of whether the First Division of the CTA has jurisdiction to entertain V.Y. Domingo's petition for review.

The CIR argues that assessment notices are not appealable to the CTA as the power to decide disputed assessments is vested in the CIR, subject only to the exclusive appellate jurisdiction of the CTA. The CIR adds that a thorough review of V.Y.

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[10] *Id.* at 49.

Domingo's petition for review before the CTA First Division would readily show that it was an *original protest*on the assessment made by the petitioner, a matter that, under R.A. No. 1125, is not within the jurisdiction of the CTA.

The CIR likewise claims that a close scrutiny of V.Y. Domingo's petition for review before the CTA would reveal that it was anchored on its receipt of the PCL issued by the BIR, which V.Y. Domingo mistakenly treated as a denial of its motion for reinvestigation of the PAN.[11] Before V.Y. Domingo filed its petition for review before the CTA First Division on September 16,2011, it had already received copies of Assessment Notice Nos. 32-06-IT-0242 and 32-06- VT-0243 and the Formal Letter of Demand (*FLD*) dated September 9, 2010. However, instead of challenging the contents of the said assessment notices by filing the appropriate protest or motion for reinvestigation within thirty (30) days from September 15, 2011, the date it received the copies of the notices, the CIR laments that V.Y. Domingo opted to immediately institute a petition for review on the basis of the PCL.[12] This, argues the CIR, is in clear violation of the doctrine of exhaustion of administrative remedies.

This Court, through a Resolution[13] dated March 7, 2016, required respondent V.Y. Domingo to comment on the Petition for Review.

In its Comment,[14] V.Y. Domingo contends that contrary to the CIR's allegation, the CTA has jurisdiction to take cognizance of its Petition for Review. Citing Section 7 of R.A. No. 1125, as amended, V.Y. Domingo suggests that the CIR may have disregarded the fact that the jurisdiction of the CTA is not limited to review of decisions of the CIR. in cases involving disputed assessments only, but also includes "other matters arising under

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[11] *Id.* at 23.

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

[13] *Id.* at 116.

[14] *Id.* at 117-149.

the National Internal Revenue or other laws administered by the Bureau of Internal Revenue."[15] V.Y. Domingo reiterates that its case does not involve an appeal from a decision of the CIR on a disputed assessment since in the first place, there is no "disputed" assessment to speak of.[16]

Furthermore, V.Y. Domingo also claims that the tenor of the PCL forecloses any opportunity for it to file its administrative protest as a reading of the same will show that the CIR had already decided to deny any protest as regards the assessment made against the respondent taxpayer.[17]

We rule for the petitioner.

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[18] Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, specifically provides:

SEC. 7. *Jurisdiction*. — **The CTA shall exercise:**

(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

> (1) **Decisions of 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;
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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 provides a specific

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[15] *Id.* at 122.

[16] *Id.* at 124-125.

[17] *Id.* at 125-126.

[18] *CIR V. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 146 Phil. 139, 152 (2014).

period of action, in which case the inaction shall be deemed a denial;

x x x x x x x x x.[19]

In relation thereto, Section 228 of R.A. No. 8424 or *The Tax Reform Act of 1997*, as amended, implemented by Revenue Regulations No. 12-99,[20] provides for the procedure to be followed in issuing tax assessments and in protesting the same. 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 pre-assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on 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.

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[19] Emphasis supplied.

[20] Dated September 6, 1999.

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 one hundred eighty (180)-day period; otherwise, the decision shall become final., executory and demandable.[21]

On the other hand, Section 3.1.5 of Revenue Regulations No. 12-99,[22] implementing Section 228 above, provides:

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**. . .

x x x x x x x x x

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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[21] Emphasis ours.

[22] *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*. September 6, 1999.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final executory and demandable: *Provided*, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30.) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable. (*Emphasis ours*)

It is clear from the said provisions of the law that a protesting taxpayer like V.Y. Domingo has only three options to dispute an assessment:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest;

2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest;

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.[23]

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[23] *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue, et al.*, 119 Phil. 547, 558 (2016).

In this case, records show that on August 11, 2011, V.Y. Domingo received the PCL issued by petitioner CIR informing it of Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010. On September 12, 2011, the former sent a letter request to the BIR requesting for certified true copies of the said Assessment Notices.

However, instead of filing an administrative protest against the assessment notice within thirty (30) days from its receipt of the requested copies of the Assessment Notices on September 15, 2011, V.Y. Domingo elected to file its petition for review before the CTA First Division on September 16, 2011, ratiocinating that the issuance of the PCL and the alleged finality of the terms used for demanding payment therein proved that its Request for Re-evaluation/Re-investigation and Reconsideration had been denied by the CIR.

That V.Y. Domingo believed that the PCL "undeniably shows" the intention of the CIR to make it as its final "decision" did not give it cause of action to disregard the procedure set forth by the law in protesting tax assessments and act prematurely by filing a petition for review before the courts. The word "decisions" in the aforementioned provision of R.A. No. 9282 has been interpreted to mean the decisions of the CIR on the protest of the taxpayer against the assessments.[24] Definitely, said word does not signify the assessment itself.[25] Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the CTA only upon receipt of the decision of the Collector on the disputed assessment.[26]

Admitting for the sake of argument the claim of V.Y. Domingo in its Comment — that its case does not involve an appeal from

[24] *Allied Banking Corporation v. Commissioner of Internal Revenue*, 625 Phil. 530, 538 (2010).

[25] *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*, 683 Phil. 430, 440 (2012).

[26] *Id.*

a decision of the CIR on a disputed assessment since in the first place, there is no disputed assessment to speak of — admits the veracity of petitioner CIR's claim: there being no disputed assessment to speak of when V.Y. Domingo filed its petition for review before the CTA First Division, the latter had no jurisdiction to entertain the same. Thus, the latter's dismissal of the petition for review was proper.

Evidently, V.Y. Domingo's immediate recourse to the CTA First Division was in violation of the doctrine of exhaustion of administrative remedies.

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her.[27] 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.[28] Exhaustion of administrative remedies is required prior to resort to the CTA precisely to give the Commissioner the opportunity to "re-examine its findings and conclusions" and to decide the issues raised within her competence.[29]

V.Y. Domingo posits that its case is an exception to the rule on exhaustion of administrative remedies and the rule on primary jurisdiction as it cannot be expected to be able to file an administrative protest to the Assessment Notices which it never received.[30] It expressly admitted that it did not file an administrative protest, based on its alleged non-receipt of the same.[31] Citing the case of *Allied Banking Corporation v. CIR*,[32]

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[27] *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, 645 Phil. 324, 331 (2010).

[28] *CIR v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3 2018.

[29] *Id.*

[30] *Rollo*, p. 125.

[31] *Id.* at 124.

[32] *Supra* note 24, at 541 -542.

wherein this Court ruled that the filing of therein petitioner of a petition.for review with the CTA without first contesting the FAN issued against it was an exception to the rule on exhaustion of administrative remedies, V.Y. Domingo maintains that in its case, the CIR was similarly estopped from claiming that the filing of the petition for review was premature.

However, as previously mentioned, the records of the case show that V.Y. Domingo did receive the certified true copies of the Assessment Notices it requested on September 15, 2011, the day before it filed its petition for review before the CTA First Division. V.Y. Domingo cannot now assert that its recourse to the court was based on its non-receipt of the Assessment Notices that it requested.

Likewise, this Court cannot apply the ruling in *Allied Banking Corporation v. CIR*,[33] wherein the demand letter sent by the CIR was worded as follows:

> It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal the final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable.[34]

The ruling of this Court in the said case was grounded on the language used and the tenor of the demand letter, which indicate that it was the final decision of the CIR on the matter. The words used, specifically the words "final decision" and "appeal," taken together led therein petitioner to believe that the Formal Letter of Demand with Assessment Notices was, in fact, the final decision of the CIR on the letter-protest it filed and that the available remedy was to appeal the same to the CTA.[35]

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[33] *Allied Banking Corporation v. CIR, supra* note 24.

[34] *Id.* at 535.

[35] *Id.* at 544.

Comparing the wording of the above-quoted demand letter with that sent by the CIR to V.Y. Domingo in the instant case, it becomes apparent that the latter's invocation of the ruling in the *Allied Banking Corporation* case in misguided as the foregoing statements and terms are not present in the subject PCL dated August 10, 2011.

What is evident in the instant case is that Assessment Notice Nos. 32-06-IT-0242 and 32-06-VT-0243 dated November 18, 2010 have not been disputed by V.Y. Domingo at the administrative level without any valid basis therefor, in violation of the doctrine of exhaustion of administrative remedies. To reiterate, what is appealable to the CTA are decisions of the CIR on the protest of the taxpayer against the assessments. There being no protest ruling by the CIR when V.Y. Domingo's petition for review was filed, the dismissal of the same by the CTA First Division was proper. As correctly put by Associate Justice Roman G. Del Rosario in his Dissenting Opinion, "(C)learly, petitioner did not exhaust the administrative remedy provided under Section 228 of the MRC of 1997, as amended, and RR No. 12-99 which is fatal to its cause. Consequently, the non-filing of the protest against the FLD let to the finality of the assessment."[36]

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition for review on *certiorari*. The assailed July 1, 2015 Decision and December 3, 2015 Resolution of the Court of Tax Appeals *En Banc* are hereby **REVERSED** and **SET ASIDE**, and the January 29, 2014 and April 23, 2014 Resolutions of the First Division of the Court of Tax Appeals are **REINSTATED**

SO ORDERED.

Reyes, Jr., A., Hernando, and *Carandang,*[*] *JJ.*, concur.

Leonen, J., on wellness leave.

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[36] *Rollo*, p. 54.

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

contempt case. Contempt of court has been defined as a **willful** disregard or disobedience of a public authority. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[30] Here, petitioner failed to show any circumstance which would lead the Court to believe that MERALCO willfully refused to turn over the remaining 3,366,800 shares.

Considering that condemnation for contempt should not be made lightly, and that the power to punish contempt should be exercised on the preservative and not on the vindictive principle, the Court finds that the e was no willful disregard or defiance of its Decision in *LBP v. Suntay*.

WHEREFORE, the petition for indirect contempt is **DISMISSED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Lazaro-Javier, JJ.*, concur.

FIRST DIVISION

[G.R. No. 222187. March 25, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SIEGFREDO OBIAS, JR., Y ARROYO a.k.a. "BOBOY",** *accused-appellant.*

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[30] *Lorenzo Shipping Corp. v. Distribution Management Association of the Philippines*, 672 Phil. 1, 16 (2011).

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; SEARCH WARRANT; TO BE REASONABLE AND VALID, THE SEARCH MUST BE WITNESSED PRIMARILY BY THE LAWFUL OCCUPANT OF THE PLACE OR ANY MEMBER OF HIS FAMILY OR IN THEIR ABSENCE, BY TWO WITNESSES OF SUFFICIENT AGE AND DISCRETION RESIDING IN THE PLACE SEARCHED.—** It is well settled that no arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority. Enshrined in our fundamental law is the rule that "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." As a safeguard from unreasonable searches and seizures, Section 3(2), Article III of the Constitution provides that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." Thus, the Constitution does not prohibit all searches and seizures but only those which are "unreasonable". However, it must be emphasized that a search warrant validly and lawfully issued by a competent authority does not provide unbridled freedom to the peace officer in the manner of implementing the same. Thus, to be reasonable and valid, the search must be witnessed primarily by the lawful occupant of the place or any member of his family. It is only in their absence, that two witnesses of sufficient age and discretion and who are residents of the place searched, may be witnesses to the search. The order of preference cannot be disregarded, interchanged or intercalated.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS AND ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; THE FINDING OF ILLICIT DRUGS AND**

PARAPHERNALIA IN A HOUSE OR BUILDING OWNED OR OCCUPIED BY A PARTICULAR PERSON RAISES THE PRESUMPTION OF KNOWLEDGE AND POSSESSION THEREOF WHICH, STANDING ALONE, IS SUFFICIENT TO CONVICT.— It remains unrefuted that, at the time of the search, appellant was the owner and possessor of the rest house based on established facts and evidence. As owner of the cock farm and the rest house, appellant clearly had full control and dominion over all the rooms located therein, including the bedroom where the thing seized were located. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it [was] found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located is shared with another. "The finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict." In the present case, appellant failed to rebut by sufficient evidence that he did not in fact exercise power and control over the place searched and the items seized and that he did not intend to do so. Appellant also failed to adduce evidence that he was authorized by law to possess the same.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONY OF WITNESSES, WHEN REFERRING ONLY TO MINOR DETAILS AND COLLATERAL MATTERS, DO NOT AFFECT EITHER THE SUBSTANCE OF THEIR DECLARATION, THEIR VERACITY OR THE WEIGHT OF THEIR TESTIMONY.— The inconsistencies alluded to by appellant particularly the exact time when the sachet of *shabu* (item MBL-A-30) was found; whether it was the outlying premises or the kitchen that was first searched; and, whether the DOJ and media representatives were already present at the start of the search—refer only to minor details that are even

irrelevant to the elements of the crimes. "[T]he rule is that, inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect either the substance of their declaration, their veracity or the weight of their testimony." Besides, "witnesses are not expected to remember every single detail of an incident with perfect or total recall."

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— The elements of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 are: "(1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused.

5. ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; ELEMENTS.— [T]he elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law."

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING UPON THE SUPREME COURT, SAVE ONLY FOR CERTAIN COMPELLING REASONS.— "[F]indings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court, save only for certain compelling reasons." We find no cogent reason herein not to adopt and affirm the findings and conclusion of the courts below.

PERALTA, *J.*, *concurring opinion*:

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY; THE INDETERMINATE SENTENCE LAW

SHOULD APPLY IF THE IMPOSABLE PENALTY CONSISTS OF A RANGE OF TWENTY YEARS AND ONE DAY TO LIFE IMPRISONMENT; CASE AT BAR.— The imposable penalty for the offense under Section 11(2), R.A. No. 9165, for which the accused-appellant was convicted, is Twenty (20) years and One (1) day to life imprisonment, a penalty not provided for in the Revised Penal Code (*RPC*) because R.A. No. 9165 is a *malum prohibitum*. Hence, the principles of graduation of penalties under Article 61 of the RPC, penalties consisting of several periods and computation of penalties under Articles 63 and 64 of the RPC may not be applicable. Nevertheless, the provisions of the Indeterminate Sentence Law should still apply if the penalty consists of a range, like in this particular case, as provided for under the second sentence of Section 1 of Act No. 4103, as amended by R.A. No, 4203 and R.A. No. 4225 x x x. [I]f the imposable penalty consists of a range of twenty (20) years and one (1) day to life imprisonment, like in this case, the Court should impose a minimum term not less than the minimum of the penalty, which is twenty (20) years and one (1) day, and a maximum term not higher than life imprisonment. Thus, imposing an indeterminate sentence of 20 years and 1 day, as minimum, to life imprisonment, as maximum, would appear to be compliant with the x x x [above] provision. However, by imposing such an indeterminate sentence, the accused, after serving the minimum term of 20 years and 1 day, will not be entitled to be released on parole because he will still serve the maximum term of life imprisonment. Besides, if the penalty of life imprisonment is imposed, the Indeterminate Sentence Law is no longer applicable because Section 2 of Act No. 4103, as amended, expressly provides that it shall not apply to persons convicted of offenses punished with life imprisonment x x x. Imposing a maximum term of life imprisonment upon the accused will not be consistent with the objectives of the Indeterminate Sentence Law x x x. It will not be good for the person who may have already been reformed and rehabilitated while serving sentence in a correctional institution and deprived of the benefits of the Indeterminate Sentence Law. x x x [T]he *ponencia* correctly imposed a minimum term of not less than twenty (20) years and one (1) day, and a maximum term not higher than life imprisonment, like thirty (30) years of imprisonment for illegal possession of dangerous drugs under Section 11(2) of

> R.A. No. 9165. This will give effect to the very purpose of the Indeterminate Sentence Law because when the penalty of life imprisonment is no longer imposed as a maximum term, then the accused, after serving 20 years or even less, taking into account his good conduct time allowance, may be already released on parole, subject to Section 6 of said law x x x. It is only when the illegal possession under Section 11, R.A. No. 9165 is committed in the presence of two or more persons or in a social gathering that the maximum penalty of life imprisonment may be imposed pursuant to Section 13, R.A. No. 9165. It is only then that the Indeterminate Sentence Law is no longer applicable.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Gabriel & Mendoza Law Offices for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the March 9, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 34933 affirming the September 26, 2011 Judgment[2] of the Regional Trial Court (RTC) of Naga City, Branch 27, in Criminal Case Nos. RTC 2008-0341 and RTC 2008-0342, finding Siegfredo Obias, Jr. *y* Arroyo a.k.a. "Boboy" (appellant) guilty beyond reasonable doubt of violation of Sections 11 (Illegal Possession of Dangerous Drugs) and 12 (Illegal Possession of Drug Paraphernalia), Article II of Republic Act (RA) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy.

[2] Records, dim. Case No. RTC 2008-0342, pp. 634-648; penned by Judge Leo L. Intia.

The prosecution evidence as synthesized by the CA is, as follows -

From the prosecution's evidence, it is gathered that elements of the National Bureau of Investigation (NBI) Legaspi District Office had conducted surveillance and test buy operations on a certain Boboy Obias who was dealing with *shabu*, a prohibited drug, at his rest house and cock farm situated at Diamond Street, Villa Grande Homes Subdivision, Concepcion Grande, Naga City. Pursuant thereto, the NBI applied for and secured Search Warrant Nos. 2008-021 and 2008-022 dated 11 September 2008 from Executive Judge Jaime E. Contreras to search the above-described premises and seize any *shabu* as well as drug paraphernalia such as aluminum foils, water pipes, lighters with fluid, burner with acetone and tanita weighing scale that may be found thereat.

At around 9:30 P.M. of 13 September 2008, with assistance from the Philippine National Police (PNP), and the Philippine Drug Enforcement Agency (PDEA), NBI agents led by Special Investigator III Felipe Jessie Jimenez, Jr. proceeded to the said address to serve the two (2) Search Warrants against Boboy Obias, the accused-appellant. The team invited Barangay Chairman Elmer Baldemoro and some barangay tanods of Concepcion Grande, media reporters from ABS-CBN Naga City, GMA 7 Network and Weekly Digest, and Assistant City Prosecutors Joveliza P. Soriano and Cyril Manzano. The team first secured the perimeter area and compound subject of the search warrants and thereafter served the same on accused-appellant.

All persons inside the premises were gathered in the receiving area of the rest house, while the search party (consisting of Special Investigator III Felipe Jessie S. Jimenez, Jr., Barangay Chairman [Baldemoro], PDEA agent Christopher Viana, media representatives, ACP Soriano, and other NBI agents) brought along accused-appellant during the conduct of the search. In the course of the search, they found several plastic sachets of white crystalline substance as well as assorted drug paraphernalia in certain portions of the subject premises, *viz.*: inside a bedroom in the elevated portion, inside a makeshift bedroom located under the house ("sirong"), inside the kitchen, and several particles of white crystalline substance on the grass near the cock shelter. The search was videotaped and photographed by Special Investigator III Edwin E. Romano as well as by the media personnel. Sometime later, after the light switch

was located, another search was conducted in the kitchen area where they found hidden under a stove a cigarette pack colored green and the contents thereof were later marked as 'MBL-ITEM A-30' and series.

Thereafter, the seized items were photographed, sealed in plastic, and then marked by Special Investigator IV Manuel Mario B. Lanoza with his initials 'MBL' in the presence of accused-appellant and other members of the search party. Special Investigator III Rowan Victor M. Estrellano prepared the Inventory Sheets of the seized items which were signed by Barangay Chairman Baldemoro, the three (3) media representatives and by ACP Soriano as representative of the Department of Justice. However, accused-appellant refused to sign the said inventory sheets; neither did he acknowledge receipt of a copy of the search warrants against him.

The NBI submitted a return to the issuing court, presenting accused-appellant and the seized items from his rest house and cock farm. The items were then withdrawn for the purpose of chemical examination at the crime laboratory. Upon receipt of the specimens at 10:00 A.M. of 14 September 2008, Forensic Chemist P/Insp. Edsel Villalobos of the PNP Camarines Sur Provincial Crime Laboratory Office examined the submitted specimens and then issued Chemistry Report D-44-2008 certifying that the white crystalline substances proved positive for the dangerous drug methamphetamine hydrochloride or *shabu*.[3]

Thus, in two Informations filed before the RTC of Naga City, appellant was separately charged with violation of Sections 11 and 12, Article II of RA 9165 by committing the following acts:

Criminal Case No. RTC 2008-0341

x x x x x x x x x

That on or about September 13, 2008, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law did, then and there, wilfully, unlawfully and criminally have in his possession, custody and control the following instruments or paraphernalia, to wit:

[3] *Rollo*, pp. 6-8.

1) One (1) pc. Leather case with Two Thousand (₱2,000.00) pesos marked as MBL ITEM A-3;

2) One (1) sachet with two (2) canister and box of cigarette mini-filter MBL ITEM A-4;

3) One (1) roll Aluminum Foil marked as MBL ITEM A-5;

4) One (1) Plastic sachet with 'Shabu tooter' and black pen case [marked as] MBL ITEM A-6;

5) One (1) plastic sachet with scissors and one (1) pc. Lighter marked as MBL ITEM A-7;

6) One (1) roll 'Shurtape' Aluminum Foil Wrap marked as MBL ITEM A-9;

7) One (1) plastic casing light green with 'shabu tooter' and several pieces of batteries pen type marked as MBL ITEM A-10;

8) One (1) plastic sachet with eleven pieces of .45 caliber bullets reload type with several rubber bands marked as MBL ITEM A-11;

9) One (1) white envelope marked MBL ITEM A-12;

10) One (1) piece TANETA M-1479V portable weighing scale marked MBL ITEM A-13;

11) One (1) roll aluminum foil marked MBL ITEM A-14;

[12] One (1) Plastic sachet of suspected "Shabu" ([Methaniphetamine] Hydrochloride) marked as MBL ITEM A-15;]

[13] One (1) Plastic sachet of suspected "Shabu" ([Methamphetamine] Hydrochloride) marked as MBL ITEM A-16;

[14] One (1) Plastic Sachet of suspected "Shabu" ([Methamphetamine] Hydrochloride) marked as MBL ITEM A-17;

[15] One (1) black plastic case with shabu tooter and used aluminum foil marked as MBL ITEM A-18;

[16] One (1) sachet with plastic lighter;

[17] Three (3) pieces lighters marked as MBL ITEM A-22;

[18] One (1) orange plastic bag with several pieces of used aluminum foils with suspected traces of 'Shabu' ([Methamphetamine] Hydrochloride) marked as RVME-1;

[19] Eighteen (18) pieces of lighters (shabu paraphernalia) marked as MBL-ITEMA-23;

[20] One (1) plastic bag pink with used aluminum foils with suspected traces of 'Shabu' ([Methamphetamine] Hydrochloride) marked as MBL ITEM A-24;

[21] One (1) plastic sachet with white lighter and suspected 'Marijuana' marked as MBL ITEM A-25;

[22] One (1) bag of small plastic sachets marked as MBL ITEM A-26;

[23] One (1) plastic bag white containing three (3) pieces of improvised paper pipes, two (2) burner [sic], Two (2) lighters, one (1) empty vial, one (1) piece glass tooter, small sachet with suspected "Shabu" ([Methamphetamine] Hydrochloride), scissors, one (1) [yellow] lighter, used aluminum foils marked as MBL ITEM A-27;

[24] [One] (1) green plastic bag with several used aluminum foils, one (1) roll aluminum foil, several empty plastic sachets marked as MBL ITEM A-28;

[25] One (1) plastic sachet with paper tooter and used aluminum foils marked as MBL ITEM A-29;

[26] One (1) Plastic sachet of suspected "Shabu" ([Methamphetamine] Hydrochloride) marked as MBL ITEM A-30; and

which are intended for consuming methamphetamine hydrochloride, a dangerous drug, in violation of the above-cited law.

ACTS CONTRARY TO LAW.[4]

Criminal Case No. RTC 2008-0342

x x x x x x x x x

[4] Records, Crim. Case No. RTC 2008-0341, pp. 2-3.

That on or about September 13, 2008, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then and there, wilfully, unlawfully and criminally have in his possession, custody and control seven (7) pcs. of Heat sealed transparent plastic sachet containing white crystalline substance found to be Methamphetamine Hydrochloride popularly known as *shabu*, with the following respective markings and weights: 'MBL ITEM A' - 0.23 grams, 'MBL ITEM A-T-0.43 grams, 'MBL ITEM A-15'-0.52 grams, 'MBL ITEM A-16'-0.82 grams, 'MBL ITEM A-17'-0.02 grams, 'MBL ITEM A-30-A-6-1' -4.58 grams, and 'MBL ITEM A-20'-.04 grams (A-7-1)& 0.05 grams (A-7-2), with a total weight of 6.69 grams,[5] which is a dangerous drug, in violation of the above-cited law

ACTS CONTRARY TO LAW.[6]

Appellant pleaded not guilty when arraigned. He vehemently denied the accusations against him claiming that the *shabu* and drug paraphernalia were found inside the rooms which were occupied by his two employees, Boyet and Tabor Alejandria, who were cock breeders/trainers. He averred that he just arrived at the rest house when the search party suddenly entered the compound and fired their guns. He disputed that *shabu* was found inside the kitchen since he and his companions were herded at the receiving area of the house during the search.[7]

Ruling of the Regional Trial Court

The RTC, in its Judgment of September 26, 2011, convicted the appellant of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia, *viz.*:

WHEREFORE, considering that the prosecution successfully proved the guilt of the accused in these two cases beyond reasonable doubt, the accused is hereby CONVICTED, and sentenced to:

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[5] Total weight after weighing done in open court is 5.921 grams; Minutes of Proceedings on October 24, 2008.

[6] Records, Crim. Case No. RTC 2008-0342, p. 1.

[7] See CA Decision, *rollo*, p. 8.

1) In Crim. Case No. RTC 2008-0342, for Violation of Sec [2], Art. II, R.A. 9165 (Illegal Possession of Dangerous Drugs): suffer imprisonment for Twenty Years (20) and One (1) Day as minimum to Thirty Years (30) as maximum, and to pay fine in the amount of Pesos: Four Hundred Thousand (₱400,000.00).

2) In Crim. Case No. RTC 2008-0341, for Violation of Sec. 12, Art. II, of R.A. 9165 (Illegal Possession of Drug Paraphernalia): suffer imprisonment for Six Months and One Day as minimum to Two Years as maximum, in accordance with the Indeterminate Sentence Law and pay fine in the amount of Pesos: Ten Thousand (₱10,000.00).

The subject dangerous drugs and paraphernalia are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law. The Philippine Drug Enforcement Agency/ National Bureau of Investigation are directed to take the necessary steps for the disposal of these items, in accordance with law.

SO ORDERED.[8]

Appellant appealed his conviction to the CA.

Ruling of the Court of Appeals

The CA affirmed the RTC's ruling in its March 9, 2015 Decision.

The CA ruled that the conduct of the search was made in accordance with the procedure provided in Section 8 of Rule 126 of the Rules of Court. All the prosecution witnesses attested that appellant personally witnessed the search. It held that being the owner of the cock farm and the rest house, appellant clearly had full control and dominion over the place where the seized items were recovered.

The CA further added that the NBI had adopted lawful means and methods in the implementation of the search warrants and there was faithful observance of the chain of custody requirement under RA 9165.

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[8] Records, Crim. Case No. RTC 2008-0342, pp. 647-648.

Ruling of the Court

The Court finds no merit in the appeal.

It is well settled that no arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority. Enshrined in our fundamental law is the rule that "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."[9] As a safeguard from unreasonable searches and seizures, Section 3(2), Article III of the Constitution provides that "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." Thus, the Constitution does not prohibit all searches and seizures but only those which are "unreasonable".[10]

However, it must be emphasized that a search warrant validly and lawfully issued by a competent authority does not provide unbridled freedom to the peace officer in the manner of implementing the same. Section 8, Rule 126 of the Rules of Court cautions that:

> Section. 8. Search of house, room or any other premises to be made in presence of two witnesses - No search of a house, room or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Thus, to be reasonable and valid, the search must be witnessed primarily by the lawful occupant of the place or any member of his family. It is only in their absence, that two witnesses of

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[9] Constitution, Article III, Section 2.

[10] *Polio v. Chairperson Constantino-David*, 675 Phil. 225, 248 (2011).

sufficient age and discretion and who are residents of the place searched, may be witnesses to the search. The order of preference cannot be disregarded, interchanged or intercalated.

In his final bid for reversal of his conviction, appellant contends that the search was illegally and irregularly conducted and violative of his constitutional rights. Appellant argues that the members of the raiding team were freely roaming around the house and the surrounding yard, unaccompanied by any of the required witnesses, in violation of the spirit and letter of the law, as enunciated in *Quintero v. National Bureau of Investigation*,[11] Moreover, he asserts that the search was conducted without his presence since he was forced to stay inside the receiving area.

Appellant's arguments fail to persuade.

Indeed, some members of the raiding team were roaming around the house and its surroundings. However, appellant failed to present any evidence that, in so doing, they were searching for incriminating evidence. The evidence showed that they were patrolling the area in order to secure the same against possible escape of the persons earlier rounded up. It must be noted that the actual search did not commence until after the arrival of *Barangay* Captain Baldemoro, the media representatives and Assistant City Prosecutor Joveliza P. Soriano.

That said, appellant's averment that the search was not made in his presence has no basis; besides, it cannot prevail and overturn the positive, straightforward and consistent testimonies of the prosecution witnesses that the search was done in the presence of the appellant himself. In fact, appellant himself admitted that he accompanied the search team throughout the conduct of the search. As aptly observed by the CA:

> x x x All the prosecution witnesses have consistently attested that accused-appellant personally witnessed the search considering that he was brought along by the search party as they conducted the search of the rest house and the cock farm. This is, in fact, confirmed implicitly

[11] 245 Phil. 414 (1988).

by accused-appellant himself who testified that he 'was forced' to go with the team. More revealing is the fact that his personal presence was proven by the photographs and video footages taken during the search.[12]

Next, appellant disclaims ownership of the place searched. He alleged that the seized illegal items were found not in his actual possession but inside the bedroom of the rest house occupied by Boyet and Tabor Alejandria.

This contention is untenable, self-serving and unsubstantiated.

It remains unrefuted that, at the time of the search, appellant was the owner and possessor of the rest house based on established facts and evidence. As owner of the cock farm and the rest house, appellant clearly had full control and dominion over all the rooms located therein, including the bedroom where the thing seized were located. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it [was] found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located is shared with another.[13]

"The finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict."[14] In the present case, appellant failed to rebut by sufficient evidence that he did not in fact exercise power and control over the place searched and the items seized and that he did not intend to do so. Appellant

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[12] *Rollo*, pp. 9-10.

[13] *People v. De la Trinidad*, 742 Phil. 347, 357-358 (2014).

[14] *People v. Logman*, 593 Phil. 617, 625-626 (2008).

also failed to adduce evidence that he was authorized by law to possess the same.

Appellant did not make much of an issue the post custody of the seized illegal drugs and paraphernalia, particularly any deviation from the directive outlined in Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165. In fact, the admissibility of the seized items under this section was not contested to by him during trial. This is as it should be since the Court, like the CA, is convinced that the integrity and evidentiary value of the seized items had been preserved under the chain of custody rule. The mandatory requirement of the presence of representatives from the media and the Department of Justice (DOJ) and any elected public official during the physical inventory and photography was complied with as evidenced by their signatures on the Inventory of Seized Property and the video footages taken during the inventory.

The inconsistencies alluded to by appellant particularly the exact time when the sachet of *shabu* (item MBL-A-30) was found; whether it was the outlying premises or the kitchen that was first searched; and, whether the DOJ and media representatives were already present at the start of the search- refer only to minor details that are even irrelevant to the elements of the crimes. "[T]he rule is that, inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect either the substance of their declaration, their veracity or the weight of their testimony."[15] Besides, "witnesses are not expected to remember every single detail of an incident with perfect or total recall."[16]

The elements of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 are: "(1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused. On the other hand, the elements of illegal possession of equipment,

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[15] *People v. Fang*, 739 Phil. 565, 576 (2014).

[16] *People v. Dimaano*, 780 Phil. 586, 609 (2016).

instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law."[17]

As found by the courts below, the evidence for the prosecution showed the presence of all these elements. "[F]indings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court, save only for certain compelling reasons."[18] We find no cogent reason herein not to adopt and affirm the findings and conclusion of the courts below.

Section 12, Article II of RA 9165 provides that the penalty for illegal possession of dangerous drug paraphernalia be imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from ₱10,000.00 to ₱50,000.00. Hence, the indeterminate penalty of imprisonment, ranging from six (6) months and one (1) day, as minimum, to two (2) years, as maximum and a fine of ₱10,000.00 was correctly imposed by the RTC and affirmed by the CA in Criminal Case No. 2008-0341.

Section 11, Article II of RA 9165 provides that the penalty for illegal possession of dangerous drugs is imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of x x x methamphetamine hydrochloride or "*shabu*".

Since appellant was found to have been in illegal possession of 5.921 grams of *shabu*, appellant should have been meted the penalty of imprisonment ranging from twenty (20) years and one (1) day to life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00. As such, the penalty of twenty

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[17] *Zalameda v. People*, 614 Phil. 710, 727 (2009).

[18] *People v. Clarite*, 682 Phil. 289, 296 (2012).

(20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and a fine of P400,000.00, imposed by the trial court and affirmed by the CA, is proper. As expounded by J. Peralta in his Concurring Opinion, "any period in excess of twenty [20] years [and one (1) day] is within the range of the penalty."

WHEREFORE, in light of all the foregoing, we **DISMISS** the appeal and **AFFIRM** the March 9, 2015 Decision of the Court of Appeals in CA-G.R. CR No. 34933.

SO ORDERED.

Bersamin, C. J., Gesmundo, and *Carandang, JJ.*, concur.

Peralta,* *J.*, see concurring opinion.

CONCURRING OPINION

PERALTA, *J.*:

I fully concur with the *ponencia* in dismissing the appeal and affirming the Court of Appeals Decision dated March 9, 2015, finding the accused-appellant Siegfredo Obias, Jr. y Arroyo guilty of violation of Sections 11 and 12 of Republic Act (R.A.) No. 9165 for illegal possession of dangerous drugs with a total weight of 6.69 grams, and illegal possession of drug paraphernalia, respectively. I also agree with the *ponencia* in affirming the penalties imposed for the said offenses: for illegal possession of dangerous drugs - twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and to pay a fine of ₱400,000.00; and for illegal possession of drug paraphernalia - six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and to pay a fine of ₱10,000.00

However, I will elaborate on the proper application of the Indeterminate Sentence Law where the imposable penalty for

* Designated additional member per Raffle dated October 3, 2018.

illegal possession of dangerous drugs under Section 11(2)[1] of R.A. No. 9165 is twenty (20) years and one (1) day to life imprisonment.

The imposable penalty for the offense under Section 11(2), R.A. No. 9165, for which the accused-appellant was convicted, is Twenty (20) years and One (1) day to life imprisonment, a penalty not provided for in the Revised Penal Code (*RPC*) because R.A. No. 9165 is a *malum prohibitum*. Hence, the principles of graduation of penalties under Article 61[2] of the RPC, penalties

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[1] Section 11. *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) 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

(2) Imprisonment of **twenty (20) years and one (1) day to life imprisonment** and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; x x x. (Emphasis added)

[2] Art. 61. *Rules for graduating penalties.* — For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degrees shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be impose to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

consisting of several periods and computation of penalties under Articles 63[3] and 64[4] of the RPC may not be applicable.

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3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.

4. when the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.

5. When the law prescribes a penalty for a crime in some manner not especially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories

[3] Art. 63. *Rules for the application of indivisible penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[4] Art. 64. *Rules for the application of penalties which contain three periods*. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different

Nevertheless, the provisions of the Indeterminate Sentence Law[5] should still apply if the penalty consists of a range, like in this particular case, as provided for under the second sentence of Section 1 of Act No. 4103, as amended by R.A. No, 4203 and R.A. No. 4225, which is hereto highlighted:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said

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penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

2. When only a mitigating circumstances is present in the commission of the act, they shall impose the penalty in its minimum period.

3. When an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

7. Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater and lesser extent of the evil produced by the crime.

[5] *AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES. ACT NO. 4103 (As Amended by Act No. 4225 and R.A. No. 4203 [June 19, 1965].*

Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and **if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same**. (Emphasis added)

From the highlighted portion, it is clear that if the imposable penalty consists of a range of twenty (20) years and one.(l) day to life imprisonment, like in this case, the Court should impose a minimum term not less than the minimum of the penalty, which is twenty (20) years and one (1) day, and a maximum term not higher than life imprisonment. Thus, imposing an indeterminate sentence of 20 years and 1 day, as minimum, to life imprisonment, as maximum, would appear to be compliant with the above-quoted provision.

However, by imposing such an indeterminate sentence, the accused, after serving the minimum term of 20 years and 1 day, will not be entitled to be released on parole because he will still serve the maximum term of life imprisonment. Besides, if the penalty of life imprisonment is imposed, the Indeterminate Sentence Law is no longer applicable because Section 2 of Act No. 4103, as amended, expressly provides that it shall not apply to persons convicted of offenses punished with life imprisonment:

Sec. 2. **This Act shall not apply to persons convicted of offenses punished with** death penalty or **life-imprisonment**; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (Emphasis added)

Imposing a maximum term of life imprisonment upon the accused will not be consistent with the objectives of the Indeterminate Sentence Law which is "to uplift and redeem

valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness"[6] of the accused since he/she may be exempted from serving the entire sentence, depending upon his/her behavior and his/her physical, mental, and moral record.[7]

It will not be good for the person who may have already been reformed and rehabilitated while serving sentence in a correctional institution and deprived of the benefits of the Indeterminate Sentence Law. That is why in *Argoncillo v. Court of Appeals*,[8] where the penalty for violation of P.D. 704[9] is 20 years to life imprisonment, the Court imposed a penalty of 20 years to 25 years because any period in excess of 20 years is within the range of the penalty. This penalty has a legal basis because under the second sentence of Section 1 of Act No. 4103, as highlighted above, the minimum term (20 years) is not less than the minimum penalty provided for by law, and the maximum term (25 years) is not higher than the maximum penalty of life imprisonment, and the penalty imposed is within the range of the penalty provided for by law. In accordance with the doctrine laid down in *Argoncillo v. Court of Appeals* and the above-cited provisions of law, the *ponencia*correctly imposed a minimum term of not less than twenty (20) years and one (1) day, and a maximum term not higher than life imprisonment, like thirty (30) years of imprisonment for illegal possession of dangerous drugs under Section 11(2) of R.A. No. 9165.

This will give effect to the very purpose of the Indeterminate Sentence Law because when the penalty of life imprisonment is no longer imposed as a maximum term, then the accused, after serving 20 years or even less, taking into account his good

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[6] *People v. Ducosin*, 59 Phil. 109, 117 (1933), citing Message of the Governor-General, Official Gazette No. 92, Vol. XXXI, August 3, 1933.

[7] *Argoncillo v. Court of Appeals*, 354 Phil. 324, 341 (1998).

[8] *Id.*

[9] *REVISING AND CONSOLIDATING ALL LAWS AND DECREES AFFECTING FISHING AND FISHERIES*, May 16, 1974.

conduct time allowance, may be already released on parole, subject to Section 6 of said law:

> Sec. 6. Every prisoner released from confinement on parole by virtue of this Act shall, at such times and in such manner as may be required by the conditions of his parole, as may be designated by the said Board for such purpose, report personally to such government officials or other parole officers hereafter appointed by the Board of Indeterminate Sentence for a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge by the Board of Indeterminate Sentence as herein provided. The officials so designated shall keep such records and make such reports and perform such other duties hereunder as may be required by said Board. The limits of residence of such paroled prisoner during his parole may be fixed and from time to time changed by the said Board in its discretion. If during the period of surveillance such paroled prisoner shall show himself to be a law-abiding citizen and shall not violate any of the laws of the Philippine Islands, the Board of Indeterminate Sentence may issue a final certificate of release in his favor, which shall entitle him to final release and discharge.

It is only when the illegal possession under Section 11, R.A. No. 9165 is committed in the presence of two or more persons or in a social gathering that the maximum penalty of life imprisonment may be imposed pursuant to Section 13,[10] R.A. No. 9165. It is only then that the Indeterminate Sentence Law is no longer applicable.

Accordingly, for illegal possession of dangerous drugs with a weight of 6.69 grams, the indeterminate sentence of twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, was properly sustained by the *ponencia*.

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[10] Section 13. *Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings*. — Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardles

FIRST DIVISION

[G.R. No. 233544. March 25, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO GONZALES Y VITAL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE TRIAL COURT'S FINDINGS OF FACT ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL, EXCEPT WHERE FACTS OF WEIGHT AND SUBSTANCE HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED IN A CASE UNDER APPEAL.— As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts.

2. ID.; EVIDENCE; PRESUMPTIONS AND BURDEN OF PROOF; THE PRESUMPTION THAT THE REGULAR DUTY WAS PERFORMED BY THE ARRESTING OFFICER CANNOT PREVAIL OVER THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED.— We recognize that buy bust operations are susceptible to abuse. The Court has acknowledged that "*in some instances*[,] *law enforcers resort to the practice of planting evidence to extract information or even to harass civilians*." Thus, the Court must be extra vigilant in trying drugs cases. The presumption that the regular duty was performed by the arresting officer cannot prevail over the constitutional presumption of innocence of the accused. In this case, the Court is convinced that no buy bust operation occurred. The collective testimonies of the prosecution witnesses, PO3 Dizon and PO2 Yambao, failed to present a coherent narration of how the

supposed buy bust operation was conducted. This Court notes the inconsistencies in the testimonies of the prosecution witnesses, as pointed out by Alberto, which cast serious doubt on the truthfulness of their allegations.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; WHERE THE TESTIMONIES OF TWO KEY WITNESSES CANNOT STAND TOGETHER, THE INEVITABLE CONCLUSION IS THAT ONE OR BOTH MUST BE TELLING A LIE, AND THEIR STORY A MERE CONCOCTION.—** It was also noted that PO3 Dizon claimed that P/Insp. Efren David led the buy bust operation. However, his statement on the matter in the Affidavit of Arrest and his subsequent testimony revealed that P/Insp. David did not participate in the buy bust operation. To Our mind, the people who are in the best position to know what transpired during the supposed buy bust operation are PO3 Dizon and PO2 Yambao. An inconsistency as glaring and as fundamental as the identity of the officer who caught Alberto and confiscated the second sachet of *shabu* and marked money casts serious doubt on the veracity of their testimonies. Consequently, where the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction. Thus, We cannot give credence to the testimonies of PO3 Dizon and PO2 Yambao to establish the buy bust operation and the chain of custody of the seized dangerous drugs.

4. **ID.; ID.; PRESUMPTIONS AND BURDEN OF PROOF; IF THE PROSECUTION CANNOT ESTABLISH THE APPELLANT'S GUILT BEYOND REASONABLE DOUBT, THE NEED FOR THE DEFENSE TO ADDUCE EVIDENCE IN ITS BEHALF IN FACT NEVER ARISES; THE EVIDENCE FOR THE PROSECUTION MUST STAND OR FALL ON ITS OWN WEIGHT AND CANNOT BE ALLOWED TO DRAW STRENGTH FROM THE WEAKNESS OF THE DEFENSE.—** We recognize that the evidence for the defense is not strong because Alberto merely claimed that the evidence against him was planted and denied that a buy bust operation took place. His testimony was uncorroborated by any other evidence. The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act.

> Nevertheless, the apparent weakness of Alberto's defense does not add any strength nor can it help the prosecution's cause. If the prosecution cannot establish, in the first place, the appellant's guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises. However weak the defense evidence might be, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

APPEARANCES OF COUNSEL

The Solicitor General *for plaintiff-appellee.*
Public Attorney's Office *for accused-appellant.*

D E C I S I O N

CARANDANG, *J.*:

This is an appeal[1] from the February 28, 2017 Decision[2] of the Court of Appeals (CA) finding accused-appellant Alberto Gonzales y Vital (Alberto) guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of R.A. No. 9165 (Dangerous Drugs Act of 2002), the dispositive portion of which reads:

> **WHEREFORE**, the appeal is **DENIED**. The assailed Decision dated 4 August 2015 of the Regional Trial Court of Angeles City, Branch 57, in Criminal Case Nos. DC-08-1292 & 1293, is hereby **AFFIRMED**.
>
> **SO ORDERED.**[3]

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[1] *Rollo*, pp. 11-13, Notice of Appeal.

[2] Penned by Associate Justice Romeo F. Barza (now Presiding Justice of the Court of Appeals) with Presiding Justice Andres B. Reyes, Jr. (now Member of the Court) and Associate Justice Renato C. Francisco, concurring; *id*. at 2-9.

[3] *Id*. at 9.

The Antecedents

Alberto was charged with violation of Sections 5 and 11, Article II of R.A. 9165, in two (2) separate Informations[4] which respectively read as follows:

CRIMINAL CASE NO. DC 08-1292

That on or about the 19th day of June 2008, in the municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized, for and in consideration of the amount of Php200.00, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer one (1) small size transparent plastic pack containing methylamphetamine hydrochloride weighing EIGHT HUNDRED NINETY-SIX TEN THOUSANDTHS OF A GRAM (0.0896 g), more or less, a dangerous drug.

Contrary to law.[5]

CRIMINAL CASE No. DC 08-1293

That on or about the 19th day of June, 2008, in the Municipality of Mabalacat, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully, and feloniously have in his possession custody and control one (1) pc. heat-sealed transparent plastic sachet containing Methylamphetamine Hydrochloride with marking "DSD-2" with a weight of **ONE THOUSAND ONE HUNDRED TEN TEN THOUSANDTHS** (0.1110g) of a **GRAM**, a dangerous drug.

Contrary to law.[6]

According to the prosecution witnesses, on June 19, 2008, at around 8:00 p.m., a civilian informant went to the Mabalacat Police Station and reported to PO3 Dindo Dizon (PO3 Dizon) that a certain "Beto," who was later on identified as Alberto, is engaged in illegal drug trade in Barangay Camachiles,

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[4] RTC records, pp. 1-3, Information.

[5] *Id.* at 1.

[6] *Id.* at 3.

Mabalacat, Pampanga.[7] PO3 Dizon went to the house of Alberto with a confidential asset and found him standing in front of his house. They approached him and told him that they are going to buy ₱200.00 worth of *shabu*. Alberto then asked the confidential asset to whom he will give the *shabu* since PO3 Dizon was more or less three (3) meters away. Alberto then gave the *shabu* (0.0896 grams) (first sachet) to PO3 Dizon and, in exchange, the latter gave two (2) pieces of ₱100.00 bills. PO3 Dizon then introduced himself as a police officer. Alberto ran towards his house but PO2 Romeo Yambao (PO2 Yambao), a back-up member of the operation allegedly apprehended him and confiscated from him the ₱200.00 marked money from his pocket and another plastic sachet containing suspected *shabu* (0.1110 grams) (second sachet).[8] While conducting a search within the vicinity of Alberto's house, PO2 Yambao saw two (2) male individuals, later on identified as Rogelio Quiambao y Ramos (Rogelio) and Ernesto Rosales y Alejaga (Ernesto), hiding behind a door. When requested to go out, PO2 Yambao found two (2) pieces of small plastic sachet containing suspected *shabu* on the floor[9] but the charges against Rogelio and Ernesto before the prosecutor's office were allegedly dismissed.[10]

The police called the barangay captain in the area to witness the inventory and prepared the confiscation receipt[11] for the confiscated items. Alberto was then brought to the police station where PO3 Dizon marked the first sachet as "DSD-1" and the second sachet as "DSD-2." They prepared a Joint Affidavit of Arrest,[12] Confiscation Receipt,[13] request for laboratory examination,[14] and Barangay Certification[15] in the presence of

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[7] CA *rollo*, pp. 27-28.

[8] *Id*. at 28.

[9] RTC records, p. 6; TSN dated June 19, 2012, p. 9.

[10] TSN dated February 12, 2013, pp. 6-7.

[11] RTC records, p. 7.

[12] *Id*. at 6.

[13] *Id*. at 7.

Sonny Galisonda, a representative from the media who participated in the operation. Chemistry Report No. D-213-2008 confirmed that the contents of the plastic sachets confiscated from Alberto are Methamphetamine Hydrochloride or *shabu*.[16]

In his defense, Alberto claimed that at the time of the incident, he was sleeping with his second wife Janette Catacutan in their house when four (4) individuals went inside and took him out of the house while they searched his belongings. No barangay officials assisted the search of his house. After 20 minutes of searching, he was handcuffed and brought to the police station where he saw two (2) plastic sachets and two (2) pieces of ₱100.00 bill placed on a table that were later used as evidence against him.[17]

Ruling of the RTC

After trial, the RTC of Angeles City, Branch 57 rendered its Decision[18] dated August 4, 2015, the dispositive portion of which reads:

> WHEREFORE, the prosecution having established its case against the accused and having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds **ALBERTO GONZALES Y VITAL GUILTY** beyond reasonable doubt of the crimes as alleged in the two Informations and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** in **Criminal case no. DC 08-1292 for Violation of Section 5, R.A. 9165 and a fine of Php 500,000.00**.
>
> Accused **ALBERTO GONZALES Y VITAL** is also sentenced to suffer the penalty of imprisonment of **TWELVE YEARS and ONE DAY as minimum to FOURTEEN YEARS as maximum and a fine of Php 300,000.00 for Violation of Section 11, R.A. 9165 in criminal case no. DC 08-1293**.

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[14] *Id*. at 10.

[15] *Id*. at 8.

[18] *Id*. at 11.

[17] CA *rollo*, p. 49.

[18] Penned by Judge Omar T. Viola; *id*. at 45-52.

SO ORDERED.[19]

In convicting Ramon, the RTC gave credence to the testimonies of poseur buyer, PO3 Dizon, and his back-up, PO2 Yambao. The sale of the *shabu* and the marked money proved the transaction. The RTC found that Alberto made a general denial that he never committed the crime but failed to give any plausible reason why the police would plant evidence against him.[20]

On appeal,[21] Alberto impugned the findings of the RTC and raised the following errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE [ACCUSED]-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE [ACCUSED]-APPELLANT OF THE CRIMES CHARGED DESPITE THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE COURT A QUO GRAVELY ERED (sic) IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL.[22]

Alberto argued that the *corpus delicti* was not proven given the inconsistent testimonies of the prosecution witnesses and their failure to establish the continuous and unbroken chain of custody of evidence in compliance with the requisites of Section 21, R.A. No. 9165. He asserted that the integrity of the seized items was compromised because the apprehending officers did

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[19] CA *rollo*, p. 52.

[20] *Id*.

[21] *Id*. at 23-43.

[22] *Id*. at 25.

not immediately conduct marking and inventory-taking. The seized items were transported to Mabalacat Police Station despite the absence of commotion. Thus, the possibility of switching or planting of evidence is not remote.[23] He averred that the barangay coordination letter was prepared by the arresting officers and made only after the arrest just to make it appear that there was an initial coordination when in fact there was none.[24] Likewise, there was no representative from the Department of Justice (DOJ) during the inventory and no photos were taken after the arrest or, at the least, during the marking and inventory.[25]

Ruling of the CA

In a Decision[26] dated February 28, 2017, the CA denied Alberto's appeal and affirmed hip conviction. In affirming Alberto's conviction, the CA held that PO3 Dizon and PO2 Yambao's positive identification of Alberto must prevail over the latter's uncorroborated and weak defense of denial. The CA found that the unbroken chain of custody of the sachets of *shabu* seized from Alberto was established by the prosecution through the testimonies of PO3 Dizon and PO2 Yambao from the time of their confiscation and delivery to the crime laboratory for examination until their presentation in court.[27] Hence, this appeal.

Alberto filed a Notice of Appeal[28] on March 17, 2017. The Court notified the parties to file their supplemental briefs. However, appellant opted not to file a supplemental brief since he believes that he had squarely and sufficiently refuted all the arguments of the OSG in his appellant's brief.[29] For its part,

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[23] *Id*. at 32.

[24] *Id*. at 35.

[25] *Id*. at 36.

[26] *Rollo*, op. 2-9.

[27] *Id*.

[28] *Id*. at 11.

[29] CA *rollo*, p. 28.

the OSG manifested that it will not file a supplemental brief since its appellee's brief filed in the CA had already exhaustively discussed its argviments.[30]

Issue

The issue to be resolved in this case is whether the evidence of the prosecution was sufficient to convict Alberto of the alleged sale and possession of methamphetamine hydrochloride or *shabu*, in violation of Sections 5 and 11, respectively, of R.A. No. 9165.

Ruling of the Court

The appeal is meritorious.

As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[31] After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts.

We recognize that buy bust operations are susceptible to abuse. The Court has acknowledged that "*in some instances*[,] *law enforcers resort to the practice of planting evidence to extract information or even to harass civilians*."[32] Thus, the Court must be extra vigilant in trying drugs cases. The presumption that the regular duty was performed by the arresting officer cannot prevail over the constitutional presumption of innocence of the accused.[33]

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[30] *Id*. at 33.

[31] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654.

[32] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

[33] *Id*.

In this case, the Court is convinced that no buy bust operation occurred. The collective testimonies of the prosecution witnesses, PO3 Dizon and PO2 Yambao, failed to present a coherent narration of how the supposed buy bust operation was conducted. This Court notes the inconsistencies in the testimonies of the prosecution witnesses, as pointed out by Alberto, which cast serious doubt on the truthfulness of their allegations.

Contrary to the finding of the lower courts, PO2 Yambao's testimony failed to corroborate PO3 Dizon's testimony on material and substantial points. PO3 Dizon claims that PO2 Yambao acted as his back-up and was the officer who allegedly accosted Alberto and confiscated the second sachet of *shabu* and the marked money as can be seen in PO3 Dizon's direct examination quoted below:

Q **Who was able to catch him?**
A **The back up, Sir**

Q And, who is this back up
A **PO1 Romeo Yambao, Sir.**

Q How about you, Mr. Witness, when this certain "Beto" ran inside the garage of his house, what did you do?
A **I followed him to the direction where he ran but it was my companion who arrested him, Sir.**

Q How was [sic] this happened?
A **He was cornered by Officer Yambao and he was able to confiscate from him the P200.00 bills, Sir.**[34] (Emphasis supplied)

Noticeably, in PO3 Dizon's subsequent testimony almost a year after his initial direct examination, he retracted his earlier statement and claimed that it was him who apprehended Alberto without elaborating further:

Q In your direct testimony, who was able to apprehend the accused Alberto Gonzales?
A **Me, sir.**[35] [Emphasis supplied.]

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[34] TSN dated June 2, 2009, p. 5.

[35] TSN dated August 17, 2010, p. 12.

For the Court, the sudden deviation of PO3 Dizon's account of the buy bust operation from the testimony he previously gave during his extensive direct examination, without offering any explanation, makes his statements doubtful.

PO2 Yambao's testimony is in complete contrast to PO3 Dizon's initial testimony. PO2 Yambao alleged that it was PO3 Dizon who arrested Alberto, ordered the latter to remove the contents of his pocket, and confiscated the marked money and the second sachet of *shabu* as reflect the exchange quoted below:

Q How do you know that the transaction was consummated?
A I saw the hand gestures, sir.

Q What happened next?
A PO3 Dizon executed the pre-arranged signal, sir.

Q Upon seeing the pre-arranged signal, what happened next?
A I immediately went to the aid of PO3 Dizon to assist him for the arrest of the suspect, sir.

Q **Were you the one who personally arrested the suspect?**
A **No sir, it was PO3 Dizon.**

Q How far were you from PO3 Dizon when he arrested the suspect?
A I was just on his side, sir.

Q What was the result of the arrest?
A **PO3 Dizon ordered the shelling out of the contents of the pocket of the suspect and he saw the marked money, sir.**

Q **Who took those marked money?**
A **PO3 Dizon, sir.**

Q Aside from the marked money, what else was recovered from the possession of the accused?
A Plastic sachet of *shabu*, sir.

Q **Who took the plastic sachet of *shabu*?**
A **PO3 Dizon, sir.**[36] (Emphasis supplied)

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[36] TSN dated June 19, 2012, pp. 8-9.

However, these statements of PO2 Yambao negate PO3 Dizon's initial claim that it was PO2 Yambao who recovered the second sachet of *shabu* and the marked money from Alberto. Thus, PO2 Yambao's testimony failed to corroborate PO3 Dizon's testimony in establishing the *corpus delicti*.

We also find the claim of PO3 Dizon that PO2 Yambao put an initial marking of "RY", the initial of his name, on the second sachet of *shabu* difficult to believe.[37] It is unusual to put a person's initial on items not confiscated by the same person. Here, PO3 Dizon's claim is belied by the confiscation receipt he prepared himself where it was stated that the second sachet of *shabu* had the initial marking "DSD-2", signifying that it was PO3 Dizon who confiscated it.[38]

It was also noted that PO3 Dizon claimed that P/Insp. Efren David led the buy bust operation.[39] However, his statement on the matter in the Affidavit of Arrest[40] and his subsequent testimony[41] revealed that P/Insp. David did not participate in the buy bust operation.[42]

To Our mind, the people who are in the best position to know what transpired during the supposed buy bust operation are PO3 Dizon and PO2 Yambao. An inconsistency as glaring and as fundamental as the identity of the officer who caught Alberto and confiscated the second sachet of *shabu* and marked money casts serious doubt on the veracity of their testimonies. Consequently, where the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction.[43] Thus,

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[37] TSN dated June 2, 2009, p. 9.

[38] RTC records, p. 7.

[39] TSN dated August 17, 2010, p. 11.

[40] RTC records, p. 6.

[41] TSN dated February 22, 2011, p. 4.

[42] RTC records, p. 6.

[43] *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581, 600.

We cannot give credence to the testimonies of PO3 Dizon and PO2 Yambao to establish the buy bust operation and the chain of custody of the seized dangerous drugs.

We recognize that the evidence for the defense is not strong because Alberto merely claimed that the evidence against him was planted and denied that a buy bust operation took place. His testimony was uncorroborated by any other evidence. The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[44] Nevertheless, the apparent weakness of Alberto's defense does not add any strength nor can it help the prosecution's cause. If the prosecution cannot establish, in the first place, the appellant's guilt beyond reasonable doubt, the need for the defense to adduce evidence in its behalf in fact never arises. However weak the defense evidence might be, the prosecution's whole case still falls. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[45]

In view of the foregoing, We no longer deem it necessary to discuss the other issues raised by Alberto.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 4, 2015 of the Regional Trial Court of Angeles City, Branch 57, in Criminal Case Nos. DC-08-1292 and DC-08-1293, as well as the Decision of the Court of Appeals in CA-G.R. CR-HC No. 07840 dated February 28, 2017 are hereby **REVERSED** and **SET ASIDE**. Accused-appellant Alberto Gonzales y Vital is **ACQUITTED** for failure to prove his guilt beyond reasonable doubt, and is ordered to be immediately released unless he is being held for some other valid or lawful cause. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

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[44] People v. Salvador, G.R. No. 190621, February 10, 2014, 715 SCRA 617, 632.

[45] *People of the Philippines v. Salvador Sanchez y Espiritu*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 222.

SO ORDERED.

Bersamin, C. J., del Castillo, and *Gesmundo, JJ.*, concur.

Jardeleza, J., on official business.

FIRST DIVISION

[G.R. No. 234155. March 25, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO CARIÑO *Y* LEYVA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); MAINTENANCE OF DRUG DEN; ELEMENTS; IT IS NOT ENOUGH THAT THE DANGEROUS DRUG OR DRUG PARAPHERNALIA WERE FOUND IN THE PLACE, AND THAT DANGERO~~US DRUG IS BE~~ING USED THEREAT, BUT IT MUST ALSO BE CLEARLY SHOWN THAT THE ACCUSED IS THE MAINTAINER OR OPERATOR OR THE OWNER OF THE PLACE WHERE THE DANGEROUS DRUG IS USED OR SOLD.— For an accused to be convicted of maintenance of a drug den under Section 6 of R.A. No. 9165, the prosecution must establish with proof beyond reasonable doubt that the accused is "maintaining a den" where any dangerous drug is administered, used, or sold. Hence, two things must be established: (a) that the place is a den — a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; and (b) that the accused maintains the said place. It is not enough that the dangerous drug or drug paraphernalia were found in the place. More than a finding that dangerous drug is being

used thereat, it must also be clearly shown that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; "PLAIN VIEW" DOCTRINE; REQUISITES.— Objects sighted in plain view by an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he inadvertently comes across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.

3. ID.; ID.; ARREST; WARRANTLESS ARRESTS WHEN LAWFUL; ELEMENTS; A VALID WARRANTLESS ARREST UNDER THE PARAMETERS OF SECTION 5(a), RULE 113 OF THE RULES OF COURT REQUIRES THAT THE APPREHENDING OFFICER MUST HAVE BEEN SPURRED BY PROBABLE CAUSE TO ARREST A PERSON CAUGHT *IN FLAGRANTE DELICTO*.— In warrantless arrests made pursuant to Section 5(a), Rule 113, two elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer. A valid warrantless arrest under the parameters of Section 5(a), Rule 113 of the Rules of Court requires that the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the

offense with which he is charged. In this case, appellant was not doing anything beforehand when he was arrested by SPO2 Navarro. Certainly, it does not satisfy the elements of a valid warrantless arrest under Section 5(a) of Rule 113 because SPO2 Navarro had no probable cause before the arrest that appellant was committing or had just committed the crime of maintenance of a drug den. It was only after his arrest that SPO2 Navarro purportedly saw the drugs being used inside appellant's house. Again, the finding of probable cause cannot apply after the warrantless arrest had been made.

4. ID.; ID.; ID.; DOCTRINE OF THE "FRUIT OF THE POISONOUS TREE"; ONCE THE PRIMARY SOURCE IS SHOWN TO HAVE BEEN UNLAWFULLY OBTAINED, ANY SECONDARY OR DERIVATIVE EVIDENCE DERIVED FROM IT IS ALSO INADMISSIBLE; EVIDENCE ILLEGALLY OBTAINED BY THE STATE SHOULD NOT BE USED TO GAIN OTHER EVIDENCE BECAUSE THE ORIGINALLY ILLEGALLY OBTAINED EVIDENCE TAINTS ALL EVIDENCE SUBSEQUENTLY OBTAINED.— The questionable and invalid arrest thus makes the subsequent search in the house of appellant also invalid, the exclusionary rule or the doctrine of the fruit of the poisonous tree applies. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act; whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. In this case, the primary source is appellant, who was arrested illegally without probable cause. Thus, all secondary or derivative evidence drawn from the arrest of appellant is also inadmissible as evidence, including those seized from the search inside his house.

5. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); MAINTENANCE OF DRUG DEN; THE EXISTENCE OF

DRUG DEN MAY BE PROVED NOT ONLY BY DIRECT EVIDENCE BUT MAY ALSO BE ESTABLISHED BY PROOF OF FACTS AND CIRCUMSTANCES, INCLUDING EVIDENCE OF THE GENERAL REPUTATION OF THE HOUSE, OR ITS GENERAL REPUTATION AMONG POLICE OFFICERS.— [O]ne of the essential requisites of the crime, that the place maintained by the offender is a drug den, was not proven. A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence may be proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers.

6. REMEDIAL LAW; EVIDENCE; HEARSAY EVIDENCE RULE; A WITNESS MAY NOT TESTIFY ON WHAT HE HAS MERELY LEARNED, READ OR HEARD FROM OTHERS BECAUSE SUCH TESTIMONY IS CONSIDERED HEARSAY AND MAY NOT BE RECEIVED AS PROOF OF THE TRUTH OF WHAT HE HAS LEARNED, READ OR HEARD; HEARSAY EVIDENCE, WHETHER OBJECTED TO OR NOT, HAS NO PROBATIVE VALUE UNLESS THE PROPONENT CAN SHOW THAT THE EVIDENCE FALLS WITHIN THE EXCEPTIONS TO THE HEARSAY EVIDENCE RULE.— Valencia, who allegedly used drugs inside appellant's house, was never presented as a witness by the prosecution. Again, the prosecution offered no reason for the non-presentation of Valencia. It did not present any written statement or affidavit signed by Valencia. Even the nature or status of the criminal charges allegedly filed against him was not provided in court. x x x [T]he purported statement of Valencia is hearsay. It is a basic rule in evidence that a witness can testify only on the facts that are of his own personal knowledge, *i.e.,* those which are derived from his own perception. A witness may not testify on what he has merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits. The general rule is that

hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value. In this case, the CA erred in stating that SPO2 Navarro's hearsay testimony, which was not objected to by the defense, should still be given evidentiary weight. It failed to consider that hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule; which do not, however, obtain in this case.

7. ID.; ID.; ID.; A CONVICTION BASED ALONE ON PROOF THAT VIOLATES THE CONSTITUTIONAL RIGHT OF AN ACCUSED IS A NULLITY AND THE COURT THAT RENDERED IT ACTED WITHOUT JURISDICTION IN ITS RENDITION. SUCH A JUDGMENT CANNOT BE GIVEN ANY EFFECT WHATSOEVER ESPECIALLY ON THE LIBERTY OF AN INDIVIDUAL; APPELLANT CANNOT BE CONVICTED FOR THE CRIME OF MAINTENANCE OF A DRUG DEN ON THE BASIS OF A HEARSAY TESTIMONY.— [I]t must be emphasized that in criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them. A conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition. Such a judgment cannot be given any effect whatsoever especially on the liberty of an individual. Thus, the hearsay testimony of SPO2 Navarro cannot be given evidentiary value to convict appellant for the crime of maintenance of a drug den.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; PROVING THE EXISTENCE OF ALL THE ELEMENTS OF THE OFFENSE DOES NOT SUFFICE TO SUSTAIN

A CONVICTION, AS THE STATE EQUALLY BEARS THE OBLIGATION TO PROVE THE IDENTITY OF THE SEIZED DRUG, FAILING IN WHICH, THE STATE WILL NOT DISCHARGE ITS BASIC DUTY OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— In prosecutions for illegal possession of dangerous drugs, such as in this case, the *corpus delicti,* apart from the elements of the offense, must be established beyond reasonable doubt. In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. The State equally bears the obligation to prove the identity of the seized drug, failing in which, the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.

9. ID.; ID.; SECTION 21 OF R.A. No. 9165; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY DEFINED; PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS, REQUIRED WITNESSES.— Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage; from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition. x x x. [S]ec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.** Notably, Sec. 21 of R.A. No. 9165 was recently amended by R.A. No. 10640, which became effective on July 15, 2014. In the amendment, the apprehending team is now required to conduct a physical inventory of the seized items and to photograph the same **(1) in the presence**

of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof. In the present case, as the alleged crimes were committed on July 30, 2009, then the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply.

10. ID.; ID.; ID.; ID.; NON COMPLIANCE WITH THE CHAIN OF CUSTODY RULE SHALL NOT RENDER VOID AND INVALID THE SEIZURES AND CUSTODY OF THE DRUGS PROVIDED THE PROSECUTION RECOGNIZED THE PROCEDURAL LAPSES AND THEREAFTER EXPLAINED THE CITED JUSTIFIABLE GROUNDS, AND ESTABLISHED THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED HAD BEEN PRESERVED. — The Court finds that the prosecution failed to comply with the chain of custody rule under Sec. 21 of R.A. No. 9165 and its IRR. When the police officers conducted the inventory and took photographs of the items seized from the house of appellant, no media representative was present. Under the law, the presence of the accused, a representative from the media and the DOJ, **and** any elected public official is mandatory because the law requires them to sign the copies of the inventory and to be given a copy thereto. Nevertheless, there is a saving clause under the IRR of R.A. No. 9165 in case of noncompliance with the chain of custody rule. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug confiscated from the accused during his arrest.

11. ID.; ID.; ID.; BARE ALLEGATION OF THE POLICE OFFICER, WITHOUT ANY SUBSTANTIATION, THAT NO MEDIA REPRESENTATIVE WAS AVAILABLE AT THE TIME OF THE INVENTORY CANNOT *IPSO FACTO* EXCUSE THE NONCOMPLIANCE WITH THE CHAIN

OF CUSTODY.— [T]he prosecution failed to give any justifiable ground for the noncompliance with Sec. 21 of R.A. No. 9165. Evidently, SPO2 Navarro simply stated that there was no media representative available at the time of the inventory x x x. Notably, the seizure happened at 8:30 a.m., when offices were open. Further, the surveillance operation was conducted prior to the seizure of the alleged drugs; it was not conducted at the spur of the moment. Thus, the police officers had sufficient opportunity to secure the mandatory witnesses in the inventory and photography of the seized drugs. SPO2 Navarro's bare allegation, without any substantiation, that no media representative was available at the time of the inventory cannot *ipso facto* excuse the noncompliance with the chain of custody.

12. ID.; ID.; ID.; ID.; MANDATORY POLICY IN THE CUSTODY OF THE SEIZED DANGEROUS DRUGS; APPELLANT CANNOT BE CONVICTED OF THE CRIME OF ILLEGAL POSSESSION OF DANGEROUS DRUGS WHERE THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAS NOT BEEN PRESERVED. — [T]he entire procedure in the chain of custody was not even discussed by the arresting officers in their affidavits of arrest. In *People v. Lim,* the Court declared that in order to weed out early on from the courts' already congested dockets any orchestrated or poorly built-up drug-related cases, the following should be enforced as a mandatory policy, *viz.:* 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 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 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. Due to the failure to preserve the integrity and evidentiary value of the *corpus delicti*, appellant cannot be convicted of the crime of illegal possession of dangerous drugs.

APPEARANCES OF COUNSEL

The Solicitor General *for plaintiff-appellee.*
Public Attorney's Office *for accused-appellant.*

D E C I S I O N

GESMUNDO, *J.*:

On appeal is the May 12, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 08344, which affirmed the April 21, 2016 Joint Decision[2] of the Regional Trial Court of Tarlac City, Branch 64 *(RTC),* finding Eduardo Cariño *y* Leyva *(appellant)* guilty of one (1) count of violation of Section 6, Article II, or Maintenance of Drug Den, in Criminal Case No. 16340; and one (1) count of violation of Section 11, Article II or illegal possession of dangerous drugs in Criminal Case No. 16341, under Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Appellant was charged in three separate informations with illegal sale of dangerous drugs (0.08 gram of methamphetamine hydrochloride *(shabu),* maintenance of a drug den, and illegal possession of dangerous drugs (0.04 gram of shabu). During arraignment, appellant pleaded "not guilty" to all charges. After consolidation, joint trial ensued.[3]

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[1] *Rollo,* pp. 2-16; penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Carmelita Salandanan-Manahan, concurring

[2] CA *rollo,* pp. 51-65; penned by Presiding Judge Lily C. De Vera-Vallo.

[3] *Rollo,* pp. 3- 4.

Evidence of the Prosecution

The prosecution presented the following witnesses: SPO2 Eduardo Navarro *(SPO2 Navarro),* SPO2 Jorge Andasan, Jr. *(SPO2 Andasan, Jr.),* and Forensic Chemist PSI Jebie Timario *(PSI Timario).*[4] Their combined testimonies tended to establish the following:

On July 24, 2009, SPO2 Navarro arrested a certain Dexter Valencia *(Valencia)* for possession of illegal drugs. Valencia admitted that appellant's house, located at Mac Arthur Highway, Block 3, San Nicolas, Tarlac City, was purposely used for shabu sessions. On that same day, SPO2 Navarro went to appellant's house to warn him of his illegal activities.[5]

On July 30, 2009, at around 8:30 a.m., SPO2 Navarro and his team, which included SPO2 Andasan and a certain Jay Mallari *(Mallari),* conducted a surveillance operation around the vicinity of appellant's house. SPO2 Navarro was stationed at the highway, SPO2 Andasan along Block 3, and another team member at Block 4. According to SPO2 Navarro, he saw three persons inside appellant's house, later identified as Noel Manianglung *(Manianglung),* Alma Bucao *(Bucao),* and Milagros Soliman *(Soliman),* who were also in the "drug list."[6]

After a couple of minutes, SPO2 Navarro saw appellant come out of his house and head towards the house of a certain Tikong Dulay *(Dulay).* SPO2 Navarro followed him and he saw appellant hand some money to Dulay in exchange for four sachets of shabu.[7]

Appellant went back to his house, with SPO2 Navarro following and returning to his position at the highway. He signaled Mallari to move closer to appellant's house. A few minutes later, Mallari gave a signal to SPO2 Navarro that a

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[4] *Id.* at 4.

[5] *Id.*

[6] *Id.* at 4-5.

[7] *Id.* at 5.

"pot session" was taking place inside appellant's house. Appellant then came out of his house. At that point, SPO2 Navarro approached appellant and told him he was being arrested for delivering shabu and maintaining a drug den. After the arrest, SPO2 Navarro stooped to look inside the house and confirmed that Noel Manianglung was heating foil with a lighter and a woman was holding a rolled aluminum foil and using it as a "tooter."[8]

SPO2 Navarro and his team then entered appellant's house. He found on top of a table one (1) opened or used small plastic sachet *(marked as ETN-1);* two (2) heat-sealed transparent plastic sachets containing white crystalline substance *(marked as ETN-2 and ETN-3);* seven (7) aluminum foils inside a cigarette pack *(marked as ETN-4);* and three (3) disposable lighters *(marked as ETN-5, ETN-6, and ETN-7)*. There were also two other sachets of shabu-like substance confiscated from Manianglung, which were hidden in his cell phone *(marked as ETN and ETN-a).* At the place of arrest, SPO2 Navarro prepared a receipt of property seized, which was signed by Edizon Dizon, barangay chairman of San Nicolas, and Owen Policarpio, representative of the Department of Justice *(DOJ).* Appellant refused to sign the inventory. The seized items were also photographed.[9]

After the marking and inventory, SPO2 Navarro placed the seized items in a plastic bag and brought them to the police station where he prepared a request for laboratory examination. At around 1:45 p.m. on July 30, 2009, SPO2 Navarro delivered the seized items to the crime laboratory, which were received by PSI Timario. The latter's examination found that the substances marked ETN-2, ETN-3, ETN, and ETN-a tested positive for methamphetamine hydrochloride or shabu, and each sachet weighed 0.02 gram. PSI Timario then turned over the items to the evidence custodian.[10]

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[8] *Id*.

[9] *Id*. at 5-6.

[10] *Id*. at 6.

Evidence of the Defense

Only appellant testified for the defense. He stated that on July 30, 2009, at around 9:00 a.m., he was at home nursing a foot injury and went to his backyard to get calamansi thorns to treat it. He had three visitors at that time, Bucao, Soliman, and Manianglung. While at the backyard, he was approached by SPO2 Navarro and his team. They asked if they could enter his premises. Appellant inquired if they had a search warrant, to which SPO2 Navarro answered in the negative. Since they were law enforcers, appellant allowed them inside the house.[11]

They searched appellant but found nothing on him. However, they found two (2) sachets inside Manianlung's cellphone. When asked where those came from, Manianglung pointed to appellant. The latter was asked to sign papers, which he refused to do. They were brought to Camp Macabulos to undergo a drug examination, with positive results.[12] Appellant averred that he did not sell or push drugs; however, he admitted that he was also a victim being a drug user himself.[13]

The RTC Ruling

In its April 21, 2016 joint decision, the RTC acquitted appellant in Criminal Case No. 16339 for illegal sale of dangerous drugs; convicted him in Criminal Case No. 16340 for maintenance of a drug den, with the penalty of life imprisonment and a fine of ₱500,000.00; and convicted him in Criminal Case No. 16341 for illegal possession of dangerous drugs, with the penalty of twelve (12) years and one (1) day to twenty (20) years, and a fine of ₱300,000.00.

The RTC acquitted appellant of the charge of illegal sale of dangerous drugs because the police officers conducted only a surveillance, not a buy-bust operation. Thus, the prosecution was not able to substantiate its allegation that appellant took part in the sale of drugs.

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[11] *Id*.

[12] *Id*. at 6-7.

[13] *Id*. at 15.

Nevertheless, the RTC gave credence to the testimonies of the prosecution's witnesses, corroborated even by appellant himself, that he consented to the use of his house for "pot sessions" and sexual activities for minimal fees. The trial court gave weight to SPO2 Navarro's testimony stating that Valencia, who was caught for possession of dangerous drugs a few days before appellant's arrest, had admitted that he used drugs inside appellant's house. The RTC underscored that appellant's intent to use his property as a drug den was proven.[14]

Further, the RTC found present all the elements of the crime of illegal possession of dangerous drugs. The two small transparent plastic sachets containing shabu were found on top of the table inside his house. Though it was not found in his immediate possession, he still had constructive possession of the drugs because these were found in a place where he had dominion or control.

Aggrieved, appellant appealed before the CA.

The CA Ruling

In its decision, the CA affirmed appellant's conviction. It ruled that the drugs seized were admissible since they were the result of a valid warrantless search and seizure under the "plain view doctrine." Also, it affirmed the RTC in ruling that the chain of custody was complied with. Though there was no media representative, this may be overlooked with the substantial observance of the other requirements.

The CA also affirmed the RTC ruling that there was, indeed, maintenance of a drug den, based on SPO2 Navarro's observation and the house's general reputation. While Valencia's statement was hearsay evidence, it was not objected to by the defense; hence, the CA gave weight to the statement that appellant's house was used as a drug den. As to the charge of possession of illegal drugs, the CA affirmed the RTC ruling that appellant had full control and dominion of the drugs found in his house.[15]

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[14] *Supra* note 2.

[15] *Supra* note 1.

Hence, this appeal.

ASSIGNMENT OF ERRORS

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 6 AND 11, ARTICLE II OF R.A. NO. 9165 DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM BASED ON THE FRUIT OF THE POISONOUS TREE DOCTRINE

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 6 AND 11, ARTICLE II OF RA. NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUG ITEM.[16]

In its November 27, 2017 Resolution,[17] the Court required the parties to submit their respective supplemental briefs, if they so desired. In his April 13, 2018 manifestation,[18] in lieu of supplemental brief, appellant stated that he would no longer file a supplemental brief since all relevant issues were exhaustively discussed in the appellant's brief. In its March 19, 2018 Manifestation,[19] the Office of the Solicitor General *(OSG)* stated that it will dispense with the filing of a supplemental brief to expedite the resolution.

THE COURT'S RULING

The Court finds the appeal partially meritorious.

Maintenance of a drug den

For an accused to be convicted of maintenance of a drug den under Section 6 of R.A. No. 9165, the prosecution must

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[16] CA *rollo,* p. 28.

[17] *Rollo,* pp. 22-23

[18] *Id*. at 30-32.

[19] *Id*. at 24.

establish with proof beyond reasonable doubt that the accused is "maintaining a den" where any dangerous drug is administered, used, or sold.[20] Hence, two things must be established: (a) that the place is a den — a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; and (b) that the accused maintains the said place. It is not enough that the dangerous drug or drug paraphernalia were found in the place. More than a finding that dangerous drug is being used thereat, it must also be clearly shown that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold.[21]

In this case, the prosecution alleged that the police officers saw in "plain view" that several persons were using drugs inside the house of appellant. The prosecution also alleged that the house had a general reputation as a drug den based on Valencia's statement that he consumed shabu inside the said house.

The Court is not convinced that appellant's guilt was proven beyond reasonable doubt.

Objects sighted in plain view by an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he inadvertently comes across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[22]

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[20] See *People v. Galicia,* G.R. No. 218402, February 14, 2018.

[21] *Id*.

[22] *Miclat, Jr. v. People,* 672 Phil. 191, 206 (2011).

Here, it was a certain Mallari who saw that drugs were being used inside appellant's house during the surveillance operation. SPO2 Navarro testified as follows:

PROS. MANGLICMOT

Q: Who among your companions witnessed the incident?
A: Jay Mallari, sir.

Q: It was Jay Mallari who witnessed the trade?
A: No, sir, not the trade, the use.[23]

However, Mallari was never presented as a witness. His rank as a police officer and his assigned role during the alleged surveillance operation were not provided by the prosecution. Thus, it could not be determined from the records whether the requisites of the plain view search were complied with against appellant's alleged crime of maintenance of a drug den. The validity of the plain view search is crucial since it will determine whether the police officers conducted a valid warrantless search and arrest against appellant and his house. The prosecution did not give any justification for its failure to present Mallari as a witness.

Instead, the prosecution presented SPO2 Navarro who, from his position, could not see what was happening inside appellant's house, *viz.*:

PROS. MANGLICMOT

Q: From the place where you were positioned, can you see what was happening inside the house of Cariño?
A: **No, I cannot, sir.**

x x x x x x x x x

Q: While monitoring the house of Cariño on that date, July 30 at 8:30 in the morning, did you notice where Cariño was?
A: He was inside his house together with the three (3) visitors, sir.

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[23] TSN, January 31, 2012, p. 18.

Q: Did you actually see Cariño there?
A: No, sir.[24] (emphasis supplied)

Worse, SPO2 Navarro, who arrested appellant, testified that he first performed a warrantless arrest against appellant before he allegedly saw people using drugs inside the house, to wit:

PROS. MANGLICMOT

Q: When he noticed you approaching, what did Cariño do if any?
A: None, sir.

x x x x x x x x x

Q: And what happened when you got near Cariño?
A: I told him that I am arresting him for delivering shabu and making his house as a drug den **and then I stoop down and saw Mr. Manianglung holding lighter and aluminium foil, then we entered their house and found on the table two (2) sachets of drugs x x x**

x x x x

Q: But from the possession of Cariño, you were not able to find drugs in his person?
A: None, sir.[25] (emphasis supplied)

The affidavit of SPO2 Navarro also confirmed that he first arrested appellant before he saw drugs inside his house, *viz.:*

x x x That Eduardo Cariño went inside his house and after a few minutes again went outside his house and stand guard at his gate. **At that juncture [SPO2] Navarro and team move-in and informed Eduardo Cariño *y* Leyva that he is being arrested for delivering drugs and maintaining a drug den,** getting inside the house we saw Noel [Manianglung] *y* Manalac, Alma Bucao *y* Gaviola and Milagros Soliman y Roxas huddled in a table where we saw Two (2) heat sealed transparent plastic sachets containing shabu weighing 0.04 grams *(sic),* one (1) open/used small plastic sachet, seven (7) aluminum foil strips and three (3) disposable lighters, x x x[26] (emphasis supplied)

[24] *Id.* at 11-12.

[25] TSN, April 10, 2012, pp. 4-5.

[26] Records, p. 2.

In warrantless arrests made pursuant to Section 5(a), Rule 113, two elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer.[27] A valid warrantless arrest under the parameters of Section 5(a), Rule 113 of the Rules of Court requires that the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto.* To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[28]

In this case, appellant was not doing anything beforehand when he was arrested by SPO2 Navarro. Certainly, it does not satisfy the elements of a valid warrantless arrest under Section 5(a) of Rule 113 because SPO2 Navarro had no probable cause before the arrest that appellant was committing or had just committed the crime of maintenance of a drug den. It was only after his arrest that SPO2 Navarro purportedly saw the drugs being used inside appellant's house. Again, the finding of probable cause cannot apply after the warrantless arrest had been made.

Notably, Mallari could have established the overt act that drugs were being used inside appellant's house before the arrest. Lamentably, he was not presented as a witness by the prosecution, thus, the facts and circumstances that would create probable cause to arrest appellant could not be determined. The Court cannot make guesswork whether Mallari truly had probable cause to justify the warrantless arrest of appellant by SPO2 Navarro.

The questionable and invalid arrest thus makes the subsequent search in the house of appellant also invalid, the exclusionary

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[27] *Macad v. People,* G.R. No. 227366, August 1, 2018.

[28] *Id.*

rule or the doctrine of the fruit of the poisonous tree applies. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act; whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained.[29]

In this case, the primary source is appellant, who was arrested illegally without probable cause. Thus, all secondary or derivative evidence drawn from the arrest of appellant is also inadmissible as evidence, including those seized from the search inside his house.

The general reputation of the house was no established.

Further, one of the essential requisites of the crime, that the place maintained by the offender is a drug den, was not proven. A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence may be proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers.[30]

Here, the prosecution alleged that a certain Valencia was arrested for possession of illegal drugs. Valencia admitted that appellant's house was purposely used for shabu sessions, thus, the general reputation of appellant's house as a drug was allegedly proven.

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[29] *People v. Fatallo,* G.R. No. 218805, November 7, 2018.

[30] *People v. Rom,* 727 Phil. 587, 605 (2014).

Again, the Court is not convinced.

Valencia, who allegedly used drugs inside appellant's house, was never presented as a witness by the prosecution. Again, the prosecution offered no reason for the non-presentation of Valencia. It did not present any written statement or affidavit signed by Valencia. Even the nature or status of the criminal charges allegedly filed against him was not provided in court. Instead, it was SPO2 Navarro who testified on the alleged statement of Valencia, *viz.:*

PROS. MANGLICMOT

Q: Were you able to verify the data or the information supplied to you by your asset that Cariño is engaged in illegal activities, he is maintaining a drug den, he is a runner and his house is used for the sexual activities of his visitors?
A: Yes, sir, as I have mentioned earlier, we caught a certain Dexter [Valencia] there with shabu purposely to take that shabu inside the house of Mr. Cariño.

Q: When was that when you caught this Dexter [Valencia]?
A: July 24, I think, sir.

Q: Before you confronted Cariño?

x x x x x x x x x

A: Yes, it was July 24, sir.

Q: How did you effect the arrest of this one Dexter [Valencia]?
A: When he saw me, sir, he threw the sachet of shabu, so I arrested him.

Q: How did you come to know that he went there to the house purposely to consume shabu?
A: He told me that he went there purposely to consume shabu, sir.

Q: Was that before he threw the shabu?
A: After, sir, on the interrogation.[31] (emphasis supplied)

Obviously, the purported statement of Valencia is hearsay. It is a basic rule in evidence that a witness can testify only on

[31] TSN, January 31, 2012, pp. 6-7.

the facts that are of his own personal knowledge, *i.e.,* those which are derived from his own perception. A witness may not testify on what he has merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[32]

The general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. But one should not be misled into thinking that such declarations are impressed with probative value. Admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not cannot be given credence for it has no probative value.[33]

In this case, the CA erred in stating that SPO2 Navarro's hearsay testimony, which was not objected to by the defense, should still be given evidentiary weight. It failed to consider that hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule; which do not, however, obtain in this case.[34]

Further, it must be emphasized that in criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them. A conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition. Such

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[32] *Miro v. Vela, de Erederos, et al.,* 721 Phil. 772, 790 (2013); citations omitted.

[33] *People v. Parungao,* 332 Phil. 917, 924 (1996).

[34] *Republic* v. *Galeno,* 803 Phil. 742, 750 (2017).

a judgment cannot be given any effect whatsoever especially on the liberty of an individual.[35]

Thus, the hearsay testimony of SPO2 Navarro cannot be given evidentiary value to convict appellant for the crime of maintenance of a drug den.

Possession of dangerous drugs
chain of custody rule

In prosecutions for illegal possession of dangerous drugs, such as in this case, the *corpus delicti,* apart from the elements of the offense, must be established beyond reasonable doubt. In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. The State equally bears the obligation to prove the identity of the seized drug, failing in which, the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.[36]

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage; from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.[37] To ensure the establishment of the chain of custody, Section 21(1) of R.A. No. 9165 specifies that:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized,

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[35] *People v. Mamalias,* 385 Phil. 499, 513 (2000).

[36] *People v. Guanzon,* G.R. No. 233653, September 5, 2018

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

or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

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

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Based on the foregoing, Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**[38]

Notably, Sec. 21 of R.A. No. 9165 was recently amended by R.A. No. 10640, which became effective on July 15, 2014. In the amendment, the apprehending team is now required to

[38] *People* v. *Dahil,* 750 Phil. 212, 228 (2015); emphasis supplied.

conduct a physical inventory of the seized items and to photograph the same **(1) in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof.[39] In the present case, as the alleged crimes were committed on July 30, 2009, then the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply.

The Court finds that the prosecution failed to comply with the chain of custody rule under Sec. 21 of R.A. No. 9165 and its IRR. When the police officers conducted the inventory and took photographs of the items seized from the house of appellant, no media representative was present. Under the law, the presence of the accused, a representative from the media and the DOJ, **and** any elected public official is mandatory because the law requires them to sign the copies of the inventory and to be given a copy thereto.

Nevertheless, there is a saving clause under the IRR of R.A. No. 9165 in case of noncompliance with the chain of custody rule. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug confiscated from the accused during his arrest.[40]

In this case, the prosecution failed to give any justifiable ground for the noncompliance with Sec. 21 of R.A. No. 9165.

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[39] *People v. Dela Rosa,* G.R. No. 230228, December 13, 2017; emphasis in the original.

[40] *People v. Carlit,* G.R. No. 227309, August 16, 2017, citing *People v. Cayas,* 789 Phil. 70, 80 (2016).

Evidently, SPO2 Navarro simply stated that there was no media representative available at the time of the inventory, to wit:

PROS MANGLICMOT

Q: xxx Why was it that no member of the media signed the list of inventory, Mr. witness?

THE WITNESS
A: There was no available media personnel at that time, sir.

Q: Who made the request for the presence of the media?
A: Captain Magday, sir.

Q: No media came?
A: Yes, sir.[41]

Notably, the seizure happened at 8:30 a.m., when offices were open. Further, the surveillance operation was conducted prior to the seizure of the alleged drugs; it was not conducted at the spur of the moment. Thus, the police officers had sufficient opportunity to secure the mandatory witnesses in the inventory and photography of the seized drugs. SPO2 Navarro's bare allegation, without any substantiation, that no media representative was available at the time of the inventory cannot *ipso facto* excuse the noncompliance with the chain of custody.

Further, the entire procedure in the chain of custody was not even discussed by the arresting officers in their affidavits of arrest. In *People v. Lim,*[42] the Court declared that in order to weed out early on from the courts' already congested dockets any orchestrated or poorly built-up drug-related cases, the following should be enforced as a mandatory policy, *viz.*:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 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

[41] TSN, April 10, 2012, p. 17.

[42] G.R. No. 231989, September 4, 2018.

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.[43]

Due to the failure to preserve the integrity and evidentiary value of the *corpus delicti,* appellant cannot be convicted of the crime of illegal possession of dangerous drugs.

WHEREFORE, the appeal is **GRANTED.** The May 12, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08344 is **REVERSED and SET ASIDE.** Appellant Eduardo Cariño *y* Leyva is **ACQUITTED** of violations of Sections 6 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt and is **ORDERED** immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections for immediate implementation. He is also directed to report to this Court within five (5) days from receipt of this decision on the action he has taken.

SO ORDERED.

Bersamin, C.J., del Castillo, and *Carandang, JJ.,* concur.

Jardeleza, J., on official business.

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[43] *Id.*

SECOND DIVISION

[G.R. No. 236279. March 25, 2019]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CHERYL PAULINE R. DEANG,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY AS A GROUND TO NULLIFY MARRIAGE. –-[T]he Court has consistently ruled that **psychological incapacity, as a ground to nullify the marriage under Article 36 of the Family Code, as amended, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage**. It should refer to no less than a mental — not merely physical — incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as provided under Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity, and render help and support. In other words, it must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. For the above reasons, the Court has declared, in *Santos v. CA*, that psychological incapacity under Article 36 of the Family Code must be characterized by: (*a*) **gravity,** *i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (*c*) **incurability**, *i.e.*, it must be incurable, or otherwise the cure would be beyond the means of the party involved.

2. ID.; ID.; ID.; ID.; THE ACTUATIONS OF THE SPOUSES INDICATING INCAPACITY TO PERFORM MARITAL OBLIGATIONS MUST HAVE EXISTED PRIOR TO, OR AT LEAST, AT THE TIME OF MARRIAGE. –- [T]he

actuations of the spouses that allegedly indicated their incapacity to perform marital obligations were not proven to have existed prior to, or at least, at the time of the celebration of the marriage, as required by jurisprudence. x x x In *Toring v. Toring,* the Court emphasized that "irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal[,] or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses." Accordingly, it cannot be said that either party is suffering from a grave and serious psychological condition which rendered either of them incapable of carrying out the ordinary duties required in a marriage. x x x It must be emphasized that there must be proof of a natal or supervening disabling factor in the person - an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage - which must be linked with the manifestations of the psychological incapacity. Also, while it is not required that the expert witness personally examine the party alleged to be suffering from psychological incapacity, nevertheless, corroborating evidence must be presented to sufficiently establish the required legal parameters. x x x In *Republic v. Tecag,* the Court held that "[i]n determining the existence of psychological incapacity, a clear and understandable causation between the party's condition and the party's inability to perform the essential marital covenants must be shown. A psychological report that is essentially comprised of mere platitudes, however speckled with technical jargon, would not cut the marriage tie."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Balanon & Lua Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 30, 2017 and the Resolution[3] dated December 12, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 04183-MIN, which affirmed the Decision[4] dated July 2, 2014 and the Order[5] dated February 16, 2015 of the Regional Trial Court of Butuan City, Branch 1 (RTC) in Civil Case No. 6540, declaring the marriage of Emilio Z. Deang (Emilio) and respondent Cheryl Pauline R. Deang (Cheryl) void on the ground of psychological incapacity pursuant to Article 36 of the Family Code, as amended.[6]

The Facts

Cheryl and Emilio were married[7] on August 28, 1993 at Sangley Point, Cavite. They have one child named Bryan Joseph R. Deang, who was born on January 12, 1994.[8]

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[1] *Rollo*, pp. 36-58.

[2] *Id*. at 63-83. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Rafael Antonio M. Santos, concurring.

[3] *Id*. at 85-86. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Edgardo A. Camello, concurring.

[4] *Id*. at 94-110. Penned by Judge Eduardo S. Casals.

[5] *Id.* at 111.

[6] Article 36 of the Family Code, as amended by Executive Order No. 227 entitled "AMENDING EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE 'FAMILY CODE OF THE PHILIPPINES'" (July 17, 1987), states:

Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[7] See Marriage Contract; *rollo*, p. 91.

[8] See Certificate of Live Birth; *id.* at 92.

As a backgrounder, the couple first met sometime in March 1992 and soon after became romantically involved. Two (2) months after living together, Emilio quit his job and engaged in gambling.[9] In April 1993, at the age of 21, Cheryl became pregnant. Emilio offered to have an abortion outside the country, which however, did not push through. Confused and stressed with her situation, she turned to Emilio's friend for comfort, whom she became intimate with at one time. When Emilio learned about this, he became jealous and began physically abusing her. At one point, he boxed her on the stomach during her second month of pregnancy forcing her to resign from work. Eventually, they got married after Cheryl's parents made the arrangements. Thereafter, they stayed in an apartment in Quezon City which was rented by Cheryl's family.[10] Despite their marriage, however, Emilio kept bringing up Cheryl's affair with his friend.[11]

In January 1994,[12] the couple went back to Butuan City in order for Cheryl's parents to assist her in giving birth. Barely more than a week after their return, however, Emilio decided to go to Manila for work. Subsequently, in August of the same year, Cheryl went to visit Emilio in Manila; Emilio, however, opted for them to live separately. One morning, Cheryl went to Emilio's rented room to surprise him. When Emilio opened the door, however, she saw him covered merely with a towel, while his mistress locked herself in the bathroom. She cried but Emilio merely sent her off to leave. Thus, she went back to Butuan City in December 1994 and never saw Emilio again.[13]

On February 11, 2013, Cheryl filed a petition for declaration of nullity of marriage[14] before the RTC alleging that Emilio

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[9] See *id*. at 66 and 96.

[10] See *id*. at 66-67.

[11] See *id*. at 68-69.

[12] Although Cheryl testified to have stayed in Quezon City until 2004 in the RTC Decision (see id. at 95-96), records show that the last time the couple had seen each other was in the last quarter of 1994 (see id. at 68).

[13] See id. at 67-68.

[14] Dated February 1, 2013. Id. at 87-90. Although the pleading is captioned

was psychologically incapacitated to fulfill his essential marital obligations. She claimed that Emilio did not give any support to her and their son, and that to her knowledge, he is living with another woman with whom he has two (2) children.[15]

For his part, Emilio failed to file his answer and appear during trial despite service of summons.[16]

During trial, Cheryl testified that she and Emilio lived together as husband and wife for only a year and a month, during which she discovered that the latter was "emotionally immature, irresponsible, a gambler and does not give financial support to the family."[17] Cheryl also presented Dr. Yolanda Y. Lara (Dr. Lara), a clinical psychologist, who submitted a Psychological Evaluation Report[18] dated October 28, 2013 and testified that after interviewing Cheryl, Cheryl's sister, and Emilio's cousin,[19] she concluded that Cheryl manifested signs of Dependent Personality Disorder (DPD), while Emilio showed symptoms of Anti-Social Personality Disorder (APD), both of which caused the dysfunction of their relationship leading to their separation.[20] She, however, admitted that: (a) she merely talked to Emilio's cousin over the phone; and (b) the information she obtained

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"Complaint," the RTC treated the same as a "Petition for Annulment of Marriage" (see *id*. at 94).

[15] See *id*. at 88.

[16] See *id*. at 65 and 94. On February 11, 2013, the summons and a copy of the petition and its annexes were served on Emilio, c/o Nita Lumbao at 8676 Fortuna St., Makati City, but to no avail as he was always out. On March 8, 2013, summons was finally served on Mrs. Nita Lumbao at the given address who acknowledged receipt thereof on behalf of Emilio. Substituted service was likewise resorted to on March 5, 6, and 8, 2013 (see *id*. at 94).

[17] *Id*. at 96. Cheryl solely supported their son's needs and schooling until high school (see id. at 68 and 96).

[18] Not attached to the *rollo*. See excerpts of the Psychological Evaluation Report of Dr. Lara; *id*. at 66-70 and 103-108.

[19] *Id*. at 109. Cheryl's sister and Emilio's cousin are Christine Amelia R. Balanon and Candice Deang- Rimas, respectively.

[20] See *id.* at 69-70, 97-98, and 103-108.

from the latter was not significant; thus, she based her findings mostly on Cheryl's story.[21]

The RTC Ruling

In a Decision[22] dated July 2, 2014, the RTC declared the marriage void *ab initio*pursuant to Article 36 of the Family Code.[23] Giving full weight and credit to Dr. Lara's findings, the RTC ruled that Emilio was psychologically incapacitated given his inability to understand his obligations as a married man. Additionally, it commiserated with Cheryl's situation, and thus, found no reason to unreasonably deny her the relief she prayed for.[24]

Petitioner Republic of the Philippines (petitioner), through the Office of the Solicitor General, moved for reconsideration[25] which was, however, denied in an Order[26] dated February 16, 2015. Thus, petitioner appealed[27] to the CA.

The CA Ruling

In a Decision[28] dated May 30, 2017, the CA affirmed the RTC's ruling.[29] It held that even without Dr. Lara's findings, the narrative of the events alleged in Cheryl's petition and those established during trial all point to the conclusion that Emilio

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[21] Dr. Lara also stated that: (a) she was unable to administer the tests on Emilio but was able to gather information from Cheryl; and (b) the information given by Emilio's cousin "was not that significant," thus, she based her findings mostly on Cheryl's story (see *id.* at 97-98).

[22] *Id.* at 94-110.

[23] *Id*. at 110.

[24] See *id*. at 108-109.

[25] See motion for reconsideration dated August 12, 2014; *id.* at 112-124.

[26] *Id*. at 111.

[27] See Notice of Appeal dated April 14, 2015; *id*. at 125-126.

[28] *Id*. at 63-83.

[29] *Id*. at 83.

was psychologically incapacitated to perform the essential marital obligations. Particularly, it noted that Emilio: (*a*) failed to financially support their son; (*b*) engaged in an extra-marital affair; (*c*) is irritable and aggressive when things do not go his way; and (*d*) is impulsive which rendered him unable to plan ahead.[30] In any event, it found Cheryl to be equally suffering from psychological incapacity based on the findings of Dr. Lara that the latter is afflicted with DPD.[31] In this regard, the CA stressed that the findings of the RTC on the existence or non-existence of psychological incapacity should be final and binding as long as they are supported by the facts and evidence presented during trial,[32] which it found in this case.

Unsatisfied, petitioner moved for reconsideration[33] but was denied in a Resolution[34] dated December 12, 2017; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in upholding the RTC ruling declaring the marriage between Cheryl and Emilio void pursuant to Article 36 of the Family Code.

The Court's Ruling

The petition is meritorious.

The policy of the Constitution is to protect and strengthen the family as the basic social institution[35] and marriage as the foundation of the family.[36] Because of this, the Constitution decrees marriage as legally inviolable and protects it from

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[30] See *id*. at 80.

[31] See *id*. at 80-82.

[32] See *id*. at 82.

[33] See motion for reconsideration dated June 28, 2017, *id*. at 171-181.

[34] *Id*. at 85-86.

[35] See Article II, Section 12 of the Constitution.

[36] See Article XV, Section 2 of the Constitution.

dissolution at the whim of the parties.[37] Thus, the Court has consistently ruled that **psychological incapacity, as a ground to nullify the marriage under Article 36 of the Family Code, as amended, should refer to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage**.[38] It should refer to no less than a mental — not merely physical — incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as provided under Article 68[39] of the Family Code, among others,[40] include their mutual obligations to live together, observe love, respect and fidelity, and render help and support.[41] In other words, it must be a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.[42]

For the above reasons, the Court has declared, in *Santos v. CA*,[43] that psychological incapacity under Article 36 of the Family Code must be characterized by: (*a*) **gravity,***i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (*b*) **juridical antecedence**, *i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may

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[37] *Republic v. Spouses Romero*, 781 Phil. 737, 746 (2016), citing *Navales v. Navales*, 578 Phil. 826, 838 (2008).

[38] *Republic v. Spouses Romero*, *id.*; emphasis and underscoring supplied.

[39] Article 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[40] The parties' mutual obligations include those provided under Articles 68 to 71, as regards the husband and wife, and Articles 220, 221 and 225, with regard to parents and their children, all of the Family Code. (See also Guideline 6 in *Republic v. CA*, 335 Phil. 664, 678 [1997].)

[41] *Republic v. De Gracia*, 726 Phil. 502, 509 (2014).

[42] *Republic v. Spouses Romero*, *supra* note 37, citing *Navales v. Navales*, *supra* note 37, at 840.

[43] 310 Phil. 21 (1995).

emerge only after the marriage; and (*c*) **incurability**, *i.e.*, it must be incurable, or otherwise the cure would be beyond the means of the party involved.[44]

Guided by the foregoing considerations, the Court, in several cases,[45] did not consider as tantamount to psychological incapacity the emotional immaturity, irresponsibility, sexual promiscuity, and other behavioral disorders invoked by the petitioning spouses, for the reason that these behaviors "do not by themselves warrant a finding of psychological incapacity, as these may be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses."[46] Accordingly, the Court dismissed the petitions for declaration of nullity of marriage.

The Court maintains a similar view in this case and thus grants the petition. As aptly pointed out by petitioner, the actuations of the spouses that allegedly indicated their incapacity to perform marital obligations were not proven to have existed prior to, or at least, at the time of the celebration of the marriage, as required by jurisprudence.[47] Emilio may have engaged in an extra-marital affair, gambled, failed to support Cheryl and their son, is irritable and aggressive, and abandoned his family, while Cheryl may have married Emilio simply in obedience to her parents' decision and had the constant need for her parents' care and support. However, these acts, by themselves, do not prove that both parties are psychologically incapacitated as these may have been simply due to jealousy, emotional immaturity,

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[44] *Id.* at 39.

[45] See *Dedel v. CA*, 466 Phil. 226 (2004); *Bier v. Bier*, 570 Phil. 442 (2008); *Agraviador v. Amparo-Agraviador*, 652 Phil. 49 (2010); *Toring v. Toring*, 640 Phil. 434 (2010); *Pesca v. Pesca*, 408 Phil. 713 (2001); *Republic v. Encelan*, 701 Phil. 192 (2013); *Republic v. De Gracia*, supra note 41; *Republic v. Spouses Romero*, supra note 37; and *Del Rosario v. Del Rosario*, 805 Phil. 978 (2017).

[46] *Republic v. Galang*, 665 Phil. 658, 674 (2011).

[47] See *Rumbaua v. Rumbaua*, 612 Phil. 1061, 1079-1080 (2009).

irresponsibility, or dire financial constraints. In *Toring v. Toring*,[48] the Court emphasized that "irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal[,] or neglect to undertake the obligations of marriage that is not rooted in some psychological illness that Article 36 of the Family Code addresses."[49] Accordingly, it cannot be said that either party is suffering from a grave and serious psychological condition which rendered either of them incapable of carrying out the ordinary duties required in a marriage.

Furthermore, an examination of Dr. Lara's psychological report, which the courts *a quo*significantly relied upon, actually fails to show that the APD and DPD which Emilio and Cheryl allegedly respectively suffer were impressed with the qualities of juridical antecedence and incurability.

For one, apart from enumerating and characterizing Emilio and Cheryl's respective behavior during the marriage based only on the symptoms specified in the Diagnostic and Statistical Manual of Mental Disorders 5th Edition,[50] no specific behavior or habits during their childhood or adolescent years were shown that would explain such behavior during the marriage. It must be emphasized that there must be proof of a natal or supervening disabling factor in the person - an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage[51] - which must be linked with the manifestations of the psychological incapacity.[52]

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[48] *Supra* note 45.

[49] *Id*. at 457.

[50] See *rollo*, pp. 76-77 and 104-106.

[51] *Republic v. Galang*, *supra* note 46, citing *Bier v. Bier*, *supra* note 45, at 452.

[52] *Republic v. Galang*, *supra* note 46.

Also, while it is not required that the expert witness personally examine the party alleged to be suffering from psychological incapacity, nevertheless, corroborating evidence must be presented to sufficiently establish the required legal parameters.[53] Here, Dr. Lara's findings as regards Emilio were solely founded on the narrations of Cheryl and her sister. From these, Dr. Lara proceeded to diagnose Emilio with APD and concluded that Emilio "grew up in a dysfunctional family" resulting "to the development of his antisocial behaviors" which is a "chronic condition x x x embedded in his personality make up."[54] Perusing the report, the Court is hard-pressed to accept this conclusion based solely on accounts coming from Cheryl's side whose bias cannot be doubted.

And finally, aside from the fact that no discernible explanation was made anent the purported disorders' incurable nature, the Court notes that Dr. Lara's report ultimately fails to demonstrate the relation of these disorders to the ability of the parties to perform their essential marital obligations. In *Republic v. Tecag*,[55] the Court held that "[i]n determining the existence of psychological incapacity, a clear and understandable causation between the party's condition and the party's inability to perform the essential marital covenants must be shown. A psychological report that is essentially comprised of mere platitudes, however speckled with technical jargon, would not cut the marriage tie."[56]

Truly, the Court can only commiserate with the parties' plight as their marriage may have failed. It must be reiterated, however, that the remedy is not always to have it declared void *ab initio* on the ground of psychological incapacity. It must be stressed that Article 36 of the Family Code, as amended, is not a divorce law that cuts the marital bond at the time the grounds for divorce

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[53] See *Navales v. Navales*, *supra* note 37, at 844-845 (2008); and *Toring v. Toring*, *supra* note 45, at 451 (2010), both citing *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

[54] *Rollo*, p. 106.

[55] G.R. No. 229272, November 19, 2018.

[56] *Id*.

manifest themselves[57] for a marriage, no matter how unsatisfactory, is not a null and void marriage. Thus, absent sufficient evidence establishing psychological incapacity within the context of Article 36, the Court is compelled to grant the present petition.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 30, 2017 and the Resolution dated December 12, 2017 of the Court of Appeals in CA-G.R. CV No. 04183-MIN are **REVERSED** and **SET ASIDE**. Accordingly, the petition for declaration of nullity of marriage filed under Article 36 of the Family Code, as amended, is **DISMISSED**.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa, Reyes, Jr., J.,* and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 236516. March 25, 2019]

ASUNCION Z. JURADO, joined by her husband REX[*] A. JURADO, CATALINA Z. ALILING, JOINED BY HER HUSBAND JOSE P. O. ALILING IV, AND THE HEIRS OF FERNANDO M. ZAMORA, NAMELY: CECILIA F. ZAMORA, RAFAEL VICTOR F. ZAMORA, FRANCIS NOEL F. ZAMORA, AND CARLA MARIE F. ZAMORA, *petitioners, vs.* **SPOUSES VICENTE AND CARMEN CHAI,** *respondents.*

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[57] See *Republic v. Spouses Romero*, *supra* note 37, 749 (2016), citing *Perez-Ferraris v. Ferraris*, 527 Phil. 722, 732-733 (2006).

[*] "Rez" in some part of the records.

SYLLABUS

1. **CIVIL LAW; LAND TITLES; PERSONS DEALING WITH ADMINISTRATIVELY RECONSTITUTED TITLES SHOULD CONDUCT AN INQUIRY OR INVESTIGATION AS MIGHT BE NECESSARY TO ACQUAINT THEMSELVES WITH THE DEFECTS IN THE TITLES OF THE VENDORS. —** Case law states that **reconstituted titles shall have the same validity and legal effect as to the originals thereof unless the reconstitution was made extrajudicially, or administratively**. This is because administrative reconstitution is essentially *ex-parte* and without notice, and thus, administratively reconstituted titles do not share the same indefeasible character of the original certificates of title. Anyone dealing with such copies are put on notice of such fact and warned to be extra-careful. In this case, Pariñas OCT 3429 was judicially reconstituted on February 28, 1974. However, following the fire that razed the RD-Ilagan on December 4, 1976, the same was administratively reconstituted on June 2, 1977. x x x Subsequently, it turned out that there is no Pariñas OCT 3429 on file x x x **and said title is totally inexistent.** That it was reconstituted is of no moment because an administrative reconstitution of title is merely a restoration or replacement of a lost or destroyed title **in its original form at the time of the loss or destruction**. The issuance of a reconstituted title vests no new rights and determines no ownership issues, and shall always be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed, but entry or notation of which has not been made on the reconstituted certificate of title, as expressly provided under Section 7 of RA 26, which was duly noted on the reconstituted Pariñas OCT 3429.

2. **ID.; ID.; TITLE THAT TRACES ITS SOURCE TO A VOID TITLE IS ALSO VOID. —** [T]he Court finds that petitioners' evidence, which convincingly prove their claim of ownership over Lot 4900, should clearly prevail over that of respondents', whose title was competently shown to have emanated from an ultimately inexistent and void title. Jurisprudence states that any title that traces its source to a void title, as respondents' in this case, is also void since the spring cannot rise higher than

its source. *Nemo potest plus juris ad alium transferre quam ipse habet*. Consequently, TCT No. T-194346 in the name of respondent Vicente Chai should be declared null and void, having been derived from the inexistent Pariñas OCT 3429. On the other hand, having convincingly proven their claim of ownership over Lot 4900, petitioners' ownership and their entitlement to possession thereof should be confirmed.

APPEARANCES OF COUNSEL

Yulo Aliling Pascua & Zuñiga for respondents.
The Law Firm Of Cabucana, Cabucana & Cabucana for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 12, 2016 and the Resolution[3] dated January 10, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 103042, which reversed the Decision[4] dated February 25, 2014 of the Regional Trial Court of Santiago City, Branch 36 (RTC) in Civil Case No. Br. 2438 and consequently, dismissed the Amended Complaint[5] for annulment of Transfer Certificate of Title (TCT) Nos. T-194346, T-194348, and T-194349,[6]

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[1] *Rollo*, pp. 12-107.

[2] *Id*. at 113-129. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.

[3] *Id.* at 131-136. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Fernanda Lampas-Peralta and Mario V. Lopez, concurring.

[4] *Id*. at 143-162. Penned by Judge Bonifacio T. Ong (CESO IV).

[5] Dated March 8, 2004. Records, Vol. II, pp. 2-9.

[6] The Amended Complaint originally included TCT No. T-194347 among the subjects thereof but was excepted in the CA Decision on account of its

mandatory injunction, and damages (annulment case) filed by petitioners Asuncion Z. Jurado (Asuncion), joined by her husband Rex A. Jurado; Catalina Z. Aliling (Catalina), joined by her husband Jose P. O. Aliling IV; and the Heirs of Fernando M. Zamora, namely: Cecilia F. Zamora, Rafael Victor F. Zamora, Francis Noel F. Zamora, and Carla Marie F. Zamora (collectively, petitioners) against respondents Spouses Vicente and Carmen Chai (respondents).

The Facts

Petitioners Asuncion and Catalina claimed to be the registered owners, together with their deceased brother Fernando Zamora (Fernando; collectively, the Zamoras), of a 7,086-square meter (sq. m.) parcel of land denominated as Lot 4900 of the Cadastral Survey of Santiago, located in Santiago City, Isabela (Lot 4900), covered by TCT No. T-65150 which they inherited from their father, Dominador Zamora (Dominador). Dominador held the same under TCT No. T-2291 after acquiring it from the original owners, Spouses Antonio Pariñas and Maura Balbin (Spouses Pariñas).[7]

Sometime in 1997, they discovered that respondents unlawfully caused the subdivision of Lot 4900 into several parcels of land under four (4) certificates of title (derivative titles), to wit: (1) TCT No. T-194346[8] in the name of Vicente Chai, married to Carmen T. Chai; (2) TCT No. T-194347[9] in the name of Eduardo Sarmiento, married to Josefina M. Sarmiento (Spouses Sarmiento); (3) TCT No. T-l94348[10] in the name of Anastacio Palermo (Anastacio); and (4) TCT No. T-194349[11] in the names of Leonora Pariñas and Margarita Pariñas (Pariñas heirs). This

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earlier declaration as null and void by the same court in another case, docketed as CA-G.R. SP No. 104344, which has attained finality; see *rollo*, p. 121.

[7] *Rollo*, p. 114.

[8] Records, Vol. VI, pp. 67-69.

[9] *Id*. at 70-71, including dorsal portion.

[10] *Id*. at 72, including dorsal portion.

[11] *Id*. at 73, including dorsal portion.

prompted the Zamoras to file an annulment case against respondents, Spouses Sarmiento, Anastacio, the Pariñas heirs with their spouses, and the Register of Deeds (RD) for Isabela in Santiago City, Isabela (RD-Santiago), which was later amended to include the lessee, Petron Corporation (Petron), as defendant (collectively, Chai, *et al.*). They claimed that the titles of Chai, *et al*. proceeded from a fake Original Certificate of Title (OCT) No. 3429 that was reconstituted judicially and administratively without notice to all concerned parties, and without following the prescribed procedure.[12]

In support of their claim, the Zamoras presented the following, among others: (*a*) the owner's duplicate copy (ODC) of TCT No. T-65150[13] in Judicial Form No. 109-D bearing serial number 2273614 entered in the Registry of Deeds for Isabela in Ilagan, Isabela (RD-Ilagan)[14] on March 13, 1973 at 11:20 a.m., purporting to be a transfer from TCT No. T-2291 derived from OCT No. 6142 pursuant to Decree No. 689655 issued in Land Registration Commission (LRC) Cadastral Record No. 1496, which was originally registered on February 11, 1939; (*b*) Land Registration Authority (LRA) Certification[15] dated February 16, 2004, stating that Judicial Form No. 109-D with serial number 2273614 was issued to the RD-Ilagan on January 18, 1972; (*c*) Extrajudicial Settlement of the Estates of the Late Spouses Dominador Zamora and Victoria Mistica[16] which included Lot 4900 among the properties inherited by the Zamoras from their parents;[17] (*d*) Official Receipt (OR) No. 482515[18] dated August 25, 1947 in

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[12] See *rollo*, pp. 114-116.

[13] Records, Vol. VI, p. 52, including dorsal portion.

[14] Notably, the RD-Santiago was created only in the mid-year of 2003 (see *rollo*, p. 153), hence, while it is the present custodian of titles pertaining to registered lands in Santiago City, it was not actually the RD which issued the said title.

[15] Records, Vol. VI, p. 53.

[16] Dated April 9, 1969. *Id*. at 54-58.

[17] See *id*. at 57.

[18] *Id*. at 59.

the amount of P3.00, representing the docket fee paid by Dominador for his petition for issuance of the owner's duplicate of TCT No. T-2291; (*e*) certified microfilm copy of Decree No. 689655,[19] decreeing the registration of Lot 4900 in the name of the conjugal partnership of Spouses Pariñas; (*f*) Tax Declaration (TD) No. 5746[20] dated October 12, 1949 in the name of Dominador over the land covered by TCT No. T-2291, which cancelled Tax No. 16978;[21] (*g*) Tax No. 16978[22] in the name of Antonio Pariñas (Antonio); (*h*) real property tax (RPT) receipts in the name of Antonio for the years 1942 to 1944,[23] and in the name of Dominador for the years 1949 to 1974;[24] (*i*) OR No. 0811990[25] dated May 2, 1944 in the amount of P1.06, representing the payment by Antonio for Cadastral Title No. 6142 in his name; (*j*) ODCs[26] of TCT Nos. T-65146 to T-65149[27] (inclusive), and T-65151[28] in the names of the Zamoras, covering parcels of land in: the municipalities of Santiago and San Manuel, Isabela, to show that TCT No. T-65150 is one of the six (6) consecutively numbered TCTs issued by the RD-Ilagan to them on February 13, 1973; (*k*) certified true copy of OCT No. 0-3429[29] over Lot No. 7069 (Lot 7069) in the name of the conjugal partnership of Spouses Jose Calma and Crisanta Tumacder (Spouses Calma) pursuant to Decree No. N-167495 issued in

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[19] *Id*. at 74-75.

[20] *Id*. at 60, including dorsal portion.

[21] See *id*. at 60, dorsal portion.

[22] *Id*. at 129, including dorsal portion.

[23] See *id*. at 130-131.

[24] See *id*. at 61-66 and 132-134.

[25] *Id*. at 80.

[26] The ODCs of said certificates of title (save for TCT No. T-65149 which was a mere photocopy) were duly identified in court; see TSN, February 21, 2012, pp. 35-39.

[27] See records, Vol. VI, pp. 101-110.

[28] See *id*. at 111-113.

[29] *Id*. at 76-77, including dorsal portions.

LRC Cadastral Record No. 1474; and (*l*) Decree No. N-167495,[30] decreeing the registration of title over Lot 7069 of the subdivision survey of Santiago, Cadastral Case No. 23, LRC Cadastral Record No. 1474, with an area of 9,155 sq. m. in the name of the conjugal partnership of Spouses Calma.

For their part, respondents raised the defense of denial, and claimed that a portion[31] of Lot 4900, which was originally registered under OCT No. 3429 in the names of Spouses Pariñas (Pariñas OCT 3429), was transferred to them on October 19, 1990, through an Extrajudicial Settlement of Estate with Simultaneous Sale[32] executed by the Heirs of Spouses Pariñas who gave them a photocopy of Pariñas OCT 3429.[33] They alleged that they inspected Lot 4900 and inquired its status from the adjoining owners, who informed them that the same was owned by Spouses Pariñas. After the ocular inspection, they instructed a certain Teresita Masa (Ms. Masa) to verify the existence and genuineness of Pariñas OCT 3429 with the RD-Ilagan which issued a Certification[34] dated March 21, 1990 (RD-Ilagan Certification) stating that the subject 7,086-sq. m. Lot 4900 situated in Poblacion, Santiago Isabela covered by Pariñas OCT 3429 is free from any liens and encumbrances except Section 7 of Republic Act No. (RA) 26[35] inscribed at the back of said title. Masa likewise went to the Office of the Municipal Assessor

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

[31] The 6,361-sq. m. Lot 4900-A was acquired by Vicente Chai pursuant to the Extrajudicial Settlement of Estate with Simultaneous Sale dated October 19, 1990 executed by the Heirs of Spouses Pariñas (see records, Vol. VI, p. 223). He likewise supposedly acquired the parcel of land formerly covered by TCT No. T-194348 in the name of Anastacio (see records, Vol. I, p. 158) by virtue of a Deed of Absolute Sale dated November 19, 1990 (see records, Vol. I, p. 165).

[32] Dated October 19, 1990. Records, Vol. VI, pp. 222-225.

[33] See *rollo*, p. 115.

[34] *Id*. at 189. Issued by Deputy Register of Deeds Amado C. Vallejo, Jr.

[35] Entitled "AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED" (September 25, 1946).

of Santiago, Isabela and found that the same was declared for taxation purposes in the name of Spouses Pariñas. Thereafter, respondents purchased the said land.[36]

To support their allegations, respondents adduced the following documents, among others: (*a*) the Affidavit[37] of Ms. Masa dated September 13, 2012; (*b*) the RD-Ilagan Certification;[38] (*c*) the Extrajudicial Settlement of Estate with Simultaneous Sale[39] dated October 19, 1990; (*d*) TD No. 89-11075-R[40] in the name of Spouses Pariñas covering Lot 4900, effective 1990; (*e*) TCT No. T-194346;[41] and (*f*) RPT receipts[42] for the years 1991 to 2012.

On the other hand, defendant Leonora Pariñas-Dela Peña (source of right of respondents) maintained the primacy of OCT No. 3429 over OCT No. 6142 for having been issued earlier.[43] However, she was subsequently declared in default for failure to appear during the pre-trial.[44] On the other hand, Spouses Sarmiento were declared in default for failure to file their answer,[45] while the cases against Anastacio,[46] and Margarita Pariñas and her husband Melecio Pinto[47] (Spouses Pinto) were eventually dropped.

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[36] See *id*. at 150.

[37] Records, Vol. VI, pp. 189-190.

[38] *Rollo*, p. 189.

[39] Records, Vol. VI, pp. 222-225.

[40] *Rollo*, p. 190, including dorsal portion.

[41] Records, Vol. VI, pp. 67-69.

[42] See *id.* at 227-248.

[43] See Answer with Counterclaim dated June 24, 2004; records, Vol. II, p. 59.

[44] See Order dated May 29, 2007 issued by Judge Fe Albano Madrid; records, Vol. III, pp. 64-70.

[45] See Order dated April 10, 2006; records, Vol. II, p. 205.

[46] The case against Anastacio was dropped as he cannot be served with summons; see records, Vol. III, p. 4. See also *rollo*, p. 144.

[47] In view of their demise. See Order dated May 21,2007; records, Vol. III, p. 57.

For its part, Petron averred[48] that prior to the execution of the 20-year Lease Agreement[49] over a 2,000-sq. m. portion of Lot 4900, it conducted due diligence verification on respondents' title and was able to confirm the authenticity of TCT No. T-194346. Thus, it claimed to be an innocent lessee for value entitled to the full protection of the law.[50]

During the proceedings before the RTC, petitioners filed a Request for Admission[51] dated June 4, 2007, seeking admission from the RD-Santiago, among others, that: (*a*) there is no record or entry of Pariñas OCT 3429 existing in their records; and (*b*) OCT No. 3429 on file with it is OCT No. 0-3429 over Lot 7069 in the names of Spouses Calma (Calma OCT) fojr a parcel of land in San Mateo, Isabela.[52] A reply[53] thereto was submitted by the RD-Santiago, admitting such facts, with the qualification that OCT No. O-3429 was transmitted to it by the RD-Ilagan.[54]

Subsequently, petitioners filed a Motion for Summary Judgment[55] and a supplement[56] thereto, contending that no genuine issue of fact exists in view of, among others: (*a*) Leonora Pariñas-Dela Peña's *implied* admission[57] that: (*i*) the heirs of

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[48] See Answer with Compulsory Counter-claim and Cross-claim dated July 30, 2004; records, Vol. II, pp. 72-78.

[49] Dated September 20, 1996 but notarized on March 14, 1997; records, Vol. VI, pp. 81-84.

[50] See records, Vol. II, pp. 73-75.

[51] Records, Vol. III, pp. 72-74.

[52] See *id.* at 73.

[53] See Reply to the Request for Admission dated June 26, 2007; *id*. at 97-98. Signed by Registrar Atty. Rodrigo F. Pascua, Jr.

[54] See *id*. at 97.

[55] Dated August 9. 2007. *Id*. at 149-177.

[56] See Supplemental Motion for Summary Judgment dated October 1, 2007. Records, Vol. IV, pp. 2-10.

[57] Pursuant to Section 2, Rule 26 of the Rules of Court (see records, Vol. III, p. 152), considering, her failure to file a Reply (see *rollo*, p. 138) to the Request for Admission dated June 5, 2007 (see records, Vol. III, pp. 121-124).

Spouses Pariñas were not aware and did not participate in the reconstitution of Pariñas OCT 3429, as it was respondent Vicente Chai who authored the Extrajudicial Settlement of Estate with Simultaneous Sale, produced Pariñas OCT 3429, and caused the survey and subdivision of Lot 4900; and (*ii*) she has nothing to do with Pariñas OCT 3429 considering that the actual title of Spouses Pariñas to the land is OCT No. 6142;[58] (*b*) the RD-Santiago's*express* admission that there is no record or entry of Pariñas OCT 3429 existing in its records as what is on file with it is the Calma OCT;[59] (*c*) Spouses Chai's *express*admission that the origin of the derivative titles of Chai, *et al*. was Pariñas OCT 3429;[60] and (*d*) Spouses Sarmiento's *express* admission of petitioners' ownership and title over Lot 4900, which they derived from Dominador who held the same under TCT No. 2291 in his name. Thus, petitioners claimed that they are entitled to a judgment as a matter of law.[61] However, in a Resolution[62] dated February 27, 2008, the RTC denied the motions for lack of merit.[63] The matter was elevated to the CA via a petition for *certiorari*,[64] docketed as CA-G.R. No. SP No. 104344, which

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[58] See records, Vol. III, pp. 152-153.

[59] See *id*. at 156.

[60] See *id*. at 150-151.

[61] See *id*. at 149-157. They attached among others, a *Magkasamang Simanpaang Salaysay* dated July 9, 2007 executed by Spouses Sarmiento (*id*. at 178-179), admitting petitioners' ownership of Lot 4900. They claimed that: (a) Fernando Zamora charged them to watch over the said land, and they built their house on the southern portion thereof near the highway; (b) Vicente Chai allotted to them a piece of land on the eastern portion of Lot 4900, and gave them ₱8,000.00 which they used to build their house in the allotted portion; (c) in December 1990, respondent Spouses Chai, together with their lawyer, Atty. Edmar Cabucana, handed to them TCT No. T-194347 as their Christmas gift; and (d) since 1991, they had been paying the taxes due on the allotted portion, but ceased to do so after being served with summons in connection with Civil Case No. 2438 (See *id*.).

[62] Records, Vol. IV, pp. 119-136. Penned by Presiding Judge Anastacio D. Anghad.

[63] See *id*. at 135.

[64] Dated July 15, 2008. *Id*. at 251-309.

resulted to the Amended Decision[65] dated July 20, 2009, *inter alia*, declaring TCT No. T-194347 in the name of Spouses Sarmiento null and void,[66] finding that summary judgment is proper only with respect to them in view of their admission of petitioners' ownership of Lot 4900.[67]

The RTC Ruling

In a Decision[68] dated February 25, 2014, the RTC: (a) declared null and void TCT Nos. T-194346, T-194348, and T-194349; (b) confirmed petitioners' ownership over Lot 4900 covered by TCT No. T-65150; and (c) ordered Petron to pay petitioners the rentals stipulated in the Lease Agreement dated September 20, 1996, or to consign the rentals in court while the case is under litigation.[69]

The RTC observed that the judicial reconstitution proceedings of Pariñas OCT 3429 was attended with irregularity, considering that the Order granting the reconstitution was issued only in a span of 28 days from the date of filing of the petition,[70] which was contrary to the provisions[71] of RA 26. It likewise ruled

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[65] *Rollo*, pp. 137-141. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Arcangelita M. Romilla-Lontok and Romeo F. Barza, concurring.

[66] See *id*. at 140.

[67] See *id*. at 138.

[68] *Id*. at 143-162.

[69] *Id*. at 161-162.

[70] See *id*. at 158.

[71] Particularly, the publication, posting, and notice requirements at least 30 days prior to the date of hearing set forth in Section 13 of RA 26, to wit:

Section 13. **The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing.** The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at

that respondents were not purchasers in good faith, pointing out that the fact that Pariñas OCT 3429 was a reconstituted title should have alerted them to make an investigation in the Register of Deeds, which could have disclosed such irregularity but they failed to do so. Consequently, it ruled that Chai, *et al*. did not acquire valid title to Lot 4900, and declared their titles null and void for having been derived from a spurious and fake reconstituted title.[72]

On the other hand, the RTC ruled that petitioners were able to discharge their burden of proving their claim of ownership over Lot 4900 by preponderance of evidence. While it noted that TCT No. T-65150 is not intact with the RD-Santiago, it held that petitioners were able to show that they and their predecessors-in-interest were issued certificates of title over the said land.[73]

Finally, the RTC found that Petron had the right to rely on respondents' title at the time the Lease Contract was entered.[74] Aggrieved, petitioners and herein respondents separately moved for reconsideration,[75] which were, however, denied in an Order[76] dated May 20, 2014.

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least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court. (Emphasis supplied)

[72] See *rollo*, p. 159.

[73] See *id*. at 159-160.

[74] See *id*. at 161.

[75] See Motion for Partial Reconsideration dated March 25, 2014 filed by petitioners and Motion for Reconsideration (of the Decision dated February 25, 2014) dated March 27, 2014 filed by herein respondents; records, Vol. VI, pp. 405-420 and 423-442, respectively.

[76] *Id*. at 471-474.

Only herein respondents elevated the matter to the CA.[77]

The CA Ruling

In a Decision[78] dated May 12, 2016, the CA reversed the RTC decision[79] and dismissed the annulment case for lack of merit.[80]

The CA ruled that respondents were purchasers in good faith despite the irregularity which attended the reconstitution of Pariñas OCT 3429. It ratiocinated that respondents had the right to believe that the said title was duly reconstituted since reconstituted certificates of titles have the same validity and legal effect as the originals thereof. Moreover, it observed that their act of verifying the existence of the title with the RD and their honest belief that the sellers could legally convey the title to the land proved that respondents were buyers in good faith.[81]

On the other hand, the CA held that petitioners were not able to prove their right or interest in Lot 4900, pointing out that TCT No. T-65150 was not on file with the RD-Ilagan and notwithstanding, they had not taken any immediate action to reconstitute the same. It further noted that: (*a*) TCT No. T-2291, which is the origin of petitioners' title, was defective;[82] and (*b*) there was discrepancy in the date of issuance of Decree No. 689655 and the date of registration indicated in TCT Nos. T-65150 and T-2291;[83] and (*c*) petitioners did not take steps to exercise possession over the premises and pay the corresponding real property taxes starting 1975.[84]

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[77] See Notice of Appeal dated June 2, 2014; *id*. at 475-477.

[78] *Rollo*, pp. 113-129.

[79] Except for the disposition relative to TCT No. T-194347, which has been declared null and void in the Amended Decision dated July 20, 2009 in CA-G.R. No. SP No. 104344 that has attained finality. See *Id*. at 129.

[80] *Id*.

[81] See *id*. at 124-125.

[82] See *id*. at 126.

[83] See *id*. at 127.

[84] See *id*. at 127-128.

Unperturbed, petitioners moved for reconsideration[85] but the same was denied in a Resolution[86] dated January 10, 2018; hence, this petition.

The Issue Before the Court

The issues for the Court's resolution are whether or not the CA erred in declaring that: (*a*) respondents are purchasers in good faith; and (*b*) petitioners have not proven their claim of ownership over Lot 4900.

The Court's Ruling

In the present case, the CA ruled that respondents had the right to believe that Pariñas OCT 3429 was duly reconstituted since reconstituted certificates of titles have the same validity and legal effect as the originals thereof, and consequently adjudged them to be purchasers in good faith despite the irregularity which attended its reconstitution.

The Court disagrees

I. <u>Persons dealing with administratively reconstituted titles should conduct an inquiry or investigation as might be necessary to acquaint themselves with the defects in the titles of their vendors.</u>

Case law states that **reconstituted titles shall have the same validity and legal effect as to the originals thereof unless the reconstitution was made extrajudicially, or administratively**. This is because administrative reconstitution is essentially *ex-parte* and without notice, and thus, administratively reconstituted titles do not share the same indefeasible character of the original certificates of title. Anyone dealing with such copies are put on notice of such fact and warned to be extra-careful.[87]

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[85] See Motion for Reconsideration dated June 7, 2016; CA *rollo*, pp. 259-307.

[86] *Rollo*, pp. 131-136.

[87] See *Barstowe Philippines Corporation v. Republic of the Philippines,* 548 Phil. 86, 123 (2007).

In this case, Pariñas OCT 3429 was judicially reconstituted on February 28, 1974.[88] However, following the fire that razed the RD-Ilagan on December 4, 1976,[89] the same was administratively reconstituted on June 2, 1977.[90] As such, said reconstituted title does not share the same indefeasible character of the original certificates of title and such fact should have alerted respondents to conduct an inquiry or investigation as might be necessary to acquaint themselves with the defects therein.

However, respondents only relied on a mere *plain photocopy*[91] of Pariñas OCT 3429 when they purchased Lot 4900. Aside from instructing Ms. Masa to verify the existence and genuineness of the said title with the RD-Ilagan, who claimed that she was shown the original copy thereof,[92] respondents had not conducted any other inquiry or investigation to acquaint themselves with the defects of the said title. They had not even secured a certified true copy thereof, and merely relied on the RD-Ilagan Certification[93] stating that the 7,086-sq. m. Lot 4900 situated in Poblacion, Santiago, Isabela covered by Pariñas OCT 3429 is free from any liens and encumbrances except Section 7 of RA 26 inscribed at the back of said title on June 2, 1977.

Subsequently, it turned out that there is no Pariñas OCT 3429 on file with the RD-Santiago. While the mere fact that the RD does not have the original of a certificate of title does not necessarily mean that such title never existed,[94] the inexistence of Pariñas OCT 3429 was sufficiently established with the express

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[88] See records, Vol. VI, p. 116.

[89] See *rollo*, p. 15.

[90] See records, Vol. VI, p. 127.

[91] See *rollo*, pp. 185-188.

[92] Notably, the Affidavit dated September 13, 2012 executed by Teresita Masa averred that she was "shown the original copy of [OCT] No. **3439** (not 3429) then on file with the said office." See records, Vol. VI, p. 189.

[93] Dated March 21, 1990. *Rollo*, p. 189.

[94] See *Chan v. Court of Appeals*, 359 Phil. 242, 257 (1998).

admission by the RD-Santiago[95] that what was transmitted to it by the RD-Ilagan that is now on file with it is the Calma OCT[96] over a 9,155-sq. m. parcel of land located in Barrio Marasat Grande, San Mateo, Isabela,[97] issued pursuant to Decree No. N-167495[98] in Cadastral Case No. 23, LRC Cadastral Record No. 1474, and registered on November 7, 1977 at 11:30 am.[99] Between the above admission from the government office responsible for safeguarding the OCTs and TCTs in its possession,[100] and respondents' RD-Ilagan Certification[101] which does not bear the seal of office of the RD-Ilagan[102] nor indicate that the required documentary stamp,[103] as well as the certification fee[104] had been paid, the admission of the RD-Santiago should prevail.

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[95] See Reply to the Request for Admission dated June 26, 2007; records, Vol. III, pp. 97-98.

[96] See records, Vol. VI, pp. 76-77, including dorsal portions.

[97] See *id*. at 76, dorsal portion.

[98] See *id*. at 78-79.

[99] See *id*. at 76.

[100] See *Escobar v. Luna*, 547 Phil. 661, 672 (2007).

[101] See *rollo*, p. 189.

[102] See TSN, September 25, 2012, p. 16.

[103] Pursuant to Section 188 of the National Internal Revenue Code, as amended:

SECTION 188. *Stamp Tax on Certificates*. - On each certificate of damages or otherwise, and on every other certificate or document issued by any customs officer, marine surveyor, or other person acting as such, and on each certificate issued by a notary public, and on each certificate of any description required by law or by rules or regulations of a public office, or which is **issued for the purpose of giving information, or establishing proof of a fact, and not otherwise specified herein**, there shall be collected a documentary stamp tax of Fifteen pesos (P15.00). [now Thirty pesos (P30.00) pursuant to Section 61 of RA 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law]. (Emphasis supplied)

[104] Pursuant to Section 111 (C) (20) of Presidential Decree No. (PD) 1529 entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES" (June 11, 1978), which provides:

Moreover, aside from the irregularity which attended its reconstitution, a perusal of Pariñas OCT 3429 shows that it was purportedly transcribed in the Registration Book for the Province of Isabela[105] on **February 19, 1937**,[106] or more than

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Section 111. *Fees payable*. - The fees payable to the Clerk of Court, the Sheriff, the Register of Deeds and the Land Registration Commission shall be as follows:

x x x x x x x x x

C. Fees payable to the Register of Deeds. - The Register of Deeds shall collect fees for all services rendered by him under this Decree in accordance with the following schedule:

x x x x x x x x x

20. Certification. — For issuing a certificate relative to, or showing the existence or nonexistence of, an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words, five pesos; if it exceeds that number an additional fee of one peso shall be collected for every hundred words, or fraction thereof, in excess of the first two hundred words.

x x x x x x x x x

LRA Circular No. 11-2002 dated September 10, 2002 increased the rates for securing such certifications, to wit:

C. Fees payable to the Register of Deeds. - The Register of Deeds shall collect fees for all services rendered by him under this Decree in accordance with the following schedule.

x x x x x x x x x

19. Certification - For issuing a **certification relative to or showing the existence or non-existence of**, an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words 30.00

If this exceeds that number an additional fee shall be collected for every hundred words, or fraction thereof, in excess of the first two hundred words 6.00

x x x x x x x x x (Emphasis supplied)

[105] See *rollo*, p. 185. The same was made pursuant to Act No. 496, entitled "AN ACT TO PROVIDE FOR THE ADJUDICATION AND REGISTRATION OF TITLES TO LANDS IN THE PHILIPPINE ISLANDS," otherwise known as "The Land Registration Act," enacted on November 6, 1902.

[106] See *id*.

one (1) year *before* the issuance on **November 17, 1938** of Decree No. 689655, decreeing the registration of Lot 4900 in the name of the conjugal partnership of Spouses Pariñas.[107] It cannot be overemphasized that the transcription or entry of an original certificate of title can never precede the issuance of the decree authorizing such registration.[108]

Considering the foregoing, it is therefore apparent that Spouses Pariñas were not issued **Pariñas OCT 3429, and said title is totally inexistent.** That it was reconstituted is of no moment because an administrative reconstitution of title is merely a restoration or replacement of a lost or destroyed title **in its**

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[107] See records, Vol. VI, p. 75.

[108] The procedure is as follows:

1. After the judgment rendered in a land registration proceedings becomes final and executory, the court shall, within fifteen (15) days from entry of judgment, issue an order to the Commissioner (now Administrator) of the then Land Registration Commission (LRC; now LRA) for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration. (See Sections 30 and 39 of PD 1529.)

2. The clerk of court shall send, within fifteen (15) days from entry of judgment, certified copies of the judgment and of the said order of the court, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The decree of registration shall be signed by the Commissioner, entered and filed in the LRC. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book. (See Section 39 of PD 1529.)

3. Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees. (See Section 40 of PD 1529.)

original form at the time of the loss or destruction.[109] The issuance of a reconstituted title vests no new rights and determines no ownership issues,[110] and shall always be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed, but entry or notation of which has not been made on the reconstituted certificate of title, as expressly provided under Section 7[111] of RA 26, which was duly noted[112] on the reconstituted Pariñas OCT 3429. Consequently, this Court finds respondents not to be innocent purchasers for value, and as such, acquired no better title to Lot 4900 than what their predecessors-in-interest had, and which is without prejudice to the rights of another person who may prove a better right thereto than their transferors.

In addition, the Court notes that while Pariñas OCT 3429 was supposedly issued on February 19, 1937,[113] its issuance in the derivative titles[114] was reflected as February 19, 1930.[115] Moreover, the reconstituted Pariñas OCT 3429, and the derivative titles do not contain the required[116] annotation of the two-year lien under Section 4,[117] Rule 74 of the Rules of Court.

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[109] See *Vda. de Anciano v. Caballes*, 93 Phil. 875, 876 (1953); and *Bunagan v. Branch VI, Court of First Instance of Cebu*, 186 Phil. 31, 35 (1980).

[110] See *Serra Serra v. Court of Appeals*, 272-A Phil. 467, 478 (1991).

[111] Section 7 of RA 26 reads:

Section 7. Reconstituted certificates of title shall have the same validity and legal effect as the originals thereof: *Provided, however*, That certificates of title reconstituted extrajudicially, in the manner stated in sections five and six hereof, shall be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed, but entry or notation of which has not been made on the reconstituted certificate of title. This reservation shall be noted as an encumbrance on the reconstituted certificate of title. (Underscoring supplied)

[112] See *rollo*, p. 186.

[113] See *id*. at 185.

[114] Records, Vol. VI, pp. 67-73, including dorsal portions.

[115] See *id*. at 67, 70, 72, and 73.

[116] Pursuant to Section 86 of PD 1529, which provides:

II. Petitioners have proven their claim of ownership over Lot 4900.

Contrary to the CA's ruling, petitioners have proven their claim of ownership over Lot 4900 considering the following circumstances:

Section 86. *Extrajudicial Settlement of Estate.* - **When a deed of extrajudicial settlement has been duly registered, the Register of Deeds shall annotate on the proper title the two-year lien mentioned in Section 4 of Rule 74 of the Rules of Court.** Upon the expiration of the two-year period and presentation of a verified petition by the registered heirs, devisees or legatees or any other party in interest that no claim or claims of any creditor, heir or other person exist, the Register of Deeds shall cancel the two-year lien noted on the title without the necessity of a court order. The verified petition shall be entered in the Primary Entry Book and a memorandum thereof made on the title.

No deed of extrajudicial settlement or affidavit of adjudication shall be registered unless the fact of extrajudicial settlement or adjudication is published once a week for three consecutive weeks in a newspaper of general circulation in the province and proof thereof is filed with the Register of Deeds. The proof may consist of the certification of the publisher, printer, his foreman or principal clerk, or of the editor, business or advertising manager of the newspaper concerned, or a copy of each week's issue of the newspaper wherein the publication appeared. (Emphasis supplied)

[117] Said provision of law reads:

Section 4. *Liability of distributees and estate*. - If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such **real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years**

A. Petitioners have an owner's duplicate certificate of title in genuine/authentic Judicial Form 109-D.

While the original of TCT No. T-65150 was not on file with the RD-Santiago,[118] the genuineness of the owner's duplicate copy[119] of said title bearing serial number 2273614 had been duly certified[120] by the LRA. Said title traces its origin to OCT No. 6142 that was purportedly issued pursuant to Decree No. 689655[121] issued in Cadastral Record No. 1496, which was originally registered on February 11, 1939. The CA was mistaken in holding[122] that said decree does not tilt the scales of justice in petitioners' favor since the November 17, 1938 issuance date is not the date indicated in TCT No. T-65150. It is well to point out that the date and time of the issuance of the decree of registration cannot be considered as the date of the title. It is simply the date of its entry and filing in the LRA.[123] The OCT shall take effect on the date and time the original and duplicate copies thereof were entered by the Register of Deeds in his record book, and the corresponding number, date, seal of office, and his signature[124] are reflected on said certificates of title upon receipt thereof from the LRA Administrator.[125]

B. Petitioners are in possession of ancient documents showing acts of dominionby Antonio Pariñas and

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after such distribution, notwithstanding any transfers of real estate that may have been made. (Emphasis supplied)

[118] See *rollo*, p. 126.

[119] Records, Vol. VI, p. 52, including dorsal portion. The ODC of TCT No. T-65150 was duly identified in court; see TSN, February 21, 2012, p. 10.

[120] Records, Vol. VI, p. 53. Notably the said Certification bears the O.R. number and the date when the same was secured, and a documentary stamp was affixed thereto.

[121] Id. at 74-75.

[122] See *rollo*, p. 127.

[123] See Sections 31 and 39 of PD 1529.

[124] See Section 40 of PD 1529.

[125] See last sentence of Section 39 of PD 1529.

Dominador Zamora over Lot 4900 prior to the supposed acquisition of the same land by respondents.

Petitioners claim to have acquired Lot 4900 through succession from Dominador Zamora (Dominador) who held the same under TCT No. T-2291, which was supposedly derived, in turn, from OCT No. 6142 in the name of Spouses Pariñas. While the original copies of TCT No. T-2291 and OCT No. 6142 cannot be presented in view of the fire that razed the RD-Ilagan and the said titles have yet to be reconstituted, the previous issuance of said titles can be reasonably inferred from the following circumstances: (*a*) Dominador filed a petition for issuance of the Owner's Duplicate of TCT No. T-2291 on August 25, 1947;[126] (*b*) he declared the property covered by TCT No. T-2291 for tax purposes in his name on October 12, 1949 under TD No. 5746,[127] and paid the realty taxes thereon starting with those *due from 1945*;[128] (*c*) the area and boundaries reflected in TD No. 5746 coincide with the area and boundaries of Lot 4900 as described in Decree No. 689655;[129] (*d*) TD No. 5746 cancels[130] Tax No. 16978[131] over a property in the name of Antonio Pariñas (Antonio) located in Dubinan, Santiago, Isabela, which was previously covered by Tax No. 12937;[132] (*e*) petitioners are in possession of Tax No. 16978 as well as RPT receipts of payments

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[126] See OR No. 482515 dated August 25, 1947, representing the payment of docket fees therefor; records, Vol. VI, p. 59.

[127] *Id*. at 60, including dorsal portion.

[128] See OR No. 362975; *id*. at 61.

[129] The property covered by Decree No. 689655 and TD No. 5746 both contain 7,086 sq. m. and have the following boundaries:

Decree No. 689655 (see *id*. at 74)		**TD No. 5746** (see id. at 60)	
Northeast	—Calle Arranz	Northeast	— Calle Arranz
Southeast	—Lot No. 348	Southeast	— Lot No. 348
Southwest	—WestProvincial Road	Southwest	— Provincial Road
West	—Dubinan Creek	West	— Dubinan Creek

[130] See *id*. at 60, dorsal portion.

[131] *Id*. at 129, including dorsal portion.

[132] See *id*. at 129, dorsal portion.

under Tax No. 12937 in the name of Antonio for the years 1942 to 1944;[133] (*f*) real property taxes were paid in the name of Dominador under TD No. 5746 starting the year 1945 and up to 1969 even after his demise on January 21, 1966,[134] and under other tax declarations until 1974, by his son, Fernando,[135] who managed Lot 4900 among other properties;[136] and (*g*) petitioners are in possession of OR No. 0811990[137] dated May 2, 1944 representing payment for Cadastral Title No. 6142 in the name of Antonio.

Considering petitioners' possession of the afore-mentioned ancient documents[138] showing acts of dominion over Lot 4900 by Dominador which can be traced to the ownership of Antonio, the Court finds that petitioners' evidence, which convincingly prove their claim of ownership over Lot 4900, should clearly prevail over that of respondents', whose title was competently shown to have emanated from an ultimately inexistent and void title. Jurisprudence states that any title that traces its source to a void title, as respondents' in this case, is also void since the spring cannot rise higher than its source. *Nemo potest plus juris ad alium transferre quam ipse habet*.[139] Consequently, TCT No. T-194346[140] in the name of respondent Vicente Chai should

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[133] See *id*. at 130-131.

[134] See *id*. at 54.

[135] See *id*. at 132-134.

[136] Records, Vol. II, p. 4.

[137] Records, Vol. VI, p. 80.

[138] Section 21, Rule 132 of the Rules of Court provides:

Section 21. W*hen evidence of authenticity of private document not necessary*. — Where a private document is **more than thirty years old, is produced from the custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion**, no other evidence of its authenticity need be given. (Emphasis supplied)

[139] *CLT Realty Development Corporation v. Hi-Grade Feeds Corporation*, 768 Phil. 149, 172 (2015).

[140] See records, Vol. VI, pp. 67-69.

be declared null and void, having been derived from the inexistent Pariñas OCT 3429. On the other hand, having convincingly proven their claim of ownership over Lot 4900, petitioners' ownership and their entitlement to possession thereof should be confirmed.

As a final note, while the RTC in its Decision dated February 25, 2014 correctly confirmed petitioners' ownership over Lot 4900 covered by TCT No. T-65150 and annulled TCT No. T-194346 in the name of respondent Vicente Chai, it likewise ordered the annulment of TCT No T-194348[141] in the name of Anastacio, as well as TCT No. T-194349 in the names of Leonora and Margarita Pariñas, when the cases against Anastacio[142] and Spouses Pinto[143] had been dropped in view of the inability to serve summons upon their persons. It is settled that while the trial court retained the authority to proceed in the action despite the non-inclusion[144] of necessary parties,[145] as Anastacio and Spouses Pinto in this case, the judgment rendered therein shall be without prejudice to their rights. The RTC was therefore bereft of jurisdiction to order the annulment of TCT No. T-194348 in the name of Anastacio, as well as TCT No. T-194349 in the name of Leonora and Margarita Pariñas, insofar as the share of Margarita Pariñas was concerned.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 12, 2016 and the Resolution dated January 10, 2018

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[140] See records, Vol. VI, pp. 67-69.

[141] However, in their Answer to Interrogatories dated January 28, 2004 (see records, Vol. I, pp. 157-160), Spouses Chai claimed to be the present registered owners of the parcel of land formerly covered by TCT No. T-194348 in the name of Anastacio (see *id*. at 158) by virtue of a Deed of Absolute Sale dated November 19, 1990 (see *id*. at 165).

[142] See *rollo*, p. 144. See also records, Vol. III, p. 4.

[143] See Order dated May 21, 2007; records, Vol. III, p. 57.

[144] See last paragraph of Section 9, Rule 3 of the Rules of Court.

[145] Section 8, Rule 3 of the Rules of Court defines a necessary party as "one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action."

of the Court of Appeals in CA-G.R. CV No. 103042 are hereby **REVERSED** and **SET ASIDE**. Accordingly, a new judgment is **ENTERED** (a) confirming petitioners Asuncion Z. Jurado, joined by her husband Rex A. Jurado, Catalina Z. Aliling, joined by her husband Jose P. O. Aliling IV, and the Heirs of Fernando M. Zamora, namely: Cecilia F. Zamora, Rafael Victor F. Zamora, Francis Noel F. Zamora, and Carla Marie F. Zamora's (petitioners) ownership over Lot 4900 of the Cadastral Survey of Santiago covered by Transfer Certificate of Title (TCT) No. T-65150; (*b*) declaring TCT No. T-194346 in the name of Vicente Chai, married to Carmen T. Chai (respondents), and TCT No. T-194349 with respect to Leonora Pariñas-Dela Peña's (Dela Peña) share as **NULL and VOID**; and (*c*) ordering respondents and Dela Peña to surrender possession of Lot 4900 to petitioners.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa, Reyes, Jr., J.,* and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 239399. March 25, 2019]

ROLANDO P. DIZON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); SECTION 21 OF RA No. 9165; CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED AND/OR SURRENDERED DANGEROUS DRUGS; WHILE STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF RA No. 9165 IS MANDATORY, A

DEVIATION MAY BE ALLOWED ONLY IF JUSTIFIABLE GROUNDS EXIST ALLOWING DEPARTURE FROM THE RULE ON STRICT COMPLIANCE, AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM.— x x x [W]hile as a rule, strict compliance with the x x x requirements is mandatory, a deviation may be allowed **only if** the following requisites concur: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; **and** (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Thus, when there is a showing of lapses in procedure, the prosecution must recognize such and accordingly justify the same in order to warrant the application of the saving mechanism.

2. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS; WITNESS REQUIREMENTS; NOT COMPLIED WITH.— In this case, the apprehending team plainly failed to comply with the witness requirements under the law, *i.e.*, that the photographing and inventory of the seized items be witnessed by a representative from the media, the Department of Justice (DOJ), and any elected public official. The records are clear: only two (2) barangay officials were present to witness the operation x x x. Worse, there was no indication whatsoever that the apprehending team attempted, at the very least, to secure the presence of the other required witnesses. Thus, as a result of the foregoing irregularities committed by the government authorities, the conviction of Dizon now hangs in the balance. In this respect, in order not to render void the seizure and custody over the evidence obtained from the latter, the prosecution is thus required, as a matter of law, to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized items were properly preserved. After a judicious scrutiny of the records of this case, the Court finds that the apprehending officers failed in this regard.

3. ID.; ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES, IMPORTANCE THEREOF EXPLAINED; PROVING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS WERE PRESERVED

BECOMES INCONSEQUENTIAL WHERE THE PROSECUTION FAILED TO PRESENT JUSTIFIABLE GROUNDS FOR THE FAILURE TO SECURE THE REQUIRED WITNESSES. — [T]he Court finds it brazen of the police officers to recognize their fatal error in procedure and yet at the same time offer no explanation or justification for doing so, which, as stated above, is **required by the law**. What further catches the attention of the Court is the fact that Dizon was apprehended pursuant to a search warrant and therefore with more reason, the police officers could have secured the presence of the other witnesses, *i.e.*, the DOJ representative and media representative. However, despite the advantage of planning the operation ahead, the apprehending team nonetheless inexplicably failed to comply with the basic requirements of Section 21 of R.A No. 9165. The importance of such witnesses was explained by the Court in *People v. Luna*: The reason for this is dictated by simple logic: these witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. Hence, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the insulating presence of the witnesses is most needed, as **it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence.** Without the actual presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the confiscated drugs, the evils of switching, planting or contamination of the *corpus delicti* that had tainted the buy-busts conducted under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected. Prescinding from the foregoing, considering that no justifiable grounds for the failure to secure the required witnesses were presented by the prosecution, proving that the integrity and evidentiary value of the seized drugs were preserved becomes inconsequential. Stated differently, the saving clause was not triggered because the first prong was not satisfied in the first place.

4. ID.; ID.; ID.; ID.; LAPSES IN THE MANDATORY PROCEDURE, WHEN LEFT UNACKNOWLEDGED AND UNEXPLAINED BY THE STATE, MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST THE ACCUSED AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAVE

BEEN COMPROMISED.— [I]t was serious error for the CA to apply the two requisites alternatively and not sequentially; that unjustified lapses in procedure could be overcome by proof that the integrity and evidentiary value of the seized items remained intact: R.A. No. 9165 and its IRR do not require strict compliance or perfect adherence to the procedural aspect of the chain of custody rule. Substantial compliance suffices since what is essential is the preservation of the integrity since what is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. Such interpretation of the law is simply not discernible from a plain reading thereof. To repeat, the procedural requirements under Section 21 of R.A. No. 9165 are mandatory and may be relaxed only if the following requisites are availing: (1) the departure in procedure is based on "justifiable grounds;" **and** (2) the integrity and the evidentiary value of the seized items are preserved. The Court has held in previous instances that lapses in the procedure under Section 21 of R.A. No. 9165, when left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* have been compromised. All things considered, the acquittal of Dizon has now become inevitable.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition)[1] questioning the Decision[2] dated

[1] *Rollo*, pp. 12-32.

[2] *Id*. at 34-45. Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) with Associate Justices Jane Aurora C. Lantion and Pablito A. Perez, concurring.

November 10, 2017 and Resolution[3] dated May 9, 2018 of the Court of Appeals - Special Third Division (CA) in CA-G.R. CR No. 39221. The Decision dated November 10, 2017 affirmed the Decision[4] dated June 27, 2016 of the Regional Trial Court of Quezon City, Branch 82 (RTC), which convicted herein petitioner Rolando P. Dizon (Dizon) for violation of Section 11, Article II of Republic Act No. 9165[5] (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

An Information[6] was filed against Dizon for violation of Section 11, Article II of R.A. No. 9165, which reads in part:

> That on or about the 26th day of November 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there wil[l] fully, unlawfully and knowingly have in his/her possession and control three point zero one nine one (3.0191) grams of white crystalline substance containing [methamphetamine] hydrochloride[,]
>
> a dangerous drug[.]
>
> CONTRARY TO LAW.[7]

When arraigned, Dizon entered a plea of "not guilty."[8] Trial on the merits ensued.

As summarized by the CA, the factual antecedents are as follows:

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

[4] *Id.* at 69-80. Penned by Presiding Judge Lyn Ebora-Cacha.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, As AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

[6] Records, p. 1.

[7] *Id.*

[8] *Rollo*, p. 69.

On November 26, 2003, at around 3:00 o'clock in the afternoon, SI Cruz together with team leader SI Arthur Oliveros, SI Sindatuk Ulama, SI Erum and SI Otec implemented a search warrant issued by the RTC of Quezon City to make an immediate search of the residence of accused-appellant Dizon and to seize and take possession of the following articles and bring them to the court:

1. undetermined quantity of Methamphetamine Hydrochloride otherwise known as "shabu";
2. records and proceeds of sale of shabu;
3. weighing scale, plastic sachets, sealers and other articles used or being used in the same and distribution of shabu;
4. tooters, water pipes, burners and other paraphernalia used or being used in the administration of ["]shabu".

When they arrived at accused-appellant's house, SI Cruz and his team noticed that the house was open yet nobody was answering their call. They fetched two (2) barangay officials who informed them that accused-appellant can be found few blocks from his house. Acting on the information, they went back to accused-appellant's residence and entered the gate. At that time, accused-appellant was watching the operation from a parked tricycle about fifteen (15) to twenty (20) meters away from his house. SI Cruz, accompanied by some residents of the house, met accused-appellant outside and told him that they obtained a search warrant and that he has to witness its execution. SI Cruz, his team, accused-appellant and the 2 barangay kagawad namely Nelson C. Alcantara (Kagawad Alcantara) and Elisa S. Lim (Kagawad Lim) went inside the house. When the search began, SI Cruz recovered plastic sachets containing crystalline substance at the nearest bedroom. The plastic sachets were found inside the pocket of a white ladies jacket place on top of the bed. Aware of the absence of accused-appellant's counsel, SI Cruz did not inquire about the owner of the jacket. Thereafter, SI Cruz prepared an inventory and placed markings on the sachet in the presence of accused-appellant, Kagawad Alcantara and Kagawad Lim. Based on the inventory, the items seized from the premises of accused-appellant included a plastic sachet containing seven (7) smaller heat-sealed transparent plastic sachets of white crystalline substance bearing the markings "NC-1", "NC-2", "NC-3", "NC-4", "NC-5", "NC-6", "N[C]-7" and another plastic sachet containing two (2) smaller unsealed Ajinomoto packets

of white crystalline substance with the marking "NC-8". SI Cruz also took photographs of the articles seized in the premises. The search team brought accused-appellant and the confiscated articles to the NBI main office in Taft Avenue and continued with the booking procedure.

At the NBI office, SI Cruz submitted the evidence to Forensic Chemist Ilagan. The quantitative and qualitative examinations conducted by Forensic Chemist Ilagan showed:

x x x x x x x x x

"NC-1" to "NC-6"	-	POSITIVE for Methamphetamine Hydrochloride, a dangerous drug;
"NC-7" & "NC-8"	-	Negative for the presence of Methamphetamine Hydrochloride. Further examinations made gave Positive Results for the presence of Potassium Aluminium Sulfate (TAWAS) and Monosodium Glutamte (sic) (VETSIN), respectively.

SI Cruz identified accused-appellant Dizon in open court as well as the plastic sachets through the markings placed on them. He likewise testified that he executed a joint affidavit of arrest.

For the defense, accused-appellant Dizon testified that on November 26, 2003 at around 1:00 o'clock in the afternoon, he was talking to one of the tricycle drivers at the terminal of Pugong Ginto, Barangay Sta. Monica Novaliches, Quezon City who told him that a number of people were in his house. While on his way home, agents of the NBI approached accused-appellant, arrested him and announced that they had a search warrant. The NBI agents brought him to his house, asked him to take a seat and the barangay officials to come over. Upon Kagawad Lim's arrival, the NBI agents started searching his house without showing him the search warrant nor telling him the subject of the search. After the search, he was brought to the NBI headquarters in Taft Avenue where he was subjected to a drug test and then to the Quezon City Hall where he was presented to the Inquest Prosecutor for the inquest proceeding. Accused-appellant maintained that he was not informed of the violations he committed and why he was brought for inquest. Thereafter, he was detained at the NBI headquarters but was able to post bail the following day.

Accused-appellant Dizon vehemently denied the accusation hurled against him and alleged that he only saw the sachets of shabu when he was at the Fiscal's office. He was surprised to learn that the pieces of evidence against him were obtained from a white jacket because he does not own one.

Simbillo, Soriano, Borero and Salvador all testified that they knew accused-appellant Dizon and that they saw the NBI agents approached and brought him to his house. But they did not witness the events that transpired inside accused-appellant's house as well as the conduct of the search.

Sombillo, a resident of Pugong Ginto, testified that on November 26, 2003 he was at the tricycle terminal with the other members of the tricycle association. At around 2:00 o'clock in the afternoon, NBI agents arrived, arrested accused-appellant and brought him in his house. Sombillo followed them but only stayed outside of the house. He admitted that he did not know what happened while accused-appellant and the agents were inside his house.

Soriano, also a resident of Pugong Ginto, lives ten (10) houses away from accused-appellant and has known him for twenty-five (25) years already. She said that at around 9:00 o'clock in the morning of November 23, Soriano was manning her canteen when she saw NBI agents arrested accused-appellant. She only saw the agents boarded accused-appellant in a van but had no idea where they were going.

Borero, a tricycle driver and a Pugong Ginto resident, recounted that accused-appellant was in a store near the tricycle terminal when the NBI agents approached and invited him. But Borero did not see what transpired next because he had to leave immediately to drive his passenger.

Salvador, also a Pugong Ginto tricycle driver, said that he has been neighbors with accused-appellant for twenty (20) years. He recalled that he was just nearby when he saw five (5) persons entered (sic) accused-appellant's house. He said there were no barangay officials or member of the media in the place. He also professed that he did not see them leave accused-appellant's house because his wife already called him.[9] (Citations omitted)

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[9] *Id.* at 35-38.

Ruling of the RTC

In a Decision, the RTC found Dizon guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused **Rolando P. Dizon "Guilty"** beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165.
>
> Accordingly, this Court sentences accused Rolando P. Dizon to suffer the indeterminate penalty of imprisonment of Twelve (12) years and **One (1) Day** as **minimum** to **Fourteen (14) Years** as **maximum** and to pay a **Fine** in the amount of Three Hundred Thousand Pesos (₱300,000.00).
>
> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.
>
> **SO ORDERED.**[10]

In convicting Dizon, the RTC overlooked the failure of the National Bureau of Investigation (NBI) agents to strictly comply with Section 21 of R.A. No. 9165 (*i.e.*, the only witnesses present were two (2) barangay kagawad) and held that the integrity and evidentiary value of the seized items were preserved due to an unbroken chain of custody:

> x x x [T]he Court is also convinced that the prosecution was able to establish the integrity of the *corpus delicti* and the unbroken chain of custody of the seized drug. Records show that the chain of custody over the seized substances was not broken. SI Noel Cruz testified that when they enter (sic) and searched the house of the accused Rolando Dizon they were armed with a search warrant issued by Honorable Natividad A. Giron-Dizon. During the searched (sic), present were the accused and two barangay kagawads (sic) and he was able to recover eight (8) pieces of plastic sachets containing white crystalline substance in a jacket placed on top of the bed of one of the bedrooms of the house of the accused. Thereafter, SI Cruz marked the plastic sachets and conducted an inventory in the presence of barangay Kagawads (sic) Alcantara and Lim. After the conduct

[10] *Id.* at 79-80.

of the inventory, they brought the accused and the evidence to the NBI office in Taft Avenue, Manila for the conduct of the booking procedure. Then, SI Cruz submitted the evidence to the NBI Forensic Chemistry Division for the examination on the confiscated evidence. The Forensic Chemist, Filipina V. Ilagan, conducted the requested examination on the marked sachets and found the sachets with markings "NC-1" to "NC-6" positive for methamphetamine hydrochloride. Finally, during trial, the same marked sachets were identified by SI Noel Cruz.

Thus, the prosecution was able to establish that the evidence recovered from accused Rolando Dizon during the implementation of the search warrant by the NBI agents was the same evidence tested, introduced, and testified on by the prosecution witness in court.

While the NBI agents were not able to strictly comply with Section 21 of R.A. 9165 considering the lack of media and DOJ representatives, case law has it that such non-compliance is not fatal to the case of the prosecution. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.[11] (Emphasis supplied)

Unsatisfied, Dizon appealed his conviction to the CA.

Ruling of the CA

In a Decision dated November 10, 2017, the CA affirmed the RTC Decision *in toto*, as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated June 27, 2016 of the RTC Branch 82 of Quezon City in Criminal Case No. Q-03-123000 is **AFFIRMED**.

SO ORDERED.[12]

In affirming the RTC, the CA found that the integrity and evidentiary value of the confiscated dangerous drugs were preserved due to the unbroken chain of custody established by the prosecution.[13]

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

[12] *Id*. at 45.

[13] *Id*. at 44-45.

A Motion for Reconsideration[14] filed by Dizon was denied by the CA in a Resolution dated May 9, 2018.

Hence, this petition.

Issue

The principal issue for resolution is whether Dizon is guilty beyond reasonable doubt for the crime of violation of Section 11, Article II of R.A. No. 9165.

The Court's Ruling

The petition is meritorious.

Non-observance of the procedure under Section 21 of R.A. No. 9165

Under the applicable Section 21,[15] Article II of R.A. No. 9165, the following procedure must be observed in the seizure, custody, and disposition of dangerous drugs:

> 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**

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[14] *Id*. at 101-112.

[15] Section 21 of R.A. No. 9165 was amended by R.A. No. 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT No. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'." RA 10640, which imposed less stringent requirements in the procedure under Section 21, was approved on July 15, 2014.

of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**[.] (Emphasis supplied)

The Implementing Rules and Regulations of R.A. No. 9165 (IRR), on the other hand, supplied additional custody requirements and added a "saving clause" in case of non-compliance with such requirements under justifiable grounds. Thus, Section 21 (a), Article II of the IRR states:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.*** — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

Thus, while as a rule, strict compliance with the foregoing requirements is mandatory,[16] a deviation may be allowed **only if** the following requisites concur: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; **and** (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[17] Thus, when there is a showing of lapses in procedure, the prosecution must recognize such and accordingly justify the same in order to warrant the application of the saving mechanism.[18]

In this case, the apprehending team plainly failed to comply with the witness requirements under the law, *i.e.*, that the photographing and inventory of the seized items be witnessed by a representative from the media, the Department of Justice (DOJ), and any elected public official. The records are clear: only two (2) barangay officials were present to witness the operation, as observed by the RTC:

> x x x During the searched (sic), present were the accused and two barangay kagawads (sic) and he was able to recover eight (8) pieces of plastic sachets containing white crystalline substance in a jacket placed on top of the bed of one of the bedrooms of the house of the accused. Thereafter, **SI Cruz marked the plastic sachets and conducted an inventory in the presence of barangay Kagawads** (sic) **Alcantara and Lim.** After the conduct of the inventory, they brought the accused and the evidence to the NBI office in Taft Avenue, Manila for the conduct of the booking procedure.[19] (Emphasis supplied)

Worse, there was no indication whatsoever that the apprehending team attempted, at the very least, to secure the presence of the other required witnesses.

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[16] *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 116 Phil. 462, 475 (2016).

[17] R.A. No. 9165, Sec. 21 (a), as implemented by its IRR.

[18] *People v. Luna*, G.R. No. 219164, March 21, 2018, p. 10.

[19] *Rollo*, p. 78.

Thus, as a result of the foregoing irregularities committed by the government authorities, the conviction of Dizon now hangs in the balance. In this respect, in order not to render void the seizure and custody over the evidence obtained from the latter, the prosecution is thus required, as a matter of law, to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized items were properly preserved.[20]

The saving clause under the IRR does not apply.

After a judicious scrutiny of the records of this case, the Court finds that the apprehending officers failed in this regard.

At the outset, the Court finds it brazen of the police officers to recognize their fatal error in procedure and yet at the same time offer no explanation or justification for doing so, which, as stated above, is **required by the law**. What further catches the attention of the Court is the fact that Dizon was apprehended pursuant to a search warrant and therefore with more reason, the police officers could have secured the presence of the other witnesses, *i.e.*, the DOJ representative and media representative.

However, despite the advantage of planning the operation ahead, the apprehending team nonetheless inexplicably failed to comply with the basic requirements of Section 21 of R.A No. 9165. The importance of such witnesses was explained by the Court in *People v. Luna*:[21]

> The reason for this is dictated by simple logic: these witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. Hence, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the insulating presence of the witnesses is most needed, as **it is their presence at the time of seizure and confiscation that would foreclose the**

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[20] See *People v. Capuno*, 655 Phil. 226, 240-241 (2011), citing *People v. Garcia*, 599 Phil. 416, 432-433 (2009); *People v. Reyes*, 797 Phil. 671, 687 (2016).

[21] *Supra* note 18.

pernicious practice of planting of evidence. Without the actual presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the confiscated drugs, the evils of switching, planting or contamination of the *corpus delicti* that had tainted the buy-busts conducted under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected.[22]

Prescinding from the foregoing, considering that no justifiable grounds for the failure to secure the required witnesses were presented by the prosecution, proving that the integrity and evidentiary value of the seized drugs were preserved becomes inconsequential. Stated differently, the saving clause was not triggered because the first prong was not satisfied in the first place.

In this regard, it was serious error for the CA to apply the two requisites alternatively and not sequentially; that unjustified lapses in procedure could be overcome by proof that the integrity and evidentiary value of the seized items remained intact:

> R.A. No. 9165 and its IRR do not require strict compliance or perfect adherence to the procedural aspect of the chain of custody rule. Substantial compliance suffices since what is essential is the preservation of the integrity since what is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[23]

Such interpretation of the law is simply not discernible from a plain reading thereof. To repeat, the procedural requirements under Section 21 of R.A. No. 9165 are mandatory and may be relaxed only if the following requisites are availing: (1) the departure in procedure is based on "justifiable grounds;" **and** (2) the integrity and the evidentiary value of the seized items are preserved.

The Court has held in previous instances that lapses in the procedure under Section 21 of R.A. No. 9165, when left

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[22] *Id*. at 11.

[23] *Rollo*, p. 44.

unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* have been compromised.[24] All things considered, the acquittal of Dizon has now become inevitable.

WHEREFORE, premises considered, the petition is **GRANTED** and the Decision dated November 10, 2017 and Resolution dated May 9, 2018 of the Court of Appeals in CA-G.R. CR No. 39221 is hereby **REVERSED** and **SET ASIDE**. Petitioner Rolando P. Dizon is hereby **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt. Let an entry of final judgment be issued immediately.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Carandang*, and *Lazaro-Javier, JJ.,* concur.

EN BANC

[A.C. No. 12423. March 26, 2019]

ALFREDO SAN GABRIEL, *complainant, vs.* **ATTY. JONATHAN T. SEMPIO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; THE LAWYER IS EXPECTED TO MAINTAIN, AT ALL TIMES, A HIGH STANDARD OF

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[*] Designated additional member per Raffle dated 19 December 2018.

[24] *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

LEGAL PROFICIENCY, AND TO DEVOTE HIS FULL ATTENTION, SKILL, AND COMPETENCE TO THE CASE, REGARDLESS OF ITS IMPORTANCE AND WHETHER OR NOT HE ACCEPTS IT FOR A FEE.— Once a lawyer agrees to handle a case, he is required by the CPR to undertake the task with zeal, care, and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Every case which a lawyer accepts deserves full attention, diligence, skill, and competence, regardless of its importance. To this end, Canons 15, 17, 18, and Rule 18.03 of the CPR respectively state: CANON 15 – A lawyer shall observe candor, fairness[,] and loyalty in all his dealings and transactions with his clients. CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust reposed in him. CANON 18 – A lawyer shall serve his client with competence and diligence. Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. "Clients are led to expect that lawyers would always be mindful of their cause and, accordingly, exercise the required degree of diligence in handling their affairs. On the other hand, the lawyer is expected to maintain, at all times, a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether or not he accepts it for a fee. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives."

2. **ID.; ID.; ID.; ID.; A LAWYER'S NEGLECT OF A LEGAL MATTER ENTRUSTED TO HIM BY HIS CLIENT CONSTITUTES INEXCUSABLE NEGLIGENCE FOR WHICH HE MUST BE HELD ADMINISTRATIVELY LIABLE.—** [R]espondent's neglect of the legal matter entrusted to him by complainant constitutes flagrant violations of the xxx tenets of the CPR. It is settled that "once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable x x x," as in this case.

3. ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF TWO (2) YEARS IMPOSED UPON THE RESPONDENT FOR INEXCUSABLE NEGLIGENCE TO THE PREJUDICE OF HIS CLIENT.— Anent the proper penalty to be imposed on respondent, case law provides that in instances where the lawyer commits similar acts against their respective clients, the Court imposed on them the penalty of suspension from the practice of law. x x x. In *Go v. Buri,* the Court suspended the erring lawyer for a period of two (2) years for, *inter alia,* neglecting her client's affairs. In view of the foregoing – as well as the fact that respondent was earlier suspended in the case of *Baens* for committing similar negligent acts to the prejudice of his client – the Court deems it proper to impose on him the penalty of suspension from the practice of law for a period of two (2) years, as recommended by the IBP Board of Governors.

4. ID.; ID.; ID.; ID.; RETURN OF THE LEGAL FEES WHICH THE LAWYER RECEIVED FROM THE CLIENT LESS THE AMOUNT COMMENSURATE TO THE WORKS THAT HE HAD DONE WARRANTED; SIX PERCENT INTEREST (6%) PER ANNUM IMPOSED.— [T]he Court notes that complainant paid respondent the total amount of ₱120,000.00 representing the latter's legal fees "inclusive of all the necessary and incidental expenses for the [Nullity Case] x x x up to the release of the decision [in connection thereto]." However, since it appears from the records that the only things that respondent did for petitioner in the Nullity Case were: *(a)* the filing of the initiatory pleading, *i.e.,* the petition; and *(b)* the filing of a motion for reconsideration which led to the reinstatement of the said petition, the Court finds it appropriate to order respondent to return to complainant **within ten (10) days from receipt of this Decision,** the legal fees of ₱120,000.00 he received less the amount commensurate to the works that he had done in the Nullity Case, which the Court pegs at about ₱20,000.00 – or a total of ₱100,000.00. Furthermore, interest at the rate of six percent (6%) per annum is imposed on the said amount, which shall accrue **from the time of respondent's receipt of this Decision until full payment.** To be sure, since the obligation to return arose – and thus, became due and demandable – only from the time of the Court's resolution of respondent's administrative liability, interest on the said monetary

amount should begin to accrue once respondent has been duly notified of his administrative liability – that is, upon receipt of the Court's Decision herein.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a complaint[1] dated February 29, 2016 filed before the Integrated Bar of the Philippines (IBP) – Commission on Bar Discipline by complainant Alfredo San Gabriel (complainant) against respondent Atty. Jonathan T. Sempio (respondent) praying that the latter be disbarred for his alleged unprofessional conduct.

The Facts

Complainant alleged that sometime in January 2014, he engaged the services of respondent to handle the annulment of his marriage (Nullity Case). In connection therewith and by virtue of the Contract of Legal Services[2] they entered into, complainant paid respondent the amount of ₱120,000.00[3] representing the latter's legal fees inclusive of all necessary and legal expenses up to the release of the decision, in said case. Shortly thereafter, respondent filed a petition[4] praying for the nullification of complainant's marriage before the Regional Trial Court of Malabon City, Branch 73 (RTC).[5]

More than a year later, complainant was surprised when he received a copy of the RTC's Order[6] dated July 2, 2015 dismissing the Nullity Case without prejudice for respondent's failure to

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[1] *Rollo,* pp. 2-5.

[2] *Id.* at 22.

[3] See Acknowledgement Receipt signed by respondent; *id*. at 23.

[4] Dated January 28, 2014; *id*. at 6-12.

[5] See *id*. at 2-3. See also *id*. at 92-93.

[6] *Id*. at 20. Penned by Presiding Judge Carlos M. Flores.

comply with a previous court order.[7] Upon confronting respondent, complainant was promised that the situation will be rectified by filing the necessary motion, *i.e.,* a motion for reconsideration.[8] After the reinstatement[9] of the Nullity Case, complainant made several follow-ups with respondent to no avail. Soon thereafter, complainant found out that respondent had left the country without informing him, resulting in the archiving of the Nullity Case.[10] As complainant felt that respondent had abandoned the Nullity Case, he filed the instant complaint. He further claimed that respondent already has a track record of unduly neglecting his clients' affairs, as seen in the case entitled *Baens v. Sempio*[11] *(Baens)* where the Court suspended him for such negligence.[12]

In his defense,[13] respondent denied neglecting complainant's Nullity Case, maintaining that he was unable to handle the same due to his suspension from the practice of law in the case of *Baens*. Respondent then claimed that after learning of his suspension, he met with complainant to inform him of his predicament. Respondent then asked complainant to look for a replacement counsel as he intended to go abroad to ease his "depression" on account of his suspension. Finally, respondent averred that he proceeded with his overseas trip, thinking that he and complainant had already agreed that the latter would just get another lawyer to handle his Nullity Case.[14]

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[7] Dated April 29, 2015. Not attached to the *rollo.* See also *id*. at 20.

[8] See Motion for Reconsideration with Motion to Publish Summons dated August 17, 2015; *id.* at 15-18.

[9] See Order dated August 24, 2015; *id*. at 19

[10] See Order dated January 22, 2016 signed by Acting Presiding Judge Edwin G. Larida, Jr.; *id.* at 21

[11] 735 Phil. 492 (2014)

[12] See *rollo,* pp. 3-4. See also *id*. at 92-93

[13] See respondent's Answer dated December 4, 2016; *id*. at 37-47.

[14] See *id.* at 41-44. See also *id.* at 93.

The IBP's Report and Recommendation

In a report and recommendation[15] dated June 20, 2017, the Investigating Commissioner (IC) found respondent administratively liable for violating Canons 15, 17, 18, and Rule 18.03 of the Code of Professional Responsibility (CPR), and accordingly, recommended that he be suspended from the practice of law for a period of two (2) years.[16]

The IC found that respondent was negligent in handling complainant's legal affairs which led to the incidents that transpired in the latter's Nullity Case. The IC did not find tenable respondent's excuse that he failed to act on the Nullity Case due to his suspension by the Court, considering that: *(a)* there was a seven (7)-month span between the time respondent filed the petition in the Nullity Case and the time he learned of his suspension; and *(b)* he did not make any positive action to further his client's interests during that time. Further, the IC opined that assuming respondent indeed got "depressed" upon learning of his suspension and asked complainant to look for a replacement counsel, he still failed to take the necessary steps to effectuate such replacement. Finally, the IC opined that respondent has not learned his lesson from his previous administrative case, *i.e.,* in *Baens,* observing that the negligent acts he committed therein were repeated in this case.[17]

In a Resolution[18] dated May 3, 2018, the IBP Board of Governors adopted the IC's report and recommendation that respondent be meted the penalty of suspension from the practice of law for a period of two (2) years.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be administratively sanctioned for the acts complained of.

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[15] *Id.* at 92-95. Penned by Commissioner Ricardo M. Espina.

[16] *Id.* at 9

[17] *Id.* at 93-95.

[18] See Notice of Resolution in CBD Case No. 16-4927 signed by National Secretary Doroteo B. Aguila; *id.* at 90-91.

The Court's Ruling

Once a lawyer agrees to handle a case, he is required by the CPR to undertake the task with zeal, care, and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Every case which a lawyer accepts deserves full attention, diligence, skill, and competence, regardless of its importance.[19] To this end, Canons 15, 17, 18, and Rule 18.03 of the CPR respectively state:

> CANON 15 – A lawyer shall observe candor, fairness[,] and loyalty in all his dealings and transactions with his clients.
>
> CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust reposed in him.
>
> CANON 18 – A lawyer shall serve his client with competence and diligence.
>
> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

"Clients are led to expect that lawyers would always be mindful of their cause and, accordingly, exercise the required degree of diligence in handling their affairs. On the other hand, the lawyer is expected to maintain, at all times, a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether or not he accepts it for a fee. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives."[20]

In this case, records show that sometime in January 2014, complainant secured respondent's services in order to assist him in filing his Nullity Case, and in connection therewith, paid the latter the amount of ₱120,000.00. Initially, respondent followed through with his undertaking by filing the necessary

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[19] See *Padilla v. Samson,* A.C. No. 10253. August 22, 2017, 837 SCRA 352, 357 citing *Rollon* v. *Naraval,* 493 Phil. 24, 29 (2005).

[20] Id. at 358-359, citing *Pitcher v. Gagate,*719 Phil. 82, 91 (2013).

petition before the RTC. However, after such filing, respondent unduly neglected the Nullity Case, as evinced not only by the RTC Order[21] dated July 2, 2015 which dismissed the case for respondent's failure to comply with the trial court's directives, but also by the RTC Order[22] dated January 22, 2016 which ordered the archival of the case due to his non-filing of any pleadings in furtherance of the case after its reinstatement.[23]

In an attempt to exculpate himself from any liability, respondent offered the excuse that his inaction was because he got "depressed" when the Court suspended him from engaging in legal practice in the case of *Baens,* and that in any case, he had met with complainant and already advised him to look for a replacement counsel. However, and as aptly pointed out by the IC, respondent's reasons are untenable, considering that: *(a)* there was a considerable period, *i.e.,* seven (7) months, between the filing of the petition and the time he learned of his suspension, and that it was never shown that he took steps to move forward with the Nullity Case during that time; and *(b)* assuming that he indeed gave such advice to complainant, he did not take positive steps to ensure his timely replacement.

Accordingly, respondent's neglect of the legal matter entrusted to him by complainant constitutes flagrant violations of the afore-cited tenets of the CPR. It is settled that "once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable x x x,"[24] as in this case.

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[21] *Rollo,* p. 20.

[22] *Id*. at 21.

[23] See Order dated August 24, 2015; *id*. at 19.

[24] See *Go v. Buri,* A.C. No. 12296, December 4, 2018, citing *Dongga-As v. Cruz-Angeles,* 792 Phil. 611, 619 (2016).

Anent the proper penalty to be imposed on respondent, case law provides that in instances where the lawyer commits similar acts against their respective clients, the Court imposed on them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin,*[25] the delinquent lawyer was suspended for a period of one (1) year for failing to perform his undertaking under his retainership agreement with his client.[26] In *Jinon v. Jiz,*[27] the derelict lawyer was suspended for two (2) years for his failure to perform what was needed from him by his client.[28] In *Go v. Buri,*[29] the Court suspended the erring lawyer for a period of two (2) years for, *inter alia,* neglecting her client's affairs. In view of the foregoing – as well as the fact that respondent was earlier suspended in the case of *Baens* for committing similar negligent acts to the prejudice of his client – the Court deems it proper to impose on him the penalty of suspension from the practice of law for a period of two (2) years, as recommended by the IBP Board of Governors.

Finally, the Court notes that complainant paid respondent the total amount of P120,000.00 representing the latter's legal fees "inclusive of all the necessary and incidental expenses for the [Nullity Case] x x x up to the release of the decision [in connection thereto]."[30] However, since it appears from the records that the only things that respondent did for petitioner in the Nullity Case were: *(a)* the filing of the initiatory pleading, *i.e.,* the petition;"[31] and *(b)* the filing of a motion for reconsideration[32] which led to the reinstatement of the said petition,[33] the Court

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[25] 721 Phil. 44 (2013).

[26] See *id*. at 52.

[27] 705 Phil. 321 (2013)

[28] See *id*. at 330.

[29] *Supra* note 27.

[30] See Contract of Legal Services; *rollo,* p. 22.

[31] *Id*. at 6-12.

[32] *Id*. at 15-18.

[33] See Order dated August 24, 2015; *id*. at 19.

finds it appropriate to order respondent to return[34] to complainant **within ten (10) days from receipt of this Decision,** the legal fees of ₱120,000.00 he received less the amount commensurate to the works that he had done in the Nullity Case, which the Court pegs at about ₱20,000.00[35] – or a total of ₱100,000.00. Furthermore, interest at the rate of six percent (6%) per annum is imposed on the said amount, which shall accrue **from the time of respondent's receipt of this Decision until full payment.** To be sure, since the obligation to return arose – and thus, became due and demandable – only from the time of the Court's resolution of respondent's administrative liability, interest on the said monetary amount should begin to accrue once respondent has been duly notified of his administrative liability – that is, upon receipt of the Court's Decision herein.

WHEREFORE, respondent Atty. Jonathan T. Sempio (respondent) is found guilty of violating Canons 15, 17, 18, and Rule 18.03 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of two (2) years, effective immediately upon his receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

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[34] "It is well to note that 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. Hence, since respondent received the aforesaid amount as part of her legal fees, the Court finds the return thereof to be in order." (See *Go v. Buri,* supra note 24.)

[35] "The recovery of attorney's fees on the basis of *quantum meruit* is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees." (See *Villarama* v. *De Jesus,* G.R. No. 217004, April 17, 2017, 823 SCRA 1, 14, citing *National Power Corporation v. Heirs of Sangkay* 671 Phil. 569,605 [2011].)

Further, respondent is **ORDERED** to return to complainant Alfredo San Gabriel within ten (10) days from receipt of this Decision, part of the legal fees he received from the latter in the amount of ₱100,000.00, which shall earn legal interest at the rate of six percent (6%) per annum from his receipt of this Decision until full payment. Respondent shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with this directive shall warrant the imposition of a more severe penalty.

Finally, respondent is **DIRECTED** to report to this Court the date of his receipt of this Decision to enable it to determine when his suspension from the practice of law shall take effect.

Let copies of this Decision be furnished to: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and (3) the Office of the Court Administrator for circulation to all courts in the country

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Reyes, Jr., A., Gesmundo, Reyes, Jr., J., Hernando, Carandang, and *Lazaro-Javier, JJ.,* concur.

Leonen, J., on official leave.

Jardeleza, J., on official business.

Caguioa, J., on leave.

EN BANC

[A.C. No. 12460. March 26, 2019]

DIWEI "BRYAN" HUANG, *complainant, vs.* **ATTY. JUDE FRANCIS V. ZAMBRANO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); RULE THAT A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION. ––** Rules 16.01 and 16.03, Canon 16 of the CPR state: CANON 16 - A LAWYER SHALL **HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION**. Rule 16.01 - A lawyer shall **account for all money or property collected or received for or from the client**. x x x Rule 16.03 - A lawyer shall **deliver the funds and property of his client when due or upon demand**. x x x Once money or property is received by a lawyer on behalf of his client, the former has the obligation to account for the said money or property and remit the same immediately to the latter. To ignore consecutive follow-ups and demands from the client without any acceptable reason corrodes the client's ~~trust and stains~~ the legal profession.

2. **ID.; LAWYERS; DISREGARDING ORDERS OF THE COMMISSION ON BAR DISCIPLINE OF THE INTEGRATED BAR OF THE PHILIPPINES (CBD-IBP) WARRANTS PENALTY. ––** Atty. Zambrano exhibited disrespect to the IBP by disregarding the orders of the CBD-IBP as an investigating body and failing to participate in much of the investigation proceedings. He neither proffered any explanation nor expressed any remorse for his disreputable actions. A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. Lawyers should bear in mind that the practice of law is a profession, a form of public trust, the performance of which is entrusted only to those who are qualified and who possess good moral character. The

appropriate penalty for a delinquent lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.

3. ID.; ID.; RESPONDENT LAWYER'S UNPROFESSIONAL AND UNETHICAL ACTUATIONS IN BREACH OF HIS ATTORNEY-CLIENT RELATIONSHIP AND HIS INSOLENT COMPORTMENT TOWARDS THE IBP JUSTIFY DISBARMENT. –– In the case at bar, Atty. Zambrano's unprofessional and unethical actuations in breach of his attorney-client relationship with Huang and his insolent comportment towards the IBP which was investigating the administrative complaint against him demonstrate attitude and conduct unbecoming a member of the legal profession and an officer of the Court, thus, justifying his disbarment.

APPEARANCES OF COUNSEL

Jose Manolito C. Cahila for complainant.

D E C I S I O N

***PER CURIAM*:**

This administrative case stemmed from a Complaint for Disbarment dated December 16, 201[1] (Disbarment Case) filed before the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP) by complainant Diwei "Bryan" Huang (Huang) against respondent Atty. Jude Francis V. Zambrano (Zambrano), charging the latter with violation of Canon 16 of the Code of Professional Responsibility (CPR).

The facts follow.

Huang is a citizen of Singapore, who is abroad at most times and comes to the Philippines only for business.

Sometime in October 2014, Huang engaged Atty. Zambrano's services to pursue a money claim against certain individuals.

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[1] *Rollo*, pp. 1-8.

In view of such engagement, Atty. Zambrano filed on November 11, 2014, on Huang's behalf, a criminal case for estafa against several individuals (Estafa Case) before the Office of the City Prosecutor of Pasig City. Huang paid the amount of PhP50,000.00 to Atty. Zambrano for his legal services. As Huang was often out of the country, his communication with Atty. Zambrano was through electronic mail or Facebook chat messages.

On or about the first week of January 2015, Atty. Zambrano informed Huang that the respondents in the pending Estafa Case had expressed their willingness to settle and pay Huang PhP250,000.00. Huang accepted the settlement proposal per Atty. Zambrano's advice.

Huang asked Atty. Zambrano how the settlement would be facilitated. Being abroad at that time, Huang suggested that either: (1) Atty. Zambrano would relay Huang's bank account details to the respondents in the Estafa Case so they could directly deposit the settlement money to the said account; or (2) Huang's friend, Ang Kevin Kar Wai (Ang), could personally collect the amount after Atty. Zambrano had secured the same from the respondents in the Estafa Case. However, Atty. Zambrano rejected both of Huang's suggestions. He rebuffed the first option, insisting that the payment should be coursed through him before it was to be transferred to Huang; while he disagreed with the second option as he would be unable to track the money once he has transferred it to Ang, whom he does not know.

The respondents in the Estafa Case eventually paid Huang the settlement money *via* Atty. Zambrano. When Huang inquired as to how he could get his money, Atty. Zambrano answered that the dismissal of the Estafa Case should first be processed. For two months, Huang constantly followed-up and demanded his money from Atty. Zambrano but to no avail. Atty. Zambrano would proffer to Huang various excuses, to wit: the Estafa Case has not yet been formally dismissed; his busy schedule; or he was dealing with personal and family issues.

Realizing that the demands for his money were futile, Huang instituted the present Disbarment Case against Atty. Zambrano before the CBD-IBP. Huang asserted that Atty. Zambrano

violated Rules 16.01 and 16.03, Canon 16 of the CPR that enjoin a lawyer to hold in trust all moneys and properties of his client that may come into his possession, to account for all money or property collected or received for or from his client, and to deliver the funds and property of his client when due or upon demand. Huang claimed that Atty. Zambrano had already received, on Huang's behalf, the payment for the settlement of the Estafa Case amounting to PhP250,000.00, but despite Huang's continuous demands, the money remained in Atty. Zambrano's possession.

Atty. Zambrano did not file any answer to the complaint or submit his brief for the scheduled mandatory conference despite duly receiving copies of the CBD-IBP Order[2] requiring the same. His counsel appeared only once in two scheduled mandatory conferences[3] before the CBD-IBP.

The CBD-IBP Investigating Commissioner[4] eventually ruled in Huang's favor. He found that Atty. Zambrano's continued refusal to remit the settlement proceeds to his client, Huang, despite the latter's repeated demands was a clear violation of Canon 16 of the CPR. Also, Atty. Zambrano's failure to turn over Huang's money upon demand gave rise to a reasonable assumption that he had already misappropriated the same. In his Report and Recommendation[5] dated September 29, 2017, the Investigating Commissioner concluded:

> In view of the foregoing premises, it is respectfully recommended that Respondent Jude Francis V. Zambrano be SUSPENDED from the practice of law for two (2) years and further be ORDERED to return to Complainant the amount of Two Hundred Fifty Thousand Pesos (PhP250,000) plus legal interest from the finality of the Judgment.[6]

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[2] *Id.* at 27-30.

[3] *Id.* at 38-42.

[4] Commissioner Ernesto A. Altamira III.

[5] *Rollo*, pp. 98-101.

[6] *Id.* at 101.

In its Resolution[7] dated June 29, 2018, the IBP Board of Governors resolved to adopt the Investigating Commissioner's findings of fact and recommendation of suspension.

While we agree in the factual findings of the CBD-IBP Investigating Commissioner and the IBP Board of Governors, we find that their recommended two-year suspension as too benevolent. Given the circumstances, Atty. Zambrano deserves the ultimate penalty of disbarment.

Rules 16.01 and 16.03, Canon 16 of the CPR state:

CANON 16 - A LAWYER SHALL **HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION**.

Rule 16.01 - A lawyer shall **account for all money or property collected or received for or from the client**.

Rule 16.03 - A lawyer shall **deliver the funds and property of his client when due or upon demand**. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of of Court. (Emphases ours.)

In *Egger v. Duran*,[8] we highlighted that:

"The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics."

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[7] *Id.* at 96-97.

[8] 795 Phil. 9, 17 (2016) citing *Emiliano Court Townhomes Homeowners Association v. Dioneda,* 447 Phil 408, 414 (2003).

Once money or property is received by a lawyer on behalf of his client, the former has the obligation to account for the said money or property and remit the same immediately to the latter. To ignore consecutive follow-ups and demands from the client without any acceptable reason corrodes the client's trust and stains the legal profession.

By his actuations, Atty. Zambrano damaged his reliability and reputation as a lawyer. There is no dispute that he had received the PhP250,000.00 from the respondents in the Estafa Case. He rejected Huang's sound suggestion to have the settlement money directly deposited by said respondents to his account. He also refused Huang's alternative proposition to have his friend receive the money on his behalf. There is evidently a premeditated effort by Atty. Zambrano to ensure that the settlement money would be given to him.

Furthermore, the reasons he gave for failing to remit the settlement money to Huang were highly dubious, if not shallow and baseless.

There is no law or jurisprudence which requires the formal dismissal of the case before the lawyer yields possession of his client's money. In advising Huang of the same, Atty. Zambrano had acted deceitfully - willfully misleading Huang and abusing the trust and confidence his client reposed in him. This is in contravention of Rule 1.01, Canon 1 of the CPR which bids lawyers not to engage in unlawful, dishonest, immoral, or deceitful conduct.

The foregoing likewise renders highly doubtful Atty. Zambrano's claims of heavy workload and family problems as additional excuses for failing to remit the settlement money to Huang, which were seemingly meant only to further thwart Huang's efforts to get his money. Even assuming that Atty. Zambrano's claims were true, these do not absolve him from complying with his professional obligations as a lawyer. It would not have taken much time or effort for him to transfer the settlement money to Huang especially given the different remote and online options now available for fund transfers.

It bears to note that after all this time, Atty. Zambrano still has not made any effort to remit the settlement money which rightfully belongs to Huang. Being undisputed, the presumption that he had appropriated Huang's settlement money for his own use becomes conclusive.

Worse, Atty. Zambrano exhibited disrespect to the IBP by disregarding the orders of the CBD-IBP as an investigating body and failing to participate in much of the investigation proceedings. He neither proffered any explanation nor expressed any remorse for his disreputable actions not only towards Huang, but also towards the IBP.

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney,[9] for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. Lawyers should bear in mind that the practice of law is a profession, a form of public trust, the performance of which is entrusted only to those who are qualified and who possess good moral character. The appropriate penalty for a delinquent lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[10]

We had previously disbarred lawyers for violating Canon 16 of the CPR.

In *Suarez v. Maravilla-Ona*,[11] complainant engaged the legal services of therein respondent lawyer for a land transfer case

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

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

[10] *Camino v. Pasagui*, 795 Phil. 501, 512-513 (2016).

[11] 796 Phil. 27 (2016).

and paid the latter the appurtenant fees. Respondent failed to facilitate the transfer and never reimbursed complainant for the amounts earlier paid despite multiple demands. She also did not participate at all in the investigative proceedings before the CBD-IBP relative to the disbarment complaint against her. We ultimately meted out to therein respondent lawyer the penalty of disbarment.

We similarly disbarred the respondent lawyer in *Overgaard v. Valdez*[12] who, despite receipt of legal fees, refused to perform any of his obligations under his Retainer Agreement with complainant, ignored complainant's requests for a report of the status of the cases entrusted to his care, and rejected complainant's demands for return of the money paid to him.

Arellano University, Inc. v. Mijares III[13] also involved an administrative complaint against therein respondent, lawyer who failed to render the titling services initially agreed upon with complainant and to account for and return complainant's money despite repeated demands. We ordered that therein respondent lawyer's name be removed from the Roll of Attorneys.

In the case at bar, Atty. Zambrano's unprofessional and unethical actuations in breach of his attorney-client relationship with Huang and his insolent comportment towards the IBP which was investigating the administrative complaint against him demonstrate attitude and conduct unbecoming a member of the legal profession and an officer of the Court, thus, justifying his disbarment.

The practice of law is a privilege given to few, and it is granted only to those of good moral character.[14] The Bar maintains and aims to uphold a high standard of honesty and fair dealing.[15] Lawyers must conduct themselves beyond reproach

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[12] 588 Phil. 422 (2008).

[13] 620 Phil. 93 (2009).

[14] *Overgaard v. Valdez*, *supra* note 12 at 433, citing *People v. Santocildes, Jr.*, 378 Phil. 943, 949 (1999).

[15] *Id.*, citing *Maligsa v. Cabanting*, 338 Phil. 912, 916 (1997).

at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty.[16] Atty. Zambrano's alarming propensity for duplicity and lack of atonement render him unworthy of the privilege to continue in the practice of law.

WHEREFORE, premises considered, respondent Atty. Jude Francis V. Zambrano is **DISBARRED** for violating Rules 1.01, 16.01, and 16.03 of the Code of Professional Responsibility, and his name is **ORDERED STRICKEN OFF** from the Roll of Attorneys.

Atty. Zambrano is further **DIRECTED** to immediately remit to complainant Diwei "Bryan" Huang the full amount of Two Hundred and Fifty Thousand Pesos (PhP250,000.00), which will earn interest of six percent (6%) per annum from finality of this Decision until its full payment. He is further **DIRECTED** to submit to this Court proof of payment within ten (10) days from said payment.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be entered into Atty. Zambrano's records as attorney. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Reyes, Jr., A., Gesmundo, Reyes, Jr., J., Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

Leonen, J., on wellness leave.

Jardeleza, J., on official leave.

Caguioa, J., on leave.

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[16] *Id.*, citing *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, 374 Phil 1, 14 (1999) and *De Ere v. Rubi*, 378 Phil. 377, 383 (1999).

EN BANC

[A.C. No. 12475. March 26, 2019]

ROSALIE P. DOMINGO, *complainant, vs.* **ATTY. JORGE C. SACDALAN,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE THAT A LAWYER SHALL NOT ENGAGE IN DECEITFUL CONDUCT; VIOLATED WHEN THE LAWYER DELIVERED A FAKE RECEIVING COPY OF THE COMPLAINT TO HIS CLIENT. ––** As properly found by the IBP Commission, respondent was tasked by complainant to file a complaint for ejectment before the court. To show his compliance, he furnished her with the alleged receiving copy of the complaint for ejectment filed before the MTC. However, it was discovered by complainant that no such complaint was actually filed. When confronted, respondent admitted the fake receiving copy but blamed his messenger for such wrongdoing. x x x By delivering a fake receiving copy of the complaint to his client, thereby deceiving the latter in filing the case, respondent participated in deceitful conduct towards his client in violation of Rule 1.01 of the Code. As a lawyer, respondent was proscribed from engaging in unlawful, dishonest, immoral or deceitful conduct in his dealings with others, especially clients whom he should serve with competence and diligence. While respondent eventually filed a complaint for ejectment before the MTC, docketed as Civil Case No. 16-022, it was swiftly dismissed because the jurisdictional requisites were not stated in the complaint. Again, this shows respondent's gross carelessness in advancing the cause of his client.

2. **ID.; ID.; RULE THAT A LAWYER SHALL NOT BORROW MONEY FROM HIS CLIENT; VIOLATED IN CASE AT BAR. ––** [R]espondent borrowed 100,000.00 from complainant, as evidenced by his email. Respondent claims that the amount was merely a cash advance on his legal fees. However, even when his legal services were terminated and there was no more basis for the cash advance, he never returned said amount. x x x It must be underscored that borrowing money from a client

is prohibited under Rule 16.04. A lawyer's act of asking a client for a loan, as what respondent did, is very unethical. It comes within those acts considered as abuse of client's confidence. x x x [T]he Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned.

3. **ID.; ID.; RULE THAT A LAWYER SHALL KEEP THE CLIENT INFORMED OF THE STATUS OF HIS CASE; VIOLATED IN CASE AT BAR. ––** After borrowing money from his client, respondent did not update his client anymore regarding the status of her case. It was only when complainant actually verified with the MTC that she confirmed the fake complaint for ejectment. Verily, respondent cannot invoke the distance of the parties or the erratic internet service in failing to comply with his duty as a lawyer. If respondent was sincere in updating complainant with her case, then he should have availed of the numerous and modern channels of communication to reach his client, but he failed to do so. Hence, respondent violated Rule 18.04, which requires that a lawyer must regularly update his or her client regarding the status of his or her case.

4. **ID.; ID.; VIOLATIONS IN CASE AT BAR WARRANTS THE PENALTY OF DISBARMENT AND RETURN OF MONEY RECEIVED FROM COMPLAINANT. ––** The Court finds that respondent furnished complainant a fake complaint, thereby facilitating deceit against his client; that he borrowed 50,000.00 as deposit and 100,000.00 as cash advance, but he neither justified such amounts nor repaid the same; and that he failed to regularly update his client regarding the status of her case. These acts and omissions violate Rules 1.01, 16.04, and 18.04 of the Code. x x x [T]he acts and omissions of respondent constitute malpractice, gross negligence and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed in him as a member of the Bar. As he violated numerous provisions of the Code, particularly, Rules 1.01, 16.04, and 18.04, the Court finds that the ultimate penalty of disbarment must be imposed against respondent and his name must be stricken off the Rolls of Attorneys. With respect to the amounts received from complainant, the Court finds that these must be returned by respondent. Disciplinary proceedings revolve around the

determination of the respondent-lawyer's administrative liability, which must include those intrinsically linked to his professional engagement. Here, the Court finds that the amount of 50,000.00, as legal deposit to cover the expenses related to the expected litigation, and 100,000.00, as cash advance chargeable against the appearance fees and other fees, are intrinsically linked to respondent's professional legal services to complainant. Hence, these amounts must be returned. Also, the said amounts shall have an interest at the legal rate of 6% per annum reckoned from the date of the receipt of this Decision until full payment.

5. **ID.; LAWYERS; DISOBEDIENCE TO THE ORDERS OF THE IBP COMMISSION IN CASE AT BAR WARRANTS A FINE OF 5,000.00. ––** [T]he Court finds that respondent disobeyed the orders of the IBP Commission. As early as May 3, 2017, he was duly notified to file his answer but he failed to do so. Instead, he belatedly filed his answer and brief on December 14, 2017 after the scheduled mandatory conference on December 11, 2017. He also neither attended the scheduled mandatory conference nor filed his position paper despite due notice. Respondent's failure to comply with the orders of the IBP without justifiable reason manifests his disrespect of judicial authorities. x x x For his disobedience to the orders of the IBP Commission, respondent must pay a fine of 5,000.00.

APPEARANCES OF COUNSEL

Luis Martin V. Tan for complainant.

D E C I S I O N

***PER CURIAM*:**

This is a Complaint[1] filed by Rosalie P. Domingo (*complainant*) against Atty. Jorge C. Sacdalan (*respondent*) before the Integrated Bar of the Philippines (*IBP*) Commission on Bar Discipline (*Commission*) for violations of the Code of Professional Responsibility (*Code*). Complainant prays that

[1] *Rollo*, pp. 3-6.

disciplinary action be taken against respondent and to return the amount of ₱140,000.00.

Complainant alleged that she engaged the services of respondent to recover possession of a parcel of land from illegal settlers. The subject land is co-owned by complainant with her sister, and is located at Binangonan, Rizal. According to complainant, she gave respondent an acceptance fee of ₱75,000.00, wherein ₱50,000.00 was paid on June 10, 2016; while the remaining ₱25,000.00 was paid on June 27, 2016. She further claimed that on July 12, 2016, she gave respondent another ₱50,000.00 as deposit to cover the expenses related to the expected litigation. After barangay conciliation proceedings failed, complainant instructed respondent to file the appropriate case in court.

On August 16, 2016, respondent sent an Email[2] to complainant seeking to borrow another ₱200,000.00 in the form of a cash advance, which would allegedly be charged against his appearance fees and other fees. He claimed that he was borrowing money for his wife's hospitalization. Complainant agreed to respondent's request for cash advance and gave him ₱100,000.00 out of compassion.

After granting the request, complainant inquired regarding the status of her case. Respondent sent her a copy of the purported Complaint For Ejectment[3] filed in the Municipal Trial Court of Binangonan, Rizal (*MTC*). The said complaint had a receiving stamp, with a handwritten note that it was received by the MTC. It also had a handwritten docket number of Civil Case No. 2016-036.

However, respondent did not give any updates to complainant regarding the case filed. Thus, she inquired directly with the MTC on the status of her case. To her surprise, she was informed that there was no such complaint for ejectment filed with the MTC.

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[2] *Id.* at 7-8.

[3] *Id.* at 9.

Consequently, complainant confronted respondent about the purported ejectment complaint. The latter explained that the non-filing of the complaint was due to the mistake of his office staff. Respondent assured her that the complaint would be filed.

A complaint for ejectment was eventually filed in the MTC, docketed as Civil Case No. 16-022. However, in an Order[4] dated October 10, 2016, the MTC dismissed the case for lack of jurisdiction. It explained that the complaint did not comply with the jurisdictional requirements for ejectjment as it neither alleged the requisites under forcible entry nor unlawful detainer.

As complainant was completely dissatisfied with the services of respondent, she sent an Email[5] dated October 20, 2016, stating that she was terminating their legal engagement. Complainant also demanded respondent to return the deposit of ₱50,000.00 and the cash advance of ₱100,000.00.

Complainant engaged the services of another lawyer, Atty. Luis Martin V. Tan, to communicate with respondent. The latter initially agreed to return the ₱100,000.00 cash advance by November 30, 2016, and, eventually, the ₱50,000.00 deposit. However, respondent still reneged on his obligations.

Complainant sent another Demand Letter[6] to respondent to comply with his obligations but it was unheeded. Thus, she filed this instant administrative complaint alleging that respondent violated the provisions of the Code for presenting a fake ejectment complaint and for non-payment of the money he borrowed.

Initially, complainant only sought for the return of ₱40,000.00 from the deposit. However, in her Position Paper,[7] she demanded for the return of the entire ₱50,000.00 because respondent never proved that he actually incurred any expense chargeable against the said deposit. Complainant also sought for the return of the

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[4] *Id.* at 10-15; penned by Presiding Judge Emmanuel Jesus P. Santos.

[5] *Id.* at 16.

[6] *Id.* at 17.

[7] *Id.* at 122-134.

₱100,000.00 because it constituted as a loan, which respondent had not paid.

On May 3, 2017, the IBP Commission required respondent to file his answer. However, on July 10, 2017, respondent filed a Motion for Extension of Time to File Answer.[8]

Several months passed but respondent still failed to file his answer. Thus, on November 16, 2017, even without respondent's answer, the IBP Commission set the case for mandatory conference on December 11, 2017. During the said conference, only the counsel of complainant appeared.

On December 14, 2017, respondent filed a Motion to Admit (Herein Attached Answer and Mandatory Conference Brief) with Manifestation.[9] In his Answer,[10] respondent admitted the allegations in the complaint that he received an acceptance fee of ₱75,000.00 and a deposit for legal expenses in the amount of ₱50,000.00. He also admitted that he borrowed ₱100,000.00 from complainant but that it was not a loan; rather, it was a cash advance to be deducted from the appearance fees and other service fees in the handling of cases. He also asserted that the said amount is fully protected by the nature of the cases, which he is handling.

On the alleged fake receiving copy of the complaint, respondent averred that he relied in good faith in the representations of his messenger and claimed that it was an honest mistake. He added that when he learned of the non-filing of the complaint, he immediately confronted his messenger and filed the complaint in court. Respondent, however, admitted that the case was dismissed for lack of jurisdiction.

With respect to his failure to update his client regarding the status of her case, he explained that it was due to the distance of the parties and erratic internet services. Thus, he failed to get in touch with complainant to give case updates.

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[8] *Id*. at 32-33.

[9] *Id*. at 92-94.

[10] *Id*. at 95-100.

The IBP Commission required both parties to submit their position papers. However, only complainant filed her position paper.

Report and Recommendation

In its Report and Recommendation[11] dated March 8, 2018, the IBP Commission found that respondent violated the Code and recommended a penalty of suspension from the practice of law for two (2) years. It observed that respondent cannot blame his messenger because he should have known that the receiving copy of the complaint for ejectment was fake because of the questionable hand-written docket number and receiving stamp. The IBP Commission highlighted that respondent gave a shallow excuse of erratic internet service for his failure to give case updates. It opined that respondent indeed received ₱50,000.00 as deposit even though he had not rendered substantial legal service; that he borrowed ₱100,000.00 from his client; and that he failed to pay his monetary obligations. It likewise emphasized that respondent failed to comply with the orders of the IBP Commission.

In its Resolution[12] dated June 28, 2018, the IBP Board of Governors (*Board*) adopted with modification the penalty recommended against respondent to suspension from the practice of law for a period of two (2) years; and to pay a fine of ₱5,000.00 for disobeying the orders of the IBP Commission.

The Court's Ruling

The Court adopts the findings of the IBP Commission but modifies the recommended penalty of the IBP Board.

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote

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[11] *Id*. at 148-155.

[12] *Id*. at 146-147.

public confidence in the integrity of the legal profession.[13] The proper evidentiary threshold in disciplinary or disbarment cases is substantial evidence.[14] It is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[15]

Rule 1.01 of the Code states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. It instructs that as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[16]

Rule 16.04 of the Code states that a lawyer shall not borrow money from his client unless the client's interest are fully protected by the nature of the case or by independent advice. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client.[17]

On the other hand, Rule 18.04 of the Code states that 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. It is the lawyer's duty to keep his client constantly updated on the developments of his case as it is crucial in maintaining the latter's confidence.[18]

In this case, the Court finds that respondent violated Rule 1.01, Rules 16.04, and 18.04 of the Code based on the substantial evidence presented by complainant.

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[13] *Belleza v. Atty. Macasa*, 611 Phil. 179, 192 (2009).

[14] See *Canillo v. Atty. Angeles*, A.C. Nos. 9899, 9900, 9903-9905, 9901 & 9902, September 4, 2018.

[15] *Peña v. Atty. Paterno*, 710 Phil. 582, 593 (2013).

[16] *Billanes v. Atty. Latido*, A.C. No. 12066, August 28, 2018.

[17] *Sps. Concepcion v. Atty. Dela Rosa*, 752 Phil. 485, 495 (2015).

[18] *Tan v. Atty. Diamante*, 740 Phil 382, 388 (2014).

Fake complaint for ejectment

As properly found by the IBP Commission, respondent was tasked by complainant to file a complaint for ejectment before the court. To show his compliance, he furnished her with the alleged receiving copy of the complaint for ejectment filed before the MTC. However, it was discovered by complainant that no such complaint was actually filed. When confronted, respondent admitted the fake receiving copy but blamed his messenger for such wrongdoing.

The Court cannot accept the flimsy excuse of respondent. A plain reading of the first page of the purported complaint readily shows that it was not properly filed. The words "MTC" and the date were only handwritten in the portion of the received stamp. Also, the docket number of the alleged complaint was merely handwritten. As highlighted by the IBP, these are net the standard operating procedures in filing a complaint in court.

As a lawyer, respondent should have noticed these irregularities before furnishing his client with the copy of the said complaint. Further, respondent did not give any concrete detail on the consequences incurred by his messenger; whether appropriate criminal or disciplinary charges were instituted against him for faking the said receiving copy. In any case, respondent cannot "pass the buck" to his messenger and escape liability because he has a sworn duty to observe due diligence and honesty in dealing with his client.

By delivering a fake receiving copy of the complaint to his client, thereby deceiving the latter in filing the case, respondent participated in deceitful conduct towards his client in violation of Rule 1.01 of the Code. As a lawyer, respondent was proscribed from engaging in unlawful, dishonest, immoral or deceitful conduct in his dealings with others, especially clients whom he should serve with competence and diligence.[19]

While respondent eventually filed a complaint for ejectment before the MTC, docketed as Civil Case No. 16-022, it was

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[19] See *Mercullo, et al. v. Atty. Ramon*, 790 Phil. 267, 273 (2016).

swiftly dismissed because the jurisdictional requisites were not stated in the complaint. Again, this shows respondent's gross carelessness in advancing the cause of his client.

Respondent borrowed money from his client; return of the amounts

Aside from furnishing his client with a fake complaint, respondent also admitted that he borrowed money from complainant. As found by the IBP Commission, respondent borrowed ₱100,000.00 from complainant, as evidenced by his email. Respondent claims that the amount was merely a cash advance on his legal fees. However, even when his legal services were terminated and there was no more basis for the cash advance, he never returned said amount

Respondent's argument - that the borrowed amount was fully protected by the nature of the case or by independent advice - deserves scant consideration. Aside from this bare allegation, respondent did not provide any detail or justification regarding such protections surrounding the loan that he secured from his client.

It must be underscored that borrowing money from a client is prohibited under Rule 16.04. A lawyer's act of asking a client for a loan, as what respondent did, is very unethical. It comes within those acts considered as abuse of client's confidence. The canon presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his or her obligation.[20] Unless the client's interests are fully protected, a lawyer must never borrow money from his or her client.

Further, respondent obtained the amount of ₱50,000.00 from complainant as deposit for his legal fees, on top of the ₱75,000.00 he received as his acceptance fee. However, as discussed above, respondent did not perform any substantial legal service for complainant because he simply furnished her with a fake complaint. Even when the actual complaint was filed in court,

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[20] *Supra* note 17 at 495.

it was immediately dismissed for lack of jurisdiction. Thus, respondent should not have received the said amount from complainant because he did not render any significant service in the furtherance of his client's case.

Worse, when complainant sought to recover the amounts of ₱50,000.00, as deposit, and ₱100,000.00, as cash advance, from respondent, it fell on deaf ears. Respondent initially gave an assurance that he would eventually pay complainant but it did not materialize. Even assuming that respondent borrowed the ₱100,000.00 for a genuine purpose of financing his wife's hospitalization, it neither justifies his non-observance of the high moral standards required from a member of the legal profession nor extinguishes his obligation to repay his client promptly and fully. Indeed, respondent's misdealing towards his client is manifest and obvious.

That being said, the Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations.[21]

Respondent did not regularly update his client

After borrowing money from his client, respondent did not update his client anymore regarding the status of her case. It was only when complainant actually verified with the MTC that she confirmed the fake complaint for ejectment.

Verily, respondent cannot invoke the distance of the parties or the erratic internet service in failing to comply with his duty as a lawyer. If respondent was sincere in updating complainant

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[21] *HDI Holdings Philippines, Inc. v. Atty. Cruz*, A.C. No. 11724, July 31, 2018.

with her case, then he should have availed of the numerous and modern channels of communication to reach his client, but he failed to do so. Hence, respondent violated Rule 18.04, which requires that a lawyer must regularly update his or her client regarding the status of his or her case.

As an officer of the court, it is the duty of an attorney to inform his client of whatever important information he may have acquired affecting his client's case. He should notify his client of any adverse decision to enable his client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and loss of trust and confidence in the attorney. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests. In this connection, the lawyer must constantly keep in mind that his actions, omissions, or nonfeasance would be binding upon his client. Concomitantly, the lawyer is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.[22]

Proper penalty

The Court finds that respondent furnished complainant a fake complaint, thereby facilitating deceit against his client; that he borrowed ₱50,000.00 as deposit and ₱100,000.00 as cash advance, but he neither justified such amounts nor repaid the same; and that he failed to regularly update his client regarding the status of her case. These acts and omissions violate Rules 1.01, 16.04, and 18.04 of the Code.

In *Foster v. Atty. Agtang*[23] the lawyer demanded excessive filing and representation fees from his client. He also secured several loans from his client but failed to pay the same. The Court found that he violated Rules 1.01 and 16.04 of the Code.

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[22] *Supra* note 18 at 389.

[23] 749PhiI. 576, 591 (2014).

For taking advantage of the complainant and for engaging in dishonest and deceitful conduct, he was disbarred from the practice of law and was ordered to return the excessive fees he received from his client.

In *HDI Holdings Philippines, Inc. v. Atty. Cruz*,[24] the lawyer committed several reprehensible acts in transacting with his client, including executing a fake secretary's certificate. He also borrowed money from his client and failed to pay the same. The lawyer violated several provisions of the Code, including Rules 1.01 and 16.04. The ultimate penalty of disbarment was imposed against him.

In *Krursel v. Atty. Abion*,[25] the lawyer therein drafted a fake order from this Court in order to deceive her client and she also did not inform her client regarding her case. The Court stated that she made a mockery of the judicial system. Her conduct degraded the administration of justice and weakened the people's faith in the judicial system. She inexorably besmirched the entire legal profession. She violated, among others, Rules 1.01 and 18.04 of the Code. The penalty of disbarment was imposed against the lawyer.

Recently, in *Justice Lampas-Peralta, et al. v. Atty. Ramon*,[26] the lawyer drafted a fake decision of the Court of Appeals and demanded exorbitant professional fees from her clients. She was even caught in an entrapment operation by the National Bureau of Investigation. She was disbarred and her name was immediately stricken off the Roll of Attorneys.

In this case, the acts and omissions of respondent constitute malpractice, gross negligence and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed in him as a member of the Bar. As he violated numerous provisions of the Code,

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[24] *Supra* note 21.

[25] 789 Phil. 584 (2016).

[26] A.C. No. 12415, March 5, 2019.

particularly, Rules 1.01, 16.04, and 18.04, the Court finds that the ultimate penalty of disbarment must be imposed against respondent and his name must be stricken off the Rolls of Attorneys.

With respect to the amounts received from complainant, the Court finds that these must be returned by respondent. Disciplinary proceedings revolve around the determination of the respondent-lawyer's administrative liability, which must include those intrinsically linked to his professional engagement.[27]

Here, the Court finds that the amount of ₱50,000.00, as legal deposit to cover the expenses related to the expected litigation, and ₱100,000.00, as cash advance chargeable against the appearance fees and other fees, are intrinsically linked to respondent's professional legal services to complainant. Hence, these amounts must be returned. Also, the said amounts shall have an interest at the legal rate of 6% per annum reckoned from the date of the receipt of this Decision until full payment.[28]

Disobedience to the orders of the IBP Commission

Finally, the Court finds that respondent disobeyed the orders of the IBP Commission. As early as May 3, 2017, he was duly notified to file his answer but he failed to do so. Instead, he belatedly filed his answer and brief on December 14, 2017 after the scheduled mandatory conference on December 11, 2017. He also neither attended the scheduled mandatory conference nor filed his position paper despite due notice. Respondent's failure to comply with the orders of the IBP without justifiable reason manifests his disrespect of judicial authorities.[29]

It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit

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[27] *Sison, Jr. v. Atty. Camacho*, 111 Phil. 1, 15 (2016).

[28] See *Chua v. Atty Jimenez*, 801 Phil. 1, 12 (2016).

[29] *Ojales v. Atty. Villahermosa III*, A.C. No. 10243, October 2, 2017, 841 SCRA 292, 299.

due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others. He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.[30]

For his disobedience to the orders of the IBP Commission, respondent must pay a fine of ₱5,000.00.

WHEREFORE, Atty. Jorge C. Sacdalan is **GUILTY** of violating Rules 1.01, 16.04, and 18.04 of the Code of Professional Responsibility. He is hereby **DISBARRED** from the practice of law and his name stricken off the Roll of Attorneys, effective immediately.

Further, Atty. Jorge C. Sacdalan is hereby **ORDERED** to return to complainant Rosalie P. Domingo the amount of ₱50,000.00, as legal deposit to cover the expenses related to the expected litigation, and ₱100,000.00, as cash advance chargeable against his appearance fees and other fees, with interest of 6% per annum reckoned from the date of the receipt of this Decision until full payment.

Atty. Jorge C. Sacdalan is also hereby meted a **FINE** in the amount P5,000.00 for disobedience to the orders of the Integrated Bar of the Philippines - Commission on Bar Discipline. These payments shall be made within ten (10) days from the receipt of this Decision.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Jorge C. Sacdalan's

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[30] *Ramiscal, et al. v. Atty. Orro*, 781 Phil. 318, 324 (2016).

records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Reyes, A. Jr., Reyes, J. Jr., Gesmundo, Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

Leonen, J., on official leave.

Jardeleza, J., on official business.

Caguioa, J., on leave.

THIRD DIVISION

[A.C. No. 9218. March 27, 2019]
(Formerly CBD Case No. 12-3487)

ENRICA BUCAG, represented by her attorney-in-fact LOPE B. TIO, *complainant, vs.* **ATTY. BERNARD P. OLALIA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS, DISQUALIFICATION FROM BEING COMMISSIONED AS NOTARY PUBLIC FOR TWO (2) YEARS, AND REVOCATION OF NOTARIAL COMMISSION, IF PRESENTLY COMMISSIONED, IMPOSED UPON THE RESPONDENT FOR VIOLATION OF THE NOTARIAL LAW. — In Resolution No. XXI-2015-016 dated January 20, 2015, the Board of Governors of the IBP adopted and approved the Report and Recommendation of the Investigating Commissioner, finding the case to be fully supported by the evidence on record and the applicable laws,

and for violation of the Notarial Law, immediately revoked Atty. Olalia's notarial commission, if presently commissioned, disqualified him from being commissioned as notary public for two (2) years, and suspended him from the practice of law for six (6) months. Respondent filed a motion for reconsideration, which was denied by the IBP Governors in Resolution No. XXII-2016-621, dated November 29, 2016. Aggrieved, respondent filed a petition for review before the Court on May 26, 2017 essentially reiterating his arguments in his motion for reconsideration. The Court, however, does not find any merit in the same. As shown by the records, the recommendation of the IBP is fully supported by evidence and applicable laws.

APPEARANCES OF COUNSEL

Romeo Sampaga for complainant.

D E C I S I O N

PERALTA, *J.*:

For resolution is an Administrative Complaint[1] filed on September 13, 2011 by complainant Enrica Bucag, represented by Lope B. Tio, against Atty. Bernard P. Olalia, for his suspension or disbarment due to alleged falsification of public document, violation of lawyer's oath, dishonesty, obstruction of justice, and gross violation of the notarial law, relative to the notarization of a deed of absolute sale of a parcel of irrigated rice land covered by Transfer Certificate of Title (*TCT*) No. T-170452.

The Report and Recommendation[2] dated July 4, 2014 of Commissioner Hector B. Almeyda, Commission on Bar Discipline (*CBD*), Integrated Bar of the Philippines (*IBP*), follows:

REPORT AND RECOMMENDATION

Respondent stands charged by complainant of "Falsification of Public Document; Violation of the Lawyer's Oath; Dishonesty; Obstruction of Justice and Gross Violation of the Notarial Law."

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

[2] *Id*. at 195-198.

According to the respondent, the same lacks factual basis. The issues thus boil down to the determination of respondent's administrative liability under the facts established.

Complainant relates:

Respondent is claimed to have prepared and notarized in 2013 a deed of absolute sale of a parcel of irrigated Riceland where the sellers appeared to be one Liboro Garcia and one Virginia "Loreta" Garcia. The buyer was her son Edgardo Roque Garcia. The parcel was indicated to be covered by Tax Declaration No. 05-6271 and described as follows:

Tax Declaration No. 05-6271

> "A parcel of land located at the Barrio of Culialaba del Norte, Municipality of Burgos, Province of Isabela, Island of Luzon. Bounded on the NE., by Lot No. 3-B-I, on the S, by Road, on the East by Lot No. 2824 and on the W, Lot No. 3-A. containing an area of 4.1372 square meters more or less."

Complainant sees the document of sale prepared and notarized by respondent to be defective since the description made on the basis of a tax declaration is irregular because the parcel is actually a titled property. Besides being titled in the name of complainant, the claimed sellers in the document prepared and notarized by the seller is incorrect. That transfer of the titled property is now subject of a complaint before the Regional Trial Court in Ilagan, Isabela, docketed as Civil Case No. 1493 (for recovery of possession and ownership). That case is not the concern of the Commission.

In respondent's comment, he traced the root of the commencement of the instant administrative complaint to the earlier filing by complainant Enrica Bucag against Loreta Mesa a.k.a. Virginia Mesa and others before the Regional Trial Court in Ilagan, Isabela (Branch 16), docketed as Civil Case No. 1493 of suit "for recovery of possession and ownership with prayer for issuance of preliminary injunction with damages."

The subject-matter of that case is that parcel of land then covered by TCT No. T-52993 located at Cullabo, Burgos, Isabela, containing a total area of 50,186 (41,372 + 8814) square meters. According to complainant, she learned that her title No. 52993 was cancelled and "transferred" to the defendants named in Civil Case No. 1493. Specifically, complainant claimed that a portion of her property was

transferred to Loreta and her husband sometime in 1972. That Deed was inscribed on complainant's Title No. T-52993.

Later, TCT No. T-170452 was issued in the name of Loreta Mesa and her husband. Subsequently, the said spouses executed a Deed of Sale of the parcel covered by TCT No. T-170452 to Edgardo Garcia (copy of this deed of transfer does not seem to be part of the records) who obtained TCT No. T-343924. That Deed was notarized by respondent Edgardo Garcia.

Complainant herself sold in 1979 8[,]814 square meters of the 41,372 (50,186 square meter) square meter lot in favor of [the] spouses Renato and Nenita Vidal who obtained Title No. 179412.

In the Comment, respondent phrases the issue to be "(W)hether or not respondent Atty. Olalia is guilty of the alleged acts complained against him."

Respondent claims membership in the Philippine Bar in 1992 after passing the Bar. This factual assertion was never refuted by complainant. Hence, reference to transactions before 1992 would appear to be irrelevant as far as respondent's participation in said transactions is concerned.

The initial sale in 1979 of a portion of complainant's property in favor of Loret[a] Mesa and Liboro Garcia was obviously a transaction that respondent had no participation as a lawyer, not having become one yet, much more a notary public at that time. It was only in 2003 that respondent had a hand in the transaction that involved the property later titled in the name of Loret[a] Mesa and Liboro Garcia. Virginia and Liboro subsequently executed a Deed of Sale in favor of Eduardo Garcia. It was respondent who prepared and thereafter notarized the document of sale.

What appears clear, irrespective of the circuitous route taken by portion of the 50,1186 square meter parcel originally titled in its entirety in the name of complainant, is that in 2013, that 4,173 square meters parcel of land sold by Loret[a] and Liboro Garcia, then described under Tax Declaration No. 056271, was already covered by Title No. T-52293. There is no explanation made by respondent, whether in his comment or position paper, why the deed of sale made by Loret[a] and Liboro Garcia of property not even registered in their names could be transferred to Edgardo Roque Garcia, utilizing the tax declaration alone when the property even that early was already registered and covered by a certificate of title.

Previous to 1992 when respondent became a member of the Bar (and presumably become a notary public circa that period), respondent may not be held responsible on how the property came to be owned by earlier parties. Respondent may possibly be held accountable to the property's transfer of ownership when he participated in its sale and that would happen only in or after 1992.The 2003 deed of sale of the Garcia couple to Eduardo Roque Garcia was a transaction that respondent may not deny he was not privy to, having prepared the document and thereafter notarized the same.

The 2003 sale from Loret[a] and Liboro Garcia in favor of Eduardo Roque Garcia utilizing a Tax Declaration in describing the property although the subject matter was a titled property that early, resulted in Eduardo Roque obtaining a new Transfer Certificate of Title No. 34929 that indicated TCT No. 170452 as its source. But that TCT No. 170452 was never mentioned in the Deed of Sale that made use of a tax declaration description. But that is not the concern of the Commission and may perhaps be treated in another appropriate proceedings.

Both as a lawyer and a notary public to boot, respondent is expected in extending his legal services, to "use only true, honest, dignified and objective information or statement of fact" (Canon 3, Chapter 1, Code of Professional Responsibility). In the process, the lawyer is enjoined to serve his client with competence and diligence (Canon 18, Chapter IV, Code of Professional Responsibility), together with zeal within the bounds of the law (Canon 19, Chapter IV, Code of Professional Responsibility).

It comes as a puzzle to the Commission how the respondent, as a notary public, should forget to make use of a certificate of title in preparing documents of transfer of titled property. He should know and realize that tax declarations are merely possible indices of ownership but not proof of the same, especially where the certificate of title exists as a matter of record. Sad to say, in the circumstances, the competence and diligence of respondent appear to be wanting. There is lack of ordinary care, much less zeal, in seeing to it that the documents prepared hew to what may (sic) viewed as correctly done.

WHEREFORE, it is respectfully recommended that apart from possible sanctions for the violation of the notarial law that may be imposed by the court concerned, that respondent be suspended from the practice of law for a period of six (6) months from notice, and for his notarial commission, if he holds one right now, be revoked,

with recommendation for respondent to be ineligible for commission as notary public for a period of two (2) years after the period of suspension is served.

RESPECTFULLY SUBMITTED.

Pasig City, July 4, 2014.[3]

In Resolution No. XXI-2015-016 dated January 20, 2015, the Board of Governors of the IBP adopted and approved the Report and Recommendation of the Investigating Commissioner, finding the case to be fully supported by the evidence on record and the applicable laws, and for violation of the Notarial Law, immediately revoked Atty. Olalia's notarial commission, if presently commissioned, disqualified him from being commissioned as notary public for two (2) years, and suspended him from the practice of law for six (6) months.

Respondent filed a motion for reconsideration, which was denied by the IBP Governors in Resolution No. XXII-2016-621, dated November 29, 2016. Aggrieved, respondent filed a petition for review before the Court on May 26, 2017 essentially reiterating his arguments in his motion for reconsideration. The Court, however, does not find any merit in the same. As shown by the records, the recommendation of the IBP is fully supported by evidence and applicable laws.

WHEREFORE, the Court **RESOLVES** to **DENY** the instant petition and **AFFIRM** the recommendation of the IBP. Respondent Atty. Bernard P. Olalia is hereby **SUSPENDED** from the practice of law for a period of six (6) months from notice, **DISQUALIFIED** from being commissioned as notary public for a period of two (2) years after the service of the period of suspension, and if he is presently commisioned, his notarial commission is immediately revoked.

SO ORDERED.

Reyes, A. Jr., Hernando, and *Carandang, JJ.*, concur.

Leonen, J., on wellness leave.

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[3] *Id*.

SECOND DIVISION

[G.R. No. 192393. March 27, 2019]

FIL-ESTATE MANAGEMENT, INC., MEGATOP REALTY DEVELOPMENT, INC., PEAKSUN ENTERPRISES AND EXPORT CORPORATION, ARTURO E. DY AND ELENA DY JAO, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES AND SPOUSES SANTIAGO T. GO,[*] AND NORMA C. GO, REPRESENTED BY THEIR SON AND ATTORNEY-IN-FACT KENDRICK C. GO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PROPERTY REGISTRATION DECREE (PD 1529); PERTINENT PROVISIONS IN RELATION TO ORDINARY ORIGINAL REGISTRATION PROCEEDINGS; SECTION 25 ON OPPOSITION TO APPLICATION IN ORDINARY PROCEEDINGS AND SECTION 29 ON JUDGMENT CONFIRMING TITLE; OBSERVED BY THE RTC AND PROPERLY MODIFIED BY THE COURT OF APPEALS. –– The pertinent provisions of Presidential Decree No. (PD) 1529 or the Property Registration Decree in relation to ordinary original registration proceedings are [found in] SEC. 25. *Opposition to application in ordinary proceedings*. [and] SEC. 29. *Judgment confirming title*. x x x To the mind of the Court, the RTC acted conformably with Section 25 of PD 1529, which provides that "[i]f the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, x x x conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands." As worded, it is discretionary on the part of the land registration court to require the parties to submit a subdivision plan duly approved by the appropriate government agency.

[*] Deceased and substituted by his heirs, namely: Norma Chan Go, Kendrick Chan Go, Kaiser Chan Go and Kleber Chan Go.

Regardless of how the said court exercises its discretion, the burden remains with the oppositor or adverse claimant to convince by preponderance of evidence the land registration court that there is an overlapping of boundaries. In this case, petitioners failed. Likewise, the RTC acted conformably with Section 29 of PD 1529. Since the RTC was not persuaded by petitioners' evidence that there is an overlapping of boundaries, then the conflicting claims of ownership and interest in the parcels of land subject of the application were resolved in favor of spouses Go and, on this basis, the RTC granted their application. However, the CA set aside the RTC Decision and dismissed spouses Go's application for registration of title. The CA, in turn, also acted correctly based on its findings that spouses Go failed to prove that the parcels of land applied for are alienable public land, and they openly, continuously, exclusively and notoriously possessed and occupied the same since June 12, 1945 or earlier. x x x In light of the foregoing, the arguments of petitioners that the CA allowed a collateral attack on their Torrens titles, created a cloud thereon, and deprived them thereof without due process are sheer speculations. The RTC as well as the CA did not make any categorical ruling on the validity of petitioners' Torrens titles. Nor did they declare that the areas covered by petitioners' Torrens titles are inalienable lands of the public domain.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE TRIAL COURT, AND THE COURT OF APPEALS, RESPECTED. — As provided in Section 6, Rule 45 of the Rules of Court, a review by the Court is not a matter of right, but of its sound discretion, and will be granted only when there are special and important reasons therefor. Petitioners have failed to convince the Court that the RTC and the CA have decided a question of substance, not theretofore determined by the Court, or have decided it in a way probably not in accord with law or with the applicable decisions of the Court, or have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's power of supervision. Also, the Court cannot accord the desired review in view of the failure of petitioners to cite the applicable recognized exceptions to the settled rule that the Court, not being a trier of facts, is under no obligation to examine, winnow, and weigh anew evidence adduced below.

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

CIVIL LAW; LAND TITLES; LAND REGISTRATION COURT; DUTY TO RESOLVE CONFLICTING CLAIMS OF OWNERSHIP; ISSUE OF OVERLAPPING OF BOUNDARIES WAS NOT ESTABLISHED. — It must be pointed out that the land registration court is required to determine all conflicting claims of ownership and interest in the land subject of the application for registration, and render judgment confirming the title of the applicant, or the oppositor, to the land or portions thereof. x x x Although in overlapping of titles disputes, it has always been the practice for the trial court to appoint a surveyor from the government land agencies, such as the Land Registration Authority or the Department of Environment and Natural Resources to act as commissioner, this is not a mandatory procedure. Thus, the trial court may rely on the parties' respectIve evidence to resolve the case. x x x The RTC found petitioners to have failed to distinctly establish their claim of overlapping. x x x It bears to stress that the issue of whether there was indubitable evidence to prove petitioners' claim of overlapping is a question of fact which this Court cannot review in a Rule 45 petition. Moreover, absent any categorical declaration that there was overlapping, it cannot be said that a cloud of doubt hangs over the Torrens titles of petitioners nor is there a collateral attack against such titles as claimed by the petitioners. Accordingly, the *ponencia* correctly denied the instant petition.

APPEARANCES OF COUNSEL

Office of the Solicitor General for public respondent.
Poblador Bautista & Reyes for petitioners.
Javier Santiago & Torres Law Offices for private respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for *Partial* Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court seeking the partial

[1] *Rollo*, pp. 10-62, excluding Annexes.

review of the Decision[2] dated July 15, 2008 (Decision) and Resolution[3] dated May 24, 2010 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 84090. The CA Decision granted the appeal, set aside the Decision[5] dated September 22, 2004 rendered by the Regional Trial Court of Las Piñas City, Branch 253 (RTC) in LRC Case No. LP-00-0111, and dismissed the application for land registration filed by spouses Santiago and Norma Go (spouses Go) over three parcels of land situated at Almanza, Las Piñas City. The CA Resolution denied the motion for partial reconsideration filed by Fil-Estate Management, Inc., Megatop Realty Development, Inc., Peaksun Enterprises and Export Corporation, Arturo E. Dy and Elena Dy Jao (collectively, petitioners or Fil-Estate Consortium).

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> In the application for registration of title filed by applicants and now appellees, spouses Santiago and Norma Go (or appellees) over three (3) parcels of land situated at Almanza, Las Piñas City, designated as Lots Nos. 7, 8 and 14 of SWO-19265-psu-11411-Amd-2, containing [the areas] of 54,847 square meters, 91,921 square meters and 76,513 square meters, respectively, Branch 253 of the Regional Trial Court of Las Piñas City, disposed that:
>
> WHEREFORE, finding merit on the instant petition, the same is GRANTED. Accordingly, enter a decree of confirmation and registration in favor of applicants Spouses Santiago T. Go and Norma C. Go in so far as the aforementioned parcels of land is (*sic*) concerned.
> x x x

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[2] *Id*. at 64-74. Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a Member of this Court) and Arcangelita M. Romilla-Lontok concurring.

[3] *Id.* at 76-77. Penned by Associate Justice Romeo F. Barza, with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda concurring

[4] Twelfth Division and Special Former Twelfth Division

[5] *Rollo*, pp. 619-623. Penned by Acting Presiding Judge Elizabeth Yu-Guray.

To support their petition and to meet the jurisdictional requirements imposed by law, appellees submitted the following documents [Exhs. "A" to "G".]

x x x x x x x x x

The Republic of the Philippines, through the Office of the Solicitor General (or OSG), filed a Notice of Appearance authorizing the City Prosecutor of Las Piñas to appear in its behalf.

Oppositors-appellants Fil-Estate Management, Inc., Peaksun Enterprises and Export Corporation, Megatop Realty Development, Inc., Arturo Dy and Elena Dy Jao (or appellants) entered their Opposition. On October 3, 2002, the court *a quo* issued an order of general default except against the State and the oppositors.

In proving their claim of ownership, appellees presented Exhibit "M" x x x, to show that they bought Lot 7 from Arturo Pascua on October 16, 1975, Exhibit "K" x x x, to show that they bought Lot 8 from Jacinto Miranda on October 6, 1967 and Exhibit "L" x x x, to show that they bought Lot 14 also from Jacinto Miranda on December 29, 1964. To further prove their status as owners, appellees declared the properties for taxation purposes (Exhs. "N" to "Q" x x x).

On the other hand, appellants presented a Deed of Absolute Sale (Exh. "17" x x x) executed on April 28, 1989, to prove that they are the owners of 7 parcels of land in the same area having bought the same from Goldenrod, Inc. According to appellants, the portions of the land being applied for by appellees for registration of title overlap the titled properties in the name of Fil-Estate Consortium, hence, these could not be subject to land registration. Appellants averred that Lot No. 8 overlaps a portion of Fil-Estate Consortium's property under TCT No. 9181. The precise metes and bounds of the overlap comprises an area of 69,567 square meters. As to Lot No. 14, this overlaps the property of Fil-Estate Consortium under TCT Nos. 9180, 9181 and 9182 with the total overlap area of 56,173 square meters.

Despite the opposition, the application for title was granted by the court *a quo*. Appellants, however, appealed this alleging that the following reversible errors were committed:

A

[The court *a quo* disregarded existing law and jurisprudence when it rendered judgment in the case *a quo* without seeking, requiring

and considering the report of the Land Registration Authority on whether or not the parcels of land applied for by the applicants-appellees overlap Torrens titled properties.]

B

[In rendering judgment without seeking, requiring and considering the report of the Land Registration Authority, the court *a quo* violated the well settled rule that land already decreed, titled and registered under the Torrens system of registration cannot be applied for and be subject of a subsequent application for registration. As such, its September 22, 2004 Decision was rendered without jurisdiction and, consequently, null and void.]

C

[The court *a quo* disregarded applicants-appellees' failure to submit the original tracing cloth plan of Plan Psu-11411-Amd-2 in evidence in granting the Petition.]

D

[The court *a quo* erred in fact and in law in granting the petition for original registration despite applicants-appellees' failure to establish that they had been in open, continuous, exclusive and notorious possession and actual occupation of the subject lots in the concept of an owner since June 12, 1945.]

The OSG appealed stating the lone error that:

> [The applicants-appellees utterly failed to present sufficient evidence that they have been the owners in fee simple of the land they are seeking to register since June 12, 1945 or earlier x x x.][6]

Ruling of the CA

The CA in its Decision dated July 15, 2008 granted the appeal. The CA only resolved the issue on whether spouses Go were able to comply with the requirements imposed by law before the registration of title could be granted and found it unnecessary to dwell on the assigned errors individually.[7]

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[6] *Id.* at 64-69

[7] *Id.* at 69.

The CA held that spouses Go failed to prove (1) that the land applied for is alienable public land; and (2) they openly, continuously, exclusively and notoriously possessed and occupied the same since June 12, 1945 or earlier.[8] The CA noted that the tax declarations presented by them show that the earliest payment was made only in 1991.[9] The CA was not convinced with the sufficiency of the evidence adduced by spouses Go as to their possession and occupation, and ruled that they failed to discharge the burden of proof required from applicants in land registration cases to show clear, positive and convincing evidence that their alleged possession and occupation were of the nature and duration required by law.[10]

The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is **GRANTED**. The decision dated September 22, 2004, is **SET ASIDE**. The application for registration of title is hereby **DISMISSED**.

SO ORDERED.[11]

The petitioners filed a motion for partial reconsideration, which was denied by the CA in its Resolution dated May 24, 2010.[12] The petitioners took exception to the CA's finding that there is no evidence on record that the parcels of land subject of the registration have been classified as alienable or disposable since portions thereof have been proved during trial that they are private property covered by Torrens titles in the name of the Fil-Estate Consortium.[13]

Hence, the instant Rule 45 Petition. The Republic of the Philippines, through the Office of the Solicitor General (OSG)

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[8] See *id*. at 69-71.

[9] *Id*. at 71

[10] *Id*. at 72-73.

[11] *Id*. at 73.

[12] *Id*. at 76-77.

[13] *Id*. at 79.

filed a Comment[14] dated December 13, 2010. Petitioners filed a Reply[15] dated April 25, 2011. Spouses Go filed a Motion to Substitute Parties with Motion for Extension of Time to File Comment[16] dated July 28, 2011, informing the Court of the death of Santiago Go on April 12, 2011, and seeking the substitution of the deceased by his heirs Norma Chan Go, his widow, as well as Kendrick Chan Go, Kaiser Chan Go and Kleber[17] Chan Go, his sons, as represented by their attorney-in-fact Kendrick C. Go (collectively, the Go family). The said Motion was granted by the Court in its Resolution[18] dated September 5, 2011. The Go family filed their Comment[19] dated September 2, 2011 and Supplemental Comment[20] dated March 6, 2012. Petitioners filed their Reply[21] dated March 30, 2012.

The Issue

The Petition raises essentially the following issue: whether the CA erred in not partially reversing its July 14, 2008 Decision insofar as it found that all lands applied for by spouses Go are lands of the public domain and partially modifying the same to declare that the lands already titled in the name of the Fil-Estate Consortium (and which are overlapped by the spouses Go's application for original land registration) under the Torrens system are private properties and can no longer be subject of any land registration proceedings.

The Court's Ruling

Petitioners want the Court to review the evidence that they adduced before the RTC on their claim that the parcels of land

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[14] *Id*. at 875-895.

[15] *Id*. at 907-922.

[16] *Id*. at 926-933, inclusive of Annexes.

[17] Also spelled as "Kieber" in some parts of the records.

[18] *Rollo*, pp. 933-A to 933-B

[19] *Id*. at 936-955.

[20] *Id*. at 986-990, including Annex.

[21] To the Go family's Comment and Supplemental Comment, *id.* at 994-1002.

applied for by spouses Go overlap with their Torrens titles.[22] For this purpose, they rely on the testimony of their witness, Engineer Rolando Cortez (Engr. Cortez), as to the encroachments of the parcels of land applied for on their Transfer Certificates of Title Nos. (TCTs) T-9180, T-9181 and T-9182.[23] According to petitioners, since portions of the parcels of land applied for are already titled, the RTC Decision is correct in denying the land registration application of spouses Go.[24]

Based on the foregoing, petitioners take the position that the RTC Decision was erroneous insofar as it held that all the lands applied for by spouses Go, without distinction and which would presumably encompass the titled lands of petitioners, form part of the public domain and belonged to the State under the Regalian doctrine.[25] As regards the CA Decision, petitioners take issue on the statement that "[n]othing in the record would show that the lands subject of registration have been classified as alienable or disposable by the property (*sic*) government agency."[26] They cite that the lands under TCTs T-9180, T-9181 and T-9182 were originally registered under Original Certificate of Title No. (OCT) 5277 issued on May 26, 1966 pursuant to Decree No. N-108906 and OCT 5442 issued on August 17, 1966 pursuant to Decree No. N-110141.[27] As such, they conclude that as early as 1966, these lands have been segregated from the public domain and became private property.[28]

Petitioners claim that the CA ruling which categorized the lands applied for by spouses Go as public lands, effectively took away portions of the property covered by their titles without due notice and hearing.[29]

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[22] *Rollo*, p. 33.

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

[24] See *id*. at 37.

[25] *Id*.

[26] *Id*.

[27] *Id*. at 40-41.

[28] *Id*. at 41.

[29] *Id*. at 32.

Petitioners further argue that the CA unwittingly sanctioned a collateral attack on their TCTs when the CA ruled that all lands applied for by spouses Go belonged to the public domain.[30] Accordingly, to petitioners, the CA Decision has raised a cloud over their Torrens titles.[31]

In its Comment, the OSG counters that the testimony of Engr. Cortez, petitioners' expert witness, is contradictory, doubtful and self-serving.[32] The OSG points out that in their opposition to the application, petitioners claimed that there was an overlapping of 128,763 square meters; however, based on Engr. Cortez's testimony, the extent of overlapping is 140,267 square meters, leaving a discrepancy of 11,504 square meters.[33] The OSG also questions the survey plan of petitioners as self-serving since they commissioned Engr. Cortez to prepare the said survey plan and the same was not approved by the proper government agency.[34]

The OSG likewise quotes the portion of the RTC Decision which ruled that there is no overlapping,[35] and invokes the doctrine that findings of fact of the trial court and its conclusions are to be accorded by the Court with high respect, if not conclusive effect especially when affirmed by the appellate court.[36]

Further, the OSG argues that it was incumbent upon petitioners to have their lands re-surveyed by the Department of Environment and Natural Resources in order to finally settle the issue of overlapping.[37]

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[30] *Id*. at 47.

[31] *Id*. at 43.

[32] *Id*. at 882.

[33] *Id*. at 883.

[34] *Id.*

[35] *Id*. at 888-890.

[36] *Id*. at 890.

[37] *Id*. at 891-892.

Finally, the OSG posits that the Rule 45 Petition is improper since it will make the Court a trier of facts.[38] The review of the issue of overlapping entails examination of facts or the evidence on record.[39]

On the part of the Go family, they seek the denial of the Petition on the ground that it will make the Court a trier of facts given the rejection of petitioners' claim of overlapping by the RTC and the lack of conflict on such issue in the CA Decision since the CA skirted the issue.[40] Nevertheless, the Comment of the Go family seeks the reinstatement of the RTC Decision and the reversal of the CA Decision as well as the declaration of the parcels of land subject of the application for registration as alienable and disposable.[41]

On this point, since the dismissal by the CA of the application for land registration filed by spouses Go was not appealed to the Court by I the applicants, and because this dismissal is not questioned by petitioners, except only on the resolution of their claim against the parcels of land applied for, it is clear that the dismissal of spouses Go's application for registration of title has already attained finality and even this Court can no longer review the same.[42]

The pertinent provisions of Presidential Decree No. (PD) 1529[43] or the Property Registration Decree in relation to ordinary original registration proceedings are:

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[38] *Id*. at 892.

[39] *Id*.

[40] See *id*. at 942-946.

[41] *Id*. at 952.

[42] A judgment becomes "final and executory" by operation of law since finality of judgment becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected. *City of Manila v. Court of Appeals*, 281 Phil. 408, 413 (1991).

[43] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, approved on June 11, 1978.

SEC. 25. *Opposition to application in ordinary proceedings*. - Any person claiming an interest, whether named in the notice or not, may appear and file an opposition on or before the date of initial hearing, or within such further time as may be allowed by the court. The opposition shall state all the objections to the application and shall set forth the interest claimed by the party, filing the same and apply for the remedy desired, and shall be signed and sworn to by him or by some other duly authorized person.

If the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, or in case of undivided co-ownership, conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands.

x x x x x x x x x

SEC. 29. *Judgment confirming title*. - All conflicting claims of ownership and interest in the land subject of the application shall be determined by the court. If the court, after considering the evidence and the reports of the Commissioner of Land Registration and the Director of Lands, finds that the applicant or the oppositor has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant, or the oppositor, to the land or portions thereof.

Given the foregoing parameters, the RTC disposed of petitioners' claim of overlapping in this wise:

Record shows that the oppositors filed a motion requiring the LRA to investigate and report thereafter if Lots 7, 8 and 14 of Plan SWO-19265-Psu-11411-Amd 2 overlapped certain titled properties. The said motion was denied (re: Order, October 21, 2003). Although a motion for reconsideration of the said Order of denial was expected, none was filed. To date, no such report has been filed by the appropriate government agency. Consequently, it is not clear whether Lots 8 and 14 overlapped Fil-Estate's property covered by TCT Nos. T-9180, T-9181 and T-9182. It should be emphasized that the Court shall consider the reports of the Commissioner of the LRA and the Director of Lands in the rendition of judgment confirming title to the subject land (cf. Section 29 of the *Property Registration Decree*).

Noteworthy is the testimony of oppositor's witness Engr. Rolando Cortez, on cross-examination, that the property claimed to be registered under the name of Fil-Estate is based on the survey plans Psu-56007 under (AP 11315) (Exhibit "21") and Pcs-8781 (Exhibit "20"). Plan Psu-56007, as testified, is not valid for registration and Pcs-8781, per the footnote of the LRA, is likewise not valid for registration (TSN of November 17, 2003, pp. 28-31). Prudence dictates that Engr. Cortez should have verified the same in order to strengthen the oppositor's claim of overlapping. When a witness affirms a fact, it is a positive testimony which is entitled to a greater weight than that of a negative testimony (cf. *Arboleda vs. NLRC*, 303 SCRA 38). However, such fact must be substantiated, otherwise, it becomes a mere allegation, which is not evidence (cf. *Luxuria Homes, Inc. vs. Court of Appeals*, 302 SCRA 315). Furthermore, Engr. Cortez did not explain what relationship there is between plan Psu-56007 and plan Psu-11411 of the applicants and the lots they cover so as to ascertain whether or not they cover the same parcels of land and its extent. This being so, oppositor's contention of overlapping is not distinctively established. Perforce, applicants' Lots 8 and 14 could not have overlapped oppositors' property covered by TCT Nos. T-9180, T-9181 and T-9182.[44]

To reiterate, since the RTC found that petitioners' contention of overlapping was "not distinctively established" by their evidence, which mainly consisted of the testimony of their witness Engr. Cortez, the parcels of land that spouses Go were applying for land registration "could not have overlapped" the properties of petitioners covered by TCTs T-9180, T-9181 and T-9182.

After rejecting petitioners' contention, the RTC proceeded to evaluate the evidence that spouses Go presented, *i.e.*, Deeds of Sale of Lots 7, 8 and 14 executed on October 16, 1975, October 6, 1967 and December 29, 1964, respectively, and tax declarations,[45] and noted that "the Deed of Sale executed by Fil-Estate and Golden Rod, Inc., covering the subject property, was on April 20, 1987."[46] Given these observations, the RTC

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[44] *Rollo*, p. 622.

[45] *Id*. at 623.

[46] *Id*.

concluded that spouses Go were presumed to have first possessed the subject properties and their claim of ownership over the same was preponderantly more tenable than that of petitioners.[47]

As mentioned earlier, the CA, on appeal, only resolved the issue on spouses Go's compliance with the following requirements imposed by law before the registration of title could be granted: (1) satisfactory proof that the land applied for is alienable public land; (2) the applicants' open, continuous, exclusive and notorious possession and occupation thereof since June 12, 1945 or earlier. The other issues raised in the appeal were deemed inconsequential by the CA.

The CA, in not ruling directly on petitioners' claim of overlapping, effectively upheld the RTC's finding that petitioners failed to preponderantly prove that parcels of land subject of the application for registration of title overlap the property covered by their Torrens titles.

To the mind of the Court, the RTC acted conformably with Section 25 of PD 1529, which provides that "[i]f the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, x x x conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands." As worded, it is discretionary on the part of the land registration court to require the parties to submit a subdivision plan duly approved by the appropriate government agency. Regardless of how the said court exercises its discretion, the burden remains with the oppositor or adverse claimant to convince by preponderance of evidence the land registration court that there is an overlapping of boundaries. In this case, petitioners failed.

Likewise, the RTC acted conformably with Section 29 of PD 1529. Since the RTC was not persuaded by petitioners' evidence that there is an overlapping of boundaries, then the conflicting claims of ownership and interest in the parcels of

[47] *Id*.

land subject of the application were resolved in favor of spouses Go and, on this basis, the RTC granted their application. However, the CA set aside the RTC Decision and dismissed spouses Go's application for registration of title.

The CA, in turn, also acted correctly based on its findings that spouses Go failed to prove that the parcels of land applied for are alienable public land, and they openly, continuously, exclusively and notoriously possessed and occupied the same since June 12, 1945 or earlier. Indeed, the deeds of sale and tax declarations that spouses Go adduced are insufficient to prove that the subject parcels of land are alienable and disposable land of the public domain and their imperfect title thereon.

In light of the foregoing, the arguments of petitioners that the CA allowed a collateral attack on their Torrens titles, created a cloud thereon, and deprived them thereof without due process are sheer speculations. The RTC as well as the CA did not make any categorical ruling on the validity of petitioners' Torrens titles. Nor did they declare that the areas covered by petitioners' Torrens titles are inalienable lands of the public domain.

In fine, petitioners' Rule 45 *certiorari* Petition must fail.

As provided in Section 6, Rule 45 of the Rules of Court, a review by the Court is not a matter of right, but of its sound discretion, and will be granted only when there are special and important reasons therefor. Petitioners have failed to convince the Court that the RTC and the CA have decided a question of substance, not theretofore determined by the Court, or have decided it in a way probably not in accord with law or with the applicable decisions of the Court, or have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's power of supervision.[48]

Also, the Court cannot accord the desired review in view of the failure of petitioners to cite the applicable recognized exceptions to the settled rule that the Court, not being a trier

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[48] RULES OF COURT, Rule 45, Sec. 6(a) and (b).

of facts, is under no obligation to examine, winnow, and weigh anew evidence adduced below.[49]

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated July 15, 2008 and Resolution dated May 24, 2010 of the Court of Appeals in CA-G.R. CV No. 84090 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Reyes, Jr.*, *J.,* and *Lazaro-Javier, JJ.*, concur.

Perlas-Bernabe, J., see concurring Opinion.

CONCURRING OPINION

I concur. May I add the following observations.

It must be pointed out that the land registration court is required to determine all conflicting claims of ownership and interest in the land subject of the application for registration, and render judgment confirming the title of the applicant, or the oppositor, to the land or portions thereof.[1]

In this case, while the Regional Trial Court of Las Piñas City, Branch 253 (RTC) erroneously confirmed respondents Spouses Santiago T. Go and Norma C. Go's (Sps. Go) title to the lands applied for registration[2] - considering the latter's failure: (a) to establish that the lands or properties form part of the disposable and alienable lands of the public domain at the time

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[49] *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, 572 Phil. 494, 511 (2008).

[1] See Section 29 of Presidential Decree No. (PD) 1529, entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," otherwise known as the "PROPERTY REGISTRATION DECREE" (June 11, 1978).

[2] See RTC Decision dated September 22, 2004 in Land Registration Case No. LP-00-0111 penned by Acting Presiding Judge Elizabeth Yu-Guray, *rollo* (Vol. I), pp. 619-623.

of the filing of the application for registration; and (b) to present convincing evidence that their alleged possession and occupation were of the nature and duration required by law[3] - it nonetheless found petitioners Fil-Estate Management, Inc., *et al.* (petitioners) to have failed to establish their claim of overlapping.[4]

Although in overlapping of titles disputes, it has always been the practice for the trial court to appoint a surveyor from the government land agencies, such as the Land Registration Authority or the Department of Environment and Natural Resources to act as commissioner, this is not a mandatory procedure. Thus, the trial court may rely on the parties' respect ve evidence to resolve the case.[5]

Here, petitioners presented the results of a survey[6] conducted on their lands to support their claim that the parcels of land subject of the application for registration of Sps. Go overlapped the properties covered by their Torrens titles.[7] On the other hand, neither the Republic nor Sps. Go presented contrary proof, like the results of a survey conducted upon their initiative to contradict petitioners' evidence. Nonetheless, the RTC found petitioners to have failed to distinctly establish their claim of overlapping.[8] The Court of Appeals' (CA) failure to rule[9] directly on the matter was a consequence of its tacit affirmance[10] of the

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[3] See Section 14 of PD 1529.

[4] See *rollo* (Vol. I), pp. 621-622.

[5] See *Pen Development Corporation v. Martinez Leyba, Inc.*, G.R. No. 211845, August 9, 2017.

[6] See Plan prepared by Geodetic Engineer Rolando B. Cortez for petitioner Fil-Estate Management; *rollo* (Vol. I), p. 574.

[7] See *id*. at 621.

[8] See *id*. at 622.

[9] See CA Decision dated July 15, 2008 in CA-G.R. CV No. 84090 penned by Associate Justice Romeo F. Barza with Associate Justices Mariano C. Del Castillo (now a Member of this Court) and Arcangelita M. Romilla-Lontok, concurring; *id*. at 64-74.

[10] See *id*. at 69.

factual finding that there was no overlapping. This is made more apparent by its denial of petitioners' partial motion for reconsideration[11] raising said issue in its assailed Resolution[12] dated May 24, 2010.

It bears to stress that the issue of whether there was indubitable evidence to prove petitioners' claim of overlapping is a question of fact which this Court cannot review in a Rule 45 petition.[13] Moreover, absent any categorical declaration that there was overlapping, it cannot be said that a cloud of doubt hangs over the Torrens titles of petitioners[14] nor is there a collateral attack against such titles[15] as claimed by the petitioners. Accordingly, the *ponencia* correctly denied the instant petition.

SECOND DIVISION

[G.R. No. 194114. March 27, 2019]

FILIPINAS ESLON MANUFACTURING CORP., *petitioner, vs.* **HEIRS OF BASILIO LLANES, NAMELY: CASIANO LLANES, DOMINGO LLANES, FABIAN LLANES, VICTORINA L. TAGALIMOT, PACENCIA L. MANALES, NORMA L. BACALARES, LOURDES L. PAJARDO, JOSEPHINE LLANES, JOSEFA LLANES AND JOVENCITA LLANES; ROLYNWIN**

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[11] Dated August 6, 2008. See *id*. at 78-95

[12] See *id*. at 76-77. Penned by Associate Justice Romeo F. Barza with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda, concurring.

[13] See *Tsuneishi Heavy Industries (Cebu), Inc. v. Mis Maritime Corporation*, G.R. No. 193572, April 4, 2018

[14] See *rollo* (Vol. I), p. 31.

[15] See *id*. at 47.

Q. LAMSON; PHILIPPINE AMANAH BANK, ALSO KNOWN AS AL-AMANAH ISLAMIC INVESTMENT BANK OF THE PHILIPPINES; SPOUSES MEDEL AND CARMEN JUSTINIANO A.K.A. CARMEN & MEDEL JUSTINIANO; RUFINO V. GENILO; MARIA SOL A. SEVESES; SPOUSES SALVADOR AND CHEQUETHELMA GERONA; CRESOGONO R. SEVESES, MONERA M. LALANTO; CLAUDIO M. CLOSAS; SPOUSES SERAFIN AND ELSA FERRAREN; EDILBERTO V. PAZA[*] AND GENEROSO EMPUESTO, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; CERTIFICATION OF NON-FORUM SHOPPING; THE CERTIFICATION OF NON-FORUM SHOPPING SHALL BE EXECUTED UNDER OATH BY THE PLAINTIFF OR PRINCIPAL PARTY. IN THE CASE OF THE CORPORATIONS, THE PHYSICAL ACT OF SIGNING MAY BE PERFORMED, ON BEHALF OF THE CORPORATE ENTITY, ONLY BY SPECIFICALLY AUTHORIZED INDIVIDUALS.— According to Section 5, Rule 7, of the Rules of Court, and as held by a *catena* of cases decided by the Court, it is the plaintiff or principal party who should execute the certification of non-forum shopping under oath. In the case of the corporations, the physical act of signing may be performed, on behalf of the corporate entity, only by specifically authorized individuals for the simple reason that corporations, as artificial persons, cannot personally do the task themselves. In its Comment, respondent PAB alleges that "there is absolutely no showing on the part of Calvin H. Tabora that at the time of the filing of the Petition, he was clothed with a special authority to sign the verification and certification of non-forum shopping on behalf of FEMCO. His being the Vice President for Manufacturing does not *ipso facto* confer on him the special authority to perform such act on behalf of the corporation." A simple perusal of the instant Petition belies the allegation of respondent PAB. It is crystal clear from the

[*] Spelled as "Plaza" in some parts of the record.

Secretary's Certificate dated November 9, 2010 attached by petitioner FEMCO in its Petition that Calvin H. Tabora is "authorized to sign the Verification and Certification of Non-Forum Shopping of the above petition."

2. **ID.; ID.; ACTIONS; THE ATTACK IS DIRECT WHEN THE OBJECTIVE IS TO ANNUL OR SET ASIDE SUCH JUDGMENT, OR ENJOIN ITS ENFORCEMENT, WHILE THE ATTACK IS INDIRECT OR COLLATERAL WHEN, IN AN ACTION TO OBTAIN A DIFFERENT RELIEF, AN ATTACK ON THE JUDGMENT IS NEVERTHELESS MADE AS AN INCIDENT THEREOF. —** Jurisprudence explains that an action or proceeding is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed. The attack is direct when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.

3. **ID.; SPECIAL CIVIL ACTIONS; QUIETING OF TITLE; FOR AN ACTION TO QUIET TITLE TO PROSPER, IT MUST BE PROVED THAT THE PLAINTIFF OR COMPLAINANT HAS A LEGAL OR AN EQUITABLE TITLE TO OR INTEREST IN THE REAL PROPERTY SUBJECT OF THE ACTION, AND THE DEED, CLAIM, ENCUMBRANCE, OR PROCEEDING CLAIMED TO BE CASTING CLOUD ON HIS TITLE MUST BE SHOWN TO BE IN FACT INVALID OR INOPERATIVE DESPITE ITS *PRIMA FACIE* APPEARANCE OF VALIDITY OR LEGAL EFFICACY.—** An action to quiet title or to remove the clouds over a title is a special civil action governed by the second paragraph of Section 1, Rule 63 of the Rules of Court. Specifically, an action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to put things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to

abuse the property as he deems best. For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. In the instant case, the Complaint filed by petitioner FEMCO alleged and, as found by the RTC, sufficiently proved these two requisites for quieting of title: that petitioner FEMCO has a legal right in the subject property by virtue of TCT No. T-17460 (a.f.); and that the deed claimed to be casting a cloud on the title of petitioner FEMCO, *i.e.*, OCT No. 0-1040 (a.f.) based on Decree No. N-182390 dated April 17, 1968, is invalid, null, and void.

4. ID.; ID.; ID.; AN ACTION FOR QUIETING OF TITLE WHICH RAISES THE INVALIDITY OF A CERTIFICATE OF TITLE IS NOT A PROHIBITED COLLATERAL ATTACK AS IT IS CENTRAL, IMPERATIVE, AND ESSENTIAL IN SUCH AN ACTION THAT THE COMPLAINANT SHOWS THE INVALIDITY OF THE DEED WHICH CASTS CLOUD ON HIS TITLE.— [R]aising the invalidity of a certificate of title in an action for quieting of title is NOT a collateral attack because it is central, imperative, and essential in such an action that the complainant shows the invalidity of the deed which casts cloud on his title. In other words, at the heart of the Complaint for Quieting of Title instituted by petitioner FEMCO is the nullification of OCT No. 0-1040 in order to remove the cloud besetting its own title. This is manifestly a direct attack. x x x . In *Guntalilib* v. *Dela Cruz,* the Court, in denying the therein petitioner's claim that the therein respondents' action for quieting of title was a prohibited collateral attack, held that the underlying objectives or reliefs sought in both quieting of title and the annulment of title cases are essentially the same ¯ adjudication of the ownership of the disputed lot and nullification of the questioned certificates of title. x x x. In any case, in *Leyson, et al. v. Sps. Bontuyan*, which was decided a year after *Foster-Gallego v. Sps. Galang*, the Court held that "[w]hile Section 47 of Act No. 496 provides that a certificate of title shall not be subject to collateral attack, the rule is that an action is an attack on a title if its object is

to nullify the same, x x x. x x x Such action to attack a certificate of title may be an original action or a counterclaim [in a quieting of title case] in which a certificate of title is assailed as void." x x x. Therefore, based on the foregoing, the CA was mistaken in deeming petitioner FEMCO's Complaint for Quieting of Title a prohibited collateral attack.

5. **ID.; CIVIL PROCEDURE; JUDGMENTS; ANNULMENT OF JUDGMENT; AN ACTION TO ANNUL AND ENJOIN THE ENFORCEMENT OF THE JUDGMENT PRESUPPOSES THAT THE CHALLENGED JUDGMENT EXISTS.—** An action to annul and enjoin the enforcement of the judgment presupposes that the challenged judgment exists to begin with. In the instant case, there is no final judgment that must be subjected to an action for annulment with the CA because, as indisputably found by the RTC, Decree No. N-182390 supposedly issued by the then CFI of Lanao del Norte and signed by Hon. Teodulo Tandayag is **non-existent to begin with**. The RTC did not invalidate or nullify Decree No. N-182390; what it decreed is that Decree No. N-182390 does not exist at all.

6. **ID.; ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, AND ITS ASSESSMENT OF THEIR PROBATIVE WEIGHT ARE GIVEN HIGH RESPECT, IF NOT CONCLUSIVE EFFECT, UNLESS IT IGNORED, MISCONSTRUED, MISUNDERSTOOD OR MISINTERPRETED COGENT FACTS AND CIRCUMSTANCES OF SUBSTANCE, WHICH, IF CONSIDERED, WILL ALTER THE OUTCOME OF THE CASE .—** All in all, the RTC conclusively found that "[t]he evidence is indubitable that NO decision was signed and rendered by the Hon. Teodulo Tandayag, the detailed presiding judge of the then Court of First Instance of Lanao del Norte adjudicating Cad. Lot No. 1911 in favor of Basilio Llanes on April 17, 1968." At this juncture, the Court stresses that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case. Hence, for the foregoing reasons, the Court finds incorrect the CA's reversal of the RTC's Decision granting

petitioner FEMCO's Complaint for Quieting of Title on the erroneous ground that a separate action is the appropriate remedy to modify or interfere with the judgment or order of another co-equal court.

7. ID.; SPECIAL CIVIL ACTIONS; QUIETING OF TITLE; THE STATE IS NOT THE PROPER PARTY TO BRING A SUIT FOR RECONVEYANCE OF A PROPERTY PROVEN TO BE PRIVATE PROPERTY. — An action for reversion involves property that is alleged to be of State ownership, aimed to be reverted to the public domain. Jurisprudence has held that there is no merit to the contention that only the State may bring an action for reconveyance with respect to property proven to be private property. The State, represented by the Solicitor General, is not the real party-in-interest; inasmuch as there was no reversion of the disputed property to the public domain, the State is not the proper party to bring a suit for reconveyance of a private property. In the instant case, contrary to the CA's belief, the granting of the Complaint for Quieting of Title filed by petitioner FEMCO did not have the effect of reverting the subject property into public land because, to begin with, petitioner FEMCO is the registered private owner of the subject property, having TCT No. T-17460 (a.f.) registered in its name. As held by the RTC in its Decision, there is no evidence on record which substantiates the claim that OCT No. RP-62(21), from whichTCT No. T-17460 (a.f.) registered in the name of petitioner FEMCO stems from, was invalidly issued. Hence, with the granting of the Complaint for Quieting of Title, the status that petitioner FEMCO enjoyed prior to the filing of the Complaint as owner of the land covered by TCT No. T-17460 (a.f.) remains undisturbed.

APPEARANCES OF COUNSEL

Padilla Ulindang And Partners for petitioners.

Office of the Government Corporate Counsel for respondent Amanah Bank.

Evasan Law Office And Associates for respondent heirs of the late Edilberto Paza.

Alan Flores for respondent Lalanto.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Filipinas Eslon Manufacturing Corporation (FEMCO) against respondents Heirs of Basilio Llanes, namely: Casiano Llanes (Casiano), Domingo Llanes (Domingo), Fabian Llanes (Fabian), Victorina L. Tagalimot (Victorina), Pacencia L. Manales (Pacencia), Norma L. Bacalares (Norma), Lourdes L. Pajardo (Lourdes), Josephine Llanes (Josephine), Josefa Llanes (Josefa), and Jovencita Llanes (Jovencita) (collectively, the respondents Heirs of Llanes); Rolynwin Q. Lamson (Rolynwin); Philippine Amanah Bank, also known as Al-Amanah Islamic Investment Bank of the Philippines (PAB); Spouses Medel and Carmen Justiniano (Sps. Justiniano); Rufino V. Genilo (Rufmo); Maria Sol A. Seveses (Maria); Spouses Salvador and Chequethelma Gerona (Sps. Gerona); Cresogono R. Seveses (Cresogono); Monera M. Lalanto (Monera); Claudio M. Closas (Claudio); Spouses Serafin and Elsa Ferraren (Sps. Ferraren); Edilberto V. Paza (Edilberto); and Generoso Empuesto (Generoso).

The instant Petition assails the Decision[2] dated August 23, 2010 (assailed Decision) promulgated by the Court of Appeals, Cagayan de Oro City Twenty-First Division (CA) in CA-G.R. CV No. 62936, which reversed the Decision[3] dated September 30, 1998 issued by the Regional Trial Court of Lanao Del Norte, City of Iligan, Branch 6 (RTC) in Civil Case No. 06-3337.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision and as culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

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[1] *Rollo*, pp. 11-35.

[2] *Id*. at 39-60. Penned by then Associate Justice Ramon Paul L. Hernando (now a Member of this Court) with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

[3] *Id*. at 61-79. Penned by Judge Valerio M. Salazar.

[Petitioner FEMCO] is a manufacturer of "eslon pipes and accessories." Its manufacturing plant is located within a 50,528 square-meter land, known as Lot B-2, covered by Transfer Certificate of Title No. (TCT) T-17460 (a.f.), which is situated in Barrio Sta. Felomina, Iligan City.

On February 2, 1994, Atty. Alfredo Busico, counsel for [respondents] Heirs of Basilio Llanes, wrote a Letter to the management of [petitioner] FEMCO informing them that its plant site may have encroached into his clients' properties, known as Lot 1911-B-4, Lot 191 l-B-3, and Lot 1911-J, covered by TCT No. T-29,635 (a.f.), TCT No. T-31,994 (a.f.) and TCT No. T-21573 (a.f.), respectively.

In a Letter dated 16 February 1994, Atty. Gerardo Padilla, counsel for [petitioner] FEMCO, replied that his client's property is covered by a valid certificate of title - TCT No. T-17460 (a.f.)- He also informed Atty. Busico that upon his inquiry with the Register of Deeds of Iligan City, he discovered that:

1) Lot 1911 is titled in the name of one Basilio Llanes. His title thereto is evidenced by OCTNo. 0-1040 (a.f.) based on Decree No. N-182390 dated April 17,1968 [allegedly issued by the Hon. Teodulo Tandayag of the Court of First Instance (CFI) of Lanao del Norte.]

2) Per Cadastral record, only Messrs. Pio Echaves and Pedro Q. Solosa filed an answer/claims for Lot 1911, which answer still exists.

3) Again, per record, your client Basilio Llanes did not file an answer/claim to said Lot 1911.

4) Finally, per record, Lot 1911 is NOT yet decreed in the name of any person, let alone your client Basilio Llanes.

Atty. Padilla concluded that OCT No. 0-1040 (a.f.) which is registered in the name of Basilio Llanes is spurious.

No further communication between Atty. Busico and Atty. Padilla transpired thereafter.

On 14 March 1995, [petitioner] FEMCO management received a Letter dated 23 February 1995 from a certain Atty. Dulcesimo Tampus, apparently the new counsel for the Heirs of Basilio Llanes, informing them that that they had erroneously fenced a portion of about 16,629 square meters of his clients' lot, known as Lot 1911. The letter

demanded that the fence be removed immediately and for [petitioner] FEMCO to pay the amount of Php 2,000.00 as rental fee, until the fence shall have been removed.

Two days later, Atty. Padilla wrote Atty. Tampus a Letter informing him that "per cadastral record, the only persons who filed answers to Lot 1911 were Messrs. Pio Echavez and Pedro Q. Solosa. Basilio Llanes never claimed or filed an answer to said lot. Also, per Form No. 36, Record of Cadastral Answer, Lot 1911 is not yet decreed in favor of any person, let alone in the name of Basilio Llanes. The only inevitable conclusion is that the title of your clients is faked (sic)."

To forestall any farther (sic) attempt to interfere with its property rights, [petitioner] FEMCO filed on 1 September 1995, a Complaint against [the respondents] before the RTC of Lanao del Norte for quieting of title and damages. This was docketed as Civil Case No. 3337.

In its Complaint, [petitioner] FEMCO asserted [that it is the registered owner of a parcel of land situated in Sta. Felomina, Iligan City having an area of 50,528 square meters, its title thereto being evidenced by TCT No. 17460 (a.f.), that it has constructed thereon its manufacturing plant for eslon pipes and accessories, and that "OCT No. 0-1040 (a.f.) and all the transfer certificate of titles emanating thereunder, including but not limited to those referred to in the next preceding paragraph, are apparently valid or effective but are in truth and in fact invalid, ineffective, voidable, or unenforceable and are prejudicial to [petitioner FEMCO's] title"; that "despite the knowledge that their titles are fake and fraudulent, [respondents] Heirs of Basilio Llanes and [Rolynwin] continue to hold on to their title and in fact has (sic) been selling and/or disposing of the same to the prejudice of [petitioner FEMCO] and the Torrens system. Furthermore, [respondents] Heirs of Basilio Llanes continue to pester and annoy [petitioner FEMCO] by claiming that a portion of [petitioner FEMCO's] land has encroached on their titled land, which they know is false"; that [respondent PAB,] despite the fact that its titles are fake as they emanated from a fake OCT No. 0-1040 (a.f.) has claimed that [petitioner FEMCO's] fence is within its property, which is false."

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[On the part of the respondents Heirs of Basilio Llanes, they denied the material allegation of the Complaint, alleging that OCT No.

0-1040 (a.f.) is valid and effective by virtue of a decision of the CFI of Lanao del Norte dated April 17, 1968; that Lot 1911 has been in actual physical possession by Basilio Llanes; that petitioner FEMCO is illegally occupying a portion of Lot 1911 consisting of 16,629 sq. meters; and that TCT No. T-17480 is the one which is invalid, void, and ineffective because it is based on a non-existing homestead application.]

On 30 September 1998, the [RTC] issued the assailed Decision in favor of [petitioner FEMCO].

[The RTC, in its Decision, held that "the evidence is indubitable that NO decision was signed and rendered by Hon. Teodulo Tandayag, the detailed presiding judge of the then Court of First Instance of Lanao del Norte adjudicating Cad. Lot No. 1911 in favor of Basilio Llanes on April 17, 1968. Aside from the other facts such as the absence of a cadastral answer of Basilio Llanes and the testimony of Atty. Macaraya that the cadastral records show that Lot 1911 has not been adjudicated to any person or entity, the most telling and strongly convincing evidence showing that no such decision was rendered by Judge Tandayag is the alleged certified decision, Exh. 'H' itself. It contains specific data which condemns itself as a falsity, x x x."[4]

The dispositive portion of the RTC's Decision reads:

1. Declaring OCT No. 0-1040 (a.f.) in the name of Basilio Llanes, Exh. "G" and Decree No. N-l82390, Exh. "G-1" null and void *ab initio*, and the decision, Exh. "H" as well as the Order for the issuance of the decree, Exh. "H-4" inexistent, fake and void *ab initio*;

2. Declaring all transfer certificates of title derived from OCT No. 0-1040 (a.f.) to be likewise invalid and ineffective[,] particularly the following:

   a) TCT No. T-35,257 (a.f.); TCT No. T- 35,258 (a.f.) and TCT No. T-35259, all in the name of [respondents Sps. Gerona];

   b) TCT No. T-28,823 (a.f.), in the name of [respondent Rufino];

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[4] *Id.* at 73.

c) TCT No. T-30,495 (a.f.) and TCT No. T-30496 (a.f), both in the name of [respondent Cresogono];

d) TCT No. T-31992 (a.f), in the name of [respondent Maria];

e) TCT No. T-29,546 (a.f.) in the name of [respondent Monera];

f) TCT No. T-45,217 (a.f), in the name of [respondent Claudio];

g) TCT No. T-31767 (a.f); TCT No. 32390 (a.f.) and TCT No. T-34,495 (a.f), all in the name of [respondents Sps. Ferraren];

h) TCT No. T-21,572 (a.f.) and TCT No. T-31994 (a.f), all in the name of Basilio Llanes;

i) TCT No. T-32,116 (a.f), in the name of [respondent Edilberto

j) TCT No. T - 23085 (a.f.) TCT NO. T-32183 (a.f.), in the name of [respondent PAB];

The Register of Deeds of Iligan City is directed to cancel all the above certificates of title.

3. Declaring [petitioner FEMCO] to be entitled to the ownership and possession of the land described in TCT No. T-17460 (a.f.) in its name particularly that portion of the 16,629 sq. meters claimed by [respondents] Heirs of Basilio Llanes and that portion of 947.64 sq. meters claimed by [respondent PAB].

4. Denying [petitioner FEMCO's] claim for damages against all [respondents] and dismissing the complaint against [respondent Generoso] without prejudice.

5. Dismissing the counterclaims of all [respondents] against [petitioner FEMCO] for lack of merit.

No pronouncement as to costs.

SO ORDERED.[5]

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

Aggrieved, [respondents Edilberto], Heirs of Basilio Llanes, [Cresogono and Maria (respondents Seveses)], [Monera], and [PAB] filed their respective Notices of Appeal. However, [respondents Rufino, Sps. Justiniano, Sps. Gerona, Claudio, and Sps. Ferraren] failed to file an appeal. Thus, as to them, the decision rendered by the court a quo has become final and executory.

While the [respondent] Heirs of Basilio Llanes and [respondents Seveses] were able to file their Notice of Appeal within the reglementary period, they however failed to file their Appellants' Brief within the time allowed and granted by [the CA]. Thus, on 10 August 2000, the [CA] issued a Resolution dismissing their appeal pursuant to Section 1(e) Rule 50 of the 1997 Rules of Civil Procedure. Subsequently, on 13 September 2000, an Entry of Judgment was issued by the [CA], declaring the case final and executory insofar as [respondents] Heirs of Basilio Llanes and [respondents Seveses] were concerned. Hence, the [CA no longer passed] upon their respective appeals in [the assailed] Decision.

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[The CA thus resolved] the merits of the appeals foisted by [respondents PAB, Monera, and Edilberto.][6]

The Ruling of the CA

In the assailed Decision, the CA granted the appeal of respondents PAB, Monera and Edilberto. The dispositive portion of the assailed Decision reads:

WHEREFORE, all the foregoing considered, the assailed Decision dated 30 September 1998 rendered by the Regional Trial Court (RTC), 12th Judicial Region, Branch 06, City of Iligan, in Civil Case No. 06-3337 is hereby **REVERSED** and **SET ASIDE**. Plaintiff-appellee FEMCO's Complaint against defendants and defentants-appellants Al-Amanah Islamic Bank, Monera M. Lalanto and Edilberto V. Paza is **DISMISSED**. No Costs.

SO ORDERED.[7]

As explained in the assailed Decision, in the main, the CA granted the appeal for three reasons.

[6] *Id.* at 41-52.

[7] *Id.* at 59.

First, according to the CA, since it is evident from petitioner FEMCO's assertions, allegations, and reliefs sought in its Complaint for Quieting of Title that it is actually an indirect action for annulment of title, the Complaint must be dismissed in accordance with the doctrine that a certificate of title cannot be subject to a collateral attack.[8]

Second, since the title of the respondents Heirs of Basilio Llanes [OCT No. 0-1040 (a.f.)] is sourced from Decree No. N-182390 supposedly issued by the then CFI of Lanao del Norte, the CA held that an action for quieting of title is not the appropriate remedy where the action would require the modification or interference with the judgment or order of another co-equal court.[9]

Lastly, the CA held that petitioner FEMCO had no personality to institute the Complaint for Quieting of Title because if petitioner FEMCO's prayer in its Complaint would be granted, Lot 1911 would be reverted to the government. Hence, only the government, through the Solicitor General, can institute a reversion case.[10]

Hence, the instant Petition.

Respondent Edilberto, through his heirs, filed a Manifestation for Substitution as Defendant-heirs of Edilberto V. Paza with Comment to the Petition for Review on Certiorari[11] dated January 15, 2014, while respondent PAB filed its Comment[12] dated November 27, 2014, to which petitioner FEMCO responded with its Consolidated Reply[13] dated January 23, 2017.

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[8] *Id*. at 54.

[9] *Id*. at 55-56.

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

[11] *Id*. at 279-296.

[12] *Id*. at 326-339.

[13] *Id*. at 366-377.

Issue

The central issue to be resolved by the Court is whether the CA was correct in holding that: (1) petitioner FEMCO's Complaint for Quieting of Title is a prohibited collateral attack on a certificate of title; (2) petitioner FEMCO, in filing its Complaint, resorted to a wrong remedy since a separate action would require the modification or interference with the judgment or order of another co-equal court; and (3) petitioner FEMCO had no personality to institute the Complaint.

The Court's Ruling

The Court finds petitioner FEMCO's Petition meritorious and resolves to grant the instant Petition.

I. *The Procedural Issues*

Before deciding on the substantive merits of the instant case, the Court shall first quickly resolve the lone procedural issue raised by respondent PAB against the instant Petition.

Supposed Defect in the Verification and Certification of Non-Forum Shopping

According to Section 5, Rule 7, of the Rules of Court, and as held by a *catena* of cases decided by the Court,[14] it is the plaintiff or principal party who should execute the certification of non-forum shopping under oath. In the case of the corporations, the physical act of signing may be performed, on behalf of the corporate entity, only by specifically authorized individuals for the simple reason that corporations, as artificial persons, cannot personally do the task themselves.[15]

In its Comment, respondent PAB alleges that "there is absolutely no showing on the part of Calvin H. Tabora that at the time of the filing of the Petition, he was clothed with a special authority to sign the verification and certification of non-forum shopping on behalf of FEMCO. His being the Vice

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[14] *Agustin v. Cruz-Herrera*, 726 Phil. 533, 543 (2014).

[15] *BA Savings Bank v. Sia*, 391 Phil. 370, 377-378 (2000).

President for Manufacturing does not *ipso facto* confer on him the special authority to perform such act on behalf of the corporation."[16]

A simple perusal of the instant Petition belies the allegation of respondent PAB.

It is crystal clear from the Secretary's Certificate dated November 9, 2010 attached by petitioner FEMCO in its Petition that Calvin H. Tabora is "authorized to sign the Verification and Certification of Non-Forum Shopping of the above petition."[17]

Hence, the lone procedural issue raised by respondent PAB is patently without merit.

II. *The Substantive Issues*

The Court shall now discuss in *seriatim* the three reasons of the CA in granting the appeal of respondents PAB, Monera, and Edilberto, and consequently reversing and setting aside the RTC's Decision dated September 30, 1998 which granted petitioner FEMCO's Complaint for Quieting of Title.

A. *The Complaint for Quieting of Title as a Prohibited Collateral Attack against Certificates of Title*

The CA posits that since in petitioner FEMCO's Complaint for Quieting of Title, the relief actually sought for was the nullification of OCT No. 0-1040 (a.f.) and all other titles emanating therefrom: "This action is clearly an indirect or collateral attack because the suit which [petitioner] FEMCO filed before the [RTC] prayed for a different relief, which is not proper in an action for quieting of title. Instead, it referred to the annulment of OCT No. 0-1040 and Decree No. N-182390, including the subsequent transfer certificates of title."[18]

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[16] *Rollo*, p. 328.

[17] *Id*. at 37.

[18] *Id*. at 55.

In essence, the CA believes that an action for quieting of title which involves a challenge to the validity of a certificate of title is a collateral attack which is prohibited by law.

The CA is mistaken.

Jurisprudence explains that an action or proceeding is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed. The attack is direct when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[19]

An action to quiet title or to remove the clouds over a title is a special civil action governed by the second paragraph of Section 1, Rule 63 of the Rules of Court. Specifically, an action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to put things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce: the improvements he may desire, to use, and even to abuse the property as he deems best. For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie*appearance of validity or legal efficacy.[20]

In the instant case, the Complaint filed by petitioner FEMCO alleged and, as found by the RTC, sufficiently proved these

[19] *Sarmiento v. Court of Appeals*, 507 Phil. 101, 113 (2005).

[20] *Mananquil v. Moico*, 699 Phil. 120, 126-127 (2012).

two requisites for quieting of title: that petitioner FEMCO has a legal right in the subject property by virtue of TCT No. T-17460 (a.f.); and that the deed claimed to be casting a cloud on the title of petitioner FEMCO, *i.e.*, OCT No. 0-1040 (a.f.) based on Decree No. N-182390 dated April 17, 1968, is invalid, null, and void.

Hence, raising the invalidity of a certificate of title in an action for quieting of title is NOTa collateral attack because it is central, imperative, and essential in such an action that the complainant shows the invalidity of the deed which casts cloud on his title. In other words, at the heart of the Complaint for Quieting of Title instituted by petitioner FEMCO is the nullification of OCT No. 0-1040 in order to remove the cloud besetting its own title. This is manifestly a direct attack.

In *Oño, et al. v. Lim*,[21] the Court, in finding unmeritorious therein petitioner's claim that action for quieting of title should be disallowed because it supposedly constituted a collateral attack on his certificate of title, held that:

> The petitioners contend that this action for quieting of title should be disallowed because it constituted a collateral attack on OCT No. RO-9969-(O-20449), citing Section 48 of Presidential Decree No. 1529, *viz*
>
> 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.
>
> The petitioners' contention is not well taken.
>
> An action or proceeding is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed. The attack is direct when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.

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[21] 628 Phil. 418 (2010).

Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.[22]

Similarly, in *Roman Catholic Archbishop of San Fernando v. Soriano, Jr.*,[23] the Court held that the complaint for quieting of title filed against the therein petitioner does not amount to a collateral attack because at the heart of the action for quieting of title was the genuineness of the certificate of title:

The RCA likewise asserts that the case for quieting of title is a collateral attack on its title which is prohibited by law. However, we agree with the CA in holding that the complaint against the RCA does not amount to a collateral attack because the action for the declaration of nullity of OCT No. 17629 is a clear and direct attack on its title.

An action is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment pursuant to which the title was decreed. The attack is direct when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.

The complaint filed with the RTC pertinently alleged that the claim of ownership by the RCA is spurious as its title, denominated as OCT No. 17629, is fake for the following reasons: (1) that the erasures

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[22] *Id*. at 425-426.

[23] 671 Phil. 308 (2011).

are very apparent and the title itself is fake; (2) it was made to appear under Memorandum of Encumbrance Entry No. 1007 that the title is a reconstituted title when in truth, it is not; and (3) the verification reveals that there was no petition filed before any court where an order was issued for the reconstitution and re-issuance of an owner's duplicate copy. It is thus clear from the foregoing that the case filed questioning the genuineness of OCT No. 17629 is a direct attack on the title of the RCA.[24]

In *Guntalilib v. Dela Cruz*,[25] the Court, in denying the therein petitioner's claim that the therein respondents' action for quieting of title was a prohibited collateral attack, held that the underlying objectives or reliefs sought in both quieting of title and the annulment of title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of the questioned certificates of title:

Moving on to the substantive issues raised, the Court finds without merit petitioner's claim that respondents' quieting of title case constitutes a prohibited attack on his predecessor Bernardo Tumaliuan's unnumbered OCT as well as the proceedings in LRC Case No. 6544. It is true that "the validity of a certificate of title cannot be assailed in an action for quieting of title; an action for annulment of title is the more appropriate remedy to seek the cancellation of a certificate of title." Indeed, it is settled that a certificate of title is not subject to collateral attack. However, while respondents' action is denominated as one for quieting of title, it is in reality an action to annul and cancel Bernardo Tumaliuan's unnumbered OCT. The allegations and prayer in their Amended Complaint make out a case for annulment and cancellation of title, and not merely quieting of title: they claim that their predecessor's OCT 213, which was issued on August 7, 1916, should prevail over Bernardo Tumaliuan's unnumbered OCT which was issued only on August 29, 1916; that petitioner and his co-defendants have knowledge of OCT 213 and their existing titles; that through fraud, false misrepresentations, and irregularities in the proceedings for

[24] *Id*. at 317-318.

[25] 789 Phil. 287 (2016).

reconstitution (LRC Case No. 6544), petitioner was able to secure a copy of his predecessor's supposed unnumbered OCT; and for these reasons, Bernardo Tumaliuan's unnumbered OCT should be cancelled. Besides, the case was denominated as one for "Quieting of Titles x x x; Cancellation of Unnumbered OCT/ Damages."

It has been held that "[t]he underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title." Nonetheless, petitioner should not have been so simplistic as to think that Civil Case No. 6975 is merely a quieting of title case. It is more appropriate to suppose that one of the effects of cancelling Bernardo Tumaliuan's unnumbered OCT would be to quiet title over Lot 421; in this sense, quieting of title is subsumed in the annulment of title case.[26]

The CA heavily relies on *Foster-Gallego v. Sps. Galang, et al.*[27] in arriving at its conclusion that petitioner FEMCO's Complaint for Quieting of Title is a prohibited collateral attack. This reliance is misplaced.

First and foremost, the said case involved the raising of the nullity of a TCT in a mere answer-in-intervention to a complaint for quieting of title. This is certainly not the situation in the instant case.

In any case, in *Leyson, et al. v. Sps. Bontuyan*,[28] which was decided a year after Foster-Gallego v. Sps. Galang, the Court held that "[w]hile Section 47 of Act No. 496 provides that a certificate of title shall not be subject to collateral attack, the rule is that an action is an attack on a title if its object is to nullify the same, x x x. x x x Such action to attack a certificate of title may be an original action or a counterclaim [in a quieting

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[26] *Id.* at 304-305.

[27] 479 Phil. 148 (2004).

[28] 492 Phil. 238 (2005).

of title case] in which a certificate of title is assailed as void."[29] The Court added that "since all the essential facts of the case for the determination of the title's validity are now before the Court, to require the party to institute cancellation proceedings would be pointlessly circuitous and against the best interest of justice."[30]

Therefore, based on the foregoing, the CA was mistaken in deeming petitioner FEMCO's Complaint for Quieting of Title a prohibited collateral attack.

B. *The Non-existence of Decree No. N-182390 dated April 17, 1968*

The Court shall now discuss the validity of the CA's reasoning that, since the title of the respondents Heirs of Basilio Llanes, *i.e.*, OCT No. 0-1040 (a.f.) is sourced from Decree No. N-182390 supposedly issued by the then CFI of Lanao del Norte, the RTC was incorrect in granting petitioner FEMCO's Complaint for Quieting of Title since a separate action is the appropriate remedy to modify or interfere with the judgment or order of another co-equal court.

The CA is correct in saying that it is the CA, and not the RTC, which has exclusive jurisdiction over actions for annulment of trial court decisions. A trial court has no authority to annul the final judgment of a co-equal court.[31] However, the aforesaid doctrine does not apply in the instant case.

An action to annul and enjoin the enforcement of the judgment presupposes that the challenged judgment exists to begin with.[32]

In the instant case, there is no final judgment that must be subjected to an action for annulment with the CA because, as indisputably found by the RTC, Decree No. N-182390 supposedly

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[29] *Id*. at 257.

[30] *Id*.

[31] *Nery v. Leyson*, 393 Phil. 644, 647-648 (2000).

[32] See *Macabingkil v. People's Homesite and Housing Corporation*, 164 Phil. 328, 345-346 (1976).

issued by the then CFI of Lanao del Norte and signed by Hon. Teodulo Tandayag is **non-existent to begin with**. The RTC did not invalidate or nullify Decree No. N-182390; what it decreed is that Decree No. N-l82390 does not exist at all.

As found by the RTC, through the records of cadastral answers of Iligan City and certification of one Atty. Joel Macaraya, the Clerk of Court of the then CFI of Lanao del Norte, among many other pieces of evidence on record, **there has been no decree issued by the Lanao CFI adjudicating Lot No. 1911 in favor of Basilio Llanes**.[33]

Further, the RTC also noted that Mrs. Ma. Geronima G. Perez, the designated Branch Clerk of Court from 1981 to 1989, certified that the only copy of the alleged Decision held by respondents, a supposed certified true copy of Decision dated April 17, 1968 adjudicating Lot No. 1911 purportedly issued by her, is a completely falsity as she never issued such a document.[34]

All in all, the RTC conclusively found that "[t]he evidence is indubitable that NO decision was signed and rendered by the Hon. Teodulo Tandayag, the detailed presiding judge of the then Court of First Instance of Lanao del Norte adjudicating Cad. Lot No. 1911 in favor of Basilio Llanes on April 17, 1968."[35]

At this juncture, the Court stresses that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case.[36]

Hence, for the foregoing reasons, the Court finds incorrect the CA's reversal of the RTC's Decision granting petitioner FEMCO's Complaint for Quieting of Title on the erroneous

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[33] *Rollo*, pp. 72-75.

[34] *Id.*

[35] *Id*. at 73

[36] *People v. Alabado*, 558 Phil. 796, 813-814 (2007).

ground that a separate action is the appropriate remedy to modify or interfere with the judgment or order of another co-equal court.

C. *The Personality of Petitioner FEMCO to institute the Complaint for Quieting of Title*

Lastly, the Court now resolves to determine whether the CA was correct in holding that petitioner FEMCO had no personality to institute the Complaint for Quieting of Title for the sole reason that if petitioner FEMCO's prayer in its Complaint would be granted, Lot No. 1911 would be reverted to the government. As held by the CA, only the government, through the Office of the Solicitor General, can institute a reversion case.

The CA is again mistaken.

An action for reversion involves property that is alleged to be of State ownership, aimed to be reverted to the public domain. Jurisprudence has held that there is no merit to the contention that only the State may bring an action for reconveyance with respect to property proven to be private property. The State, represented by the Solicitor General, is not the real party-in-interest; inasmuch as there was no reversion of the disputed property to the public domain, the State is not the proper party to bring a suit for reconveyance of a private property.[37]

In the instant case, contrary to the CA's belief, the granting of the Complaint for Quieting of Title filed by petitioner FEMCO did not have the effect of reverting the subject property into public land because, to begin with, petitioner FEMCO is the registered private owner of the subject property, having TCT No. T-17460 (a.f.) registered in its name.

As held by the RTC in its Decision, there is no evidence on record which substantiates the claim that OCT No. RP-62(21), from which TCT No. T-17460 (a.f.) registered in the name of petitioner FEMCO stems from, was invalidly issued.[38]

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[37] *Heirs of Santiago v. Heirs of Santiago*, 452 Phil. 238, 253-254 (2003).

[38] *Rollo*, p. 76.

Hence, with the granting of the Complaint for Quieting of Title, the status that petitioner FEMCO enjoyed prior to the filing of the Complaint as owner of the land covered by TCT No. T-17460 (a.f.) remains undisturbed.

Therefore, with the refutation of the three erroneous grounds provided by the CA in granting the appeal posed by respondents PAB, Monera, and Edilberto, the overturned Decision of the RTC, which granted petitioner FEMCO's Complaint for Quieting of Title, must be reinstated.

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The assailed Decision dated August 23, 2010 promulgated by the Court of Appeals, Cagayan de Oro City, Twenty-First Division in CA-G.R. CV No. 62936 is **REVERSED AND SET ASIDE**. The Decision dated September 30, 1998 issued by the Regional Trial Court of Lanao Del Norte, City of Iligan, Branch 6 in Civil Case No. 06-3337 is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202799. March 27, 2019]

VIVENCIO DALIT, *petitioner, vs.* **SPOUSES ROLANDO E. BALAGTAS, SR. AND CARMELITA G. BALAGTAS, ROLANDO G. BALAGTAS, JR., CLARINA G. BALAGTAS, CARLOTA G. BALAGTAS, CARMELA G. BALAGTAS, SOFRONIO SARIENTE AND METROPOLITAN BANK AND TRUST COMPANY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE DEPARTMENT OF AGRARIAN REFORM AS TO THE CLASSIFICATION OF THE DISPUTED LOT, ACCORDED GREAT WEIGHT AND RESPECT.—** As correctly observed by DAR Regional Director Teofilo Q. Inocencio: x x x **[T]he findings of the MARO that the property is indeed agriculturally productive, not to mention that there are occupants/farmers found thereon, remained uncontroverted. As between the undisputed findings of the field office concerned and the bare allegations of the [Balagtas family], the former prevails. x x x** The Court has accorded great weight and respect to the factual findings of administrative bodies in the absence of any showing of fraud, collusion, arbitrariness, illegality, imposition or mistake on the part of administrative officials, or a total lack of substantial evidence to support the same. This principle finds emphatic application in this case, since the DAR's findings as to the classification of the Disputed Lot were no longer questioned by respondents, and thus, became final.

2. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) OF 1988 (RA 6657) AS AMENDED BY RA 9700; THE ISSUANCE OF CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA) NO. T-2165 IN PETITIONER'S FAVOR CONFIRMS HIS RIGHT TO RETAIN POSSESSION OF THE PORTION OF THE DISPUTED LOT IDENTIFIED THEREIN.—** One of the modes by which DAR implements the distribution of agricultural lands under the CARP is through the issuance of a CLOA. A CLOA is a document evidencing ownership of the land granted or awarded to the qualified ARB, and contains the restrictions and conditions of such grant. **The issuance of CLOA No. T-2165 in Dalit's favor thus**

confirms his right to retain possession over the portion of the Disputed Lot identified thereunder, such possession being an attribute of ownership granted in his favor. However, considering that Dalit is only one of several ARBs of the Disputed Lot, the Court deems it necessary to clarify that this Decision should not be interpreted to grant Dalit authority to encroach upon any portion of the Disputed Lot beyond the 30,000-square meter portion granted in his favor, consistent with the boundaries set forth in CLOA No. T-2165.

3. ID.; ID.; ID.; THE DECISION AND WRIT OF EXECUTION ISSUED IN CIVIL CASE NO. 3361-AF CANNOT DEFEAT PETITIONER'S RIGHTS ARISING FROM CLOA NO. T-2165.— [I]t cannot be gainsaid that the State recognizes the indefeasibility of CLOAs issued in accordance with applicable law. Under DAR Administrative Order No. 07-14, the cancellation of erroneously issued CLOAs may be allowed only in the manner and under the conditions prescribed thereunder. **Until duly cancelled in accordance with the prescribed procedure, CLOAs issued by the DAR shall remain valid and subsisting and enjoy the same respect accorded to those issued through other modes of acquisition of title.** To recall, the Balagtas family's Petition for the Lifting of the Coverage of the Land Under the Agrarian Reform Program had already been denied with finality, as evidenced by the Certificate of Finality issued by the DAR Regional Director on December 6, 2012. **Hence, the issuance of the Writ of Execution directing the enforcement of the RTC's superseded Decision cannot defeat CLOA No. T-2165 which, as explained, is already valid and subsisting by virtue of the denial with finality of the Balagtas family's petition.**

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

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) OF 1988 (RA 6657)

AS AMENDED BY RA 9700; PETITIONER MUST BE MAINTAINED IN THE PEACEFUL POSSESSION OF THE SUBJECT LOT AS A CONSEQUENCE OF HIS CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA) TITLE.— ***It is but proper to maintain Dalit in the possession of the subject lot as a consequence of his CLOA title.*** It bears stressing that the rights and responsibilities of ARBs shall commence from their receipt of duly registered CLOAs and their actual physical possession of the awarded land. Under Section 24 of Republic Act No. (RA) 6657, as amended by RA 9700, identified and qualified ARBs shall have usufructuary rights over the awarded land as soon as the PAR takes possession of such land, and even pending the award of the CLOA. Consequently, Dalit must be maintained in the peaceful possession of the subject lot as a consequence of his CLOA title, **until such title is cancelled for valid reasons.**

2. ID.; ID.; ID.; THE ISSUE OF WHETHER OR NOT AN AGRARIAN REFORM BENEFICIARY (ARB) IS A *DE JURE* TENANT ON A CARP-COVERED LOT IS NOT RENDERED MOOT BY THE MERE ISSUANCE OF CLOA TITLE IN HIS NAME; DESPITE THE INDEFEASIBILITY OF CLOA TITLES AFTER ONE YEAR FROM REGISTRATION, IT MAY STILL BE CANCELLED FOR VALID REASONS.— ***It must be clarified that the issue of whether or not an ARB is a de jure tenant on a CARP-covered lot is not necessarily rendered moot by the mere issuance of a CLOA title in the ARB's name.*** An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. In this case, since the action before the PARAD primarily involves Dalit's right to be maintained in the possession of the subject lot, the issuance of a CLOA title in his name which recognizes his usufructuary rights over the awarded land necessarily entails his continued possession thereof, regardless of whether or not he had valid grounds to be so maintained when he filed the amended petition for maintenance of possession in 2005 long before the issuance of his CLOA title on October 20, 2011. Notably, however, it was Dalit himself who raised the issue of tenancy in invoking the jurisdiction of the PARAD (DARAB Adjudicator) to maintain

him in the possession of the subject lot. Thus, it may be reasonably presumed that his identification as a qualified beneficiary over the subject lot was precipitated by his claim of tenancy thereon. Nonetheless, it bears stressing that despite the indefeasibility and imprescriptibility accorded by law to CLOAs, EPs, and other agrarian titles after one (1) year from their registration with the Office of the Register of Deeds (ROD), any material misrepresentation of the ARB's basic qualifications, as well as the other grounds mentioned under Sections 4.3 to 4.15 of DAR Administrative Order (AO) No. 07-14, is not a bar to a petition for cancellation of such titles filed by any party in interest outside the one-year period. Thus, the tenancy issue continues to find relevance, albeit, must give way to the primacy of Dalit's CLOA in this case, until such title is cancelled for valid reasons.

APPEARANCES OF COUNSEL

Sabino Jose Facunla for petitioner.
Edgardo Villarin for Metropolitan Bank and Trust Company.
Angelina Domingo Mauricio for respondents Balagtas.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated October 26, 2011 (assailed Decision) and Resolution[3] dated June 27, 2012 (assailed Resolution) in CA-G.R. SP No. 104836 rendered by the Court of Appeals (CA), Special Thirteenth Division and Former Special Thirteenth Division, respectively.

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[1] *Rollo*, pp. 38 to 63-A, excluding Annexes.

[2] *Id.* at 97-111. Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Edwin D. Sorongon concurring.

[3] *Id.* at 112-113.

The assailed Decision and Resolution stem from a petition for review questioning the Decision[4] dated June 14, 2007 and Resolution[5] dated April 10, 2008 issued by the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 14872 (Reg. Case No. 08505'SNE'05) which, in turn, reversed the June 7, 2006 Decision[6] of the Provincial Agrarian Reform Adjudicator (PARAD) of South Nueva Ecija, Cabanatuan City.

The assailed Decision and Resolution declare that Vivencio Dalit (Dalit) is not a *de jure tenant* of the land in dispute — a 123,744-square meter lot in Bantug, Kalikid[7] Sur, Cabanatuan City, *previously* covered by Transfer Certificate of Title (TCT) No. T-82410[8] (Disputed Lot) issued in the names of Spouses Rolando E. Balagtas, Sr. (Rolando, Sr.) and Carmelita G. Balagtas, together with their children Rolando G. Balagtas, Jr., Clarina G. Balagtas, Carlota G. Balagtas and Carmela G. Balagtas (collectively, the Balagtas family).[9]

The Facts

On May 31, 2005, Dalit filed before the Office of the PARAD a **petition for maintenance of possession, with prayer for issuance of *status quo* order and/or injunction**[10] (PARAD petition) against the Balagtas family and respondents Sofronio Sariente and Metropolitan Bank and Trust Company, Inc. (Metrobank).

Therein, Dalit averred that sometime in 1997, Rolando, Sr., with the consent of the rest of the Balagtas family, instituted him as tenant farmer of the Disputed Lot, and that he had been

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[4] *Id.* at 73-78.

[5] *Id.* at 84-85.

[6] *Id*. at 64-66. Penned by Adjudicator/Agrarian Judge Walter R. Carantes.

[7] Also spelled as "Calikid" in some parts of the records.

[8] *Rollo*, pp. 119-120.

[9] *Id.* at 98.

[10] *Id*. at 114-118.

tilling it since then. Dalit further alleged that he had been remitting a portion of the proceeds of the harvest to Balagtas, Sr. as part of the tenurial arrangement.[11]

To support his allegations, Dalit cited the *Pagpapatunay*[12] issued by the Barangay Captain and President of the Samahang Nayon of Barangay Kalikid Sur, and the *Sinumpaang Salaysay*[13] executed by the farmers[14] of the adjoining lots, confirming the existence of the tenurial arrangement.

Dalit alleged that the Balagtas family later mortgaged the Disputed Lot in favor of Metrobank without his consent, in order to secure an P8,000,000.00 loan.[15] The Balagtas family defaulted, leading to the foreclosure of the mortgage constituted over the Disputed Lot and the consolidation of title in Metrobank's name.[16] Subsequently, the Balagtas family directed Dalit to vacate the Disputed Lot.[17]

In his Answer *Ad Cautelam,*[18] Rolando, Sr. denied that Dalit had been instituted as tenant farmer of the Disputed Lot, and claimed that he was merely employed as bulldozer and street roller operator during the construction of a memorial park constituted thereon.[19] Further, Rolando, Sr. assailed the PARAD's jurisdiction, claiming that the Disputed Lot had already been classified as residential property, as stated in Tax Declaration No. 02927[20] issued in favor of the Balagtas family.[21]

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[11] *Id*. at 98, 115.

[12] *Id*. at 121.

[13] *Id*. at 122-124.

[14] Namely Aquino Punzal, Jr., Cesar Borja and Patricio Torres; see *rollo*, pp. 98-99, 115 and 122-124.

[15] See *rollo*, pp. 99, 151.

[16] *Id*. at 99, 116.

[17] *Id*. at 99.

[18] *Id*. at 130-134.

[19] *Id*. at 99, 131-132.

[20] *Id*. at 128.

[21] *Id*. at 99, 132.

For its part, Metrobank insisted on its right to take possession of the Disputed Lot as the new registered owner, and echoed Rolando, Sr.'s position anent PARAD's lack of jurisdiction.[22]

In his Reply, Dalit assailed the veracity of Tax Declaration No. 02927 by presenting a Certification[23] dated May 31, 2005 issued by Lourdes DL. Calamanan, Records Officer III of the Office of the City Assessor of Cabanatuan City (OCA-Cabanatuan). The Certification states that Tax Declaration No. 02927 does not appear in the records of the OCA-Cabanatuan, and is "null and void" for having been issued under a forged signature.[24] To bolster his claim, Dalit presented a certified true copy of the *actual tax* declaration covering the Disputed Lot which indicates that it is still classified as rice land.[25]

On June 7, 2006 the PARAD, through Regional Agrarian Reform Adjudicator Walter R. Carantes, issued a Decision declaring Dalit as lawful tenant of the Disputed Lot, thus:

> ***WHEREFORE***, premises considered, judgment is hereby rendered maintaining [Dalit] in his peaceful possession and cultivation of the premises and declaring further his status as a tenant thereon.
>
> SO ORDERED.[26]

Notably, only Metrobank filed an appeal with the DARAB Central Office.[27] The appeal was granted by the latter in its Decision dated June 14, 2007 reversing the findings of the PARAD, thus:

> **WHEREFORE**, premises considered, the assailed decision is hereby **REVERSED** and **SET ASIDE** and [a] new judgment is rendered declaring [Dalit] **not a *de jure* tenant of the [Disputed Lot] and ordering his ejectment thereon** (sic).

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[22] *Id*. at 100; see Answer, *id*. at 136 to 138-A.

[23] *Id*. at 129.

[24] *Id*. at 100, 129.

[25] *Id*. at 100, 126-127.

[26] *Id*. at 68.

[27] *Id*. at 101.

SO ORDERED.[28] (Additional emphasis supplied)

Dalit filed a motion for reconsideration,[29] which was denied by the DARAB Central Office in its Resolution dated April 10, 2008.[30]

CA Proceedings

Aggrieved, Dalit filed a petition for review before the CA (CA Petition) *via* Rule 43.[31]

Dalit argued that Metrobank's appeal was defective since it was not supported by a board resolution showing that its counsel was duly authorized to file the appeal on its behalf. While Metrobank later attempted to correct this error by presenting the necessary board resolution after Dalit had filed his Motion for Dismissal of the Appeal, he argues that such belated attempt was inconsequential as it was done after the lapse of Metrobank's period to appeal. Proceeding therefrom, Dalit asserted that the PARAD decision had become final and executory, and that the DARAB Central Office erred in entertaining Metrobank's defective appeal.[32]

Dalit further maintained that the Balagtas family should be deemed to have admitted his status as tenant, as they failed to deny that they received a portion of the harvest proceeds from him.[33]

On October 26, 2011, the CA issued the assailed Decision, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the [CA] Petition is **DENIED** and the assailed Decision and Resolution [are] **AFFIRMED**.

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[28] *Id*. at 78.

[29] *Id.* at 79-83.

[30] *Id.* at 84-85, 101.

[31] *Id*. at 101.

[32] *Id*. at 102-103.

[33] See *id*. at 105.

SO ORDERED.[34]

On the procedural aspect, the CA found that the relaxation of DARAB's rules of procedure was proper considering that Metrobank had been able to rectify its error by submitting a Special Power of Attorney executed by its Assistant Vice-President Rufo C. Venus, Jr. specifically authorizing its counsel Atty. Edgardo G. Villarin to file, among others, pleadings, motions, petitions, documents and deeds necessary to protect the interest of Metrobank in the instant case.[35]

On the substantive aspect, the CA held that Dalit failed to adduce substantial evidence to show the establishment of a tenancy relationship. The CA noted that Dalit worked on the Disputed Lot as a hired laborer of the Balagtas family, tasked to operate the latter's bulldozer and street roller. In this connection, the CA held that the *Pagpapatunay* and *Sinumpaang Salaysay* presented by Dalit do not suffice to establish a tenancy relationship, for while these documents confirm that Dalit worked on the Disputed Lot, they do not prove that such work was in the nature of personal cultivation, or that the Balagtas family agreed to merely share in the harvest arising therefrom.[36] On this score, the CA held that working on another's landholding, without more, "does not raise a presumption of the existence of agricultural tenancy".[37]

Dalit filed a motion for reconsideration, which the CA denied in the assailed Resolution[38] dated June 27, 2012.

Based on the records, Dalit received the assailed Resolution on July 11, 2012.[39]

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[34] *Id*. at 110.

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

[36] *Id* at 106-108.

[37] *Id*. at 107.

[38] *Id.* at 112-113.

[39] *Id*. at 41, 252.

On July 26, 2012, Dalit filed a motion for extension[40] seeking an additional period of thirty (30) days from July 26, 2012, or until August 24, 2012 to file his Petition. This motion was granted by the Court.[41]

Finally, Dalit filed the present Petition on the last day of the extension prayed for, impleading the Balagtas family and Metrobank as parties.

In addition to the issues he raised before the CA, Dalit now alleges that the CA erred when it effectively granted the Balagtas family relief through the assailed Decision and Resolution, considering that they did not file an appeal to question the PARAD's Decision.

In any case, **Dalit further claims that supervening events have rendered moot respondents' claim over the Disputed Lot**, particularly:

1. The issuance of a Notice of Coverage (NOC) dated March 31, 2008 placing the Disputed Lot within the coverage of the Comprehensive Agrarian Reform Program (CARP);[42]
2. The cancellation of Metrobank's TCT No. T-96104[43] and subsequent issuance of TCT No. 141677[44] in the name of the Republic of the Philippines (Republic) in its stead on September 19, 2011;[45]
3. The division and subsequent distribution of the Disputed Lot through the issuance of Certificates of Land Ownership Award (CLOAs) on October 20, 2011 in

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[40] *Id*. at 3-6.

[41] Through the Court's Resolution dated September 12, 2012, *id*. at 183-184.

[42] See *rollo*, p. 587.

[43] *Id*. at 139.

[44] *Id*. at 154-157.

[45] *Id*. at 587, 605.

favor of several agrarian reform beneficiaries (ARBs) chosen by the Department of Agrarian Reform (DAR), one of whom is Dalit;[46] and

4. The finality of the Order[47] of the DAR Regional Office dated August 8, 2012 denying the Balagtas family's Petition for the Lifting of the Coverage of the Land Under the Agrarian Reform Program, as evidenced by the Certificate of Finality[48] dated December 6, 2012, issued by the DAR Regional Director.

In this regard, Dalit insists that a re-evaluation of the assailed Decision and Resolution is in order.[49]

Metrobank filed its Comment[50] on November 14, 2012, to which Dalit filed his Reply.[51]

On March 13, 2013, the Balagtas family filed a Manifestation of Compliance,[52] stating that they adopt the Comment and other pleadings submitted by Metrobank in the present case.

On June 3, 2013, the Court directed the parties to file their respective memoranda.[53]

On August 8, 2013, the Balagtas family filed a Second Manifestation[54] stating its intention to adopt all pleadings to be filed by Metrobank.

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[46] See *id*. at 158-181, 587 and 605.

[47] *Id*. at 587-593. Issued by DAR Regional Director Teofilo Q. Inocencio.

[48] *Id*. at 594.

[49] See *id*. at 38-39.

[50] *Id*. at 202-218.

[51] *Id*. at 254-258.

[52] *Id.* at 320-322.

[53] *Id*. at 393-396.

[54] *Id*. at 426-428.

Subsequently, Metrobank and Dalit filed their memoranda on August 28, 2013[55] and February 13, 2015,[56] respectively.

The Issues

The Petition calls on the Court to resolve the following issues:

1. Whether the CA erred when it held that Dalit failed to establish his status as a *de jure* tenant of the Disputed Lot; and
2. Whether the supervening events cited by Dalit render respondents' claim to the Disputed Lot moot.

The Court's Ruling

The Petition is meritorious.

Dalit's right of possession arises from CLOA No. T-2165[57].

The Comprehensive Agrarian Reform Law of 1988[58] (CARL) was enacted to facilitate "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."[59]

In essence, the CARL implements the CARP of the Republic. While the CARL initially set a 10-year implementation period for the CARP following the statute's effectivity,[60] said period

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[55] *Id*. at 430-450.

[56] *Id*. at 517-533. Following the filing of an Explanation, Manifestation of Apology and Compliance to the Resolution of the Honorable Court dated February 12, 2015 setting forth the reasons for counsel's failure to file memorandum within the period set by the Court, see *rollo*, pp. 504-505.

[57] TCT No. T-2165 (CLOA No. 00924230), *rollo*, pp. 178-181.

[58] Republic Act No. (RA) 6657, AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES, June 10, 1988.

[59] *Id*., Sec. 2.

[60] *Id*., Sec. 7.

was later extended through the enactment of Republic Act No. 9700[61] which granted the DAR an additional period ending June 30, 2014 to complete the acquisition and distribution of all agricultural lands under the CARP.[62]

The CARP covers not only alienable and disposable lands of the public domain, but also those lands owned by the government in its private capacity and lands owned by private individuals, *provided* they are devoted to or suitable for agriculture.[63]

The fact that the Disputed Lot is agricultural in nature is clearly established by the evidence on record. To recall, Tax Declaration No. 02927, presented by the Balagtas family to show that the Disputed Lot had already been re-classified for residential use, was shown to have been forged through OCA-Cabanatuan's Certification dated May 31, 2005, which states:

> This is to certify that [the] Tax Declaration issued in the name of ROLANDO L. BALAGTAS married to CARMELITA G. BALAGTAS, Rolando G. Balagtas, Jr., single and Clarina Balagtas of Kalikid [S]ur, Cabanatuan City dated November 15, 1996 with ARP no. 02927 should be considered NULL and VOID, because of its nature as being made under bad faith.
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> Our good office does not have any record as what (sic) is stated in the fake Tax Declaration with the forge (sic) signature of the Officer's name in the document.[64]

Notably, neither the Balagtas family nor Metrobank presented documentary evidence to refute the veracity of OCA-Cabanatuan's Certification. As correctly observed by DAR Regional Director Teofilo Q. Inocencio:

> To revisit the provision of [CARL], thus, "the [CARL] shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands x x x. More specifically[,] the following lands are covered by the [CARP] x x x all private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon."
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> Applying the foregoing dictum of the law in the instant case, while

the protestants argued that the land is for [a] memorial project and x x x is residential in nature, no evidence was ever adduced to support such contention.

On the contrary, the findings of the MARO that the property is indeed agriculturally productive, not to mention that there are occupants/farmers found thereon, remained uncontroverted. As between the undisputed findings of the field office concerned and the bare allegations of the [Balagtas family], the former prevails. This is because the field offices concerned being the implementors of agrarian laws and thus possessed (sic) the necessary expertise in such field of endeavor, ergo, their findings should be accorded respect absent x x x any showing of fraud committed in the performance thereof.[65] (Emphasis supplied)

The Court has accorded great weight and respect to the factual findings of administrative bodies[66] in the absence of any showing of fraud, collusion, arbitrariness, illegality, imposition or mistake on the part of administrative officials, or a total lack of substantial evidence to support the same.[67] This principle finds emphatic application in this case, since the DAR's findings as to the

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[61] 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, August 7, 2009.

[62] *Id*., Sec. 5, amending RA 6657, Sec. 7.

[63] RA 6657, Sec. 4. See also *Heirs of Augusto Salas, Jr. v. Cabungcal*, G.R. No. 191545, March 29, 2017, 822 SCRA 1, 29-31 [Second Division, Per *J*. Leonen].

[64] *Rollo*, p. 129.

[65] *Id*. at 591.

[68] See *Family Planning Organization of the Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 75907, March 23, 1992, 207 SCRA 415, 420-421 [First Division, Per *J.* Medialdea].

[67] See *Lacuesta v. Melencio-Herrera*, 159 Phil. 133, 134 and 141-142 (1975) [First Division, *J.* Teehankee].

classification of the Disputed Lot were no longer questioned by respondents, and thus, became final.

Under Executive Order No. 229,[68] DAR shall exercise "quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction **over all matters involving implementation of agrarian reform**, except those falling under the exclusive original jurisdiction of the [Department of Environment and Natural Resources (DENR)] and the Department of Agriculture (DA)."[69] In such cases, "[a]ll doubts should be resolved in favor of the DAR, since the law has granted it special and original authority to hear and adjudicate agrarian matters."[70]

One of the modes by which DAR implements the distribution of agricultural lands under the CARP is through the issuance of a CLOA. A CLOA is a document evidencing ownership of the land granted or awarded to the qualified ARB, and contains the restrictions and conditions of such grant.[71] **The issuance of CLOA No. T-2165 in Dalit's favor thus confirms his right to retain possession over the portion of the Disputed Lot identified thereunder, such possession being an attribute of ownership granted in his favor.**

However, considering that Dalit is only one of several ARBs of the Disputed Lot, the Court deems it necessary to clarify that this Decision should not be interpreted to grant Dalit authority to encroach upon any portion of the Disputed Lot beyond the 30,000-square meter portion granted in his favor, consistent with the boundaries set forth in CLOA No. T-2165.[72]

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[68] PROVIDING THE MECHANISMS FOR THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM, JULY 22, 1987.

[69] EO 229, Sec. 17; *Department of Agrarian Reform v. Cuenca*, 482 Phil. 208, 220 (2004) [Third Division, Per *J.* Panganiban].

[70] *Department of Agrarian Reform v. Cuenca*, *id.* at 211.

[71] *Lebrudo v. Loyola*, 660 Phil. 456, 462 (2011) [Second Division, Per J. Carpio]. See also RA 6657, Sec. 24. On the terms of payment and conditions on transferability of awarded lands, see RA 6657, Secs. 26 and 27.

[72] *Rollo*, pp. 178-181.

The Decision and Writ of Execution issued in Civil Case No. 3361-AF cannot defeat Dalit's rights arising from CLOA No. T-2165.

A perusal of the records shows that in addition to the present case, the Balagtas family also filed before the Regional Trial Court of Cabanatuan City (RTC) a Complaint for Specific Performance with TRO, Writ of Preliminary Injunction and/or Damages against Metrobank on November 20, 1998, docketed as Civil Case No. 3361-AF[73]. As correctly observed by Justice Perlas-Bernabe, this complaint led to the issuance of a Decision[74] dated October 24, 2001 directing the reinstatement of the Balagtas family's TCT, thus:

> WHEREFORE, judgment is hereby rendered ORDERING:
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> x x x x x x x x x
>
> 2. The NULLITY of the AUCTION SALE of the [Disputed Lot], including the Certificate of Sale and other documents arising therefrom, including TCT No. T-96104, a**nd the Register of Deeds of Cabanatuan City is ordered to cancel [Metrobank's] TCT No. T-96104 and to restore [the Balagtas family's] TCT No. T-82410;** x x x[75] (Emphasis supplied)

The foregoing Decision appears to have then been made subject of a Writ of Execution issued by the RTC years later, or on April 26, 2012, upon motion of the Balagtas family.[76] Said motion thus appears to be an attempt on the part of the Balagtas family to surreptitiously reinstate TCT No. T-82410 and defeat Dalit's right of possession. However, this attempt fails.

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[73] Also stated as Civil Case No. 3361 in some parts of the records.

[74] *Id*. at 540-550. Penned by Judge Ubaldino A. Lacurom.

[75] *Id*. at 550.

[76] See Resolution dated April 26, 2012, penned by Presiding Judge Felizardo S. Montero, Jr., *id*. at 383- 387; see also Manifestations and Motion for the Quashal/Lifting of the Writ of Execution Due to Supervening Events and Rulings Thereon of the Honorable Supreme Court, *id*. at 604-615.

It bears to stress that the Decision subject of the Writ of Execution had been issued *prior* to: (i) the issuance of the NOC placing the Disputed Lot under the coverage of the CARP; and (ii) the consequent issuance of CLOAs covering the same. In other words, these events, having come after the Decision, had the effect of superseding the orders and directives made by the RTC in its Decision.[77]

In this regard, it cannot be gainsaid that the State recognizes the indefeasibility of CLOAs issued in accordance with applicable law.[78] Under DAR Administrative Order No. 07-14,[79] the cancellation of erroneously issued CLOAs may be allowed only in the manner and under the conditions prescribed thereunder. **Until duly cancelled in accordance with the prescribed procedure, CLOAs issued by the DAR shall remain valid and subsisting and enjoy the same respect accorded to those issued through other modes of acquisition of title.**

To recall, the Balagtas family's Petition for the Lifting of the Coverage of the Land Under the Agrarian Reform Program had already been denied with finality, as evidenced by the Certificate of Finality issued by the DAR Regional Director on December 6, 2012. **Hence, the issuance of the Writ of Execution directing the enforcement of the RTC's superseded Decision cannot defeat CLOA No. T-2165 which, as explained,**

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[77] On the effect of supervening events, see generally *Roman Catholic Archbishop of Caceres v. Heirs of Manuel Abella*, 512 Phil. 408 (2005) [Second Division, Per *J.* Austria Martinez] and *Marquez v. Espejo*, 643 Phil. 341 (2010) [First Division, Per *J.* Del Castillo].

[78] DAR Administrative Order No. 03-09, RULES AND PROCEDURES GOVERNING THE CANCELLATION OF REGISTERED CERTIFICATES OF LAND OWNERSHIP AWARDS (CLOAS), EMANCIPATION PATENTS (EPS), AND OTHER TITLES ISSUED UNDER ANY AGRARIAN REFORM PROGRAM, October 15, 2009, Sec. 2(a).

[79] 2014 RULES AND PROCEDURES GOVERNING THE CANCELLATION OF REGISTERED EMANCIPATION PATENTS (EPS), CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAS), AND OTHER TITLES ISSUED UNDER THE AGRARIAN REFORM PROGRAM, September 15, 2014.

is already valid and subsisting by virtue of the denial with finality of the Balagtas family's petition.

In view of the foregoing, the Court deems it unnecessary to discuss the other issues raised in the Petition.

WHEREFORE, the Petition is **GRANTED**. The Decision and Resolution respectively dated October 26, 2011 and June 27, 2012 rendered by the Court of Appeals, Special Thirteenth Division and Former Special Thirteenth Division, respectively in CA-G.R. SP No. 104836 are **REVERSED and SET ASIDE**, in view of the issuance of Transfer Certificate of Title No. T-2165 (CLOA No. 00924230) in favor of petitioner Vivencio Dalit.

SO ORDERED.

C*arpio* (Chairperson), *Reyes, Jr., J.,* and *Lazaro-Javier, JJ*., concur.

Perlas-Bernabe, J., see concurring opinion.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

This case stemmed from an amended petition[1] for maintenance of possession with prayers for issuance of status *quo* order/ injunction dated May 27, 2005 filed before the Office of the Provincial Agrarian Reform Adjudicator of South Nueva Ecija (PARAD) by petitioner Vivencio Dalit (Dalit) against respondents spouses Rolando E. Balagtas, Sr. (Rolando, Sr.) and Carmelita G. Balagtas (Sps. Balagtas), Rolando G. Balagtas, Jr., Clarina G. Balagtas, Carlota G. Balagtas, Carmela G. Balagtas (collectively, Balagtas family), Sofronio Sariente (Sariente), and Metropolitan BanK and Trust Company (MBTC).

Dalit claimed that: (*a*) he was previously an employee of Rolando, Sr. as operator of bulldozer and street roller; (*b*) sometime in 1997, the Balagtas family instituted him as tenant-

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* Also spelled as Sariante in some parts of the records.

[1] Dated May 27, 2005. *Rollo*, pp. 114-117.

farmer over a 123,744-square meter (sq. m.) parcel of land located in Bantug Kalikid Sur, Cabanatuan City (subject lot), covered by Transfer Certificate of Title (TCT) No. T-82410[2] in their names; (*c*) he had been tilling the land since then, and had been remitting a portion of the proceeds of the harvest to Rolando, Sr. and his agent/representative, Sariente; (*d*) the Balagtas family mortgaged the subject lot to MBTC but defaulted, leading to the foreclosure of the mortgage and eventual consolidation of title in the name of MBTC, which was issued TCT No. T-96104;[3] and (*e*) the Balagtas family demanded that he vacate the subject lot;[4] hence, the petition, docketed as DARAB Case No. 08505 'SNE' 05. To support his claim of tenancy, he presented the *Pagpapatunay*[5] dated January 10, 2003 signed by the Barangay Captain and the President of the *Samahang Nayon* of Barangay Kalikid Sur, Cabanatuan, as well as several *Sinumpaang Salaysay*[6] all dated April 18, 2005 separately executed by the farmers of the adjoining lots.[7]

For his part, Rolando, Sr. denied[8] having instituted Dalit as tenant on the subject lot, and claimed that he was merely employed as operator of bulldozer and street roller during the construction of a memorial park thereon.[9] On the other hand, MBTC insisted[10] that the Balagtas family has no right to institute any tenant on the subject lot as the same is no longer registered in their names.[11]

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[2] See *id*. at 119-120, including dorsal portion.

[3] *Id*. at 139, including dorsal portion.

[4] See *id.* at 115-116.

[5] See *id.* at 121.

[6] See *id*. at 122-124.

[7] See *id*. at 115.

[8] See Answer *Ad Cautelam* dated April 29, 2005; *id*. at 130-134.

[9] See *id.* at 131.

[10] See Answer dated July 25, 2005; *id.* at 136-138-A.

[11] See *id*. at 137.

On June 7, 2006, the Regional Agrarian Reform Adjudicator (RARAD) rendered a Decision:[12] (*a*) declaring Dalit as a tenant on the subject lot; and (*b*) maintaining him in his peaceful possession and cultivation thereof.[13] In a Decision[14] dated June 14, 2007, the Department of Agrarian Reform Adjudication Board (DARAB) reversed and set aside the RARAD[15] ruling, consequently, declaring that petitioner is not a *de jure* tenant on the subject lot, and ordering his ejectment therefrom on the ground of the absence of the elements of consent and sharing.[16] The Court of Appeals (CA), in its Decision[17] dated October 26, 2011, affirmed the DARAB decision,[18] holding that the pieces of evidence presented by petitioner failed to establish all the essential requisites for the existence of a tenancy relationship.[19] Aggrieved, Dalit moved for reconsideration,[20] which was, however, denied by the CA in its Resolution[21] dated June 27, 2012; hence, the Rule 45 petition[22] before the Court.

In the interim, the Balagtas family was able to secure a judgment:[23] (*a*) nullifying the foreclosure proceedings pursuant

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[12] *Id.* at 64-66. Penned by Adjudicator/Agrarian Judge (RARAD for CAR) Walter R. Carantes.

[13] *Id.* at 66.

[14] *Id.* at 73-78. Penned by Member Delfin B. Samson with Members Augusto P. Quijano, Edgar A. Igano and Ma. Patricia P. Rualo-Bello, concurring.

[15] "PARAD" in the DARAB Decision.

[16] See *rollo*, pp. 76-78

[17] *Id.* at 97-111. Docketed as CA-G.R. SP No. 104836 and penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Edwin D. Sorongon, concurring.

[18] *Id*. at 110.

[19] See *id.*

[20] Not attached to the *rollo*.

[21] *Rollo*, pp. 112-113.

[22] *Id*. at 38-60.

[23] See Decision dated October 24, 2001 of the Regional Trial Court of Cabanatuan City, Branch 29 in Civil Case No. 3361-AF penned by Judge

to which MBTC was able to secure title to the subject lot; and (*b*) reinstating TCT No. T-82410 in their names, which decision became final and executory in 2007.[24] A Notice of *Lis Pendens* was duly annotated on MBTC's TCT No. T-96104 prior to the said judgment.[25]

Subsequently, however, the subject lot was subjected to the coverage of the government's Comprehensive Agrarian Reform Program (CARP) in 2008,[26] leading to the cancellation of TCT No. T-96104 and the issuance of TCT No. T-141677[27] in the name of the Republic of the Philippines (RP title) on September 19, 2011, after the Land Bank of the Philippines made the corresponding deposit[28] of the provisional compensation for the subject lot. The annotation of *lis pendens* was carried over[29] to the RP title. The RP title, in turn, was cancelled with the issuance of registered Certificates of Land Ownership Award (CLOAS) to several identified agrarian reform beneficiaries (ARBs), including Dalit,[30] who was issued TCT No. T-2165[31] (CLOA title) on *October 20, 2011*. The annotation of *lis pendens* was likewise carried over[32] to the said title. Thereafter, Sps. Balagtas filed before the Department of Agrarian Reform, Regional Office III a protest against the issuance of the notice of coverage over the subject lot, which was, however, denied

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Ubaldino A. Lacurom (id. at 228-238), which was affirmed by the CA in a Decision dated February 21, 2007 in CA-G.R. CV No. 74249 penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring (*id*. at 240-247).

[24] See Entry of Judgment in CA-G.R. CV No. 74249; *id*. at 239.

[25] See *id*. at 139 dorsal portion.

[26] Through a Notice of Coverage dated March 31, 2008; see *id*. at 587.

[27] See *id*. at 154-157.

[28] See Certification of Deposit dated August 19, 2011; *id.* at 632.

[29] See *id*. at 156.

[30] See *id*. at 587.

[31] See *id*. at 178-181.

[32] See *id*. at 180.

in an Order[33] dated August 8, 2012 that became final and executory.[34]

May I add the following observations:

First. *It is but proper to maintain Dalit in the possession of the subject lot as a consequence of his CLOA title.* It bears stressing that the rights and responsibilities of ARBs shall commence from their receipt of duly registered CLOAs and their actual physical possession of the awarded land.[35] Under Section 24[36] of Republic Act No. (RA) 6657,[37] as amended by

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[33] *Id.* at 587-593. Issued by Regional Director Teofilo Q. Inocencio.

[34] See Certificate of Finality dated December 6, 2012; *id*. at 594.

[35] See Section 24 of RA 6657, as amended by RA 9700.

[36] Section 24 of RA 6657, as amended, provides:

SECTION 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.

It is the ministerial duty of the Registry of Deeds to register the title of the land in the name of the Republic of the Philippines, after the Land Bank of the Philippines (LBP) has certified that the necessary deposit in the name of the landowner constituting full payment in cash or in bond with due notice to the landowner and the registration of the certificate of land ownership award issued to the beneficiaries, and to cancel previous titles pertaining thereto.

Identified and qualified agrarian reform beneficiaries, based on Section 22 of Republic Act No. 6657, as amended, shall have usufructuary rights

RA 9700,[38] identified and qualified ARBs shall have usufructuary rights over the awarded land as soon as the PAR takes possession of such land, and even pending the award of the CLOA. Consequently, Dalit must be maintained in the peaceful possession of the subject lot as a consequence of his CLOA title, **until such title is cancelled for valid reasons.**

Second. ***It must be clarified that the issue of whether or not an ARB is a dejure tenant on a CARP-covered lot is not necessarily rendered moot by the mere issuance of a CLOA title in the ARB's name.*** An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties.[39] In this case, since the action before

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over the awarded land as soon as the DAR takes possession of such land, and such right shall not be diminished even pending the awarding of the emancipation patent or the certificate of land ownership award.

All cases involving 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 DAR. (Emphases supplied)

[37] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," otherwise known as the "COMPREHENSIVE AGRARIAN REFORM LAW OF 1988," approved on June 10, 1988.

[38] Entitled "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" (July 1, 2009).

[39] Resolution, *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 791 Phil. 243, 259 (2016).

the PARAD primarily involves Dalit's right to be maintained in the possession of the subject lot, the issuance of a CLOA title in his name which recognizes his usufructuary rights over the awarded land necessarily entails his continued possession thereof, regardless of whether or not he had valid grounds to be so maintained when he filed the amended petition for maintenance of possession in 2005 long before the issuance of his CLOA title on October 20, 2011.

Notably, however, it was Dalit himself who raised the issue of tenancy[40] in invoking the jurisdiction of the PARAD (DARAB Adjudicator) to maintain him in the possession of the subject lot. Thus, it may be reasonably presumed that his identification as a qualified beneficiary over the subject lot was precipitated by his claim of tenancy thereon. Nonetheless, it bears stressing that despite the indefeasibility and imprescriptibility accorded by law to CLOAs, EPs, and other agrarian titles after one (1) year from their registration with the Office of the Register of Deeds (ROD),[41] any material misrepresentation of the ARB's basic qualifications,[42] as well as the other grounds mentioned under Sections 4.3 to 4.15 of DAR Administrative Order (AO) No. 07-14,[43] is not a bar to a petition for cancellation of such titles filed by any party in interest[44] outside the one-year period. Thus, the tenancy issue continues to find relevance, albeit, must give way to the primacy of Dalit's CLOA in this case, until such title is cancelled for valid reasons.

Third. While I agree with the *ponencia's* opinion that the decision and writ of execution issued in Civil Case No. 3361 cannot defeat Dalit's rights arising from TCT No. T-2165[45]

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[40] See *rollo*, p. 115.

[41] See Section 24 of RA 6657, as amended by RA 9700.

[42] See Section 4.9 of DAR AO No. 07-14.

[43] Re: 2014 Rules and Procedures Governing the Cancellation of Registered Emancipation Patents (EPs), Certificates of Land Ownership Awards (CLOAs) and Other Titles Issued Under the Agrarian Reform Program, issued on September 15, 2014

[44] See Section 9 of DAR AO No. 07-14.

[45] See *ponencia*, p. 9.

(*i.e.*, Dalit's CLOA title), the same is irrelevant to the instant case. It must be pointed out that Dalit was not a party to the said case - an action for specific performance with prayer for injunctive relief and damages filed by the Balagtas family against MBTC. While an annotation of *lis pendens* was carried over[46] to Dalit's CLOA title, the Decision in said case[47] limited itself to the cancellation of MBTC's TCT No. T-96104 and the restoration of the Balagtas family's TCT No. T-82410, without cancelling any derivative title from TCT No. T-96104. Accordingly, unless the cancellation of TCT No. T-2165 is finally secured in an action specifically impleading Dalit,[48] his right to be maintained in the possession of the subject lot guaranteed by such title must be respected.

SECOND DIVISION

[G.R. No. 204753. March 27, 2019]

UNITED COCONUT PLANTERS BANK, *petitioner, vs.* **SPS. ALISON ANG-SY AND GUILLERMO SY, RENATO ANG, NENA ANG, RICKY ANG, AND DERICK CHESTER SY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; JURISDICTION OVER A DEFENDANT IN A CIVIL CASE

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[46] See *rollo*, p. 180.

[47] See Decision dated October 24, 2001; *id.* at 228-238.

[48] Under Section 3 (j) of DAR AO No. 07-14, the ARBs or identified beneficiaries, or their heirs in case of death, and/or their associations are indispensable parties in petitions for cancellation of their respective CLOAs.

IS ACQUIRED EITHER THROUGH SERVICE OF SUMMONS OR THROUGH VOLUNTARY APPEARANCE IN COURT AND SUBMISSION TO ITS AUTHORITY.— Jurisdiction refers to the power and authority of the court to hear, try, and decide a case. One of the aspects of jurisdiction is jurisdiction over the parties. This refers to the fundamental rule that jurisdiction over a defendant in a civil case is acquired either through: (1) **service of summons** or through (2) **voluntary appearance in court and submission to its authority**.

2. ID.; ID.; ID.; SERVICE OF SUMMONS; MODES; SUMMONS MAY BE EFFECTED THROUGH SUBSTITUTED SERVICE WHERE, FOR JUSTIFIABLE CAUSES, THE DEFENDANT CANNOT BE SERVED WITHIN A REASONABLE TIME; IN THE ABSENCE OF SERVICE OF SUMMONS OR WHEN THE SERVICE OF SUMMONS UPON THE PERSON OF THE DEFENDANT IS DEFECTIVE, THE COURT ACQUIRES NO JURISDICTION OVER HIS PERSON, AND THE PROCEEDINGS AND ANY JUDGMENT RENDERED ARE NULL AND VOID.— According to the Rules of Court, upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants. The summons shall be served by handling a copy thereof to the defendant in person. Only in instances wherein, for justifiable causes, the defendant cannot be served within a reasonable time, may summons be effected through substituted service, *i.e.*, (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. With respect to parties that are domestic private juridical entities, service may be made only upon the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. In the absence of service of summons or when the service of summons upon the person of the defendant is defective, **the court acquires no jurisdiction over his person**, and **the proceedings and any judgment rendered are null and void**.

3. ID.; ID.; ID.; ID.; FOR SUBSTITUTED SERVICE OF SUMMONS TO BE AVAILABLE, THERE MUST BE

SEVERAL ATTEMPTS BY THE SHERIFF, WHICH MEANS AT LEAST THREE TRIES, PREFERABLY ON AT LEAST TWO DIFFERENT DATES.— [I]t must be stressed that **the fact that service of summons was defective in the instant case is *undisputed***. The evidence on record, specifically the Sheriff's Report, indubitably shows that the established jurisprudential doctrine on the prerequisites for valid substituted service was not observed, *i.e.*, for substituted service of summons to be available, there must be several attempts by the sheriff, which means at least three tries, preferably on at least two different dates. It is crystal clear that there were no several attempts made to effect personal service in the instant case; as correctly found by the court *a quo*, there was only a single day's effort to personally serve summons upon the therein defendants.

4. ID.; ID.; ID.; ID.; THE RETURN OF SUMMONS MUST CLEARLY AND SPECIFICALLY INDICATE THAT THE PERSON WHO RECEIVED THE SUMMONS WAS A PERSON OF SUITABLE AGE AND DISCRETION RESIDING IN THE RESIDENCE OF THE THEREIN DEFENDANT, AND WHO UNDERSTOOD THE SIGNIFICANCE OF THE RECEIPT OF THE SUMMONS AND THE CORRELATIVE DUTY TO IMMEDIATELY DELIVER THE SAME TO THE THEREIN DEFENDANTS OR, AT THE VERY LEAST, TO NOTIFY THE SAID PERSONS IMMEDIATELY.— [A]s also correctly found by the CA, the Sheriff's Report miserably failed to indicate that the person who received the summons was a person of suitable age and discretion residing in the residence of the therein defendants. Nor is there a statement that validates that such person understood the significance of the receipt of the summons and the correlative duty to immediately deliver the same to the therein defendants or, at the very least, to notify the said persons immediately. Jurisprudence is clear and unequivocal in making it an ironclad rule that such matters "must be clearly and specifically described in the Return of Summons."

5. ID.; ID.; ID.; ID.; WHERE THE DEFENDANT IS A CORPORATION, A SERVICE OF SUMMONS TO SOMEONE OTHER THAN THE CORPORATION PRESIDENT, MANAGING PARTNER, GENERAL MANAGER, CORPORATE SECRETARY, TREASURER,

AND IN-HOUSE COUNSEL IS NOT VALID. — As regards the service of summons undertaken with respect to the therein defendant corporations, *i.e*., NGI and NPGI, the CA was also not mistaken in holding that since the summons were served on a mere OIC property supply custodian, the services of summons undertaken were defective. Section 11, Rule 14 of the Rules of Court sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel is not valid.

6. **ID.; ID.; ID.; ID.; ONE WHO SEEKS AN AFFIRMATIVE RELIEF IS DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THE COURT; THUS, THE FILING OF MOTIONS TO ADMIT ANSWER, FOR ADDITIONAL TIME TO FILE ANSWER, FOR RECONSIDERATION OF A DEFAULT JUDGMENT, AND TO LIFT ORDER OF DEFAULT WITH MOTION FOR RECONSIDERATION IS CONSIDERED VOLUNTARY SUBMISSION TO THE TRIAL COURT'S JURISDICTION.—** Indeed, despite lack of valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. According to the Rules of Court, the defendant's voluntary appearance in the action shall be equivalent to service of summons. However, the inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.

7. **ID.; ID.; ID.; ID.; ONE WHO PRAYS FOR AN AFFIRMATIVE RELIEF IS NOT DEEMED TO HAVE VOLUNTARILY SUBMITTED TO THE JURISDICTION OF THE COURT WHERE HE EXPLICITLY AND UNEQUIVOCABLY POSES OBJECTIONS TO THE JURISDICTION OF THE COURT OVER HIS PERSON DUE TO IMPROPER SERVICE OF SUMMONS.—** As held

in the very recent case of *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al.* (*Interlink Movie Houses, Inc.*), the abovementioned general rule is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. As explained by the Court in the aforesaid case, citing *Philippine Commercial International Bank v. Spouses Dy, et al.*, a special appearance operates as an exception to the general rule on voluntary appearance when **the defendant explicitly and unequivocably poses objections to the jurisdiction of the court over his person**. The Court in *Interlink Movie Houses, Inc.* explained that while at first glance, the therein respondents may be seen to have submitted themselves to the jurisdiction of the RTC by praying for an affirmative relief, there was an explicit objection made by the parties, in an unequivocal manner, to the jurisdiction of the court on the ground of invalid service of summons. This convinced the Court that the therein respondents never recognized and did not acquiesce to the jurisdiction of the RTC despite the fact that the said party prayed for an affirmative relief. Applying the foregoing principles to the instant case, while it is true that respondents Sps. Sy, *et al.* did pray in their Motion to Dismiss for a suspension of the proceedings due to a Stay Order issued by a different court, which is an affirmative relief, **such was not tantamount to a voluntary appearance as respondents Sps. Sy, *et al.*, in an *explicit and unequivocal manner*, posed vehement objections to the jurisdiction of the RTC over their persons due to improper service of summons**. Therefore, following what is already settled jurisprudence, the general rule that asking for an affirmative relief is tantamount to voluntary submission to the jurisdiction of the court should not be applied in the instant case.

8. ID.; ID.; ID.; EVEN IF A PARTY DOES NOT QUESTION THE JURISDICTION OF THE COURT TO HEAR AND DECIDE THE PENDING ACTION, THE COURTS ARE NOT PREVENTED FROM ADDRESSING THE ISSUE, ESPECIALLY WHERE THE LACK OF JURISDICTION IS APPARENT AND EXPLICIT.— [P]etitioner UCPB also made the argument that the CA purportedly committed an error of law because it held that the RTC did not acquire jurisdiction

with respect to the therein defendant corporations even when such corporations failed to question the RTC's Order before the CA. Such argument fails to convince. The courts may dismiss an action when there is lack of jurisdiction, even though the issue of jurisdiction was not raised by the pleadings or not even suggested by the parties. Issues of jurisdiction are not subject to the whims of the parties. Even if a party does not question the jurisdiction of the court to hear and decide the pending action, the courts are not prevented from addressing the issue, especially where the lack of jurisdiction is apparent and explicit.

APPEARANCES OF COUNSEL

United Coconut Planters Bank Legal Services Group for petitioner.

Gatchalian Castro & Mawis for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner United Coconut Planters Bank (petitioner UCPB) assailing the Decision[2] dated February 10, 2012 (assailed Decision) and Resolution[3] dated December 7, 2012 (assailed Resolution) of the Court of Appeals (CA) Special Twelfth Division, and Former Special Twelfth Division, respectively, in CA-G.R. SP No. 102725, which reversed and set aside the Order[4] dated June 8, 2007 (Order) of the Regional Trial Court of Makati City, Branch 146 (RTC) for improper service of summons.

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[1] *Rollo*, pp. 14-32.

[2] *Id*. at 34-46. Penned by Associate Justice Mario V. Lopez, with Associate Justices Fernanda Lampas Peralta and Ramon A. Cruz concurring.

[3] *Id*. at 48-50.

[4] *Id*. at 153-157. Penned by Presiding Judge Encarnacion Jaja G. Moya.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

On 27 November 2006, United Coconut Planters Bank (UCPB) filed a [C]omplaint[5] for sum of money and/or damages with prayer for the *ex parte* issuance of a writ of preliminary attachment against Nation Granary, Inc. (NGI), the spouses Alison Ang-Sy and Guillermo Sy, Renato Ang, Nena Ang, Ricky Ang, Derick Chester A. Sy [(collectively, respondents Sps. Sy, *et al.*)], and Nation Petroleum Gas, Inc. (NPGI) [collectively, therein defendants], [The Complaint was filed before the RTC and was docketed as Civil Case No. 06-1014.] The [C]omplaint alleged that, on 28 August 2005, UCPB granted NGI a credit accommodation, in the form of an Import Letter of Credit/Trust Receipt Line in the amount of US$15,000,000.00 and a case-to-case Letter of Credit/Trust Receipt in the amount of US$3,800,400.00. Both NPGI and the spouses Sy executed Surety Agreements securing the credit accommodations. x x x Demands for payment remained unheeded. The [C]omplaint prayed that the RTC order [therein] defendants to pay UCPB: (1) the amount of P824,390,158.21 plus interest, penalty and other charges from 15 November 2006 until fully paid; (2) P1,000,000.00 as attorney's fees as well as litigation expenses; and (3) costs of suit.

On 30 November 2006, the RTC granted UCPB's prayer for a writ of preliminary attachment. Summonses and copies of the order granting the writ were served on the [therein] defendants on 4 December 2006. On the same day, the Sheriff levied a Toyota Land Cruiser with plate number XRK-783 allegedly owned by the [therein] defendants. The following day, [therein] defendants' interests in stocks and shares and other assets in NPGI and NGI were garnished.

On 18 December 2006, [therein] defendants filed a Motion to Dismiss with Manifestation[6] alleging that the RTC did not acquire jurisdiction over their persons. Where a defendant is a corporation, service of summons may be made on the president, managing partner, general manager, corporate secretary or in-house counsel. This list is exclusive and does not include a mere employee like Charlotte Magpayo, NPGI's Property Supply Custodian (OIC). The RTC did

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[5] *Id.* at 236-254.

[6] *Id.* at 55-63.

not also acquire jurisdiction over the persons of the spouses Allyson Ang-Sy and Guillermo Sy, Renato Ang, Nena Ang, Ricky Ang and Derick Chester Sy as personal service of summons was not first resorted to before substituted service was effected. Defendants thus prayed for the dismissal of the [C]omplaint for lack of jurisdiction, the discharge of the writ of attachment on their properties, and the suspension of further proceedings because a Stay Order had been issued against NGI and NPGI.

UCPB opposed the motion insisting that there was valid service of summons or, at the very least, substantial compliance of the rules. If not, [therein] defendants are deemed to have voluntarily submitted to the jurisdiction of the RTC when it prayed for an alternative relief other than dismissal in its [M]otion to [D]ismiss.

On 8 June 2007, the RTC granted the suspension of proceedings with respect to defendants NGI and NPGI but denied defendants' [M]otion to Dismiss x x x.

[Therein] [defendants' [M]otion for [Reconsideration was denied. Hence, [the Sps. Ang-Sy, *et al*. filed a Petition for Certiorari and Prohibition[7] under Rule 65 of the Rules of Court imputing grave abuse of discretion on the part of the RTC when it denied their Motion to Dismiss through its Order dated June 8, 2007.][8]

The Ruling of the CA

In its assailed Decision, the CA granted the Rule 65 Petition filed by respondents Sps. Sy, *et al*., reversing and setting aside the RTC's Order dated June 8, 2007:

FOR THE STATED REASONS, the petition is **GRANTED**. The assailed RTC [O]rder dated 8 June 2007 is **REVERSED** and **SET ASIDE**.

SO ORDERED.[9] (Emphasis in the original)

The CA held that the RTC failed to acquire jurisdiction over the persons of the therein defendants due to improper service

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[7] *Id*. at 193-223.

[8] *Id*. at 34-38.

[9] *I*d. at 45.

of summons. Hence, "all proceedings before the [RTC] and the subsequent [Order] [are] void. [Therein] [d]efendants-petitioners are not bound by it."[10]

On February 29, 2012, petitioner UCPB filed with the CA a Motion for Reconsideration[11] (MR) of the assailed Decision. The MR was denied by the CA in its assailed Resolution[12] dated December 7, 2012.

Hence, petitioner UCPB filed the instant Petition for Review[13] asking the Court to reverse the CA's assailed Decision and Resolution.

Issue

In the instant Petition, petitioner UCPB posits two issues for the Court's consideration, *i.e.*, (1) whether the CA committed an error of law when it found that the RTC did not acquire jurisdiction over the therein defendant corporations, even when such corporations failed to assail the RTC's Order; and (2) whether the CA committed an error of law in finding that the RTC did not acquire jurisdiction over the persons of the Sps. Sy, *et al.*

Stripped to its core, the critical question to be resolved by the Court is whether the RTC acquired jurisdiction to hear petitioner UCPB's Complaint.

The Court's Ruling

The aforesaid question should be answered in the negative; the instant appeal is denied.

Jurisdiction refers to the power and authority of the court to hear, try, and decide a case.[14] One of the aspects of jurisdiction

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[10] *Id.*

[11] *Id.* at 377-387.

[12] *Id.* at 48-50.

[13] *Id.* at 14-32.

[14] *Asia International Auctioneers, Inc., et al. v. Parayno, et al.*, 565 Phil. 255, 265 (2007).

is jurisdiction over the parties. This refers to the fundamental rule that jurisdiction over a defendant in a civil case is acquired either through: (1) **service of summons** or through (2) **voluntary appearance in court and submission to its authority**.[15]

The service of summons undertaken in the instant case is undoubtedly defective.

According to the Rules of Court, upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants.[16] The summons shall be served by handling a copy thereof to the defendant in person.[17] Only in instances wherein, for justifiable causes, the defendant cannot be served within a reasonable time, may summons be effected through substituted service, *i.e.*, (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.[18] With respect to parties that are domestic private juridical entities, service may be made only upon the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.[19]

In the absence of service of summons or when the service of summons upon the person of the defendant is defective, **the court acquires no jurisdiction over his person**, and **the proceedings and any judgment rendered are null and void**.[20]

At the outset, it must be stressed that **the fact that service of summons was defective in the instant case is *undisputed***.

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[15] *Prudential Bank v. Magdamit, Jr., et al.,* 746 Phil. 649, 659 (2014).

[16] RULES OF COURT, Rule 14, Sec. 1.

[17] RULES OF COURT, Rule 14, Sec. 6.

[18] RULES OF COURT, Rule 14, Sec. 7.

[19] RULES OF COURT, Rule 14, Sec. 11.

[20] *Prudential Bank v. Magdamit, Jr., et al.*, supra note 15.

The evidence on record, specifically the Sheriff's Report,[21] indubitably shows that the established jurisprudential doctrine on the prerequisites for valid substituted service was not observed, *i.e.*, for substituted service of summons to be available, there must be several attempts by the sheriff, which means at least three tries, preferably on at least two different dates.[22]

It is crystal clear that there were no several attempts made to effect personal service in the instant case; as correctly found by the court *a quo*, there was only a single day's effort to personally serve summons upon the therein defendants.

Further, as also correctly found by the CA, the Sheriff's Report miserably failed to indicate that the person who received the summons was a person of suitable age and discretion residing in the residence of the therein defendants. Nor is there a statement that validates that such person understood the significance of the receipt of the summons and the correlative duty to immediately deliver the same to the therein defendants or, at the very least, to notify the said persons immediately. Jurisprudence is clear and unequivocal in making it an ironclad rule that such matters "must be clearly and specifically described in the Return of Summons."[23]

As regards the service of summons undertaken with respect to the therein defendant corporations, *i.e.*, NGI and NPGI, the CA was also not mistaken in holding that since the summons were served on a mere OIC property supply custodian, the services of summons undertaken were defective.

Section 11, Rule 14 of the Rules of Court sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel is not valid.[24]

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[21] *Rollo*, pp. 85-86.

[22] *Manotoc v. Court of Appeals*, 530 Phil. 454, 469-470 (2006).

[23] *Id.* at 470.

[24] *Paramount Insurance Corp. v. A.C. Ordoñez Corporation, et al.*, 583 Phil. 321, 327 (2008).

It must be emphasized that even the RTC's Order, which petitioner UCPB aims to reinstate, does not make any refutation with respect to the fact that the service of summons undertaken was defective.

In fact, a perusal of the instant Petition would show that petitioner UCPB does not refute at all that substituted service was undertaken despite the fact that there were no several attempts to personally serve the summons on different dates, and that the summons with respect to the therein defendant corporations was made upon a person other than the defendant corporations' president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel.

Bearing in mind the foregoing, the critical question now redounds to whether there was voluntary appearance on the part of respondents Sps. Sy, *et al*. that cures the defective service of summons.

There was no voluntary submission to the jurisdiction of the RTC on the part of respondents Sps. Sy, et al.

Indeed, despite lack of valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance.[25] According to the Rules of Court, the defendant's voluntary appearance in the action shall be equivalent to service of summons. However, the inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.[26]

As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.[27]

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[25] *Prudential Bank vs. Magdamit, Jr., et al.,* supra note 15 at 665.

[26] RULES OF COURT, Rule 14, Sec. 20.

[27] *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al*., G.R. No. 203298, January 17, 2018, p. 7.

Both petitioner UCPB and the RTC posit the view that since respondents Sps. Sy, *et al*., in their Motion to Dismiss, included a plea to suspend the proceedings in view of the Stay Order issued by another court, they thus sought an affirmative relief which should be deemed a voluntary submission to the jurisdiction of the court.

Such view is mistaken.

As held in the very recent case of *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al*.[28] (*Interlink Movie Houses, Inc*.), the abovementioned general rule is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.[29]

As explained by the Court in the aforesaid case, citing *Philippine Commercial International Bank v. Spouses Dy, et al.*,[30] a special appearance operates as an exception to the general rule on voluntary appearance when **the defendant explicitly and unequivocably poses objections to the jurisdiction of the court over his person**.[31]

The Court in *Interlink Movie Houses, Inc*. explained that while at first glance, the therein respondents may be seen to have submitted themselves to the jurisdiction of the RTC by praying for an affirmative relief, there was an explicit objection made by the parties, in an unequivocal manner, to the jurisdiction of the court on the ground of invalid service of summons. This convinced the Court that the therein respondents never recognized and did not acquiesce to the jurisdiction of the RTC despite the fact that the said party prayed for an affirmative relief.[32]

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[28] *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 203298, January 17, 2018.

[29] *Id*. at 7.

[30] 606 Phil. 615 (2009).

[31] *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al*., supra note 28 at 8.

[32] *Id*.

Applying the foregoing principles to the instant case, while it is true that respondents Sps. Sy, *et al*. did pray in their Motion to Dismiss for a suspension of the proceedings due to a Stay Order issued by a different court, which is an affirmative relief, **such was not tantamount to a voluntary appearance as respondents Sps. Sy, *et al*., in an *explicit and unequivocal manner*, posed vehement objections to the jurisdiction of the RTC over their persons due to improper service of summons**.[33] Therefore, following what is already settled jurisprudence, the general rule that asking for an affirmative relief is tantamount to voluntary submission to the jurisdiction of the court should not be applied in the instant case.

In supporting their view that respondents Sps. Sy, *et al*.'s raising of an affirmative relief cured the defective service of summons, petitioner UCPB cites the Court's ruling in *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*,[34] which in turn cited *Philippine Commercial International Bank v. Spouses Dy, et al*.[35] Petitioner UCPB placed much emphasis on the Court's pronouncement in the aforesaid cases that "by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction."[36]

Regrettably, the petitioner UCPB failed to place the foregoing pronouncement of the Court in the proper context.

In *Philippine Commercial International Bank v. Spouses Dy, et al.*, it should be emphasized that the pleading which contained certain affirmative reliefs "**did not categorically and expressly raise the jurisdiction of the court over their persons as an issue**."[37]

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[33] *Rollo*, pp. 56-59.

[34] 677 Phil. 351 (2011).

[35] *Supra* note 30.

[36] *Id*. at 635.

[37] *Id.* at 634; emphasis and underscoring supplied.

Oppositely, respondents Sps. Sy, *et al.* plainly and unmistakably questioned the jurisdiction of the RTC over their persons due to improper service of summons.[38] Hence petitioner UCPB's theory lacks any jurisprudential support.

As a final note, petitioner UCPB also made the argument that the CA purportedly committed an error of law because it held that the RTC did not acquire jurisdiction with respect to the therein defendant corporations even when such corporations failed to question the RTC's Order before the CA.

Such argument fails to convince. The courts may dismiss an action when there is lack of jurisdiction, even though the issue of jurisdiction was not raised by the pleadings or not even suggested by the parties. Issues of jurisdiction are not subject to the whims of the parties.[39] Even if a party does not question the jurisdiction of the court to hear and decide the pending action, the courts are not prevented from addressing the issue, especially where the lack of jurisdiction is apparent and explicit.[40]

Therefore, the Petition is without merit.

WHEREFORE, the appeal is hereby **DENIED**. The Decision dated February 10, 2012 and Resolution dated December 7, 2012 issued by the Court of Appeals Special Twelfth Division, and Former Special Twelfth Division, respectively, in CA-G.R. SP No. 102725 are **AFFIRMED**.

SO ORDERED.

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

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[38] *Rollo*, pp. 56-59.

[39] *Paguio v. NLRC*, 323 Phil. 203, 212 (1996).

[40] *Heirs of De la Cruz v. Heirs of Cruz*, 512 Phil. 389, 400-401 (2005), citing *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631 (2003).

SECOND DIVISION

[G.R. No. 209014. March 27, 2019]

NIEVES TURGO JADER AND HEIRS OF ALFREDO TURGO: ZENAIDA TURGO BASCO AND LUCIA R. TURGO, REPRESENTED HEREIN BY THEIR ATTORNEY-IN-FACT, CARLITO JADER, *petitioners, vs.* **HEIRS OF EVELYN TURGO ALLONES: NICASIO ALLONES AND MICHAEL TURGO ALLONES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; THE PETITION SHALL BE ACCOMPANIED BY A CERTIFIED TRUE COPY OF THE JUDGMENT, ORDER OR RESOLUTION SUBJECT THEREOF; FAILURE TO COMPLY IS SUFFICIENT GROUND FOR DISMISSAL OF THE PETITION. —** The second paragraph of Section 1 of Rule 65 of the Rules of Court provides that *the petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof x x x as provided in the third paragraph of Section 3, Rule 46.* Last paragraph of Section 3, Rule 46 states that *failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition.* x x x Non-compliance with the requirement of the Rules is already a ground for the dismissal of the petition.

2. **ID.; ID.; ID.; TO WARRANT THE ISSUANCE THEREOF, THE ABUSE OF DISCRETION MUST HAVE BEEN SO GROSS OR GRAVE. ––** *Certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion,

prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

APPEARANCES OF COUNSEL

Gabriel Marcelo Torre for petitioners.
Noli H. Villamor for respondents.

D E C I S I O N

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

Batas Pambansa Bilang 129 (BP 129), as amended by Republic Act 7691 (RA 7691), states that jurisdiction of action involving recovery of title or possession of real property, located outside of Metro Manila and assessed at below ₱20,000.00, belongs to the first level court.

The Facts

On October 23, 1924, Mariano Turgo died intestate, leaving behind six children namely: Nicolas, Filemon, Alfredo, Abreo, Trinidad, and Juan. On September 30, 1960, the Turgo siblings executed a K*asulatan ng Pagbabahaging Labas sa Hukuman ng Ari-ariang Naiwan ng Namatay na Mariano Turgo* (Deed of Extrajudicial Settlement of Estate of the Late Mariano Turgo), in which they agreed to partition among themselves a land measuring 1,125 square meters and originally covered by Tax Declaration 3276.[1]

In 1963, Tax Declaration No. 3276 was split into two: Tax Declaration Nos. 9795 and 9796, covering 563 square meters each. Tax Declaration No. 9795 was divided among Abreo, Trinidad, and Juan, while Tax Declaration No. 9796 was divided among Nicolas, Filemon, and Alfredo.[2] The subject matter of

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[1] *Rollo*, p. 22.

[2] *Id.*

this case pertains to the land covered by Tax Declaration No. 9796, since the children of Nicolas, Filemon and Alfredo are the party litigants in this case.

Through the years, the tax declaration underwent several cancellations and replacements.[3] One time, the land was covered by Tax Declaration No. 14-001-0188-R, which indicated that the land was reduced to 373 square meters due to road widening.[4]

In 1985, Nicolas executed a Relinquishment of Rights in favor of her daughter, Evelyn, over Lot 6812, Pls-1052-D, located in Brgy. Comon, Infanta, Quezon, and measuring 373 square meters.[5] Later, Evelyn filed an application for free patent and was granted Free Patent No. IV-8-2187. Consequently, she was issued Original Certificate of Title P-9980 (OCT P-9980).[6]

Upon learning this, petitioner Nieves Turgo Jader (Nieves) filed an Affidavit of Adverse Claim before the Quezon Register of Deeds, claiming part ownership of the land as she is the daughter of Filemon, one of the co-owners of the land.[7]

In 1993, Nieves, through her son and attorney-in-fact, Carlito Jader (Carlito), occupied and built a house on a portion of the land with Evelyn's consent as she recognized Nieves' right of ownership.[8]

In 1999, Evelyn's husband, Nicasio, evicted Carlito and rented out the house for ₱1,500.00 monthly.[9] Nieves tried to reach out to Evelyn but to no avail, until Evelyn died on August 3, 2006.[10]

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[3] *Id*. at 22-23.

[4] *Id.* at 23.

[5] *Id*. at 23, 41.

[6] *Id*. at 23.

[7] *Id*.

[8] *Id*.

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

[10] *Id*. at 24.

In 2009, Nieves, through Carlito, filed a complaint against Nicasio before the *Lupong Tagapamayapa* (*Lupon*) and claimed ownership of the land. As no settlement took place, the *Lupon* issued *Katunayan Para Makadulog sa Hukuman* (Certificate to File Action) on March 17, 2009.[11]

Since Nicasio refused to hand over a portion of the land due to Nieves, the latter was forced to file an action for partition of property with damages and claimed litigation costs and attorney's fees estimated at ₱200,000.00, before the Regional Trial Court (RTC) of Infanta, Quezon, Branch 65 and docketed as Civil Case No. 785-1. An amended complaint was later filed to include co-plaintiffs Zenaida Turgo Basco (Zenaida) and Lucia Turgo (Lucia), both children of Alfredo.[12] Plaintiffs Nieves, Zenaida, and Lucia are represented in this case by their attorney-in-fact, Carlito.[13]

Proceedings in the RTC

After the parties exchanged their pleadings, the plaintiffs moved for summary judgment under Rule 35 of the Rules of Court. On April 14, 2011, the RTC issued an Order[14] treating the motion as judgment on the pleadings under Rule 34, instead. The RTC denied the motion because there is a genuine issue to be litigated, that is, who between Mariano and Romana Lucero-Turgo (Romana) is the real owner of the land measuring 1,125 square meters and covered by Tax Declaration No. 3276.

The RTC further resolved that the issue affects title or ownership over the land. Section 19 (2) of BP 129, as amended by RA 7691, states that exclusive original jurisdiction in all civil actions involving title to or possession of real property or any interest therein, where the assessed value of the property located outside Metro Manila exceeds P20,000, is conferred upon the RTC.[15]

Considering that the 2003 Tax Declaration No. 02-14-001-0064-R indicates that the land's assessed value is P13,055.00, the RTC ruled that the case falls within the exclusive original jurisdiction of the first level court pursuant to Sec. 33 (3) of

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[11] *Id.*

[12] *Id*.

[13] *Id.* at 21.

[14] Penned by Presiding Judge Arnelo C. Mesa; id. at 65-66.

[15] *Id*. at 66.

BP 129, as amended by RA 7691. Thus, the RTC dismissed the complaint.[16]

Plaintiffs moved for reconsideration, which the RTC denied in its January 19, 2012 Resolution.[17] The RTC reiterated that there are two grounds for dismissal. First, the real issue is ownership and not partition. The RTC explained that although the complaint was entitled as action for partition of property with damages, the ultimate objective is to recover title over two-thirds portion of the 373 square-meter land or 248.6 square meters.

Second, the RTC lacks jurisdiction over the subject matter of the case. The RTC considered the assessed value of the two-thirds portion, which is ₱8,703.33, and not ₱13,055.00 as indicated in the previous order. The assessed value falls within the original exclusive jurisdiction of the first level court.[18]

Plaintiffs filed a Notice of Appeal, which the RTC dismissed in its April 22, 2013 Order.[19] Sec. 1, Rule 41 of the Rules of Court states that no appeal may be taken from an order dismissing an action without prejudice. The RTC clarified that the dismissal of the complaint is without prejudice, and the plaintiffs may file a complaint before the first level court, or file a special civil action under Rule 65, instead.

Plaintiffs moved for reconsideration, which the RTC denied in its May 24, 2013 Order[20] and essentially reiterated its discussion in its January 19, 2012 Resolution.

The Issue Presented

Unsuccessful, plaintiffs elevated the case before the Court through a petition for *certiorari*[21] under Rule 65 of the Rules

[16] *Id*.

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

[18] *Id.*

[19] *Id.* at 97-98.

[20] *Id*. at 19-20.

[21] *Id*. at 3-13.

of Court, alleging that the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it issued the orders and resolution and unfavourably ruled against them. Petitioners prayed to set aside the April 22, 2013 and May 24, 2013 RTC Orders denying the Notice of Appeal and Motion for Reconsideration, respectively. In the alternative, petitioners prayed to set aside the April 14, 2011 RTC Order denying the Motion for Summary Judgment and dismissing the complaint, and the January 19, 2012 RTC Resolution denying the Motion for Reconsideration.

In their Comment, respondent heirs of Evelyn Turgo Allones alleged that the RTC's dismissal was based on jurisprudence, and therefore, it did not act without or in excess of jurisdiction. The respondents averred that it was right for the RTC to dismiss the complaint and advice the petitioners to re-file the complaint in the first level court. Respondents further assert that the Court may grant the petition and remand the case to the first level court.[22]

In their Reply,[23] petitioners reiterated the arguments in the petition and clarified that the primary subject of their petition is the May 24, 2013 RTC Order denying the Motion for Reconsideration of the April 22, 2013 Order dismissing their Notice of Appeal.

The issue to be resolved by the Court is **whether or not the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the May 24, 2013 Order.**

The Court's Ruling

The petition is dismissed.

The second paragraph of Section 1 of Rule 65 of the Rules of Court provides that *the petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof x x x as provided in the third paragraph of Section 3, Rule 46.*

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

[23] *Id.* at 115-118.

Last paragraph of Section 3, Rule 46 states that *failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition.*

Here, petitioners specifically stated in their Reply that *the primary subject for review x x x is the order of the Court a quo of May 24, 2013 denying the Petitioner's Motion for Reconsideration of the Order dated April 22, 2013 denying their Notice of Appeal.*[24] Petitioners failed to attach a certified true copy of the May 24, 2013 RTC Order in their Petition. What petitioners attached is a mere photocopy of the order. Non-compliance with the requirement of the Rules is already a ground for the dismissal of the petition. However, the Court will further discuss substantial grounds for its dismissal.

Certiorari is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

Here, petitioners failed to show specific instances that the RTC gravely or grossly abused its discretion or acted arbitrarily and capriciously in issuing the May 24, 2013 Order. On the contrary, the RTC's order was clear, concise, and substantiated by law, jurisprudence, and facts on record. The May 24, 2013 Order was consistent with the earlier RTC orders and resolution. The RTC dismissed the complaint due to lack of jurisdiction.

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[24] *Id*. at 116.

[25] *Polytechnic University of the Philippines v. National Development Co*., G.R. No. 213039, November 27, 2017, 846 SCRA 599, 610-611..

The RTC sufficiently explained that the real issue of the case is ownership of two-thirds portion of the land, and the assessed value of which is jurisdictional to this case. The Court finds petitioners' claim of grave abuse of discretion to be unsupported by evidence other than their bare allegations.

WHEREFORE, premises considered, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 210641. March 27, 2019]

DOMESTIC PETROLEUM RETAILER CORPORATION, *petitioner, vs.* **MANILA INTERNATIONAL AIRPORT AUTHORITY,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; QUASI-CONTRACT; *SOLUTIO INDEBITI*; FOR THE CONCEPT OF *SOLUTIO INDEBITI* TO APPLY, IT MUST BE ESTABLISHED THAT A PAYMENT IS MADE WHEN THERE EXISTS NO BINDING RELATION BETWEEN THE PAYOR WHO HAS NO DUTY TO PAY AND THE PERSON WHO RECEIVED THE PAYMENT, AND THE PAYMENT IS MADE THROUGH MISTAKE AND NOT THROUGH LIBERALITY OR SOME OTHER CAUSE.— Article 2154 of the Civil Code explains the concept of the quasi-contract of *solutio indebiti*: Art. 2154. If something is received when there is no right to demand it, and it was unduly

delivered through mistake, the obligation to return it arises. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. In order to establish the application of *solutio indebiti* in a given situation, **two conditions must concur**: (1) a payment is made when **there exists no binding relation** between the payor who has no duty to pay, and the person who received the payment, and (2) **the payment is made through mistake**, and not through liberality or some other cause. In the instant case, the Court finds that the essential requisites of *solutio indebiti* are not present.

2. ID.; ID.; ID.; LEASE; ARTICLE 1659 OF THE CIVIL CODE, IN RELATION TO ARTICLE 1657; THE AGGRIEVED PARTY IN A CONTRACT OF LEASE MAY ASK FOR INDEMNIFICATION WHEN THE OTHER PARTY FAILS TO COMPLY WITH HIS/HER OBLIGATIONS, ONE OF WHICH IS TO ASK FROM THE LESSEE THE PRICE OF THE LEASE ONLY ACCORDING TO THE TERMS STIPULATED; APPLICABLE LAWS FORM PART OF, AND ARE READ INTO, CONTRACTS WITHOUT NEED FOR ANY EXPRESS REFERENCE THERETO.— [A]kin to *National Commercial Bank of Saudi Arabia v. Court of Appeals*, the Court finds that the cause of action of petitioner DPRC is based on the violation of a contractual stipulation in the parties' Contract of Lease, and not due to the existence of a quasi-contract**.** x x x **. —** Respondent MIAA's supposition that there is no provision in the Contract of Lease that petitioner DPRC can rely upon to ask for a refund is completely mistaken. To reiterate, respondent MIAA readily admits that according to the Contract of Lease, petitioner DPRC's monthly rentals shall be subject to price escalation only when respondent MIAA issues a valid Administrative Order calling for price escalation and when petitioner DPRC is given prior notice. By still imposing a price escalation despite the non-observance of both requirements, both the RTC and CA found that respondent MIAA violated the Contract of Lease. Just because the Contract of Lease in itself may be silent as to petitioner DPRC's entitlement to a refund does not mean that such claim for refund is not provided for in the contract and cannot be asserted by petitioner DPRC. It must be stressed that applicable laws form part of, and are read into, contracts without need for any express reference

thereto. Specifically on lease contracts, Article 1659 of the Civil Code, in relation to Article 1657, states that the aggrieved party in a contract of lease may ask for indemnification when the other party fails to comply with his/her obligations, one of which is to ask from the lessee the price of the lease only according to the terms stipulated. Hence, with these provisions of law read into the parties' Contract of Lease, respondent MIAA's argument that there is no provision in the Contract of Lease that petitioner DPRC can rely on to claim for refund of overpayment of monthly rentals is erroneous.

3. **ID.; ID.; ID.; QUASI CONTRACTS; FOR THE CONCEPT OF *SOLUTIO INDEBITI* TO APPLY, THE UNDUE PAYMENT MUST HAVE BEEN MADE BY REASON OF EITHER AN ESSENTIAL MISTAKE OF FACT OR A MISTAKE IN THE CONSTRUCTION OR APPLICATION OF A DOUBTFUL OR DIFFICULT QUESTION OF LAW; NOT APPLICABLE.—** [I]t cannot be said that petitioner DPRC's payments in monthly rentals from December 11, 1998 up to December 5, 2005 in observance with the subsequently nullified Resolution No. 98-30 were made due to mistake on the part of petitioner DPRC. For the concept of *solutio indebiti* to apply, the undue payment must have been made by reason of either an essential mistake of fact or a mistake in the construction or application of a doubtful or difficult question of law. Mistake entails an error, misconception, or misunderstanding. In the instant case, petitioner DPRC made the overpayments in monthly rentals from December 11, 1998 to December 5, 2005 not due to any mistake, error, or omission as to any factual matter surrounding the payment of rentals. Nor did petitioner DPRC make the overpayments due to any mistaken construction or application of a doubtful question of law. Instead, petitioner DPRC deliberately made the payments in accordance with respondent MIAA's Resolution No. 98-30, albeit under protest.

4. **ID.; ID.; PRESCRIPTION OF ACTIONS; AN ACTION BASED ON A WRITTEN CONTRACT MUST BE BROUGHT WITHIN 10 YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES.—**Considering that petitioner DPRC's cause of action is not based on a quasi-contract and is instead founded on the enforcement of a contract, the CA erred in applying Article 1145(2) of the Civil Code in the instant

case. Instead of the prescriptive period of six years for quasi-contracts, it is Article 1144 of the Civil Code that finds application in the instant case. This Article provides that an action based on a written contract must be brought **within 10 years from the time the right of action accrues**.

5. ID.; ID.; ID.; ID.; THE CLAIMANT HAS A CAUSE OF ACTION FOR PAYMENT AGAINST THE GOVERNMENT ONLY FROM THE TIME THAT THE COURT DECLARED INVALID THE QUESTIONED ADMINISTRATIVE POLICY BECAUSE IT IS AT THAT POINT WHEN THE PRESUMPTION OF LEGALITY OF THE QUESTIONED ADMINISTRATIVE POLICY HAD BEEN REBUTTED AND THUS IT CAN BE SAID WITH CERTAINTY THAT THE GOVERNMENT INFRINGED ON THE RIGHT OF THE CLAIMANT; PETITIONER'S RIGHT OF ACTION FOR THE REFUND OF THE OVERPAID RENTALS ACCRUED ONLY FROM THE DATE RESOLUTION NO. 98-30 WAS INVALIDATED.— Aside from erroneously applying the six-year prescriptive period governing quasi-contracts, the CA likewise erred in stating that the applicable prescriptive period is reckoned from the date of petitioner DPRC's first overpayment on December 11, 1998. In *Español v. Board of Administrators, Philippine Veterans Administration*, as to when the right of action of a party who claims payment from the government due to the nullification of an administrative policy or issuance accrues, the Court held that the claimant has a cause of action for payment against the government **only from the time that the Court declared invalid the questioned administrative policy**. This is so because it is at that point when the presumption of legality of the questioned administrative policy had been rebutted and thus it can be said with certainty that the government infringed on the right of the claimant x x x. Therefore, considering that the Court's Decision in *Manila International Airport Authority v. Airspan Corporation, et al*. invalidating Resolution No. 98-30 was promulgated only on **December 1, 2004**, the right of action of petitioner DPRC for the refund of the overpaid rentals accrued only on the said date. **Hence, the filing of petitioner DPRC's Complaint for sum of money on December 23, 2008 was well within the prescriptive period.**

6. ID.; ID.; ID.; ID.; A WRITTEN EXTRAJUDICIAL DEMAND FOR REFUND OF OVERPAYMENTS NOT ONLY SUSPENDS THE PRESCRIPTIVE PERIOD TO FILE AN ACTION, BUT IT ALSO WIPES OUT THE PERIOD THAT HAS ALREADY ELAPSED AND STARTS ANEW THE PRESCRIPTIVE PERIOD.— [I]t is likewise undisputed that on **July 27, 2006**, petitioner DPRC sent respondent MIAA a **written demand** for the refund of P9,593,179.87, which covers the overpayment of monthly rentals made by petitioner DPRC since December 11, 1998. According to Article 1155 of the Civil Code, **the prescription of actions is interrupted when a written extrajudicial demand is made**. And so, when written extrajudicial demand for refund of overpayments was made by petitioner DPRC on July 27, 2006, not only was the prescriptive period to file an action suspended; jurisprudence holds that "[t]he interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand[,] x x x **written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period**." Hence, after petitioner DPRC made its written extrajudicial demand on July 27, 2006, it actually had until **July 27, 2016** to file an action for the full recovery of the overpayment of monthly rentals. Accordingly, at the time of the institution of the Complaint for Collection of Sums of Money by petitioner DPRC on December 23,2008, no claim for refund of overpaid monthly rentals had prescribed. For the aforementioned reasons, the Court holds that the CA erred in issuing the assailed Decision and Resolution insofar as it modified the amount of respondent MIAA's liability. The Court finds that petitioner DPRC is entitled to the full amount of ₱9,593,179.87 plus legal interest at 12% per annum computed from the time of extrajudicial demand on July 27, 2006.

APPEARANCES OF COUNSEL

Andres Padernal And Paras Law Offices for petitioner.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Domestic Petroleum Retailer Corporation (petitioner DPRC) against respondent Manila International Airport Authority (respondent MIAA), assailing the Decision[2] dated May 31, 2013 (assailed Decision) and Resolution[3] dated November 29, 2013 (assailed Resolution) promulgated by the Court of Appeals (CA) Special Second Division and Former Special Second Division, respectively, in CA-G.R. CV No. 98378, which affirmed the Decision[4] dated August 15, 2011 of the Regional Trial Court, Pasay City, Branch 119 (RTC) in Civil Case No. R-PSY-08-08963.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, and as culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

> On December 23, 2008, [petitioner DPRC] filed a Complaint[5] for "Collection of Sums of Money" against [respondent MIAA] before the [RTC,] averring that: on June 4, 1998, [petitioner DPRC] and [respondent MIAA] entered into a Contract of Lease whereby the former leased from the latter a 1,631.12-square meter parcel of land and a 630.88-square meter building both located at Domestic Road, Pasay City[.]
>
> [Petitioner DPRC] was obliged to pay monthly rentals of ₱75,357.74 for the land and ₱33,310.46 for the building; [petitioner DPRC]

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

[2] *Id*. at 26-42. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 44-45.

[4] *Id*. at 61-72. Penned by Judge Pedro De Leon Gutierrez.

[5] *Id*. at 133-142.

faithfully complied with its obligation to pay the monthly rentals since the start of the lease contract[.]

[O]n April 2, 1998, [respondent MIAA] passed Resolution No. 98-30 which took effect on June 1, 1998 increasing the rentals paid by its concessionaires and lessees[.] [Respondent MIAA] issued Administrative Order No. 1[,] Series of 1998 reflecting the new schedule of fees, charges, and rates[.] [Petitioner] DPRC initially refused to pay the increased rentals which was decreed without prior notice and hearing[.]

[O]n November 19, 1998, [respondent MIAA] demanded its payment of P655,031.13 as rental in arrears which was based on the increase prescribed in Resolution No. 98-30 with 2% interest compounded monthly[.] [Respondent MIAA] also demanded payment of ₱628,895.43 after recomputing and deducting the amount of ₱26,135.70 from the original amount of ₱655,031.13[.]

[O]n December 8, 1998, [petitioner DPRC] protested in writing to [respondent MIAA] the increased rentals and the computation[.] [H]owever, it also signified its intention to comply in good faith with the terms and conditions of the lease contract by paying the amount charged[.] [O]n December 11, 1998, [petitioner DPRC] paid [respondent MIAA] ₱628,895.43 which was based on the new rates[.]

[On December 1, 2004, the First (1st) Division of the Court promulgated its Decision in the case of *Manila International Airport Authority v. Airspan Corporation, et al.*,[6] docketed as G.R. No. 157581. In the said case, the Court nullified Resolution Nos. 98-30 and 99-11 issued by respondent MIAA for non-observance of the notice and hearing requirements for the fixing rates required by the Administrative Code.]

[O]n December 21, 2005, [petitioner DPRC] advised [respondent] MIAA of its intention to stop paying the increased rental rate, and on January 1, 2006, it stopped paying the increased rental rate[,] but continued paying the original rental rate prescribed in the lease contract[.] [Petitioner DPRC's] decision to stop paying the increased rental rate was based on the [Court's] Decision dated December 1, 2004 in the case of *Manila International Airport Authority vs. Air span Corporation, et al*. x x x [Petitioner DPRC] paid [respondent] MIAA a total amount of ₱9,593,179.87, which is in excess of the

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[6] 486 Phil. 1136 (2004).

stipulated monthly rentals from December 11, 1998 up to December 5, 2005[.]

[O]n June 22, 2006, [respondent] MIAA required the payment of ₱645,216.21 allegedly representing the balance of the rentals from January up to June 2006[.] [O]n July 27, 2006, [petitioner DPRC] sent its reply to [respondent] MIAA denying the unpaid obligation, reiterating that the rental could no longer be computed based on the nullified Resolution No. 98-30, and demanding for the refund of its overpayment in the amount of ₱9,593,179.87[.] [Respondent] MIAA ignored its demand[,] prompting [petitioner DPRC] to send a final written demand dated November 5, 2008[.] [The latter] was constrained to file [the Complaint for Collection of Sums of Money.]

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On August 15, 2011, the [RTC] rendered [its Decision, ruling in favor of petitioner DPRC. The dispositive portion of the RTC's Decision dated August 15, 2011 states the following:

> **WHEREFORE**, judgment is hereby rendered in favor of the plaintiff Domestic Petroleum Retailer Corporation and against defendant Manila International Airport Authority, ordering the latter to pay the former the following:
>
> (1) the principal amount of ₱9,593,179.87, plus legal interest computed from the time of the extra-judicial demand on July 27, 2006;
>
> (2) the sum of ₱300,00.00 (sic) as and for attorney's fees; and
>
> (3) the cost of suit.
>
> **SO ORDERED.**[7]]

Upon [petitioner] DPRC's motion, the [RTC] issued an Order dated November 17, 2011 clarifying its [D]ecision to read as follows: "(1) the principal amount of ₱9,593,179.87 plus 12% per annum legal interest computed from the time of the extrajudicial demand on July 27, 2006."

Hence, [respondent MIAA filed an appeal before the CA, arguing that (1) the decided case of *Manila International Airport Authority*

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

v. Airspan Corporation does not apply as to the instant case; (2) the RTC erred in considering the receipts respondent MIAA issued as for alleged payment of the increased rental rate; and (3) prescription or laches has set in to bar petitioner DPRC from asserting its claim against respondent MIAA.][8]

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's Decision holding respondent MIAA liable to petitioner DPRC, but with a modification as to the amount. Instead of holding respondent MIAA liable for the entire amount of ₱9,593,179.87, the CA decreased respondent MIAA's liability to ₱3,839,643.05 plus legal interest at 12% per annum computed from the time of'extrajudicial demand on July 27, 2006. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the Decision dated August 15, 2011 of the RTC, Branch 119, Pasay City in Civil Case No. R-PSY-08-08963 is **AFFIRMED WITH MODIFICATION** by ordering defendant-appellant Manila International Airport Authority to pay plaintiff-appellee Domestic Petroleum Retailer Corporation the principal amount of ₱3,839,643.05 paid during the period from January 9, 2003 to December 5, 2005, plus legal interest at 12% per annum computed from the time of the extra-judicial demand on July 27, 2006.
>
> In all other respects, the appealed decision so stands as **AFFIRMED**.
>
> SO ORDERED.[9]

In the assailed Decision, the CA found that the liability of respondent MIAA to petitioner DPRC for overpaid monthly rentals was in the nature of a quasi-contract of *solutio indebiti*. And because petitioner DPRC's claim against respondent MIAA is purportedly in the nature of *solutio indebiti*, the CA held that "the claim of refund must be commenced within six (6)

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[8] *Id.* at 27-34.

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

years from date of payment pursuant to Article 1145(2)[10] of the Civil Code."[11]

Proceeding from such premise, the CA found that, despite the records showing that petitioner DPRC made overpayment in monthly rentals from December 11, 1998 up to December 5, 2005, such claim could not be fully awarded to petitioner DPRC due to prescription.

The CA explained that:

As already stated, the claim for refund must be made within six (6) years from date of payment. Since [petitioner] DPRC demanded the refund of the increase in monthly rentals mistakenly paid only on July 27, 2006 and filed this case before the [RTC] only on December 23, 2008, it can recover only those paid during the period from January 9,2003 to December 5, 2005[,] or a total amount of ₱3,839,643.05[,] broken down as follows:

Date of Payment	Amount Paid Under Protest inclusive of 5% Withholding Tax
January 9, 2003	106,297.33
February 5, 2003	106,297.33
March 5, 2003	106,297.33
April 4, 2003	106,297.33
May 5, 2003	106,297.33
June 5, 2003	106,297.33
July 4, 2003	106,297.33
August 5, 2003	106,297.33
September 5, 2003	129,126.87
October 4, 2003	105,931.02

[10] Art. 1145. The following actions must be commenced within six years:

(1) Upon an oral contract

(2) Upon a quasi-contract.

[11] *Rollo*, p. 40.

November 5, 2003	105,931.02
December 5, 2003	105,931.02
January 5, 2004	105,931.02
February 5, 2004	105,931.02
March 5, 2004	105,931.02
April 5, 2004	105,931.02
May 5, 2004	105,931.02
June 4, 2004	105,931.02
July 5, 2004	105,931.02
August 5, 2004	105,931.02
September 6, 2004	105,931.02
October 5, 2004	105,931.02
November 5, 2004	105,931.02
December 6, 2004	105,931.02
January 5, 2005	105,931.02
February 4, 2005	105,931.02
March 4, 2005	105,931.02
April 5, 2005	105,931.02
May 5, 2005	105,931.02
June 5, 2005	105,931.02
July 5, 2005	105,931.02
August 5, 2005	105,931.02
September 5, 2005	105,931.02
October 5, 2005	105,931.02
November 7, 2005	105,931.02
December 5, 2005	105,931.02
TOTAL	₱3,839,643.05

[Petitioner] DPC has, by reason of the six (6) years prescriptive period, lost its right to recover the amount of ₱5,753,536.82 paid during the period from December 11, 1998 to December 5, 2002.[12]

[12] *Id.* at 40-41.

Unsatisfied, petitioner DPRC filed a Motion for Partial Reconsideration[13] dated June 28, 2013, which was denied by the CA in the assailed Resolution.

Hence, the instant Petition.

The Court notes that, based on the records, respondent MIAA has not filed an appeal of the assailed Decision and Resolution promulgated by the CA.

However, respondent MIAA filed its Comment[14] (On the Petition for Review) dated July 8, 2014, to which petitioner DPRC responded with its Reply[15] dated November 17, 2014.

Issues

The only issue raised by petitioner DPRC in the instant Petition is whether the CA was correct in amending the RTC's Decision, modifying the amount of respondent MIAA's liability from the full amount of ₱9,593,179.87 to just ₱3,839,643.05 plus legal interest at 12% per annum computed from the time of extra-judicial demand on July 27, 2006, on the basis of the application of the six-year prescriptive period governing the quasi-contract of *solutio indebiti*.

The Court's Ruling

The Court finds merit in the instant Petition.

The CA posited the view that the quasi-contract of *solutio indebiti* applies as to the instant case because petitioner "DPRC's payment of the increased rental to [respondent MIAA], who was found to have no authority to increase fees, charges and rates without the approval of the DOTC Secretary, due to a mistake in the interpretation and imposition of Administrative Order No. 98-30, which was later found to be invalid for lack of the required prior notice and public hearing, gives rise to

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[13] *Id*. at 90-94.

[14] *Id.* at 121-132.

[15] *Id*. at 161-166.

the application of the principle of *solutio indebiti* under Articles 2154, 2155 and 2156 of the Civil Code in this case."[16]

Article 2154 of the Civil Code explains the concept of the quasi-contract of *solutio indebiti*:

> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another.[17]

In order to establish the application of *solutio indebiti* in a given situation, **two conditions must concur**: (1) a payment is made when **there exists no binding relation** between the payor who has no duty to pay, and the person who received the payment, and (2) **the payment is made through mistake**, and not through liberality or some other cause.[18]

In the instant case, the Court finds that the essential requisites of *solutio indebiti* are not present.

There exists a binding relation between petitioner DPRC and respondent MIAA.

First and foremost, it is undisputed by all parties that respondent MIAA and petitioner DPRC are mutually bound to each other under a Contract of Lease, which both parties entered on June 4, 1998, covering the 1,631.12-square-meter parcel of land and a 630.88-square-meter building both located at Domestic Road, Pasay City. Hence, with respondent MIAA and petitioner DPRC having the juridical relationship of a lessor-lessee, it cannot be said that in the instant case, the overpayment of monthly

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

[17] *Power Commercial and Industrial Corp. v. Court of Appeals*, 340 Phil. 705, 718 (1997).

[18] *Moreno-Lentfer v. Hans Jurgen Wolff*, 484 Phil. 552, 560 (2004).

rentals was made when there existed no binding juridical tie or relation between the pay or, *i.e.,* petitioner DPRC, and the person who received the payment, i.e., respondent MIAA. In fact, respondent MIAA itself acknowledged in its Comment that there was a "pre-existing contractual relation" between itself and petitioner DPRC.[19]

The Court's Decision in *National Commercial Bank of Saudi Arabia v. Court of Appeals*[20] is instructive.

In the said case, therein petitioner National Commercial Bank of Saudi Arabia (NCBSA) filed a case against therein respondent Philippine Banking Corporation (PBC) to recover the duplication in the payment of the proceeds of a letter of credit, under which NCBSA obliged itself to pay PBC subject to compliance with certain conditions provided in the letter of credit.

Assailing the lower court's decision granting NCBSA's complaint for recovery of money, therein respondent PBC argued that "[therein petitioner] NCBSA's complaint is 'based on the quasi-contract of *solutio indebiti*,'' hence, it prescribes in six years and, therefore, when NCBSA filed its complaint nine years after the cause of action arose, it had prescribed."[21]

In denying the aforesaid argument and upholding NCBSA's claim of refund against PBC due to double payment, the Court held that, since *solutio indebiti* applies only where no binding relation exists between the payor and the person who received the payment, *solutio indebiti* was not applicable because the parties therein were bound by a contract, *i.e*., a letter of credit. As such, **the cause of action against PBC was deemed to be based on the violation of a contract instead of a quasi-contract**:

Technicality aside, *en passant*, on the merits of PBC's Motion for Reconsideration of the trial court's decision, the trial court did not err in brushing aside its main defense of prescription — that

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[19] See *rollo*, p. 127.

[20] 444 Phil. 615 (2003).

[21] *Id.* at 624.

NCBSA's complaint is "based on the quasi-contract of *solutio indebiti*" hence, it prescribes in six years and, therefore, when NCBSA filed its complaint nine years after the cause of action arose, it had prescribed.

Solutio indebiti applies where: (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment, and (2) the payment is made through mistake, and not through liberality or some other cause. **In the case at bar, PBC and NCBSA were bound by their contract, the letter of credit, under which NCBSA obliged itself to pay PBC, subject to compliance by the latter with certain conditions provided therein. As such, the cause of action was based on a contract, and the prescriptive period is ten, not six years**.[22]

Similarly, in *Genova v. De Castro*,[23] despite holding that the therein petitioner is entitled to a refund of what he had previously paid to the therein respondent, the Court held that *solutio indebiti* was not applicable because the first element was not present, considering that petitioner therein made payments to respondent therein pursuant to an underlying agreement to repurchase property that governed the relation of the parties therein.[24]

Applying the foregoing to the instant case, akin to *National Commercial Bank of Saudi Arabia v. Court of Appeals*, the Court finds that the cause of action of petitioner DPRC is based on the violation of a contractual stipulation in the parties' Contract of Lease, and not due to the existence of a quasi-contract.

As admitted by respondent MIAA in its Comment, the overpayment made by petitioner DPRC is rooted in Section 2.06 of the Contract of Lease, which provided that petitioner DPRC's monthly rentals shall be subject to price escalation on the condition that respondent MIAA will issue a valid Administrative Order calling for the price escalation and that petitioner DPRC will be given prior notice of such price escalation.

[22] *Id*. at 624. Emphasis supplied.

[23] 454 Phil. 662 (2003).

[24] *Id*. at 676-677.

Hence, by filing its Complaint, petitioner DPRC invoked the Contract of Lease and alleged that respondent MIAA violated the aforementioned contractual stipulation, considering that the latter imposed a price escalation of monthly rentals despite reneging on its contractual obligation to first issue a valid Administrative Order and give petitioner DPRC prior notice.

No less than the CA in the assailed Decision held that, pursuant to the agreement of the parties in their Contract of Lease, "an Administrative Order must be issued by [respondent] MIAA and [petitioner] DPRC should be notified of the said increase in rental and other charges thirty (30) days before their imposition."[25] The CA agreed with the RTC that there exists a valid cause of action against respondent MIAA because "the requirements provided in x x x the lease contract itself were not satisfied in this case."[26]

In arguing in its Comment that petitioner DPRC's cause of action is not based on a contract, respondent MIAA asserts that "[petitioner] DPRC's cause of action for refund is not based on contract (since there is no provision in the Contract that [petitioner] DPRC can rely upon for refund) but on quasi-contract since [respondent MIAA] allegedly does not have the right to hold on the excess amounts."[27]

Respondent MIAA's supposition that there is no provision in the Contract of Lease that petitioner DPRC can rely upon to ask for a refund is completely mistaken. To reiterate, respondent MIAA readily admits that according to the Contract of Lease, petitioner DPRC's monthly rentals shall be subject to price escalation only when respondent MIAA issues a valid Administrative Order calling for price escalation and when petitioner DPRC is given prior notice. By still imposing a price escalation despite the non-observance of both requirements, both the RTC and CA found that respondent MIAA violated the Contract of Lease.

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[25] *Rollo*, p. 37.

[26] *Id.*

[27] *Id.* at 127.

Just because the Contract of Lease in itself may be silent as to petitioner DPRC's entitlement to a refund does not mean that such claim for refund is not provided for in the contract and cannot be asserted by petitioner DPRC.

It must be stressed that applicable laws form part of, and are read into, contracts without need for any express reference thereto.[28] Specifically on lease contracts, Article 1659[29] of the Civil Code, in relation to Article 1657,[30] states that the aggrieved party in a contract of lease may ask for indemnification when the other party fails to comply with his/her obligations, one of which is to ask from the lessee the price of the lease only according to the terms stipulated.

Hence, with these provisions of law read into the parties' Contract of Lease, respondent MIAA's argument that there is no provision in the Contract of Lease that petitioner DPRC can rely on to claim for refund of overpayment of monthly rentals is erroneous.

In the instant case, there was no payment by mistake.

Furthermore, it cannot be said that petitioner DPRC's payments in monthly rentals from December 11, 1998 up to December 5, 2005 in observance with the subsequently nullified Resolution No. 98-30 were made due to mistake on the part of petitioner DPRC.

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[28] *Halili v. Justice for Children International*, 769 Phil. 456, 462 (2015).

[29] Art. 1659. If the lessor or the lessee should not comply with the obligations set forth in Articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force.

[30] Art. 1657. The lessee is obliged:

(1) To pay the price of the lease according to the terms stipulated;

(2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place;

(3) To pay expenses for the deed of lease.

For the concept of *solutio indebiti* to apply, the undue payment must have been made by reason of either an essential mistake of fact[31] or a mistake in the construction or application of a doubtful or difficult question of law.[32] Mistake entails an error, misconception, or misunderstanding.[33]

In the instant case, petitioner DPRC made the overpayments in monthly rentals from December 11, 1998 to December 5, 2005 not due to any mistake, error, or omission as to any factual matter surrounding the payment of rentals. Nor did petitioner DPRC make the overpayments due to any mistaken construction or application of a doubtful question of law.

Instead, petitioner DPRC deliberately made the payments in accordance with respondent MIAA's Resolution No. 98-30, albeit under protest. It must be recalled that after the issuance of Resolution No. 98-30, on December 8, 1998, petitioner DPRC protested in writing to respondent MIAA, alleging that Resolution No. 98-30 was invalidly issued. However, petitioner DPRC also signified its intention to comply in good faith with the terms and conditions of the lease contract by paying the amount charged in accordance with Resolution No. 98-30 despite registering its objection to its validity.

Solutio indebiti applies when payment was made on the erroneous belief of facts or law that such payment is due.[34] In the case at hand, petitioner DPRC's overpayment of rentals from 1998 to 2005 was not made by sheer inadvertence of the facts or the misconstruction and misapplication of the law. Petitioner DPRC did not make payment because it mistakenly and inadvertently believed that the increase in rentals instituted by the subsequently voided Resolution No. 98-30 was indeed due and demandable. From the very beginning, petitioner DPRC was consistent in its belief that the increased rentals were not due as Resolution No. 98-30 was, in its view, void.

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[31] *City of Cebu v. Caballero*, 110 Phil. 558, 563 (1960).

[32] CIVIL CODE, Art. 2155.

[33] BLACK'S LAW DICTIONARY 1092 (9th ed. 2009).

[34] *Gonzalo Puyat & Sons, Inc. v. City of Manila*, 117 Phil. 985, 989 (1963).

However, petitioner DPRC still made payment despite its objection, not due to any mistaken belief, but for the sole reason that prior to the Court's Decision in *Manila International Airport Authority v. Airspan Corporation, et al.*, Resolution No. 98-30 was still presumed to be legal, having the force of law in the absence of any judicial declaration to the contrary. Hence, without any judicial declaration on the nullity of Resolution No. 98-30 at that time, petitioner DPRC had no alternative but to make the subject payments, though under protest. Therefore, it is not correct to say that the subject payments made by petitioner DPRC were made by mistake or inadvertence.

Therefore, with the absence of the two essential requisites of *solutio indebiti* in the instant case, petitioner DPRC's cause of action is not based on the quasi-contract of *solutio indebiti*.

Petitioner DPRC's claim against respondent MIAA for full refund of the overpayment of rentals has not prescribed.

Considering that petitioner DPRC's cause of action is not based on a quasi-contract and is instead founded on the enforcement of a contract, the CA erred in applying Article 1145(2) of the Civil Code in the instant case.

Instead of the prescriptive period of six years for quasi-contracts, it is Article 1144[35] of the Civil Code that finds application in the instant case. This Article provides that an action based on a written contract must be brought **within 10 years from the time the right of action accrues**.

Aside from erroneously applying the six-year prescriptive period governing quasi-contracts, the CA likewise erred in stating that the applicable prescriptive period is reckoned from the date of petitioner DPRC's first overpayment on December 11, 1998.

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[35] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

x x x x x x x x x

In *Español v. Board of Administrators, Philippine Veterans Administration*,[36] as to when the right of action of a party who claims payment from the government due to the nullification of an administrative policy or issuance accrues, the Court held that the claimant has a cause of action for payment against the government **only from the time that the Court declared invalid the questioned administrative policy**. This is so because it is at that point when the presumption of legality of the questioned administrative policy had been rebutted and thus it can be said with certainty that the government infringed on the right of the claimant:

> The contention of appellant PVA that the action of appellee Maria U. Español to compel the restoration of her monthly pension and that of her children, effective from the date of cancellation on November 1, 1951, has already prescribed, inasmuch as the same was filed more than 10 years from the date of cancellation, is without merit.
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> x x x x x x x x x
>
> The right of action accrues when there exists a cause of action, which consists of 3 elements, namely: a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; b) an obligation on the part of defendant to respect such right; and c) an act or omission on the part of such defendant violative of the right of the plaintiff (Cole vs. Vda. de Gregorio, 116 SCRA 670 [1982]; Mathay vs. Consolidated Bank & Trust Co., 58 SCRA 559 [1974]; Vda. de Enriquez vs. De la Cruz, 54 SCRA 1 [1973]). It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen (Cole vs. Vda. de Gregorio, *supra*).
>
> The appellee cannot be said to have a cause of action, in compelling appellant to continue paying her monthly pension on November 1,1951, because appellant's act of cancellation, being pursuant to an administrative policy, cannot be considered a violation of appellee's right to receive her monthly pension.
>
> It is elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret

[36] 221 Phil. 667 (1985).

the law which they are entrusted to enforce, have the force of law, are entitled to great respect (Sierra Madre Trust vs. Secretary of Agriculture and Natural Resources, 121 SCRA 384 [1983]; Asturias Sugar Central Inc. vs. Commissioner of Customs, 29 SCRA 617 [1969]; Antique Sawmill Inc. vs. Zayco, et al., 17 SCRA 316 [1966]), and have in their favor a presumption of legality. Thus, appellant's act of cancelling appellee's monthly pension being presumed legal and valid, cannot be taken as a violation of appellee's right to receive her monthly pension under R.A. No. 65.

In the case of Del Mar vs. The Philippine Veterans Administration (51 SCRA 340 [1973]), this Court did not consider prescription in favor of PVA, even though the action of Del Mar was filed on June 20, 1964 or more than 10 years from the cancellation of his monthly pension in March, 1950; because the action of Del Mar was basically to declare the questioned administrative policy invalid, which action does not prescribe.

It is only when this Court declared invalid the questioned administrative policy in the case of Del Mar vs. The Philippine Veterans Administration, *supra*, promulgated on June 27, 1973, can the appellee be said to have a cause of action to compel appellant to resume her monthly pension; because it is at that point in time, when the presumption of legality of the questioned administrative policy had been rebutted and thus it can be said with certainty that appellant's act was in violation of appellee's right to receive her monthly pension.[37]

Therefore, considering that the Court's Decision in *Manila International Airport Authority v. Airspan Corporation, et al.* invalidating Resolution No. 98-30 was promulgated only on **December 1, 2004**, the right of action of petitioner DPRC for the refund of the overpaid rentals accrued only on the said date. **Hence, the filing of petitioner DPRC's Complaint for sum of money on December 23, 2008 was well within the prescriptive period.**

Therefore, regardless of whether the prescriptive period to be applied in the instant case is the one pertaining to actions arising from quasi-contracts, *i.e.*, six years, or from contracts, *i.e.*, 10 years, considering that the prescriptive period started

[37] *Id.* at 669-671.

to run only on December 1, 2004, petitioner DPRC's claim for a complete refund of all the overpaid rentals has not prescribed.

More so, it is likewise undisputed that on **July 27, 2006**, petitioner DPRC sent respondent MIAA a **written demand** for the refund of P9,593,179.87, which covers the overpayment of monthly rentals made by petitioner DPRC since December 11, 1998.[38]

According to Article 1155 of the Civil Code, **the prescription of actions is interrupted when a written extrajudicial demand is made**. And so, when written extrajudicial demand for refund of overpayments was made by petitioner DPRC on July 27, 2006, not only was the prescriptive period to file an action suspended; jurisprudence holds that "[t]he interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand[,] x x x **written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period**."[39]

Hence, after petitioner DPRC made its written extrajudicial demand on July 27, 2006, it actually had until **July 27, 2016** to file an action for the full recovery of the overpayment of monthly rentals. Accordingly, at the time of the institution of the Complaint for Collection of Sums of Money by petitioner DPRC on December 23,2008, no claim for refund of overpaid monthly rentals had prescribed.

For the aforementioned reasons, the Court holds that the CA erred in issuing the assailed Decision and Resolution insofar as it modified the amount of respondent MIAA's liability. The Court finds that petitioner DPRC is entitled to the full amount of ₱9,593,179.87 plus legal interest at 12% per annum computed from the time of extrajudicial demand on July 27, 2006.

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[38] *Rollo*, p. 40.

[39] *Ledesma v. Court of Appeals*, 295 Phil. 1070, 1073-1074 (1993), citing *Overseas Bank of Manila v. Geraldez, et al*., 183 Phil. 493 (1979); emphasis supplied.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The Decision dated May 31, 2013 and Resolution dated November 29, 2013 promulgated by the Court of Appeals, Special Second Division and Former Special Second Division, respectively in CA-G.R. CV No. 98378 are **PARTIALLY REVERSED** and **SET ASIDE** insofar as the Court of Appeals reduced the total amount of liability of respondent Manila International Airport Authority to P3,839,643.05, plus legal interest at 12% per annum computed from the time of the extrajudicial demand on July 27, 2006.

Accordingly, the Decision dated August 15, 2011 of the Regional Trial Court, Pasay City, Branch 119 in Civil Case No. R-PSY-08-08963, as clarified in its Order dated November 17, 2011, is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 212607. March 27, 2019]

PUERTO DEL SOL PALAWAN, INC., *petitioner, vs.* **HON. KISSACK B. GABAEN, REGIONAL HEARING OFFICER, REGIONAL HEARING OFFICE IV, NATIONAL COMMISSION ON INDIGENOUS PEOPLES AND ANDREW ABIS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP);

NCIP ADMINISTRATIVE CIRCULAR NO. 1, SERIES OF 2003, OR THE RULES ON PLEADINGS, PRACTICE AND PROCEDURE BEFORE THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (2003 NCIP RULES OF PROCEDURE); ONLY ONE MOTION FOR RECONSIDERATION SHALL BE ENTERTAINED BEFORE THE REGIONAL HEARING OFFICE (RHO).— [T]he CA was incorrect in holding that a motion for reconsideration was an available remedy at the disposal of PDSPI in questioning NCIP RHO IVs Order dated January 14, 2013. According to NCIP Administrative Circular No. 1, Series of 2003, or the Rules on Pleadings, Practice and Procedure Before the National Commission on Indigenous Peoples (2003 NCIP Rules of Procedure), the Rules of Procedure governing actions before NCIP at the time of the instant controversy, only one motion for reconsideration shall be entertained before the RHO. In the instant case, PDSPI had already filed a Motion for Reconsideration dated December 10, 2012, barring it from filing another similar motion before the NCIP RHO IV.

2. **ID.; ID.; ID.; SECTION 97, RULE XVII OF THE 2003 NCIP RULES OF PROCEDURE; THE PROVISIONS OF THE RULES OF COURT SHALL APPLY IN AN ANALOGOUS AND SUPPLETORY CHARACTER WITH RESPECT TO CASES HEARD BEFORE THE NCIP; THE NCIP RHO IV'S ORDER DENYING DUE COURSE TO PETITIONER'S APPEAL CANNOT BE SUBJECT OF AN APPEAL BEFORE THE NCIP *EN BANC*.—** Neither can it be validly argued that the NCIP RHO IV's Order denying due course to PDSPI's Memorandum on Appeal should have first been appealed before the NCIP *En Banc*. According to Section 97, Rule XVII of the 2003 NCIP Rules of Procedure, the provisions of the Rules of Court shall apply in an analogous and suppletory character. Hence, following Section 1, Rule 41 of the Rules of Court, which states that an appeal may be taken only from a judgment or final order that completely disposes the case, and that an appeal may not be taken from an order disallowing an appeal, the NCIP RHO IV s Order denying due course to PDSPI's appeal cannot be subject of an appeal before the NCIP *En Banc*.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE FILING OF A PRIOR MOTION FOR**

RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILING OF A PETITION FOR *CERTIORARI*, EXCEPT IF THE ORDER CHALLENGED IS A PATENT NULLITY OR WHERE THE ISSUE RAISED IS ONE PURELY OF LAW; THE ISSUE ON THE CORRECT REGLEMENTARY PERIOD APPLICABLE WITH RESPECT TO APPEALS OF RHO DECISIONS BEFORE THE NCIP *EN BANC* IS A PURELY LEGAL ONE.— Although the general rule states that the filing of a prior motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, such rule is subject to well-recognized exceptions. Jurisprudence has held that the special civil action of *certiorari* will lie even without a party first availing itself of a motion for reconsideration if, among other exceptions, **the order challenged is a patent nullity** or where **the issue raised is one purely of law**. Moreover, while the general rule dictates that it must be first shown that all the administrative remedies prescribed by law have been exhausted before filing an extraordinary action for *certiorari* under the principle of exhaustion of administrative remedies, there are however exceptions to this rule, such as where **the issue is purely a legal one** or **where the controverted act is patently illegal**. Applying the foregoing to the instant case, the issue raised by PDSPI in the instant Petition, *i.e.*, the correct reglementary period applicable with respect to appeals of RHO decisions before the NCIP *En Banc*, is a purely legal one.

4. POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP); 2003 NCIP RULES OF PROCEDURE; A JUDGMENT RENDERED BY THE REGIONAL HEARING OFFICE (RHO) SHALL BECOME FINAL ONLY WHEN NO APPEAL IS MADE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF THE ASSAILED DECISION OR, WHEN A MOTION FOR RECONSIDERATION WAS FILED BY THE PARTY, WITHIN FIFTEEN (15) DAYS FROM THE RECEIPT OF THE ORDER DENYING SUCH MOTION FOR RECONSIDERATION; PETITIONER'S APPEAL WAS FILED WITHIN THE REGLEMENTARY PERIOD.— [T]he Court finds that the NCIP RHO IV's Order dated January 14, 2013 is patently in violation of the 2003 NCIP Rules of Procedure. Clearly and unequivocally, Section 46, Rule IX of

the 2003 NCIP Rules of Procedure states that a judgment rendered by the RHO shall become final only when no appeal is made within fifteen (15) days from receipt of the assailed decision or, when a motion for reconsideration was filed by the party, **within fifteen (15) days from the receipt of the order denying such motion for reconsideration** x x x. [P]DSPI received a copy of the assailed Decision dated November 22, 2012 issued by the NCIP RHO IV on **November 29, 2012**. Within fourteen (14) days from such date, or on December 13, 2012, a Motion for Reconsideration dated December 10, 2012 was filed by PDSPI on **December 12, 2012**. The said Motion was eventually denied by the NCIP RHO IV in its Order dated December 18, 2012. PDSPI received the NCIP RHO IV's Order dated December 18, 2012 denying its Motion for Reconsideration on **December 21, 2012**. With the fifteenth (15th) day from December 21, 2012, *i.e.*, January 5, 2013, falling on a Saturday, **according to Section 46, Rule IX of the 2003 NCIP Rules of Procedure, PDSPI had until Monday, January 7, 2013, to file its appeal. This is exactly what PDSPI did on such date**. Therefore, NCIP RHO IV committed a palpable and manifest error, violating the 2003 NCIP Rules of Procedure in denying PDSPI's appeal due course on the ground that the reglementary period for the filing of an appeal had already passed, based on the erroneous theory that PDSPI had only one (1) day remaining to file an appeal upon receipt of the NCIP RHO IV's Order denying its Motion for Reconsideration.

5. ID.; ID.; ID.; ID.; THE FRESH PERIOD RULE APPLIES IN AN APPEAL FROM A DECISION OF THE NCIP REGIONAL HEARING OFFICE (RHO).— [S]ection 97, Rule XVII of the 2003 NCIP Rules of Procedure states that the rules of procedure under the Rules of Court shall apply suppletorily with respect to cases heard before the NCIP. Under the Rules of Court, with the advent of the *Neypes Rule*, otherwise known as the *Fresh Period Rule*, parties who availed themselves of the remedy of motion for reconsideration are now allowed to file an appeal within fifteen days from the denial of that motion. The Court is not unaware that jurisprudence has held that the *Neypes Rule* strictly applies only with respect to judicial decisions and that the said rule does not firmly apply to administrative decisions. However, in the cases wherein the Court did not apply the *Neypes Rule* to administrative decisions, the specific

administrative rules of procedure applicable in such cases explicitly precluded the application of the *Fresh Period Rule*. x x x. In the instant case, there is no similar provision in the 2003 NCIP Rules of Procedure which states that in case the aggrieved party files a motion for reconsideration from an adverse decision of the RHO, the said party has only the remaining balance of the period within which to appeal, reckoned from receipt of notice of the RHO's decision denying the motion for reconsideration. Oppositely, Section 46, Rule IX of the 2003 NCIP Rules of Procedure clearly adopts the *Fresh Period Rule*, stating that, in a situation wherein a motion for reconsideration was filed, a judgment rendered by the RHO shall become final only when no appeal is made within fifteen (15) days from receipt of the order denying such motion for reconsideration. **By issuing an Order that plainly and unmistakably goes against the above-stated rule, the Court finds that NCIP, RHO IV gravely abused its discretion.**

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE DISMISSAL OF APPEALS PURELY ON TECHNICAL GROUNDS IS FROWNED UPON AND PROCEDURAL RULES OUGHT NOT TO BE APPLIED IN A VERY RIGID, TECHNICAL SENSE, FOR THEY ARE ADOPTED TO HELP SECURE, NOT OVERRIDE, SUBSTANTIAL JUSTICE, AND THEREBY DEFEAT THEIR VERY AIMS.— [T]he Court stresses that the dismissal of appeals purely on technical grounds is frowned upon and procedural rules ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims. Indeed, while the right to appeal is merely statutory and not a natural right, the courts, as well as administrative bodies, are nonetheless enjoined to respect the minimum period laid down by the applicable Rules within which to allow an appeal. All litigants, to the extent allowed by the Rules, must be afforded the fullest opportunity for the adjudication of their cases on the merits.

APPEARANCES OF COUNSEL

Edgar A. Pacis for petitioner.
Josefina Rodriguez-Augusti for respondent Andrew Abis.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Puerto Del Sol Palawan, Inc. (PDSPI) against public respondent Hon. Kissack B. Gabaen (Gabaen), in her capacity as Regional Hearing Officer of the Regional Hearing Office IV (RHO IV), National Commission on Indigenous Peoples (NCIP) and private respondent Andrew Abis (Abis), assailing the Resolution[2] dated April 3, 2013 and Resolution[3] dated May 20, 2014 (collectively, the assailed Resolutions) promulgated by the Court of Appeals (CA)[4] in CA-G.R. SP No. 129036, which denied petitioner PDSPI's Petition for *Certiorari*[5] (*Certiorari* Petition) dated March 4, 2013.

The Facts and Antecedent Proceedings

As culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

On August 15, 2011, Abis filed with the NCIP RHO IV a Complaint[6] entitled "*Andrew Abis v. Puerto Del Sol Resort/ Michael Bachelor*" for "Unauthorized and Unlawful Intrusion with Prayer for TRO and Permanent Injunction with Damages." The case was docketed as NCIP Case No. 038-RIV-11.

In the said Complaint, Abis alleged that he and his predecessors-in-interest, who are all members of the Cuyunen

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[1] *Rollo*, pp. 9 to 24-A.

[2] *Id*. at 26-28. Penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro, concurring.

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

[4] Second Division and Former Second Division.

[5] *Rollo*, pp. 77-85.

[6] *Id*. at 35-37.

Tribe, have been occupying and cultivating property located in Sitio Orbin, Brgy. Concepcion, Busuanga, Palawan as their ancestral land since time immemorial. It is claimed that PDSPI, through Michael Batchelor, entered the Cuyunen ancestral lands, put up a "no trespassing, private property" sign therein, installed armed security guards, destroyed crops and plants planted by the tribe, and occupied a portion of the Cuyunen ancestral lands. The Puerto del Sol Resort was subsequently developed in the Cuyunen ancestral lands.[7]

Finding the petition for Temporary Restraining Order (TRO) sufficient in form and substance, a TRO was issued by the NCIP RHO IV on August 22, 2011.[8]

On September 8, 2011, PDSPI filed an Answer,[9] denying the allegations of Abis. PDSPI maintained that the Puerto del Sol Resort is not in conflict and does not overlap with any ancestral domain.

On November 22, 2012, after assessing all the facts and evidence adduced by both parties, the NCIP RHO IV, through Gabaen, rendered its Decision[10] in favor of Abis, holding that the land wherein the Puerto del Sol Resort is situated in the ancestral lands of the Cuyunen Tribe. Further, the NCIP RHO IV found that PDSPI unlawfully intruded into the ancestral domain of the Cuyunen Tribe.

PDSPI received a copy of the Decision dated November 22, 2012 on **November 29, 2012**.[11]

A Motion for Reconsideration[12] dated December 10, 2012 was filed by PDSPI **fourteen (14) days from November 29,**

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[7] *Id*. at 35.

[8] *Id*. at 53.

[9] *Id.* at 38-42.

[10] *Id*. at 43-54.

[11] *Id*. at 55.

[12] *Id*. at 55-57.

2012 or on December 13, 2012, which was eventually denied by the NCIP RHO IV in its Order[13] dated December 18, 2012.

PDSPI received the NCIP RHO IV's Order denying its Motion for Reconsideration on **December 21, 2012**.[14]

Unsatisfied, PDSPI filed a Memorandum on Appeal[15] with the NCIP RHO IV on Monday, **January 7, 2013**, considering that the fifteenth (15th) day from December 21, 2012, *i.e.*, January 5, 2013, fell on a Saturday.

In its **Order**[16] **dated January 14, 2013**, the NCIP RHO IV, through Gabaen, denied due course the Memorandum on Appeal of PDSPI for being filed beyond the reglementary period.

According to the NCIP RHO IV, since PDSPI filed its Motion for Reconsideration a day before the end of the reglementary period to file an appeal of the NCIP RHO IV s Decision, PDSPI had only one (1) day remaining to file an appeal upon receipt of the NCIP RHO IV's Order denying its Motion for Reconsideration. Simply stated, according to the NCIP RHO IV, PDSPI was not granted a fresh period to appeal after it received a copy of the NCIP RHO IV's denial of its Motion for Reconsideration.

Feeling aggrieved, PDSPI filed its Petition for *Certiorari* dated March 4, 2013 before the CA, docketed as CA-G.R. SP No. 129036. PDSPI alleged that grave abuse of discretion was extant in the issuance of the NCIP RHO IV s Order dated January 14, 2013.

The Ruling of the CA

In its assailed Resolution, the CA denied outright PDSPI's *Certiorari* Petition. The dispositive portion of the assailed Resolution of the CA reads:

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[13] *Id*. at 58-59.

[14] *Id*. at 73.

[15] *Id*. at 60-72.

[16] *Id*. at 73-76.

WHEREFORE, foregoing considered, the instant petition is **DISMISSED**outright.

SO ORDERED.[17]

The CA denied outright the *Certiorari* Petition of PDSPI, invoking the doctrine of exhaustion of administrative remedies. According to the CA, instead of filing a petition for *certiorari*, PDSPI should have first filed a motion for reconsideration of the NCIP RHO IV's Order dismissing outright its Memorandum on Appeal. Hence, the CA held that there was a plain, adequate, and speedy remedy available to PDSPI that precluded the institution of a *Certiorari* Petition.[18]

In addition, the CA pointed out several formal defects of the *Certiorari* Petition, *i.e.*, (1) failure of PDSPI's counsel to indicate the date of issuance of his MCLE compliance number, and (2) defect in the *jurat*> of the Verification and Certification of Non-Forum Shopping.[19]

PDSPI filed a Motion for Reconsideration[20] dated April 25, 2013, wherein PDSPI attached a photocopy of its counsel's MCLE certification,[21] as well as an affidavit[22] executed by its corporate representative, Ms. Edna V. Blach, affirming and authenticating her signature in the *jurat* of the Verification and Certification of Non-Forum Shopping.

The CA, in its assailed Resolution, denied PDSPI's Motion for Reconsideration, holding that, while PDSPI was able to cure the formal defects of its *Certiorari* Petition, the supposed violation of the doctrine of exhaustion of administrative remedies still warranted the dismissal of the *Certiorari* Petition.[23]

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

[18] *Id*. at 27.

[19] *Id*. at 27.

[20] *Id*. at 86-95.

[21] *Id*. at 93.

[22] *Id*. at 92.

[23] *Id*. at 31.

Hence, the instant Petition.

Abis filed his Comment[24] dated October 10, 2014, to which PDSPI responded with his Reply to Comment[25] dated January 26, 2017.

Issue

The central question to be resolved by the Court is whether or not the CA was correct in invoking the doctrine of exhaustion of administrative remedies to deny PDSPI's *Certiorari* Petition assailing the NCIP RHO IV's Order dated January 14, 2013.

The Court's Ruling

The instant Petition is meritorious. The Court rules in favor of PDSPI.

In the main, the CA posits the view that, since PDSPI supposedly had the available remedy of filing a motion for reconsideration against the NCIP RHO IV's Order dismissing outright PDSPI's Memorandum on Appeal, the *Certiorari* Petition could not prosper as there was still a plain, adequate, and speedy remedy at the disposal of PDSPI, invoking the doctrine of exhaustion of administrative remedies.

First and foremost, the CA was incorrect in holding that a motion for reconsideration was an available remedy at the disposal of PDSPI in questioning NCIP RHO IVs Order dated January 14, 2013.

According to NCIP Administrative Circular No. 1, Series of 2003, or the Rules on Pleadings, Practice and Procedure Before the National Commission on Indigenous Peoples (2003 NCIP Rules of Procedure), the Rules of Procedure governing actions before NCIP at the time of the instant controversy, only one motion for reconsideration shall be entertained before the RHO.[26] In the instant case, PDSPI had already filed a Motion for

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[24] *Id*. at 104-108.

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

[26] 2003 NCIP Rules of Procedure, Sec. 45.

Reconsideration dated December 10, 2012, barring it from filing another similar motion before the NCIP RHO IV.

Neither can it be validly argued that the NCIP RHO IV s Order denying due course to PDSPI's Memorandum on Appeal should have first been appealed before the NCIP *En Banc*.

According to Section 97, Rule XVII of the 2003 NCIP Rules of Procedure, the provisions of the Rules of Court shall apply in an analogous and suppletory character. Hence, following Section 1, Rule 41 of the Rules of Court, which states that an appeal may be taken only from a judgment or final order that completely disposes the case, and that an appeal may not be taken from an order disallowing an appeal, the NCIP RHO IV s Order denying due course to PDSPI's appeal cannot be subject of an appeal before the NCIP *En Banc*.

In any case, although the general rule states that the filing of a prior motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, such rule is subject to well-recognized exceptions. Jurisprudence has held that the special civil action of *certiorari* will lie even without a party first availing itself of a motion for reconsideration if, among other exceptions, **the order challenged is a patent nullity** or where **the issue raised is one purely of law**.[27]

Moreover, while the general rule dictates that it must be first shown that all the administrative remedies prescribed by law have been exhausted before filing an extraordinary action for *certiorari* under the principle of exhaustion of administrative remedies, there are however exceptions to this rule, such as where **the issue is purely a legal one or where the controverted act is patently illegal**.[28]

Applying the foregoing to the instant case, the issue raised by PDSPI in the instant Petition, *i.e.*, the correct reglementary period applicable with respect to appeals of RHO decisions before the NCIP *En Banc*, is a purely legal one.

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[27] *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010).

[28] *Industrial Power Sales, Inc. v. Sinsuat*, 243 Phil. 184, 185 (1988).

Furthermore, the Court finds that the NCIP RHO IV's Order dated January 14, 2013 is patently in violation of the 2003 NCIP Rules of Procedure.

Clearly and unequivocally, Section 46, Rule IX of the 2003 NCIP Rules of Procedure states that a judgment rendered by the RHO shall become final only when no appeal is made within fifteen (15) days from receipt of the assailed decision or, when a motion for reconsideration was filed by the party, **within fifteen (15) days from the receipt of the order denying such motion for reconsideration**:

Section 46. Finality of Judgment. — A judgment rendered by the RHO shall become final upon the lapse of fifteen (15) days from receipt of the decision, award or **order denying the motion for reconsideration**, and there being no appeal made. If the 15th day falls on a Saturday, Sunday or a Holiday, the last day shall be the next working day.[29]

To recall, PDSPI received a copy of the assailed Decision dated November 22, 2012 issued by the NCIP RHO IV on **November 29, 2012**. Within fourteen (14) days from such date, or on December 13, 2012, a Motion for Reconsideration dated December 10, 2012 was filed by PDSPI on **December 12, 2012**. The said Motion was eventually denied by the NCIP RHO IV in its Order dated December 18, 2012. PDSPI received the NCIP RHO IV's Order dated December 18, 2012 denying its Motion for Reconsideration on **December 21, 2012**.

With the fifteenth (15th) day from December 21, 2012, *i.e.*, January 5, 2013, falling on a Saturday, **according to Section 46, Rule IX of the 2003 NCIP Rules of Procedure, PDSPI had until Monday, January 7, 2013, to file its appeal. This is exactly what PDSPI did on such date**.

Therefore, NCIP RHO IV committed a palpable and manifest error, violating the 2003 NCIP Rules of Procedure in denying PDSPI's appeal due course on the ground that the reglementary period for the filing of an appeal had already passed, based on

[29] Emphasis and underscoring supplied.

the erroneous theory that PDSPI had only one (1) day remaining to file an appeal upon receipt of the NCIP RHO IV's Order denying its Motion for Reconsideration.

To reiterate, Section 97, Rule XVII of the 2003 NCIP Rules of Procedure states that the rules of procedure under the Rules of Court shall apply suppletorily with respect to cases heard before the NCIP. Under the Rules of Court, with the advent of the *Neypes Rule*, otherwise known as the *Fresh Period Rule*, parties who availed themselves of the remedy of motion for reconsideration are now allowed to file an appeal within fifteen days from the denial of that motion.[30]

The Court is not unaware that jurisprudence has held that the *Neypes Rule* strictly applies only with respect to judicial decisions and that the said rule does not firmly apply to administrative decisions.

However, in the cases wherein the Court did not apply the *Neypes Rule* to administrative decisions, the specific administrative rules of procedure applicable in such cases explicitly precluded the application of the *Fresh Period Rule*.

For instance, in *Panolino v. Tajala*,[31] which involved an appeal of a decision of a Regional Executive Director of the Department of Environment and Natural Resources (DENR) before the DENR Secretary, the Court held that "Rule 41, Section 3 of the Rules of Court, as clarified in *Neypes*, being inconsistent with Section 1 of Administrative Order Nof 87, Series of 1990, it may not apply to the case of petitioner whose motion for reconsideration was *denied*."[32] The Court did not apply the *Fresh Period Rule* because, according to Administrative Order No. 87, Series of 1990, which was the applicable rule of procedure in that case, "if a motion for reconsideration of the decision/order of the Regional Office is filed and such motion for reconsideration is

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[30] *Active Realty and Development Corp. v. Fernandez*, 562 Phil. 707, 721 (2007).

[31] 636 Phil. 313 (2010)

[32] *Id*. at 319-320.

denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial."[33]

As another example, in *San Lorenzo Ruiz Builders and Developers Group, Inc. v. Bayang*[34] the Court did not apply the Fresh Period Rule in an appeal of a decision of the Housing and Land Use Regulatory Board (HLURB) before the Office of the President (OP) because according to the applicable rule therein, *i.e.*, Section 2, Rule XXI of HLURB Resolution No. 765, Series of 2004, in relation to Paragraph 2, Section 1 of Administrative Order No. 18, Series of 1987, "in case the aggrieved party files a motion for reconsideration from an adverse decision of any agency/office, the said party has the only remaining balance of the prescriptive period within which to appeal, reckoned from receipt of notice of the decision denying his/her motion for reconsideration."[35]

Similarly, in *Jocson v. San Miguel*[36] the Fresh Period Rule was also not applied in an appeal from a decision of the Provincial Adjudicator to the Department of Agrarian Reform Adjudication Board (DARAB) because under the 2003 DARAB Rules of Procedure, "[t]he filing of a Motion for Reconsideration shall interrupt the period to perfect an appeal. If the motion is denied, the aggrieved party shall have the remaining period within which to perfect his appeal. Said period shall not be less than five (5) days in any event, reckoned from the receipt of the notice of denial."[37]

In the instant case, there is no similar provision in the 2003 NCIP Rules of Procedure which states that in case the aggrieved party files a motion for reconsideration from an adverse decision of the RHO, the said party has only the remaining balance of

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[33] Administrative Order No. 87, Sec. 1(b) (1990).

[34] 758 Phil. 368 (2015).

[35] *Id*. at 374.

[36] 783 Phil. 176 (2016).

[37] 2003 DARAB Rules of Procedure, Rule X, Sec. 12.

the period within which to appeal, reckoned from receipt of notice of the RHO's decision denying the motion for reconsideration.

Oppositely, Section 46, Rule IX of the 2003 NCIP Rules of Procedure clearly adopts the *Fresh Period Rule*, stating that, in a situation wherein a motion for reconsideration was filed, a judgment rendered by the RHO shall become final only when no appeal is made within fifteen (15) days from receipt of the order denying such motion for reconsideration. **By issuing an Order that plainly and unmistakably goes against the above-stated rule, the Court finds that NCIP, RHO IV gravely abused its discretion.**

As a final note, the Court stresses that the dismissal of appeals purely on technical grounds is frowned upon and procedural rules ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims.[38] Indeed, while the right to appeal is merely statutory and not a natural right, the courts, as well as administrative bodies, are nonetheless enjoined to respect the minimum period laid down by the applicable Rules within which to allow an appeal. All litigants, to the extent allowed by the Rules, must be afforded the fullest opportunity for the adjudication of their cases on the merits.[39]

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The Resolutions dated April 3, 2013 and May 20, 2014 promulgated by the Court of Appeals, Second Division and Former Second Division in CA-G.R. SP No. 129036 are **REVERSED**and **SET ASIDE**.

Accordingly, the Order dated January 14, 2013 issued by the National Commission on Indigenous Peoples, Regional Hearing Office IV is likewise **REVERSED** and **SET ASIDE**. The National Commission on Indigenous Peoples, Regional Hearing Office IV is hereby **ORDERED** to give due course to

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[38] *A-One Feeds, Inc. v. Court of Appeals*, 188 Phil. 577, 580 (1980).

[39] *Pacific Life Assurance Corp. v. Sison*, 359 Phil. 332, 339 (1998).

petitioner Puerto Del Sol Palawan, Inc.'s Memorandum on Appeal dated January 4, 2012.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 213199. March 27, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ESPERANZA BRIONES-BLANCO, ROSARIO R. BRIONES, MARIA CELSA BRIONES, EMMA BRIONES-MARCAIDA, MILAGROS BRIONES-ASPRER, CARMELITA BRIONES-CABUNDOC, REBECCA BRIONES-BUNALOS, FERDINAND R. BRIONES, LUNA C. BRIONES, MARILOU BRIONES-CHIONGBIAN, JOSE C. BRIONES, JR., MANUEL C. BRIONES II, EVELYN G. BRIONES, MARIA CELESTINA G. BRIONES, MARIA CRISTITA G. BRIONES, MARIA ANTONETTE G. BRIONES, MANUEL ANTONIO G. BRIONES, MARIANO G. BRIONES, ALLAN G. BRIONES AND JOCELYN B. AVILA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) OR REPUBLIC ACT No. 6657; JUST COMPENSATION; THE EQUIVALENT TO BE GIVEN FOR THE PROPERTY TO BE TAKEN SHALL BE REAL, SUBSTANTIAL, FULL AND AMPLE; THE DETERMINATION OF JUST COMPENSATION IS

PRINCIPALLY A JUDICIAL FUNCTION.— The Court, in *Republic v. Spouses Tomas C. Legaspi and Ruperta V. Esquito*, has defined just compensation as: x x x [J]ust 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 determination of just compensation is principally a judicial function.

2. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM (DAR) ADMINISTRATIVE ORDER (AO) No. 5, SERIES OF 1998 (DAR FORMULA No. 5); FORMULA FOR THE VALUATION OF LANDS COVERED BY VOLUNTARY OFFER TO SELL OR COMPULSORY ACQUISITION; THE COURTS ARE NOT CONFINED TO RIGOROUSLY AND FAITHFULLY COMPLY WITH THE DAR FORMULA No. 5, AS THEY MAY RELAX THE APPLICATION OF THE DAR FORMULA, IF WARRANTED BY THE CIRCUMSTANCES OF THE CASE AND PROVIDED THE COURTS EXPLAIN THEIR DEVIATION FROM THE FACTORS OR FORMULA. — Relevant also is DAR AO No. 5 which provides for a formula for the valuation of lands covered by voluntary offer to sell or compulsory acquisition, to wit: LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) Where: LV = Land Value CNI = Capitalized Net Income CS = Comparable Sales MV = Market Value per Tax Declaration. Although ushered by the foregoing standards, courts are not confined to rigorously and faithfully comply with the same. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. The courts may relax the application of the DAR formula, if warranted by the circumstances of the case and provided the RTC explains its deviation from the factors or formula above-mentioned. Thus, the "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic DAR formula, and the "justness" of the components (and their weights) that flow into such formula, are all matters for the courts to decide.

3. ID.; ID.; ID.; ID.; IF THE REGIONAL TRIAL COURT, ACTING AS SPECIAL AGRARIAN COURT, FINDS THE VALUATION GUIDELINES OF RA No. 6657 AND FORMULA FOUND IN DAR No. 5 INAPPLICABLE, IT MUST CLEARLY EXPLAIN THE REASONS FOR DEVIATING THEREFROM AND FOR USING OTHER FACTORS OR FORMULA IN ARRIVING AT THE REASONABLE JUST COMPENSATION FOR THE PROPERTY EXPROPRIATED.— It is clear that the circumstances of each case would determine as to whether the RTC would deviate from the guidelines set forth; and reasons for the same must be clearly set forth. In the case of *Department of Agrarian Reform v. Galle*, this Court refused to strictly apply the formula found in DAR AO No. 5 because to do so would go against the fundamental principle in eminent domain that just compensation shall be determined as of the time of taking. In this case, the RTC veered away from the guidelines. x x x x x x [T]he RTC proceeded to set the amount of just compensation to ₱4.00 per square meter as it was determined to be just, reasonable, and fair. In setting the valuation at ₱4.00 per square meter, it bears stressing that the RTC merely made an estimate as these valuations were based in the prevailing prices in 2006, whereas the subject land was taken in 2000. Moreover, there was neither explanation as to why the RTC opted to deviate from the rules nor stated circumstances which would warrant the same. All the RTC did was to consider the rules and concluded that just compensation should be the value above-stated. Jurisprudence is replete with cases emphasizing the duty of the RTC to explain the reasons for departing from the formula created by DAR. In the case of *Spouses Mercado v. Land Bank of the Philippines*, this Court reiterated that if the RTC finds these guidelines inapplicable, it must clearly explain the reasons for deviating therefrom and for using other factors or formula in arriving at the reasonable just compensation for the property expropriated. So too is the case of *Alfonso v. Land Bank of the Philippines*, wherein this Court reminded that a reasoned explanation from the SAC to justify its deviation from the guidelines is indispensable and *Land Bank of the Philippines v. Rural Bank of Hermosa (Bataan), Inc.*, which deemed improper the complete disregard of the DAR formula and Section 17 of RA 6657 without stating their inapplicability in the case.

4. ID.; ID.; ID.; ID.; UNTIL AND UNLESS DECLARED INVALID, THE DAR FORMULAS PARTAKE OF THE NATURE OF STATUTES, WHICH UNDER THE 2009 AMENDMENT BECAME LAW ITSELF, AND THUS HAVE IN THEIR FAVOR THE PRESUMPTION OF LEGALITY, SUCH THAT COURTS SHALL CONSIDER, AND NOT DISREGARD, THESE FORMULAS IN THE DETERMINATION OF JUST COMPENSATION FOR PROPERTIES COVERED BY THE CARP. WHEN FACED WITH SITUATIONS WHICH DO NOT WARRANT THE FORMULA'S STRICT APPLICATION, COURTS MAY, IN THE EXERCISE OF THEIR JUDICIAL DISCRETION, RELAX THE FORMULA'S APPLICATION TO FIT THE FACTUAL SITUATIONS BEFORE THEM, SUBJECT ONLY TO THE CONDITION THAT THEY CLEARLY EXPLAIN IN THEIR DECISION THEIR REASONS FOR THE DEVIATION UNDERTAKEN.— While the RTC, acting as Special Agrarian Courts, exercises judicial prerogative in determining and fixing just compensation, the duty to abide by the rules, especially so when the same are enacted to comply with the objectives of agrarian reform, cannot simply be disregarded. The case of *Alfonso* illuminates in this wise: x x x The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. x x x As the RTC failed to comply with the foregoing pronouncement, the remand of the case is deemed proper. More so, when both parties failed to present satisfactory evidence of the value of the property as of the time

of its taking; and that this Court, as we are not a trier of facts, cannot receive new evidence for prompt disposition of the case.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner *Land Bank of the Philippines.*

Hilario C. Baril for respondents.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated November 19, 2013 and Resolution[3] dated June 20, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 03346-MIN, which affirmed the ruling of the Regional Trial Court of Ozamis City, Branch 15 (RTC), sitting as a Special Agrarian Court (SAC).

Relevant Antecedents

The case stemmed from a petition for judicial determination of just compensation.

Esperanza Briones-Blanco, Rosario R. Briones, Maria Celsa Briones, Emma Briones-Marcaida, Milagros Briones-Asprer, Carmelita Briones-Cabundoc, Rebecca Briones-Bunalos, Ferdinand R. Briones, Luna C. Briones, Marilou Briones Chiongbian, Jose C. Briones, Jr., Manuel C. Briones II, Evelyn G. Briones, Maria Celestina G. Briones, Maria Cristita G. Briones, Maria Antonette G. Briones, Manuel Antonio G. Briones, Mariano G. Briones, Allan G. Briones and Jocelyn B. Avila (respondents) were the co-owners of an agricultural land

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[1] *Rollo*, pp. 13-43.

[2] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Edgardo T. Lloren and Edward B. Contreras, concurring; *id.* at 49-57.

[3] *Id.* at 60-62.

(subject land), covered by Transfer Certificate of Title (TCT) No. T-2583, with an area of more or less 55.9729 hectares situated at Barangay Bueno Voluntad, Municipality of Plaridel, Misamis Occidental.[4]

The subject land was compulsorily placed by the Department of Agrarian Reform (DAR) under the coverage of the Comprehensive Agrarian Reform Law (CARL) or Republic Act (RA) No. 6657.[5]

Under the valuation guidelines of RA No. 6657 and DAR Administrative Order (AO) No. 5, series of 1998, DAR and Land Bank of the Philippines (petitioner) valuated the subject land at P18,284.28 per hectare for the 53.099 hectares of coco land portion and P8,738.50 per hectare for the 2.8738 hectares of rice land portion. Said valuation translates to an average price of about P1.80 per square meter.[6]

Disputing said findings, respondents filed a petition for determination of just compensation of the subject land.[7]

In its Answer, petitioner averred that the valuation was conducted pursuant to, and in strict compliance with the provisions of RA No. 6657 and pertinent DAR Administrative Order and Guidelines. Attached in its Answer were true copies of the Field Investigation Report and Claims Valuation Processing Form.[8]

Subsequently, a Board of Commissioners was constituted for the purpose of assisting the court in fixing the amount of just compensation. Atty. Rico Tan, as chairman, and three commissioners, namely, James Butalid, Engr. Leo Catane and Engr. Jacinto Ricardo were appointed. Instead of submitting a unified report, the members of the Board filed their respective

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[4] *Id.* at 50.

[5] *Id*.

[6] *Id*.

[7] *Id* at 51.

[8] *Id*.

reports which made different valuations: Atty. Rico Tan pegged the value of the subject land at ₱30,000.00 per hectare; James Butalid valued the same at ₱8,000.00 per hectare, while Engr. Leo Catane pegged the same at P18,284.94 per hectare for the coco land, and P8,738.50 per hectare for the rice land, mirroring those of the DAR and petitioner.[9]

In a Decision[10] dated September 18, 2009, the RTC fixed the amount of just compensation at ₱4.00 per square meter or ₱40,000.00 per hectare. In making such valuation, the RTC found a median on the figures arrived at by the Agrarian Reform Operations Center, Cuervo Appraisers, Inc., and local real estate brokers. The *fallo* thereof reads:

WHEREFORE, judgment is hereby rendered fixing the amount of just compensation of petitioners' land at [PhP]4.00 per square meter or [PhP]40,000 per hectare and thereby ordering respondent Land Bank of the Philippines to pay to the petitioners the just compensation of their land as hereto fixed in the amount of [PhP]4.00 per square meter or [PhP]40,000.00 per hectare.

SO ORDERED.

Aggrieved, petitioner filed a motion for reconsideration, which was denied in an Order dated November 24, 2009.[11]

Still seeking relief, petitioner elevated the matter before the CA via a petition for review under Section 60 of RA No. 6657.[12] Petitioner essentially questioned the valuation made by the RTC.

In a Decision[13] dated November 19, 2013, the CA dismissed the petition. In affirming the ruling of the RTC, the CA held that strict adherence to the formula provided by DAR AO No. 5 is not required, as relevant evidence of the parties and

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[9] *Id*.

[10] Penned by Executive Judge Edmundo P. Pintac; *id*. at 143-146.

[11] *Id*. at 50.

[12] *Id*.

[13] *Supra* note 2.

reasonable factors may be used to determine just compensation, thus:

WHEREFORE, the instant petition is **DISMISSED** for lack of merit. The 18 September 2009 Decision of the Regional Trial Court (RTC) of Ozamis City, Branch 15, sitting as a Special Agrarian Court (SAC) is hereby **AFFIRMED**.

SO ORDERED.[14]

A motion for reconsideration filed by petitioner was likewise denied in a Resolution[15] dated June 20, 2014.

Hence, this instant petition.

The Issue

In the main, the issue is whether or not, the disregard of the DAR AO No. 5 as guidelines for determining just compensation, is proper in this case.

This Court's Ruling

The Court, in *Republic v. Spouses Tomas C. Legaspi and Ruperta V. Esquito*,[16] has defined just compensation as:

> x x x [J]ust 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." (Citation omitted)

The determination of just compensation is principally a judicial function.[17] For guidance of the courts, Section 17 of RA No. 6657 provides:

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[14] *Id*. at 56-57.

[15] *Supra* note 3.

[16] G.R. No. 221995, October 3, 2018.

[17] *Department of Agrarian Reform v. Beriña*, 738 Phil. 605, 619 (2014).

Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Relevant also is DAR AO No. 5 which provides for a formula for the valuation of lands covered by voluntary offer to sell or compulsory acquisition, to wit:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration[18]

Although ushered by the foregoing standards, courts are not confined to rigorously and faithfully comply with the same. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation.[19] The courts may relax the application of the DAR formula, if warranted by the circumstances of the case and provided the RTC explains its deviation from the factors or formula above-mentioned.[20] Thus, the "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic DAR formula, and the "justness" of the components (and their weights) that flow into such formula, are all matters for the courts to decide.[21]

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[18] *Spouses Mercado v. Land Bank of the Philippines*, 760 Phil. 846, 858 (2015).

[19] *Id*.

[20] *Spouses Mercado v. Land Bank of the Philippines*, 760 Phil. 846, 856-857 (2015).

[21] *Land Bank of the Philippines v. Rural Bank of Hermosa (Bataan), Inc.*, G.R. No. 181953, July 25, 2017, 832 SCRA 78, 91.

It is clear that the circumstances of each case would determine as to whether the RTC would deviate from the guidelines set forth; and reasons for the same must be clearly set forth. In the case of *Department of Agrarian Reform v. Galle*,[22] this Court refused to strictly apply the formula found in DAR AO No. 5 because to do so would go against the fundamental principle in eminent domain that just compensation shall be determined as of the time of taking.

In this case, the RTC veered away from the guidelines. It based its valuation on the following: (a) valuations of the Agrarian Reforms Operations Center, Region 10 which pegged the price at ₱1.40 per square meter on coco land and ₱0.50 on rice land; (b) Cuervo Appraisers, Inc, which based its valuation on the Bank Appraiser of the Rural Bank of Oroquieta City, which valued the subject land at ₱10.00 per square meter and the Bureau of Internal Revenue, which set the value at ₱9.00 per square meter; and (c) local real estate brokers, which made a valuation of ₱7.00 to ₱8.00 per square meter. After which, the RTC proceeded to set the amount of just compensation to ₱4.00 per square meter as it was determined to be just, reasonable, and fair.

In setting the valuation at ₱4.00 per square meter, it bears stressing that the RTC merely made an estimate as these valuations were based in the prevailing prices in 2006, whereas the subject land was taken in 2000.

Moreover, there was neither explanation as to why the RTC opted to deviate from the rules nor stated circumstances which would warrant the same. All the RTC did was to consider the rules and concluded that just compensation should be the value above-stated.

Jurisprudence is replete with cases emphasizing the duty of the RTC to explain the reasons for departing from the formula created by DAR. In the case of *Spouses Mercado v. Land Bank of the Philippines*, this Court reiterated that if the RTC finds these guidelines inapplicable, it must clearly explain the reasons

[22] 741 Phil. 1 (2014).

for deviating therefrom and for using other factors or formula in arriving at the reasonable just compensation for the property expropriated.[23] So too is the case of *Alfonso v. Land Bank of the Philippines*,[24] wherein this Court reminded that a reasoned explanation from the SAC to justify its deviation from the guidelines is indispensable and *Land Bank of the Philippines v. Rural Bank of Hermosa (Bataan), Inc.*,[25] which deemed improper the complete disregard of the DAR formula and Section 17 of RA 6657 without stating their inapplicability in the case.

While the RTC, acting as Special Agrarian Courts, exercises judicial prerogative in determining and fixing just compensation, the duty to abide by the rules, especially so when the same are enacted to comply with the objectives of agrarian reform, cannot simply be disregarded. The case of *Alfonso* illuminates in this wise:

> x x x The factors listed under Section 17of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. x x x[26]

As the RTC failed to comply with the foregoing pronouncement, the remand of the case is deemed proper. More

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[23] *Supra* note 19, at 861.

[24] 801 Phil. 217, 286 (2016)

[25] *Supra* note 21.

[26] *Supra* note 24, at 282.

so, when both parties failed to present satisfactory evidence of the value of the property as of the time of its taking; and that this Court, as we are not a trier of facts, cannot receive new evidence for prompt disposition of the case.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The Decision dated November 19, 2013 and the Resolution dated June 20, 2014 of the Court of Appeals in CA-G.R. SP No. 03346-MIN are **REVERSED and SET ASIDE**. Accordingly, the case is **REMANDED** to the court of origin for proper determination of just compensation. **SO ORDERED.**

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 213666. March 27, 2019]

VICTORIA[*] T. FAJARDO, *petitioner, vs.* **BELEN CUA-MALATE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN AN APPEAL BY *CERTIORARI* UNDER RULE 45, THE COURT DOES NOT PASS UPON QUESTIONS OF FACT AS THE FACTUAL FINDINGS OF THE TRIAL AND APPELLATE COURTS ARE BINDING ON THE COURT.— [I]t must be stressed that, as a rule, in an appeal by *certiorari* under Rule 45, the Court does not pass upon questions of fact as the factual findings of the trial and appellate

[*] Also referred to as "Vicoria" in some parts of the *rollo*.

courts are binding on the Court. The Court is not a trier of facts. Hence, to disprove the factual findings of the RTC and CA that there was already a valid and binding agreement that was entered into by the parties during the mediation conferences before the PMC, it was incumbent on the part of petitioner Victoria to provide clear and convincing evidence to substantiate her claim that she never reached an agreement with her siblings as to the partition of their late mother's estate during the mediation conferences. However, the Court finds that petitioner Victoria failed to do so. Aside from her mere self-serving statements, no other evidence was provided to support her claim. x x x. x x x [A]s stressed by the RTC and CA, the proceedings during the mediation conferences indubitably show that petitioner Victoria and her siblings actually came to an agreement as to the partition of the estate of Ceferina. Hence, that an oral partition has been entered into by the parties is a factual finding that must be left undisturbed.

2. ID.; SPECIAL CIVIL ACTIONS; PARTITION; AN ORAL PARTITION IS VALID AND BINDING UPON THE HEIRS.— The fact that petitioner Victoria failed to sign the written document bearing the terms of the parties' agreement is of no moment. As explicitly held in *Vda. de Reyes v. Court of Appeals*, **an oral partition may be valid and binding upon the heirs**; there is **no law that requires partition among heirs to be in writing to be valid**. Citing *Hernandez v. Andal*, the Court in the above-mentioned case explained that under Rule 74, Section 1 of the Rules of Court, "there is nothing in said section from which it can be inferred that a writing or other formality is an essential requisite to the validity of the partition. Accordingly, an oral partition is valid." The Court further added that the partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of real property because it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right of property by the heir renouncing in favor of another heir accepting and receiving the inheritance. Hence, **an oral partition is not covered by the Statute of Frauds**. Therefore, even if the document titled Compromise Agreement was not signed by petitioner Victoria, there was already an oral partition entered into by the parties that bound all of the siblings. The written agreement only served to reduce into writing for the

convenience of the parties the terms of the agreement already entered into during the mediation conferences. In fact, the Court has likewise previously held that, "independent and in spite of the statute of frauds, **courts of equity have enforced oral partition when it has been completely or partly performed**." In the instant case, there is no refutation on the part of petitioner Victoria as to respondent Belen's assertion that the terms of the Compromise Agreement have already been partially performed by the parties.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Victoria T. Fajardo (petitioner Victoria) against respondent Belen Cua-Malate (respondent Belen), assailing the Decision[2] dated October 23, 2013 (assailed Decision) and Resolution[3] dated July 21, 2014 (assailed Resolution) rendered by the Court of Appeals, Thirteenth Division (CA) in CA-G.R. CV No. 95692.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:[4]

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[1] *Rollo*, pp. 13-30.

[2] *Id*. at 32-51; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias concurring.

[3] *Id*. at 53-54; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring.

[4] *Id*. at 33-44.

On December 1, 2003, respondent Belen filed **an Amended Complaint for Partition and Accounting with Damages** (Amended Complaint) against her siblings, namely petitioner Victoria, Ramon T. Cua (Ramon), Adelaida T. Cua (Adelaida), Emelita T. Cua (Emelita), and Elena T. Cua (Elena) (collectively referred to as the defendants siblings). The Complaint was filed before the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 (RTC). The case was docketed as Special Civil Action Case No. RTC 03-173.

In the Amended Complaint respondent Belen alleged that she and the defendants siblings are compulsory heirs of their late mother, Ceferina Toregosa Cua (Ceferina). Ceferina died intestate on June 10, 1998 and had left certain real and personal properties, as well as interest in real properties. Respondent Belen further alleged that she did not receive her lawful share from Ceferina's estate. She prayed that judgment be issued: 1) ordering the partition and distribution of Ceferina's entire estate; 2) ordering that she (respondent Belen) be awarded her lawful share; 3) and ordering the defendants siblings to pay respondent Belen moral damages, exemplary damages, contingency fee, and litigation expenses.

On April 6, 2004, defendants Ramon, Adelaida, Emelita, and Elena filed their Answer, alleging that they were willing to settle the partition case amicably; that respondent Belen was receiving her share from the income of the properties left by their late mother, Ceferina; that it was respondent Belen who intentionally refused to show documents pertaining to the supposed properties left by Ceferina; and that respondent Belen is not entitled to the reliefs she prayed for.

Meanwhile, on August 14, 2004, **petitioner Victoria filed an Answer alleging that she is in favor of the partition and accounting of the properties of Ceferina**.

Pre-trial was conducted and terminated on January 25, 2007. Thereafter, respondent Belen was presented as a witness. But after her direct examination, and before the conduct of the cross-examination, the parties agreed to refer the case to mediation.

Hence, the RTC issued an Order of Referral dated October 22, 2008, referring the case to mediation through the Philippine Mediation Center (PMC). During the mediation conferences, all the parties attended and successfully arrived at an agreement on the manner of partition of Ceferina's estate. Because of the agreement reached upon by the parties, the mediator issued an Order dated November 5, 2009 requiring respondent Belen's counsel to draft a written compromise agreement. The terms of the agreement reached upon by the parties were thus translated into writing. A meeting was then scheduled on April 8, 2010 for the signing of the document entitled Compromise Agreement, which reduced into writing the prior agreement reached by the parties during the mediation conferences.

On said date, petitioner Victoria did not appear, while all her other siblings appeared. It was subsequently explained by petitioner Victoria's counsel that petitioner Victoria was not able to attend the meeting as she did not have enough money to travel from Manila to Calabanga, Camarines Sur. Respondent Belen and the other siblings proceeded to sign the Compromise Agreement and submitted the same before the RTC for approval.

The Ruling of the RTC

On July 1, 2010, the RTC rendered a Decision[5] issuing a judgment on compromise. The dispositive portion of the same reads:

> WHEREFORE, the foregoing compromise agreement submitted by the parties being not contrary to law, morals, public order, good customs and public policy, the same is hereby approved and judgment is rendered in accordance therewith. The parties are hereby enjoined to honor the above-mentioned compromise agreement and to abide with the terms stated therein.
>
> SO ORDERED.[6]

Feeling aggrieved, petitioner Victoria appealed the RTC's Decision before the CA. Petitioner Victoria alleged that the

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[5] *Id.* at 73-82. Penned by Judge Freddie D. Balonzo.

[6] *Id.* at 82.

Compromise Agreement cannot be binding as to her considering that she did not sign it and supposedly did not consent to its execution.

The Ruling of the CA

In the assailed Decision, the CA denied petitioner Victoria's appeal, holding that "[t]he RTC did not err when it approved the Compromise Agreement."[7] The dispositive portion of the assailed Decision reads:

> We **DISMISS** the appeal, and **AFFIRM** the Decision of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur, in Special Civil Action No. RTC 03-173.
>
> **IT IS SO ORDERED.**[8]

Petitioner Victoria filed a Motion for Reconsideration[9] dated November 27, 2013, which was denied by the CA in the assailed Resolution.

Hence, the instant Petition for Review on *Certiorari*.

Respondent Belen filed her Comment[10] on February 4, 2015, which was replied to by petitioner Victoria in her Manifestation (In Lieu of Reply),[11] which was filed on August 27, 2015.

Issue

Stripped to its core, the critical issue presented by the instant Petition is whether the RTC erred in rendering its Decision dated July 1, 2010 based on the compromise agreement entered into by the parties during the mediation conferences before the PMC.

The Court's Ruling

The Court finds the instant Petition unmeritorious.

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[7] *Id*. at 46.

[8] *Id*. at 50; emphasis in the original.

[9] *Id*. at 97-103.

[10] *Id*. at 111 -120. Comment to the Petition for Review on Certiorari.

[11] *Id*. at 123-127.

At the heart of petitioner Victoria's Petition assailing the RTC's judgment on compromise is her assertion that she "did not sign the compromise [agreement because] she did not agree with the manner of partition of their mother's estate."[12] However, aside from this self-serving assertion, there is absolutely no evidence substantiating her claim that petitioner Victoria did not come to an agreement with her siblings as to the partition of the estate of their late mother, Ceferina.

On the contrary, both the RTC and CA factually found that the parties most definitely came to terms as to the partition of Ceferina's estate even prior to the translation of the agreement into written form on April 8, 2010. There was already a valid and binding oral partition that was agreed upon by the parties.

As factually established by the RTC:

> As earlier mentioned[,] during the several settings of conferences between the parties, all the parties from [respondent Belen] down to all the defendants [siblings] were all present and **they have agreed the partition of the properties located in Metro Manila as well as in the Bicol Region. The parties have already agreed what is supposed to be the properties allotted to each one of them**. Because of that agreement, the [RTC] then instructed Atty. Flora Malate-Pante[, the counsel of respondent Belen] to prepare a compromise agreement of the properties agreed upon between the parties to be their shares in the properties both located in the Bicol Region as well as in Metro Manila[.] x x x It appears, however, that [petitioner Victoria], one of the defendants, was not able to sign the compromise agreement because of her absence on April 8, 2010 which was the last setting of the conference between the parties. **However, during the last conference between the parties, [petitioner Victoria] was present and she agreed first on the partition made between them of the properties located in the Bicol Region and also agreed of (sic) their respective shares of the properties located in the National Capital Region particularly in Quezon City and Manila**.[13]

The RTC likewise noted the fact that the counsel of petitioner Victoria explained that "[the sole reason why petitioner Victoria

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[12] *Id*. at 21.

[13] *Id*. at 74-75; emphasis supplied.

was not able to sign the document was] because she has no money for transportation"[14] and not because petitioner Victoria disagreed with the terms of the Compromise Agreement. The truth of the matter is that the parties had already previously arrived at an agreement with respect to the partition of their late mother's estate.

Further, after an exhaustive review of the records of the instant case, the CA also factually established that:

A review of the parties' evidence show that **they entered into a valid oral partition**.

The mediation conferences between the parties were presided by the mediator, Judge Balonzo (retired), and were scheduled on the following dates: 17 November 2008; 28 November 2008; 29 January 2009; 20 March 2009; 23 April 2009; 18 June 2009; 3 September 2009; 5 November 2009; and 21 January 2010. **The parties, assisted by their respective counsel on said dates, negotiated the terms and provisions of the Compromise Agreement so they could settle this case amicably.** After the parties agreed to the manner of partitioning Ceferina's estate, the mediator issued the Order dated 5 November 2009, requiring [respondent Belen's] counsel to draft the Compromise Agreement. **The Compromise Agreement was executed only to reduce into writing the oral partition already validly agreed upon by the parties**.[15]

At this juncture, it must be stressed that, as a rule, in an appeal by *certiorari* under Rule 45, the Court does not pass upon questions of fact as the factual findings of the trial and appellate courts are binding on the Court. The Court is not a trier of facts.[16] Hence, to disprove the factual findings of the RTC and CA that there was already a valid and binding agreement that was entered into by the parties during the mediation conferences before the PMC, it was incumbent on the part of petitioner Victoria to provide clear and convincing evidence

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[14] *Id*. at 75.

[15] *Id*. at 49-50; emphasis supplied.

[16] *Romualdez-Licaros v. Licaros*, 449 Phil. 824, 837 (2003).

to substantiate her claim that she never reached an agreement with her siblings as to the partition of their late mother's estate during the mediation conferences.

However, the Court finds that petitioner Victoria failed to do so. Aside from her mere self-serving statements, no other evidence was provided to support her claim. In fact, petitioner Victoria's actuations lend more credence to the fact that she fully consented to the terms encapsulated in the Compromise Agreement. From the signing of the aforesaid document on April 8, 2010 until the time the RTC rendered the judgment on compromise on July 1, 2010, there has not been even a whimper coming from petitioner Victoria contesting the Compromise Agreement. If the Compromise Agreement indeed failed to capture the real agreement reached by the parties during the mediation conferences, petitioner Victoria would have raised the matter before the RTC. It should also be pointed out that, as early as November 5, 2009, the mediator had already issued an Order to reduce into writing the agreement already reached upon by the parties. If there was truly no agreement reached upon during the mediation conferences, petitioner Victoria would have opposed the said Order. Yet, petitioner Victoria did not do so.

On the other hand, as stressed by the RTC and CA, the proceedings during the mediation conferences indubitably show that petitioner Victoria and her siblings actually came to an agreement as to the partition of the estate of Ceferina. Hence, that an oral partition has been entered into by the parties is a factual finding that must be left undisturbe

The fact that petitioner Victoria failed to sign the written document bearing the terms of the parties' agreement is of no moment. As explicitly held in *Vda. de Reyes v. Court of Appeals*,[17] **an oral partition may be valid and binding upon the heirs**; there is **no law that requires partition among heirs to be in writing to be valid**.[18]

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[17] 276 Phil. 706 (1991).

[18] *Id*. at 721.

Citing *Hernandez v. Andal*,[19] the Court in the above-mentioned case explained that under Rule 74, Section 1 of the Rules of Court,[20] "there is nothing in said section from which it can be inferred that a writing or other formality is an essential requisite to the validity of the partition. Accordingly, an oral partition is valid."[21] The Court further added that the partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of real property because it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right of property by the heir renouncing in favor of another heir accepting and receiving the inheritance. Hence, **an oral partition is not covered by the Statute of Frauds**.[22]

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[19] 78 Phil. 196 (1947).

[20] Section 1. *Extrajudicial settlement by agreement between heirs*. — If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should/they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filled in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this Rule. It shall be presumed that the decedent left no debts if no creditor tiles a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

[21] *Vda. de Reyes v. Court of Appeals*, *supra* note 17 at 721.

[22] *Id*., citing *Barcelona v. Barcelona*, 100 Phil. 251 (1956).

Therefore, even if the document titled Compromise Agreement was not signed by petitioner Victoria, there was already an oral partition entered into by the parties that bound all of the siblings. The written agreement only served to reduce into writing for the convenience of the parties the terms of the agreement already entered into during the mediation conferences.

In fact, the Court has likewise previously held that, "independent and in spite of the statute of frauds, **courts of equity have enforced oral partition when it has been completely or partly performed**."[23] In the instant case, there is no refutation on the part of petitioner Victoria as to respondent Belen's assertion that the terms of the Compromise Agreement have already been partially performed by the parties

WHEREFORE, the instant Petition is denied. The Decision dated October 23, 2013 and Resolution dated July 21, 2014 of the Court of Appeals, Thirteenth Division in CA-G.R. CV No. 95692 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 215614. March 27, 2019]

CARMELITA V. DIZON, *petitioner, vs.* **JOSE LUIS K. MATTI, JR.,** *respondent.*

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[23] *Hernandez v. Andal*, 78 Phil. 196, 203 (1947).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; IT IS THE PLAINTIFF OR PRINCIPAL PARTY WHO SHOULD EXECUTE THE CERTIFICATION OF NON-FORUM SHOPPING UNDER OATH, BUT IF, FOR REASONABLE OR JUSTIFIABLE REASONS, THE PARTY-PLEADER IS UNABLE TO SIGN THE CERTIFICATION, ANOTHER PERSON MAY BE AUTHORIZED TO EXECUTE THE CERTIFICATION ON HIS OR HER BEHALF THROUGH A SPECIAL POWER OF ATTORNEY.— A perusal of the Verification and Certification of Non-Forum Shopping (Certification) dated January 21, 2015 attached to the instant Petition reveals that it was the brother of petitioner Dizon, Wilfredo V. Dizon (Wilfredo), and not petitioner Dizon herself, who executed the Certification. According to Section 5, Rule 7of the Rules of Court, and as held by a *catena* of cases decided by the Court, it is the plaintiff or principal party who should execute the certification of non-forum shopping under oath. However, this rule is not entirely inflexible. The Court has held that if, for reasonable or justifiable reasons, the party-pleader is unable to sign the certification, another person may be authorized to execute the certification on his or her behalf through a Special Power of Attorney. Respondent Matti, Jr. claims that petitioner Dizon failed to substantiate her claim that there was a reasonable or justifiable reason for her failure to personally execute the Certification. This claim, however, is belied by the evidence on record. Petitioner Dizon claims that she, a senior citizen, was suffering from sickness while in London, United Kingdom at around the time of the filing of the instant Petition, disabling her from traveling to the Philippine Embassy to personally execute a certification of non-forum shopping. She presented a Medical Certificate dated February 11, 2005 and a Statement of Fitness Work for Social Security or Statutory Sick Pay dated January 23, 2015 to show that she was in poor medical condition, preventing her from personally executing the Certification at the Philippine Embassy.

2. ID.; ID.; ID.; ID.; ID.; THE BELATED SUBMISSION OF AN AUTHORIZATION FOR THE EXECUTION OF A

CERTIFICATE OF NON-FORUM SHOPPING CONSTITUTES SUBSTANTIAL COMPLIANCE WITH THE RULES.— Respondent Matti, Jr.'s argument that there was no Special Power of Attorney attached to the instant Petition that authorized Wilfredo to execute the Certification on behalf of his sister, petitioner Dizon, is also unavailing. While it is true that at the time of the filing of the instant Petition, a Special Power of Attorney authorizing Wilfredo to execute the Certification was not attached, petitioner Dizon was able to belatedly submit before the Court a Special Power of Attorney dated June 30, 2015 fully signed by petitioner Dizon and duly authenticated by the Philippine Embassy in London. The Court has held that the belated submission of an authorization for the execution of a certificate of non-forum shopping constitutes substantial compliance with Sections 4 and 5, Rule 7 of the Rules of Court.

3. **ID.; ID.; APPEALS; RULES OF PROCEDURE ARE USED TO HELP SECURE AND NOT OVERRIDE SUBSTANTIAL JUSTICE. THUS, THE DISMISSAL OF AN APPEAL ON A PURELY TECHNICAL GROUND IS FROWNED UPON ESPECIALLY IF IT WILL RESULT IN UNFAIRNESS.—** The Rules of Civil Procedure should be applied with reason and liberality to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are used to help secure and not override substantial justice. Thus, the dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness. Hence, the Court refuses to dismiss outright the instant Petition on the basis of the defective Certification, which was eventually cured by the subsequent submissions of petitioner Dizon.

4. **ID.; ID.; PLEADINGS AND PRACTICES; LIBERAL CONSTRUCTION OF THE RULES MAY BE INVOKED IN SITUATIONS WHERE THERE MAY BE SOME EXCUSABLE FORMAL DEFICIENCY OR ERROR IN A PLEADING, PROVIDED THAT THE SAME DOES NOT SUBVERT THE ESSENCE OF THE PROCEEDING AND IT AT LEAST CONNOTES A REASONABLE ATTEMPT AT COMPLIANCE WITH THE RULES; OUTRIGHT DISMISSAL OF THE MOTION FOR RECONSIDERATION FOR FAILURE OF THE COUNSEL TO SIGN THE SAID**

PLEADING IS NOT PROPER WHERE THE SAME WAS DUE TO AN HONEST INADVERTENCE WITHOUT ANY INTENTION TO DELAY THE PROCEEDINGS.— In the assailed Resolution, citing Section 3, Rule 7 of the Rules of Court, the CA held that every pleading must be signed by the party or counsel representing him and that an unsigned pleading produces no legal effect. While the CA is correct in invoking the aforesaid Rule, the rest of Section 3, Rule 7elucidates that the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. In the instant case, the Court accepts petitioner Dizon's explanation that the failure of her counsel to affix his signature in the Motion for Reconsideration was due to an honest inadvertence without any intention to delay the proceedings. That the was inadvertence not intended to delay is strengthened by the fact that petitioner Dizon's Motion for Reconsideration was actually filed one day ahead of the expiration of the reglementary period. To reiterate, the Court is not inclined to dismiss outright an appeal on a purely technical ground, especially if there is some merit to the substantive issues raised by the petitioner. It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. In sum, therefore, the Court finds merit in petitioner Dizon's argument that the CA erred in issuing its assailed Resolution insofar as it dismissed outright petitioner's Motion for Reconsideration due to the failure of her counsel to sign the said pleading is concerned.

5. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; NOTARIZATION *PER SE* IS NOT A GUARANTEE OF THE VALIDITY OF THE CONTENTS OF A DOCUMENT. THE PRESUMPTION OF REGULARITY OF NOTARIZED DOCUMENTS CANNOT BE MADE TO APPLY AND MAY BE OVERTHROWN BY HIGHLY QUESTIONABLE CIRCUMSTANCES THAT SERIOUSLY REPUDIATE THE VALIDITY OF THE SAID NOTARIZED DOCUMENTS.— As pronounced by the Court in *Mayor v. Belen, et al.*, notarization *per se* is not a guarantee of the validity of the contents of a document. The presumption

of regularity of notarized documents cannot be made to apply and may be overthrown by highly questionable circumstances, as may be pointed out by the trial court. Contrary to the finding of the CA, the Court agrees with the RTC's finding that there is **clear, strong, and convincing evidence proving that petitioner Dizon did not execute a Deed of Absolute Sale in favor of respondent Matti, Jr**. With the existence of highly questionable circumstances that seriously repudiate the validity of the Deed of Absolute Sale, the presumption of regularity that may have been created by the notarization of the said instrument has been shattered.

6. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, AND ITS ASSESSMENT OF THEIR PROBATIVE WEIGHT ARE GIVEN HIGH RESPECT, IF NOT CONCLUSIVE EFFECT, UNLESS IT IGNORED, MISCONSTRUED, MISUNDERSTOOD OR MISINTERPRETED COGENT FACTS AND CIRCUMSTANCES OF SUBSTANCE, WHICH, IF CONSIDERED, WILL ALTER THE OUTCOME OF THE CASE.— [I]t must be stressed that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case. The trial court is in the best position to ascertain and measure the sincerity and spontaneity of witnesses through its actual observation of the witnesses' manner of testifying, demeanor and behavior while in the witness box. In the instant case, the RTC, after a painstaking and thorough examination of the evidence presented by both parties, found that "**[petitioner Dizon] has sufficiently proven that she was not here in the Philippines for the whole month of February 2000**. x x x Such being the case, this Court is of [the] firm belief and resolve that **[petitioner Dizon] could not have signed the said Deed of Absolute Sale which purportedly transferred or conveyed the subject property** x x x."

7. ID.; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; DOCUMENTS CONSISTING OF ENTRIES IN PUBLIC RECORDS MADE IN THE PERFORMANCE

OF A DUTY BY A PUBLIC OFFICER ARE *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED.— A Certification dated March 21, 2011 with an attached Travel Record with Control No. 0322201105P1017G establishes that **since her departure from the Philippines on October 20, 1999, petitioner Dizon only went back to the Philippines on November 9, 2000**, completely belying respondent Matti, Jr.'s claim that he personally met up with petitioner Dizon in the Philippines in February 2000 and executed the Deed of Absolute Sale together with her and other witnesses before a notary public. According to Rule 132, Section 23 of the Rules of Court, documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. Hence the official travel record issued by the Bureau of Immigration is *prima facie* evidence of the fact that petitioner Dizon was abroad in February 2000, the time she supposedly personally transacted with respondent Matti, Jr. in the Philippines.

8. ID.; ID.; ID.; IF THERE IS NO COPY OF THE INSTRUMENT IN THE NOTARIAL RECORDS, THERE ARISES A PRESUMPTION THAT THE DOCUMENT WAS NOT NOTARIZED AND IS NOT A PUBLIC DOCUMENT.— [T]he Court likewise notes the Certification dated August 20, 2014 issued by the notarial records section of the Office of the Clerk of Court, ParanÞaque City, which was presented by petitioner in her Most Respectful Motion to Admit Herein Supplemental Motion for Reconsideration, **certifying that the alleged notarized Deed of Absolute Sale does not exist in the notarial records of the said office**. This casts very serious doubt on respondent Matti, Jr.'s claim that the notarization of the Deed of Absolute Sale was completely in order. In this connection, it is *apropos* to mention that if there is no copy of the instrument in the notarial records, there arises a presumption that the document was not notarized and is not a public document. The non-existence of the sale between the parties is further strengthened and supported by the undisputed fact that **the RD itself certified that respondent Matti, Jr.'s copy of the Owner's Duplicate copy of TCT No. T-58674 is fake**.

9. ID.; ID.; EXECUTION AND AUTHENTICITY OF HANDWRITING; A FINDING OF FORGERY DOES NOT DEPEND ON THE TESTIMONY OF HANDWRITING

EXPERTS. ALTHOUGH SUCH TESTIMONY MAY BE USEFUL, THE JUDGE STILL EXERCISES INDEPENDENT JUDGMENT ON THE ISSUE OF AUTHENTICITY OF THE SIGNATURES UNDER SCRUTINY BASED ON HIS CAREFUL AND METICULOUS EXAMINATION OF THE EVIDENCE ON RECORD.— The Court has previously held that resort to document examiners is not mandatory and while probably useful, they are **not** indispensable in examining or comparing handwriting. A finding of forgery does not depend on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny. A judge must therefore conduct an independent examination in order to arrive at a reasonable conclusion as to a signature's authenticity. That was exactly what the RTC did. It conducted a careful and meticulous examination of the evidence on record. And after having done so, it arrived at the conclusion that the Deed of Absolute Sale is a spurious document as it was impossible for petitioner Dizon to have executed the same, considering that she was in London at the alleged time of execution of the said document.

10. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; THE PARTY MAKING ALLEGATIONS HAS THE BURDEN OF PROVING THEM. THE PLAINTIFF MUST RELY ON THE STRENGTH OF HIS OWN EVIDENCE, AND NOT UPON THE WEAKNESS OF THE DEFENSE OFFERED BY HIS OPPONENT.— On the other side of the fence, looking at the evidence presented by respondent Matti, Jr., it must be emphasized that aside from his lone, self-serving testimony, no other witness was presented to corroborate his allegations that a sale indeed transpired between him and petitioner. To stress, respondent Matti, Jr. is the plaintiff who initiated the instant case for Specific Performance, making specific allegations on the supposed sale he entered into with petitioner Dizon over the subject property. In civil cases, the basic rule is that the party making allegations has the burden of proving them. The plaintiff must rely on the strength of his own evidence, and not upon the weakness of the defense offered by his opponent.

11. ID.; ID.; ID.; FOR TESTIMONIAL EVIDENCE TO BE BELIEVED, IT MUST NOT ONLY PROCEED FROM THE

MOUTH OF A CREDIBLE WITNESS BUT MUST ALSO BE CREDIBLE IN ITSELF SUCH THAT COMMON EXPERIENCE AND OBSERVATION OF MANKIND LEAD TO THE INFERENCE OF ITS PROBABILITY UNDER THE CIRCUMSTANCES. — Moreover, when describing his supposed first meeting with petitioner Dizon, respondent Matti, Jr. testified during cross examination that he met petitioner Dizon through Ms. Acleto and Mrs. Estaris in February 2000, who brought him inside a certain vehicle to meet petitioner Dizon. Perplexingly, during this first encounter with petitioner Dizon, despite being the prospective purchaser of her property and despite the sale being a major transaction, respondent Matti, Jr. did not even introduce himself or inquire with petitioner whatsoever about the supposed sale x x x. It goes without saying that respondent Matti, Jr.'s testimony is unrealistic and contrary to ordinary human experience. Considering that the sale involved real property and entailed a substantial purchase price, respondent Matti, Jr. should have at the very least posed probing questions to the person who represented herself to be petitioner Dizon as regards the subject property and the sale transaction. But, bizarrely, after having been introduced to the person represented to be petitioner Dizon, he just kept mum. It is axiomatic that for testimonial evidence to be believed, it must not only proceed from the mouth of a credible witness but must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances.

12. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; AN ABSOLUTELY SIMULATED AND FICTITIOUS CONTRACT OF SALE IS NULL AND VOID.— [A]fter a thorough review of the records of the instant case, including the various evidentiary and documentary evidence provided by both parties, the Court finds itself in agreement with the RTC's Decision dated October 25, 2011 and Order dated April 13, 2012 that there is sufficient and convincing evidence establishing petitioner Dizon's claim that she did not sell the subject property to respondent Matti, Jr. on February 24, 2000, and that the Deed of Absolute Sale is a sham and fictitious document. An absolutely simulated and fictitious contract of sale is null and void. Consequently, as correctly held by the RTC, respondent Matti, Jr.'s Complaint for Specific Performance must be dismissed.

APPEARANCES OF COUNSEL

Andres Moralda Layno Lorbes & Associates for petitioner.
Mendoza Cruz & Associates for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Carmelita V. Dizon (Dizon) against respondent Jose Luis K. Matti, Jr. (Matti, Jr.), assailing the Decision[2] dated July 25, 2014 (assailed Decision) and Resolution[3] dated November 26, 2014 (assailed Resolution) promulgated by the Court of Appeals (CA) Tenth Division in CA-G.R. CV No. 98685, which reversed the Decision[4] dated October 25,2011 and Order[5] dated April 13, 2012 issued by the Regional Trial Court of Las Piñas City, Branch 202 (RTC) in Civil Case No. 09-0078.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, and as culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

> This case stems from a Complaint[6] for Specific Performance filed by [respondent Matti, Jr.] against [petitioner Dizon] on July 2, 2009. The allegations of the parties, as culled from the herein assailed [RTC] Decision, are as follows:

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[1] *Rollo*, pp. 15-50

[2] *Id*. at 51-63. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[3] *Id*. at 64-67.

[4] *Id.* at 68-76. Penned by Judge Elizabeth Yu Guray.

[5] *Id*. at 78-80.

[6] *Id*. at 147-151.

"x x x [Respondent Matti, Jr.] alleged that sometime during the second week of February 2000, Zenaida Acleto, a real estate agent[,] together with Mrs. Basilica C. Estaris, offered [respondent Matti, Jr.] a townhouse for sale [(subject property)] that belonged to [petitioner Dizon] and located at Block 2, Lot 48, Veraville Allegria Townhomes, San Antonio Road, Talon IV, Las Piñas City, with an area of sixty (60) square meters and fifty decimeters (60.50). [I]n the third week of February 2000, [respondent Matti, Jr.] together with Ms. Acleto and Basilica Estaris made a physical inspection of the said townhouse and was shown all the original documents of said townhouse including the original Owner's Duplicate Certificate of Title No. 58674, registered with the Register of Deeds of Las Piñas City [(RD)] in the name of [petitioner] Dizon.

After [respondent Matti, Jr.] photocopied the [alleged] original Owner's Duplicate Certificate of Title No. T-58674 and brought it to the [RD], [respondent Matti, Jr.] personally verified that it was one and the same with the one filed with the [RD] and thus, [respondent Matti, Jr.] agreed to purchase the property from [petitioner Dizon].

On February 24, 2000, Ms. Acleto and Mrs. Estaris together with [respondent Matti, Jr.] came to see [petitioner Dizon.] A Deed of Absolute Sale was executed by [petitioner Dizon] in favor of [respondent Matti, Jr.], duly notarized the same and after which [respondent Matti, Jr.] paid petitioner Dizon] in full.

On August 25, 2000, [respondent Matti, Jr.] personally went to the Las Piñas City Assessor's Office to update the real estate taxes and to get a new Tax Declaration for [petitioner Dizon's] property only to be told that all of the documents (TCT No. 58674 and Tax Receipts) that were in [respondent Matti, Jr.'s] possession were falsified.

On September 15, 2000, [respondent Matti, Jr.] went back to the [RD] to have the Owner's Duplicate copy of TCT No. T-58674 authenticated by the said office, registered in [petitioner Dizon's] name. Thereafter, [respondent Matti, Jr.] was told verbally that said title is fake. A certificate was then issued by [the RD] attesting that said title in [respondent Matti, Jr.'s] possession is fake.

> In order to protect his rights and to avoid any fraudulent transfer of the said property to an innocent third party, [respondent Matti, Jr.] caused the annotation of the Affidavit of Adverse Claim on TCT No. T-58674 before the [RD].
>
> Despite oral and written demand, [petitioner Dizon] has not rectified [her alleged] wrongdoings by delivering the authentic Owner's Duplicate Copy of TCT No. T-58674. Thus, [respondent Matti, Jr.] asked that [petitioner Dizon] be ordered to: a) Deliver the [O]wner's [Duplicate certificate [of] TCT No. T-58674 to him or if [petitioner Dizon] refuses to do so, that the [RD] be ordered to cancel TCT No. T-58674 and issue a new TCT in [respondent Matti, Jr.'s] favor; b) that physical possession of the property be surrendered to him; c) that [petitioner Dizon] be ordered to pay x x x.
>
> x x x [Petitioner Dizon] alleged that [respondent Matti, Jr.] has no cause of action against [her] because she did not encumber and/or transfer ownership of her property to [respondent Matti, Jr.] x x x. [Petitioner Dizon also claimed that she] did not execute nor signed (sic) the Deed of Absolute Sale presented by [respondent Matti, Jr.] nor did she participate in the negotiation, preparation and execution of the said Deed of Absolute Sale. Finally, [petitioner Dizon] stated that she does not know [respondent Matti, Jr.] nor a certain Zenaida Acleto and Basilica Estaris x x x."[7]

During the trial, [respondent Matti, Jr.] himself testified as [the] lone witness for the plaintiff. On the other hand, witnesses for [petitioner Dizon] were Wilfredo Dizon, [petitioner Dizon's] brother, and Jeoffrey G. Valix [(Valix)], a confidential agent and travel records verifier from the Bureau of Immigration

On October 25, 2011, the RTC rendered its herein assailed Decision, dismissing the complaint for lack of merit, *viz.*:

x x x x x x x x x

> In the case at bar, [petitioner Dizon] has sufficiently proven that she was not here in the Philippines for the whole month of February 2000. As attested by [Valix] and the Certification from the [Bureau of Immigration and Deportation (BID)] dated

[7] *Id.* at 68-69.

> March 22, 2011 issued by Simeon L. Sanchez, [petitioner Dizon] has shown that she was working in London contrary to the mere allegation of [respondent Matti, Jr.] that she was here in the Philippines and executed the assailed Deed of Absolute Sale, dated February 24, 2000. Such being the case, this Court is of [the] firm belief and resolve that [petitioner Dizon] could not have signed the said Deed of Absolute Sale which purportedly transferred or conveyed the subject property covered by [TCT No. T-58674] to [respondent Matti, Jr.]
>
> x x x x x x x x x
>
> [Petitioner Dizon] in this case has actually substantiated with sufficient evidence her claim that her signature appearing in the said Deed of Absolute Sale [was] actually forged considering her absence in the country during the month of February 2000 and thereafter, during the execution of the Deed of Absolute Sale. The requisite consent of the contracting parties x x x was lacking, x x x and thus, it can be definitely determined that the subject [Deed of Absolute Sale] is invalid and should be declared null and void.[8]
>
> x x x x x x x x x

On December 12, 2011, [respondent Matti, Jr.] filed his Motion for Reconsideration, but the same was denied by the RTC in the other assailed Order[9] dated April 13, 2012.

Hence, [respondent Matti, Jr. filed an appeal with the CA.][10]

The Ruling of the CA

In its assailed Decision, the CA granted respondent Matti, Jr.'s appeal. The dispositive portion of the assailed Decision of the CA reads:

WHEREFORE, the instant appeal is **GRANTED**. The assailed Decision dated October 25, 2011 and the Order dated April 13, 2012 by the Regional Trial Court of Las Piñas City, Branch 202 is (sic)

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[8] *Id*. at 74-75.

[9] *Id*. at 78-80.

[10] *Id*. at 52-57.

REVERSED and **SET ASIDE**. The Deed of Absolute Sale dated February 24, 2000 is hereby declared **VALID**. Accordingly, defendant-appellee Carmelita V. Dizon is directed to deliver the original Owner's Duplicate Copy of Transfer Certificate of Title No. T-58674 to plaintiff-appellant Jose Luis K. Matti, Jr. and to surrender the physical possession of the subject property to the latter.

SO ORDERED.[11]

In the assailed Decision, the CA held that since a notarized document enjoys the presumption of regularity, and only clear, strong, and convincing evidence can rebut such presumption, the evidence presented by petitioner Dizon was not enough to refute the notarized Deed of Absolute Sale dated February 24, 2000, which stated that petitioner Dizon entered into a contract of sale over the subject property with respondent Matti, Jr. The CA added that allegations of forgery should not be presumed and that a claim of forgery cannot be accepted where no examination of signatures was conducted by an expert witness.

Petitioner Dizon filed a Motion for Reconsideration[12] dated August 20, 2014 and a Most Respectful Motion to Admit Herein Supplemental Motion for Reconsideration[13] dated August 29, 2014 before the CA, asking for a reconsideration of the assailed Decision, which were subsequently denied by the CA in the assailed Resolution.[14]

Hence, the instant Petition.

Respondent Matti, Jr. filed his Comment/Opposition to the Petition for Review on *Certiorari*[15] dated April 12, 2015, to which petitioner Dizon responded with her Reply (to respondent's Comment/Opposition) dated September 7, 2015.[16]

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[11] *Id*. at 62.

[12] *Id*. at 128-138.

[13] *Id*. at 139-143.

[14] *Id*. at 64-67.

[15] *Id*. at 323-344.

[16] *Id*. at 347-371.

Issue

The central question to be resolved by the Court is whether the CA was correct in upholding the sale covering the subject property purportedly entered into by petitioner Dizon and respondent Matti, Jr. on the basis of the presumption of regularity of the supposedly notarized Deed of Absolute Sale dated February 24, 2000.

The Court's Ruling

The Court finds petitioner Dizon's submissions meritorious and resolves to grant the instant Petition.

I. *The Procedural Issues*

Before deciding on the substantive merits of the instant case, the Court shall first delve into the various procedural issues raised by respondent Matti, Jr. against the instant Petition.

Defect in the Verification and Certification of Non-Forum Shopping

A perusal of the Verification and Certification of Non-Forum Shopping[17] (Certification) dated January 21, 2015 attached to the instant Petition reveals that it was the brother of petitioner Dizon, Wilfredo V. Dizon (Wilfredo), and not petitioner Dizon herself, who executed the Certification.

According to Section 5, Rule 7 of the Rules of Court, and as held by a *catena* of cases decided by the Court,[18] it is the plaintiff or principal party who should execute the certification of non-forum shopping under oath. However, this rule is not entirely inflexible

The Court has held that if, for reasonable or justifiable reasons, the party-pleader is unable to sign the certification, another person may be authorized to execute the certification on his or her behalf through a Special Power of Attorney.[19]

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[17] *Id*. at 48.

[18] *Agustin v. Cruz-Herrera*, 726 Phil. 533, 543 (2014).

[19] *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative*, 614 Phil. 222, 232 (2009).

Respondent Matti, Jr. claims that petitioner Dizon failed to substantiate her claim that there was a reasonable or justifiable reason for her failure to personally execute the Certification.[20] This claim, however, is belied by the evidence on record. Petitioner Dizon claims that she, a senior citizen, was suffering from sickness while in London, United Kingdom at around the time of the filing of the instant Petition, disabling her from traveling to the Philippine Embassy to personally execute a certification of non-forum shopping. She presented a Medical Certificate[21] dated February 11, 2005 and a Statement of Fitness Work for Social Security or Statutory Sick Pay[22] dated January 23, 2015 to show that she was in poor medical condition, preventing her from personally executing the Certification at the Philippine Embassy.

Respondent Matti, Jr.'s argument[23] that there was no Special Power of Attorney attached to the instant Petition that authorized Wilfredo to execute the Certification on behalf of his sister, petitioner Dizon, is also unavailing. While it is true that at the time of the filing of the instant Petition, a Special Power of Attorney authorizing Wilfredo to execute the Certification was not attached, petitioner Dizon was able to belatedly submit before the Court a Special Power of Attorney[24] dated June 30, 2015 fully signed by petitioner Dizon and duly authenticated by the Philippine Embassy in London. The Court has held that the belated submission of an authorization for the execution of a certificate of non-forum shopping constitutes substantial compliance with Sections 4 and 5, Rule 7 of the Rules of Court.[25]

The Rules of Civil Procedure should be applied with reason and liberality to promote its objective of securing a just, speedy

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[20] *Rollo*, pp. 324-325.

[21] *Id*. at 370.

[22] *Id*. at 370A.

[23] *Id*. at 326-327.

[24] *Id.* at 366-369.

[25] *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*, 713 Phil. 240, 249 (2013).

and inexpensive disposition of every action and proceeding. Rules of procedure are used to help secure and not override substantial justice. Thus, the dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness.[26] Hence, the Court refuses to dismiss outright the instant Petition on the basis of the defective Certification, which was eventually cured by the subsequent submissions of petitioner Dizon

Unsigned Motion for Reconsideration dated August 20, 2014

In the instant Petition, petitioner Dizon argues that the CA, in its assailed Resolution, erred in dismissing outright her Motion for Reconsideration dated August 20, 2014, which assailed the CA's Decision dated July 25, 2014, due to the fact that the said pleading was left unsigned by petitioner Dizon's counsel.

In the assailed Resolution, citing Section 3, Rule 7 of the Rules of Court, the CA held that every pleading must be signed by the party or counsel representing him and that an unsigned pleading produces no legal effect.

While the CA is correct in invoking the aforesaid Rule, the rest of Section 3, Rule 7 elucidates that the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. In the instant case, the Court accepts petitioner Dizon's explanation that the failure of her counsel to affix his signature in the Motion for Reconsideration was due to an honest inadvertence without any intention to delay the proceedings. That the inadvertence was not intended to delay is strengthened by the fact that petitioner Dizon's Motion for Reconsideration was actually filed one day ahead of the expiration of the reglementary period.

To reiterate, the Court is not inclined to dismiss outright an appeal on a purely technical ground, especially if there is some

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[26] *Benguet Corp. v. Cordillera Caraballo Mission Inc.*, 506 Phil. 366, 370-371 (2005).

merit to the substantive issues raised by the petitioner.[27] It is settled that liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules.[28]

In sum, therefore, the Court finds merit in petitioner Dizon's argument that the CA erred in issuing its assailed Resolution insofar as it dismissed outright petitioner's Motion for Reconsideration due to the failure of her counsel to sign the said pleading is concerned

II. ***The Substantive Issues***

Now that the Court has settled the procedural issues raised by both parties, it shall proceed to carefully examine and resolve the substantive issues.

The assailed Decision reversing the RTC's dismissal of respondent Matti, Jr.'s Complaint for Specific Performance is grounded primarily on the **presumption of regularity of notarized documents**, which in this case, is the purported notarized Deed of Absolute Sale dated February 24, 2000. The CA justifies its ruling because only clear, strong, and convincing evidence can overturn such presumption, which it found wanting here as there should have been an examination of the forged and genuine signatures conducted by competent witnesses.[29]

In *Suntay v. Court of Appeals*,[30] the Court held that despite the notarization of a deed of sale, the subject sale was still deemed a fictitious conveyance which did not bind the parties, considering that "[t]he cumulative effect of the evidence on record x x x identified badges of simulation proving that the sale x x x was not intended to have any legal effect between

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[27] *Id*.

[28] *Mediserv v. Court of Appeals*, 631 Phil. 282, 295 (2010).

[29] *Rollo*, pp. 59-60.

[30] 321 Phil. 809 (1995).

them."[31] The Court further held that "[t]hough the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto. The intention of the parties still and always is the primary consideration in determining the true nature of a contract."[32]

In Sps. Tan v. Mandap, et al.,[33] the Court, in turn, found that even an apparently valid notarization of a document does not guarantee its validity. Having found that the affiant did not personally appear before the notary public, the Court held that "such falsity raises doubt regarding the genuineness of the vendor's alleged consent to the deeds of sale."[34]

As pronounced by the Court in *Mayor v. Belen, et al.*,[35] notarization *per se* is not a guarantee of the validity of the contents of a document. The presumption of regularity of notarized documents cannot be made to apply and may be overthrown by highly questionable circumstances, as may be pointed out by the trial court.[36]

Contrary to the finding of the CA, the Court agrees with the RTC's finding that there is **clear, strong, and convincing evidence proving that petitioner Dizon did not execute a Deed of Absolute Sale in favor of respondent Matti, Jr.** With the existence of highly questionable circumstances that seriously repudiate the validity of the Deed of Absolute Sale, the presumption of regularity that may have been created by the notarization of the said instrument has been shattered.

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[31] *Id*. at 834.

[32] *Id*.

[33] 473 Phil. 787 (2004).

[34] *Id*. at 797.

[35] 474 Phil. 630 (2014).

[36] *Id*. at 640.

At this juncture, it must be stressed that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case. The trial court is in the best position to ascertain and measure the sincerity and spontaneity of witnesses through its actual observation of the witnesses' manner of testifying, demeanor and behavior while in the witness box.[37]

In the instant case, the RTC, after a painstaking and thorough examination of the evidence presented by both parties, found that "**[petitioner Dizon] has sufficiently proven that she was not here in the Philippines for the whole month of February 2000**. x x x Such being the case, this Court is of [the] firm belief and resolve that **[petitioner Dizon] could not have signed the said Deed of Absolute Sale which purportedly transferred or conveyed the subject property** x x x."[38]

After a review of the evidentiary and documentary evidence on record, the Court finds itself in agreement with the RTC's Decision dated October 25, 2011 and Order dated April 13, 2012. There are indeed sufficient and convincing pieces of evidence establishing petitioner Dizon's claim that she did not sell the subject property to respondent Matti, Jr. on February 24,2000.

First, petitioner Dizon's testimony, by way of an Affidavit[39] dated October 16, 2009, wherein she unequivocally stated under oath that it was physically impossible for her to meet with respondent Matti, Jr. and execute with him the Deed of Absolute Sale as she was in London working as a nurse during the purported execution of the said instrument on February 24, 2000, and that she has never met respondent Matti, Jr. in her life, was

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[37] *People v. Alabado*, 558 Phil. 796, 813-814 (2007).

[38] *Rollo*, p. 74.

[39] *Id.* at 230.

corroborated, not only by the testimony of her brother Wilfredo,[40] but more importantly, by the testimony of a public officer, *i.e.*, Mr. Joeffrey G. Valix, an agent of the Bureau of Immigration.

Mr. Valix testified unequivocally that based on the records of the Bureau of Immigration, petitioner was not in the Philippines during the alleged execution of the Deed of Absolute Sale:

> Q: Was there any indication from your records, Mr. Witness, that this Carmelita V. Dizon was in the Philippines in February 2000?
>
> A: Based on our records, she is not, sir.[41]

Moreover, the above-stated testimonies of the witnesses of petitioner Dizon are strengthened by several public and private documentary evidence that form part of the records of the case.

A Certification dated March 21, 2011 with an attached Travel Record with Control No. 0322201105P1017G[42] establishes that **since her departure from the Philippines on October 20, 1999, petitioner Dizon only went back to the Philippines on November 9, 2000**, completely belying respondent Matti, Jr.'s claim that he personally met up with petitioner Dizon in the Philippines in February 2000 and executed the Deed of Absolute Sale together with her and other witnesses before a notary public.

According to Rule 132, Section 23 of the Rules of Court, documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.

Hence the official travel record issued by the Bureau of Immigration is *prima facie* evidence of the fact that petitioner Dizon was abroad in February 2000, the time she supposedly personally transacted with respondent Matti, Jr. in the Philippines.

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[40] *Id.* at 241-247.

[41] *Id.* at 43.

[42] *Id.* at 249-250.

This was further corroborated by the passport[43] of petitioner Dizon, a public document, which bears official stamps made by the Bureau of Immigration proving her absence from the Philippines during the time alleged by respondent Matti, Jr. that she was in the Philippines.

In addition, added corroboration was provided by the Letter/Certification of Employment[44] dated October 15, 2009 issued by the employer of petitioner Dizon, Royal Free Hampstead NHS Trust, certifying that she had been continually engaged at work as a Health Care Assistant in London from 1978 to 2009 (and that she was then doing temporary work in the Royal Free Hospital's nursing bank).

In assessing the foregoing evidence presented by petitioner Dizon that substantiates her claim that she could not have personally transacted with respondent Matti, Jr. and executed a Deed of Absolute Sale together with him in the Philippines in February 2000, the CA found such evidence "not conclusive as it does not categorically prove her physical whereabouts."[45]

Such reasoning by the CA is erroneous, if not absurd. The evidence need not determine petitioner Dizon's exact and precise physical whereabouts. Any clear and unmistakable proof that solidifies the fact that petitioner Dizon was not in the Philippines in February 2000 is already conclusive in nature as it entirely and utterly knocks down the main pillar of respondent Matti, Jr.'s cause of action — that he personally met, transacted, and executed a Deed of Absolute Sale with petitioner Dizon in the Philippines in February 2000. Regardless of the failure of the evidence on record to pinpoint the specific physical location of petitioner in February 2000, the fact that the evidence on record indubitably establish petitioner's claim that she was not in the Philippines in February 2000 makes respondent Matti, Jr.'s assertions physically and legally impossible.

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[43] *Id*. at 231-234.

[44] *Id*. at 228.

[45] *Id.* at 61.

In fact, the CA itself acknowledged that the travel records show that petitioner Dizon "**may not have been in the Philippines at the time of [the] execution of the purported Deed of Absolute Sale**."[46]

Additionally, the Court likewise notes the Certification[47] dated August 20, 2014 issued by the notarial records section of the Office of the Clerk of Court, Parañaque City, which was presented by petitioner in her Most Respectful Motion to Admit Herein Supplemental Motion for Reconsideration, **certifying that the alleged notarized Deed of Absolute Sale does not exist in the notarial records of the said office**. This casts very serious doubt on respondent Matti, Jr.'s claim that the notarization of the Deed of Absolute Sale was completely in order.[48] In this connection, it is *apropos* to mention that if there is no copy of the instrument in the notarial records, there arises a presumption that the document was not notarized and is not a public document.[49] The non-existence of the sale between the parties is further strengthened and supported by the undisputed fact that **the RD itself certified that respondent Matti, Jr.'s copy of the Owner's Duplicate copy of TCT No. T-58674 is fake**.

As to the CA's sheer reliance on the failure of petitioner Dizon to present expert witnesses, the Court finds this egregiously wrong.

The Court has previously held that resort to document examiners is not mandatory and while probably useful, they are **not** indispensable in examining or comparing handwriting. A finding of forgery does not depend on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny. A judge must

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[46] *Id*., emphasis supplied.

[47] *Id*. at 144.

[48] Rule VI, Section 2(h), A.M. No. 02-8-13-SC.

[49] *DECS v. Del Rosario*, 490 Phil. 193, 208 (2005).

therefore conduct an independent examination in order to arrive at a reasonable conclusion as to a signature's authenticity.[50]

That was exactly what the RTC did. It conducted a careful and meticulous examination of the evidence on record. And after having done so, it arrived at the conclusion that the Deed of Absolute Sale is a spurious document as it was impossible for petitioner Dizon to have executed the same, considering that she was in London at the alleged time of execution of the said document. Contrary to the CA's pronouncement, it was not at all fatal to petitioner Dizon's cause that testimony comparing the genuine and fake signature of petitioner Dizon inscribed in the Deed of Absolute Sale was not provided. As jurisprudence grants judges the prerogative to exercise independent judgment on the issue of authenticity of signatures based on the entirety of evidence, the RTC did not err in holding that the signature of petitioner Dizon inscribed in the Deed of Absolute Sale was necessarily a forgery on account of physical impossibility, despite the lack of expert testimony scrutinizing the authenticity of the signature in question.

In fact, as in *Basilio, et al. v. Court of Appeals, et al.*,[51] the Court conducted its own analytical study of the questioned document. After doing so, the Court is convinced that the purported signature of petitioner Dizon in the Deed of Absolute Sale[52] is highly dubious, to say the least.

Comparing the purported signature of petitioner Dizon contained in the Deed of Absolute Sale with her signatures inscribed in other documents, such as her Demand Letters[53]dated August 13, 2008 and the Special Power of Attorney[54] dated June 30, 2015, it is easy to detect the signature in the Deed of Absolute Sale is **patently and demonstrably dissimilar** with

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[50] *Heirs of Gregorio v. Court of Appeals*, 360 Phil. 753, 763-764 (1998).

[51] 400 Phil. 120 (2000).

[52] *Rollo*, p. 180.

[53] *Id*. at 225-226.

[54] Id. at 367-368.

petitioner Dizon's signature in the other documents, written in completely different handwriting styles. The supposed signature of petitioner Dizon in the Deed of Absolute Sale is written in the cursive style, with the letters "C" and "D" inscribed using loops and broader strokes, while the admittedly genuine signatures of petitioner Dizon contained in the other documents are written plainly. It does not take a handwriting expert to see that the signatures contained in the Deed of Absolute Sale and the other documents are of divergent handwriting. This further lends credence to the conclusion made by the RTC that the Deed of Absolute Sale relied upon by respondent Matti, Jr. is fictitious.

On the other side of the fence, looking at the evidence presented by respondent Matti, Jr., it must be emphasized that aside from his lone, self-serving testimony, no other witness was presented to corroborate his allegations that a sale indeed transpired between him and petitioner.

To stress, respondent Matti, Jr. is the plaintiff who initiated the instant case for Specific Performance, making specific allegations on the supposed sale he entered into with petitioner Dizon over the subject property. In civil cases, the basic rule is that the party making allegations has the burden of proving them. The plaintiff must rely on the strength of his own evidence, and not upon the weakness of the defense offered by his opponent.[55]

Hence, in alleging that petitioner Dizon was indeed in the Philippines in February 2000 to execute the purported sale over the subject property with respondent, the latter could have easily presented as witnesses Ms. Acleto, Mrs. Estaris, and his own wife (who was then his girlfriend) who, together with respondent Matti, Jr., allegedly met with petitioner Dizon on February 24, 2000 prior to the supposed execution and notarization of the Deed of Absolute Sale.[56]

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[55] *Ramos v. Obispo*, 705 Phil. 221, 229 (2013).

[56] *Rollo*, p. 282.

Respondent Matti, Jr. also could have easily called to the witness stand the notary public who purportedly notarized the Deed of Absolute Sale, as well as the two witnesses who were supposedly present during the execution of the said instrument before the notary public. Yet, he miserably failed to present these witnesses. Clearly, he failed to discharge his burden of proof.

Further, not only was the lone testimony of respondent Matti, Jr. self-serving and uncorroborated, the testimony itself casts serious doubts as to the veracity of his claims.

During his cross examination before the RTC, despite having supposedly met with petitioner Dizon several times and having spent a considerable amount of time with her when they purportedly executed the Deed of Absolute Sale in February 2000, respondent Matti, Jr. suddenly and inexplicably could not recall and provide a simple and general description as to the physical appearance of petitioner Dizon.[57]

Moreover, when describing his supposed first meeting with petitioner Dizon, respondent Matti, Jr. testified during cross examination that he met petitioner Dizon through Ms. Acleto and Mrs. Estaris in February 2000, who brought him inside a certain vehicle to meet petitioner Dizon. Perplexingly, during this first encounter with petitioner Dizon, despite being the prospective purchaser of her property and despite the sale being a major transaction, respondent Matti, Jr. did not even introduce himself or inquire with petitioner whatsoever about the supposed sale:

Q: So, the first time that you met this Carmelita Dizon inside the car, you just saw her and you did not talk to her?

A: **I did not talk to her.**[58]

It goes without saying that respondent Matti, Jr.'s testimony is unrealistic and contrary to ordinary human experience.

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[57] *Id*. at 44.

[58] *Id*. at 101; emphasis supplied.

Considering that the sale involved real property and entailed a substantial purchase price, respondent Matti, Jr. should have at the very least posed probing questions to the person who represented herself to be petitioner Dizon as regards the subject property and the sale transaction. But, bizarrely, after having been introduced to the person represented to be petitioner Dizon, he just kept mum.

It is axiomatic that for testimonial evidence to be believed, it must not only proceed from the mouth of a credible witness but must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances.[59]

The Court also notes that while in his cross examination, respondent Matti, Jr. explained that he first met petitioner Dizon inside a certain vehicle,[60] this was in conflict with his direct examination where he testified that his first encounter with petitioner Dizon occurred not inside a vehicle, but inside his "mother's residence at 15 Kyoto St., BF Homes Subdivision, Parañaque City, x x x."[61] In the eyes of the Court, the truthfulness, reliability, and credibility of respondent Matti, Jr. is in serious doubt.

All told, after a thorough review of the records of the instant case, including the various evidentiary and documentary evidence provided by both parties, the Court finds itself in agreement with the RTC's Decision dated October 25, 2011 and Order dated April 13, 2012 that there is sufficient and convincing evidence establishing petitioner Dizon's claim that she did not sell the subject property to respondent Matti, Jr. on February 24, 2000, and that the Deed of Absolute Sale is a sham and fictitious document. An absolutely simulated and fictitious contract of sale is null and void.[62] Consequently, as correctly

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[59] *People v. Obedo*, 451 Phil. 529, 542 (2003).

[60] *Rollo*, p. 101.

[61] *Id*. at 280; emphasis supplied.

[62] See *Manila Banking Corporation v. Silverio*, 504 Phil. 17, 26-27 (2005).

held by the RTC, respondent Matti, Jr.'s Complaint for Specific Performance must be dismissed.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The Decision dated July 25, 2014 and Resolution dated November 26, 2014 issued by the Court of Appeals, Tenth Division in CA-G.R. CV No. 98685 are **REVERSED** and **SET ASIDE**.

The Decision dated October 25, 2011 and Order dated April 13, 2012 issued by the Regional Trial Court of Las Piñas City, Branch 202 in Civil Case No. 09-0078 are **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 216018. March 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DON VEGA *y* RAMIL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FINDINGS OF FACT OF THE TRIAL COURTS ARE GENERALLY ACCORDED GREAT WEIGHT; EXCEPT WHEN IT APPEARS ON THE RECORD THAT THE TRIAL COURT MAY HAVE OVERLOOKED, MISAPPREHENDED, OR MISAPPLIED SOME SIGNIFICANT FACTS OR CIRCUMSTANCES WHICH IF CONSIDERED, WOULD HAVE ALTERED THE RESULT. — It is settled that findings of fact of the trial courts

are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant facts or circumstances 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. The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; AN ACCUSED WHO PLEADS SELF-DEFENSE ADMITS TO THE COMMISSION OF THE CRIME CHARGED; REQUISITES OF SELF-DEFENSE; NOT PRESENT.—** An accused who pleads self-defense admits to the commission of the crime charged. He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. Of these three, unlawful aggression is indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated. The Court agrees with the CA that Don failed to discharge his burden. All the requisites of self-defense are wanting in this case:

3. **ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; ELEMENTS; NOT ESTABLISHED. —** [T]here is no unlawful aggression on the part of the victim. For unlawful aggression to be present, there must be real danger to life or personal safety. Accordingly, the accused must establish the concurrence of the three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful. None of the elements of unlawful aggression was proven by the defense. Aside from Don's self-serving statement that it was Manuel who punched and attacked him, not one of

the persons present at the incident corroborated his account. Neither did he present any medical record showing that he sustained any injuries as the result of the attack by Manuel.

4. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; IN ORDER TO APPRECIATE TREACHERY, IT IS NOT ENOUGH THAT THE ATTACK WAS "SUDDEN," "UNEXPECTED," AND "WITHOUT ANY WARNING OR PROVOCATION." 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.— It is established that the qualifying circumstance of treachery must be proven by clear and convincing evidence. Thus, for Don to be convicted of Murder, the prosecution must not only establish that he killed Manuel; it must also be proven that the killing of Manuel was attended by treachery. 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. 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, methods 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. In order to appreciate treachery, both elements must be present. It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation." 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.

5. ID.; 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 ALL OF A SUDDEN AND THE VICTIM'S HELPLESS POSITION WAS ACCIDENTAL.— [I]n killing Manuel, Don merely picked up a bladed weapon from his table - there was no mention in the records as to who owned the said weapon. 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 all of a sudden and the victim's helpless position was accidental. Based on the first and second circumstances abovementioned, Don's decision to attack Manuel was more of a sudden impulse on his part than a planned decision.

6. ID.; ID.; ID.; ID.; WHEN AID WAS EASILY AVAILABLE TO THE VICTIM, SUCH AS WHEN THE ATTENDANT CIRCUMSTANCES SHOW THAT THERE WERE SEVERAL EYEWITNESSES TO THE INCIDENT, NO TREACHERY COULD BE APPRECIATED BECAUSE IF THE ACCUSED INDEED CONSCIOUSLY ADOPTED MEANS TO INSURE THE FACILITATION OF THE CRIME, HE COULD HAVE CHOSEN ANOTHER PLACE OR TIME.— [A]s testified to by the witnesses of the prosecution, the incident happened during a drinking spree where there were more or less 15 people, excluding Don and Manuel. If Don wanted to make certain that no risk would come to him, he could have chosen another time and place to stab Manuel. In another case, the Court held that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time. Thus, the Court can reasonably conclude that Don acted impetuously in suddenly stabbing Manuel.

7. ID.; ID.; HOMICIDE; ABSENT THE QUALIFYING CIRCUMSTANCE OF TREACHERY, THE CRIME IS HOMICIDE AND NOT MURDER; PROPER IMPOSABLE PENALTY.— With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any modifying

circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years. Thus, Don shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

8. 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 CA Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal filed under Section 13(c), Rule 124 of the Rules of Court from the Decision[1] dated May 12, 2014 of the Court of Appeals (CA), Fifth (5th) Division, in CA-G.R. CR-HC No. 05072, which affirmed the Decision[2] dated May 31, 2011 of the Regional Trial Court, Branch 42, Manila (RTC), in Criminal Case No. 09-266191, finding herein accused-appellant Don Vega y Ramil (Don) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Don was charged with the crime of Murder under the following Information:

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Rosmari D. Carandang (now a Member of this Court) and Marlene Gonzales-Sison concurring.

[2] CA *rollo*, pp. 33-37. Penned by Judge Dinnah C. Aguila-Topacio.

That on or about January 18, 2009, in the City of Manila, Philippines, the said accused, with intent to kill, qualified with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously take [*sic*], attack, assault and use personal violence upon the person of one MANUEL ISIP y PADILLA @ Antuling, by then and there repeatedly stabbing the latter on different parts of his body with a bladed weapon, thereby inflicting upon the said MANUEL ISIP y PADILLA @ Antuling mortal stab wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.[3]

Upon arraignment, Don pleaded not guilty.

Version of the Prosecution

The witnesses for the prosecution were SPO2 Edmundo Cabal, Jennifer S. Torres, Aldrin R. Fernandez, Dr. Romeo T. Salen, and Maricel A. Calixto, whose versions of the incident were summarized by the RTC and adopted by the CA and the Office of the Solicitor General, *viz.*:

[O]n 18 January 2009 at about 11:30 in the evening, the victim, Manuel Padilla Isip, was at Arellano Street, Malate, Manila because his friend, a certain Ogad Venus, was celebrating his birthday. Among his drinking buddies was Aldrin Roldan Fernandez, witness for the prosecution. They were around fifteen at that time including the celebrator. While drinking, chatting, and listening to music, they spotted accused Don Vega who was about four [arms'] length away sniffing rugby from a bottle. After a few hours, Don Vega approached them and caused a disturbance. He smashed several items. Victim Manuel Isip tried to pacify the accused saying, "*pre, huwag naman dito, kasi may nagkakasiyahan dito*" but accused harshly replied, "*huwag kang makialam dito, baka ikaw ang samain*." Victim Manuel Isip did not comment and merely turned his back to avert a bigger trouble. While the victim's back was turned on him, accused suddenly grabbed [the] victim from behind, wrapped his left arm around [the] victim's neck and using his right hand, plunged a knife to his (Manuel's) chest. Victim Manuel Isip was rushed to the *Ospital ng Maynila* but was declared "dead on arrival."

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[3] *Id.* at 33.

The victim (Manuel Isip) suffered six stab wounds and one abrasion on the body. The cause of his death is [sic] the four stab wounds that penetrated the frontal cavities of the chest.[4]

Version of the Defense

The defense offered the lone testimony of Don, which was recounted by the RTC in its Decision, in this manner:

For its part, the defense presented accused himself, who painted an entirely different picture of the incident. He claimed that on 18 January 2009, at about 11:00 o'clock in the evening, [h]e was along Tuazon St., San Andres, Manila, drinking with victim Manuel Isip and a certain "Fernandez," together with the birthday celebrator called "Ogad." A certain "Jeffrey" and the father of the celebrator were also there. More than fifteen joined the drinking spree. The mood was fine. He requested victim Manuel Isip to play his theme song. The victim asked him to wait because there were many who made similar request[s]. He reiterated his request to victim several times but he ignored him. He then approached the victim, but the latter punched him. Upset, he went back to his table and picked up a bladed weapon. Victim Manuel Isip suddenly charged towards him, so he stabbed him. He thought the people will pacify him (accused), but he was wrong. He then dashed to his house because people were ganging up on him. He was apprehended inside his abode and he voluntarily surrendered to those who arrested him. [The victim] was unarmed. It was unfortunate because he did not have previous "bad blood" with [the] victim. He regrets what has happened; it was unwilled.[5]

Ruling of the RTC

After trial on the merits, in its Decision[6] dated May 31, 2011, the RTC convicted Don of the crime of Murder. The dispositive portion of said Decision reads:

WHEREFORE, the Court finds accused DON VEGA y RAMIL guilty beyond reasonable doubt of the crime of MURDER. He is

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[4] *Id.* at 34.

[5] *Id.* at 34-35.

[6] *Supra* note 2.

hereby sentenced to suffer the penalty of *Reclusion Perpetua*. Accused is further ordered to pay Fifty Thousand Pesos (Php50,000.00) as civil indemnity and [Php]50,000.00 as moral damages to the heirs of Manuel Padilla Isip.

SO ORDERED.[7]

The RTC ruled that all the elements of Murder are present in the instant case.[8] It also ruled that the defense was not able to establish all the elements of self-defense.[9] One of the important elements of self-defense is that there be reasonable necessity of the means employed to prevent or repel the unlawful aggression.[10] However, in this case, there is none since Don used a bladed weapon to attack an unarmed victim.[11] More importantly, there was no unlawful aggression. The act of Manuel Isip (Manuel) charging towards Don cannot even be considered as unlawful aggression absent any showing of any intention of the victim to harm the accused.[12] Thus, on this score, the theory of self-defense, according to the RTC, falls flat on its face.[13] Further, considering that Don claimed that there were 15 eyewitnesses to the crime, he failed to present any witness to fortify his contention that he acted in self-defense.[14] Lastly, the RTC ruled that treachery is present since Don grabbed Manuel from behind and suddenly attacked the unarmed victim with a bladed weapon.[15]

Aggrieved, Don appealed to the CA.

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[7] CA *rollo*, p. 37.

[8] *Id*. at 36.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 37.

[14] *Id.*

[15] *Id*.

Ruling of the CA

On appeal, in its Decision[16] dated May 12, 2014, the CA affirmed the conviction by the RTC with modifications:

> **WHEREFORE**, the instant appeal is **DISMISSED**. The Decision of the Regional Trial Court of Manila, Branch 42 dated May 31, 2011 in Criminal Case No. 09-266191 is **AFFIRMED WITH MODIFICATION** in that accused-appellant Don Vega y Ramil is ordered to pay the heirs of Manuel Padilla Isip the following: a) Php75,000.00 as civil indemnity; b) Php75,000.00 as moral damages; c) Php14,000.00 as actual damages; and d) Php30,000.00 as exemplary damages. Further, all monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this Decision until full payment thereof.
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> **SO ORDERED.**[17]

The CA likewise held that the elements of self-defense are lacking.[18] Moreover, the CA said that Don's flight from the place where the crime was committed, his non-reporting of the crime to the police, and his failure to voluntarily surrender to the police after the commission of the crime fully warranted the RTC's rejection of his claim of self-defense.[19] Lastly, the CA ruled that the killing of the victim was attended by treachery qualifying the crime to Murder.[20]

Hence, this appeal.

Issues

Whether the CA erred in affirming Don's conviction for Murder.

The Court's Ruling

The appeal is partly meritorious.

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[16] *Supra* note 1.

[17] *Id*. at 15.

[18] *Id*. at 7.

[19] *Id*. at 8.

[20] *Id*. at 13.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant facts or circumstances which if considered, would have altered the result.[21] 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.[22] The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[23]

After a careful review and scrutiny of the records, the Court affirms the conviction of Don, but only for the crime of Homicide, instead of Murder, as the qualifying circumstance of treachery was not proven in the killing of Manuel.

The accused failed to prove self-defense

In questioning his conviction, Don argues that he should not be criminally liable for the death of the victim because he only acted in self-defense. He avers that he was merely requesting Manuel to play his theme song, but when he approached to follow-up on his request, the victim suddenly punched him, which thus triggered him to stab the victim.[24]

This argument deserves scant consideration.

An accused who pleads self-defense admits to the commission of the crime charged.[25] He has the burden to prove, by clear and convincing evidence, that the killing was attended by the

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[21] *People v. Duran Jr.*, G.R. no. 215748, November 20, 2017, 845 SCRA 188, 211.

[22] *Id*.

[23] *Ramos v. People*, 803 Phil. 775, 783 (2017).

[24] See CA *rollo*, pp. 34-35.

[25] *People v. Duran, Jr.*, *supra* note 21 at 196.

following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[26] Of these three, unlawful aggression is indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person."[27] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[28]

The Court agrees with the CA that Don failed to discharge his burden. All the requisites of self-defense are wanting in this case:

First, there is no unlawful aggression on the part of the victim. For unlawful aggression to be present, there must be real danger to life or personal safety.[29] Accordingly, the accused must establish the concurrence of the three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.[30] None of the elements of unlawful aggression was proven by the defense. Aside from Don's self-serving statement that it was Manuel who punched and attacked him, not one of the persons present at the incident corroborated his account.[31] Neither did he present any medical record showing that he sustained any injuries as the result of the attack by Manuel.[32]

Second, in the absence of unlawful aggression on the part of the victim, the second requisite of self-defense could not have been present. Even assuming that there was unlawful aggression,

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[26] *Guevarra v. People*, 726 Phil. 183, 194 (2014).

[27] *People v. Dolorido*, 654 Phil. 467, 475 (2011).

[28] *Nacnac v. People*, 685 Phil. 223, 229 (2012).

[29] *People v. Satonero*, 617 Phil. 983, 993 (2009).

[30] *People v. Nugas*, 611 Phil. 168, 177 (2011).

[31] *Rollo*, p. 7.

[32] *Id*.

the means employed by Don in repelling the alleged attack by Manuel was not reasonably necessary. Manuel was unarmed and had his back turned while Don used a bladed weapon to "repel the attack" and stab Manuel repeatedly.[33] Thus, the CA was correct in ruling that the means employed by Don in repelling the attack was unreasonable.

Lastly, the third requisite requires the person mounting a defense to be reasonably blameless. He or she must not have antagonized or incited the attacker into launching an assault.[34] In this case, Don was not entirely blameless as the reason why Manuel scolded him was because he was breaking things and making unnecessary disturbance.[35] It was also Don who suddenly rushed to the victim and stabbed the latter several times in the chest.[36] In addition, there was no sufficient provocation on the part of Manuel. Based on the account of the witnesses of the prosecution, Manuel merely implored Don to refrain from breaking things and making unnecessary disturbance.[37] In fact, when Don uttered harsh words against Manuel, the latter did not make a comment and instead turned his back from the former.[38]

Hence, the Court finds that Don failed to prove that he acted in self-defense.

Treachery was not established by clear and convincing evidence

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Don liable for Murder instead of Homicide. The CA held:

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[33] *Id.*

[34] *Velasquez v. People*, 807 Phil. 438, 451 (2017).

[35] *Rollo*, p. 1.

[36] *Id.* at 7-8.

[37] *Id.*

[38] *Id.* at 7.

Applying the foregoing pronouncement, we find that *alevosia* is thus present in the case at bar. From the statements of Fernandez and Calixto, accused-appellant wrapped his arm around the neck of Manuel and stabbed the victim the moment he turned his back from the accused-appellant. Evidently, the attack is so sudden and unexpected preventing any chance from the victim to defend himself. In other words, accused-appellant's position in attacking Manuel rendered the victim defenseless and unable to retaliate. Moreso [*sic*], the fatality and quantity of the stab wounds forestalled any possibility on the part of Manuel of resisting the attack. All told, the attack was executed in a manner that tended to directly and specifically ensure the execution of the offense.[39]

It is established that the qualifying circumstance of treachery must be proven by clear and convincing evidence.[40] Thus, for Don to be convicted of Murder, the prosecution must not only establish that he killed Manuel; it must also be proven that the killing of Manuel was attended by treachery.

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.[41] 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, methods or forms of execution were deliberately or consciously adopted by the assailant.[42] 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.[43]

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[39] *Rollo*, p. 14.

[40] *Guevarra v. People*, *supra* note 26.

[41] *People v. Duran, Jr.*, supra note 21 at 205-206.

[42] *Id*., citing *People v. Dulin*, 762 Phil. 24, 40 (2015).

[43] *Id*., citing *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

In order to appreciate treachery, both elements must be present.[44] It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation."[45] 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.

In the case at bar, the following circumstances negate the presence of treachery:

First, the stabbing incident happened during a drinking spree in which Don was already a part of. He did not deliberately seek the presence of Manuel as he was already in the same vicinity as Manuel, joining the merriment when he stabbed the latter.

Second, in killing Manuel, Don merely picked up a bladed weapon from his table - there was no mention in the records as to who owned the said weapon. 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 all of a sudden and the victim's helpless position was accidental.[46]

Based on the first and second circumstances abovementioned, Don's decision to attack Manuel was more of a sudden impulse on his part than a planned decision.

Lastly, as testified to by the witnesses of the prosecution, the incident happened during a drinking spree where there were more or less 15 people, excluding Don and Manuel. If Don wanted to make certain that no risk would come to him, he could have chosen another time and place to stab Manuel. In another case, the Court held that when aid was easily available to the victim, such as when the attendant circumstances show

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[44] *Id*., citing REVISED PENAL CODE, Art. 14, par. 16.

[45] *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

[46] *People v. Escoto*, 313 Phil. 785, 802 (1995).

that there were several eyewitnesses to the incident, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.[47] Thus, the Court can reasonably conclude that Don acted impetuously in suddenly stabbing Manuel.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal.* In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.

Thus, Don shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

Finally, in view of the Court's ruling in *People v. Jugueta*,[48] the damages awarded in the CA 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 Don Vega y Ramil **GUILTY of HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Manuel Isip y Padilla the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos

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[47] *People v. Caliao*, G.R. No. 226392, July 23, 2018, p. 7.

[48] 783 Phil. 806 (2016).

(₱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 (*Chairperson*), *Perlas-Bernabe, Reyes, Jr., J.,* and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 217611. March 27, 2019]

ROGELIO LOGROSA, *petitioner, vs.* **SPOUSES CLEOFE AND CESAR AZARES, SPOUSES ABUNDIO, JR. AND ANTONIETA TORRES, SPOUSES NELSON SALA AND ARLENE ANG, AND SPOUSES BONIFACIO, JR., AND WELHELMINA BARUIZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; THE CERTIFICATE OF TITLE SERVES AS EVIDENCE OF AN INDEFEASIBLE AND INCONTROVERTIBLE TITLE TO THE PROPERTY IN FAVOR OF THE PERSON WHOSE NAME APPEARS THEREIN, AND THE BEST PROOF OF OWNERSHIP OF A PARCEL OF LAND.— The Court notes that petitioner Logrosa does not rely merely on his own testimony to prove that he is a co-owner of the subject properties. No one disputes the fact that there are **eight certificates of title**, *i.e.*, TCT No. T-52508, TCT No. T-52509, TCT No. T-52510, TCT No. T-52511, TCT No. T-52512, TCT No. T-52513, TCT No. T-

52514, and TCT No. T-52515, **all of which clearly and unequivocally identify petitioner Logrosa as one of the co-owners of the subject properties**. It is a fundamental principle in land registration that **the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein**. It becomes the **best proof of ownership of a parcel of land**. Such principle of indefeasibility has long been well-settled in this jurisdiction and it is only when the acquisition of the title is attended with fraud or bad faith that the doctrine finds no application. In the instant case, there is no accusation whatsoever that petitioner Logrosa was included as co-owner in the TCTs through means of fraud or bad faith.

2. **REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; A DOCUMENT EVIDENCING A SALE TRANSACTION, SUCH AS A DEED OF SALE, WHICH IS DULY NOTARIZED IS CONSIDERED A PUBLIC DOCUMENT AND THEREFORE ENJOYS THE PRESUMPTION OF VALIDITY AS TO ITS AUTHENTICITY AND DUE EXECUTION.—** [I]t is also not disputed by any party that a **duly notarized Deed of Absolute Sale dated April 14, 1987** was executed by all the parties, wherein it clearly states without ambiguity that one of the vendees of the subject properties is petitioner Logrosa. It must be stressed that respondents Sps. Azares do not deny whatsoever that petitioner Logrosa is a co-vendee under the Deed of Absolute Sale. In fact, respondent Cleofe was even a co-signatory of the said Deed of Absolute Sale, evidencing her assent and consent to petitioner Logrosa's status as a co-vendee of the subject properties. The Court has previously held that a document evidencing a sale transaction, such as a deed of sale, which is duly notarized is considered a public document and therefore enjoys the presumption of validity as to its authenticity and due execution. Section 23, Rule 132 of the Rules of Court likewise state that public documents are *prima facie* evidence of the fact which gave rise to their execution.

3. **CIVIL LAW; THE CIVIL CODE; CO-OWNERSHIP; ONE'S ASSERTION OF OWNERSHIP IS STRENGTHENED AND BUTTRESSED BY THE FACT OF POSSESSION OF THE PROPERTY, COUPLED WITH THE LACK OF OPPOSITION OF SUCH POSSESSION ON THE PART**

OF THE OTHER PARTIES.— [A]s held in *Heirs of Santiago v. Heirs of Santiago*, one's assertion of ownership is further strengthened and buttressed by the fact of possession, *i.e.*, by building and occupying a house on the subject lot, coupled with the lack of opposition of such possession on the part of the other parties. In the instant case, it is not disputed that petitioner Logrosa possesses a portion of the subject property with no opposition by the other parties, aside from respondents Sps. Azares, who disclaimed petitioner Logrosa's status as co-owner **only after more than two decades since the execution of the Deed of Absolute Sale, and only as a mere reaction to the Complaint for Partition filed by petitioner Logrosa**. Hence, with the strong legal presumption created by the eight certificates of title and duly notarized Deed of Absolute Sale that petitioner Logrosa is a co-buyer and co-owner of the subject properties, the burden to prove otherwise was shifted to respondents Sps. Azares. From the evidence on record, the Court finds that respondents Sps. Azares have not successfully hurdled this burden.

4. ID.; ID.; ID.; THE SELF-SERVING TESTIMONY OF A PARTY TO AN INSTRUMENT CANNOT BE GIVEN MORE WEIGHT AND RELIABILITY THAN THE CONTENTS OF SUCH INSTRUMENT, ESPECIALLY IF SUCH INSTRUMENT ENJOYS PRESUMPTIVE WEIGHT.— To controvert the strong legal presumption in favor of petitioner Logrosa's co-ownership over the subject properties, respondents Sps. Azares can only muster the sole testimony of respondent Cesar. A solitary, self-serving testimony cannot successfully overturn petitioner Logrosa's *prima facie* status as co-owner brought about by the execution of a notarized Deed of Absolute Sale and the issuance of the certificates of title. It is the main contention of respondents Sps. Azares that despite the inclusion in the documents of title of petitioner Logrosa and the other parties, *i.e.*, respondents Sps. Torres, Sala, and Baruiz, the latter are only co-owners on paper and that respondents Sps. Azares are the sole buyers of the subject properties. According to respondents Sps. Azares, the sole reason why they included the other parties in the documents of title is "to provide one place for all the parties herein to live near each other for easy access and mutual security." First and foremost, respondent Cesar's testimony is self-serving. The self-

serving testimony of a party to an instrument cannot be given more weight and reliability than the contents of such instrument, especially if such instrument enjoys presumptive weight.

5. **ID.; ID.; ID.; THE INCLUSION OF PERSONS IN A DEED OF SALE AND A CERTIFICATE OF TITLE IS BY NO MEANS A PREREQUISITE TO ALLOW SUCH PERSONS TO OCCUPY SUCH PROPERTY. HENCE, NO ONE IN HIS RIGHT MIND WOULD INCLUDE NON-BUYERS OR NON-OWNERS IN A NOTARIZED DEED OF ABSOLUTE SALE AND IN INDEFEASIBLE CERTIFICATES OF TITLE IF HE TRULY BELIEVES THAT HE IS THE SOLE OWNER OF THE PROPERTY.—** The Court finds respondents Sps. Azares' theory perplexing and contrary to ordinary human experience. Assuming *arguendo* that respondents Sps. Azares are indeed the true sole owners of the subject properties, there was absolutely no need for them to include the other parties in the documents of title if only to allow the latter to stay within the premises of the subject properties. In other words, if respondents Sps. Azares' mere motivation was to provide one place for all of the parties to live near each other, respondents Sps. Azares could have easily achieved such objective without including the parties in the sale transaction. The inclusion of persons in a deed of sale and a certificate of title is by no means a prerequisite to allow such persons to occupy such property. Hence, no one in his right mind would include non-buyers or non-owners in a notarized deed of absolute sale and in indefeasible certificates of title if he truly believes that he is the sole owner of the property. Bearing in mind the strong presumption created by public documents such as a notarized instrument and certificates of title, if respondents Sps. Azares really believed that they are the sole owners of the subject properties, one would expect that they would, at the very least, execute another document evidencing their true agreement as a precautionary measure. But no such precautionary measure was employed by respondents Sps. Azares to protect their supposed right as sole owners of the subject properties.

6. **ID.; ID.; ID.; TAX DECLARATIONS AND TAX RECEIPTS AS EVIDENCE OF OWNERSHIP CANNOT PREVAIL OVER A CERTIFICATE OF TITLE, WHICH IS AN INCONTROVERTIBLE PROOF OF OWNERSHIP.—** With

respect to the tax declarations presented by respondents Sps. Azares, jurisprudence holds that tax declarations and tax receipts as evidence of ownership cannot prevail over a certificate of title which, to reiterate, is an incontrovertible proof of ownership. Hence, in order for respondents Sps. Azares' tax declarations to successfully overturn the strong presumption of petitioner Logrosa's co-ownership, it was incumbent upon respondents Sps. Azares to fortify their position with other supporting evidence. As stated above, respondents Sps. Azares were not able to do so.

7. ID.; ID.; ID.; A PERSON WHO DERIVED HIS TITLE AND WAS GRANTED CO-OWNERSHIP RIGHTS THROUGH GRATUITY MAY COMPEL PARTITION.— The Court finds the lower courts' heavy reliance on petitioner Logrosa's supposed incapacity to purchase the subject properties misplaced; it made a mountain out of a molehill. Assuming for argument's sake that petitioner Logrosa did not contribute in the payment of the purchase price of the subject properties, it does not necessarily mean that he could not become a co-owner of the subject properties who can compel partition. A person may exercise the right to compel the partition of real estate if he/she sets forth in his/her complaint the nature and extent of his title and subsequently proves the same. The law does not make a distinction as to how the co-owner derived his/her title, may it be through gratuity or through onerous consideration. In other words, a person who derived his title and was granted co-ownership rights through gratuity may compel partition.

8. ID.; ID.; TRUSTS; THE BURDEN OF PROVING THE EXISTENCE OF A TRUST IS ON THE PARTY ASSERTING ITS EXISTENCE, AND SUCH PROOF MUST BE CLEAR AND SATISFACTORILY SHOW THE EXISTENCE OF THE TRUST AND ITS ELEMENTS; WHILE IMPLIED TRUSTS MAY BE PROVED BY ORAL EVIDENCE, THE EVIDENCE MUST BE TRUSTWORTHY AND RECEIVED BY THE COURTS WITH EXTREME CAUTION, AND SHOULD NOT BE MADE TO REST ON LOOSE, EQUIVOCAL OR INDEFINITE DECLARATIONS.— Respondents Sps. Azares maintain that there was no gratuitous granting of title and co-ownership rights to petitioner Logrosa and that they only intended to designate petitioner Logrosa as a mere trustee of the subject properties. However, to reiterate,

this self-serving testimony of respondents Sps. Azares based on their mere say-so cannot stand, *vis-a-vis* the strong legal presumption created by the certificates of title and the notarized Deed of Absolute Sale that petitioner Logrosa is a co-owner of the subject property. As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated. To the contrary, as pointed out by petitioner Logrosa, the testimony of respondent Cesar actually lends credence to petitioner Logrosa's claim that respondent Cesar really intended to designate the former, together with the other respondents, as co-owners of the subject properties.

9. ID.; ID.; CO-OWNERSHIP; TO CONTROVERT THE LEGAL PRESUMPTION BROUGHT ABOUT BY THE EXECUTION AND ISSUANCE OF PUBLIC DOCUMENTS POINTING TO THE EXISTENCE OF CO-OWNERSHIP, THE OPPOSING PARTY MUST CARRY AND SATISFY THE BURDEN OF PROVING WITH CLEAR, CONVINCING AND PERSUASIVE EVIDENCE TO REPUDIATE THE CO-OWNERSHIP.— [W]hile it is true that the Court has previously held that the mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the registrant may only be a trustee, to controvert the legal presumption brought about by the execution and issuance of public documents pointing to the existence of co-ownership, the opposing party must carry and satisfy the burden of proving with clear, convincing and persuasive evidence to repudiate the co-ownership. In this case, the Court finds that respondents Sps. Azares failed to fulfill such burden.

APPEARANCES OF COUNSEL

Mariano C. Alegarbes for respondents.
Yap-de Gala Law & Realty Offices for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Rogelio Logrosa (petitioner Logrosa) against respondents Spouses Cleofe Azares (Cleofe) and Cesar Azares (Cesar) (collectively, respondents Sps. Azares), Spouses Abundio Torres, Jr. (Abundio) and Antonieta Dumagan Torres (Antonieta) (collectively, respondents Sps. Torres), Spouses Nelson Sala (Nelson) and Arlene Ang (Arlene) (collectively, respondents Sps. Sala), and Spouses Bonifacio Baruiz, Jr. (Bonifacio) and Welhelmina Baruiz (Welhelmina) (collectively, respondents Sps. Baruiz), assailing the Decision[2] dated July 30, 2014 (assailed Decision) and Resolution[3] dated February 26, 2015 (assailed Resolution) promulgated by the Court of Appeals - Cagayan de Oro City (CA), Special Twenty-First Division and Former Special Twenty-First Division, respectively, in CA-G.R. CV No. 02878-MIN.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, and as culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

> The facts, as summarized by the [Regional Trial Court of Tagum City, Davao del Norte, Branch 30 (RTC)], are as follows:
>
> > In his verified complaint [for partition filed before the RTC, docketed as Civil Case No. 4026, petitioner Logrosa] alleged that he, together with the [respondents] are co-owners of eight (8) parcels of lands [(subject properties)], all situated in [the] Municipality of Tagum (now Tagum City), Davao del Norte, and more particularly described under the following Transfer

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[1] *Rollo*, pp. 8-42.

[2] *Id*. at 44-50. Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Pablito A. Perez concurring.

[3] *Id*. at 60-61.

Certificates of Titles (TCT), to wit: TCT No. T-52508,[4] TCT No. T-52509,[5] TCT No. T-52510,[6] TCT No. T-52511,[7] TCT No. T-52512,[8] TCT No. T-52513,[9] TCT No. T-52514,[10] and TCT No. T-52515.[11] [The aforementioned TCTs all indicate that petitioner Logrosa, together with the respondents, are co-owners of the subject properties.]

[Petitioner Logrosa alleged that in 1987, the original owner of the subject properties, one Benjamin A. Gonzales (Gonzales), sold the subject properties collectively to petitioner Logrosa and the other respondents. The records show that a notarized Deed of Absolute Sale[12] dated April 14, 1987 was executed by the parties, bearing the signatures of Gonzales, petitioner Logrosa, respondents Cleofe, Nelson, Bonifacio, and Abundio.][13]

[Petitioner Logrosa likewise] claimed that the aforementioned titles were issued to the parties herein on May 19, 1987, hence the co-ownership over the aforementioned properties had already existed for more than ten (10) years, without the parties having entered into [any] subsequent agreement to keep the above-said properties undivided. He anchored his complaint on Article 494 of the New Civil Code of the Philippines which provides:

> "No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand a[t] any time the partition of the thing owned in common, insofar as his share is concerned. [x x x]"

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[4] *Id*. at 73.

[5] *Id.* at 74.

[6] *Id*. at 75.

[7] *Id.* at 76.

[8] *Id*. at 77.

[9] *Id.* at 78.

[10] *Id*. at 79.

[11] *Id.* at 80.

[12] *Id*. at 89-93.

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

Summoned to plead, only [respondents Sps. Azares] filed their Answer to the complaint, and opposed [petitioner Logrosa's] prayer for partition.

[Respondents Sps. Torres], as well as [respondent Welhelmina], respectively filed a manifestation and declared that they are not filing an answer to the complaint and that they interpose no objection to the partition of the properties subject of this case. On the other hand, [respondents Sps. Sala] did not file any answer.

Answering [respondents Sps. Azares] contended that while it may be true that [petitioner Logrosa's] name appeared in the titles of the properties aforementioned, however, they belied [petitioner Logrosa's] claim that he is a co-owner of the same, as he never contributed as to its acquisition and never contributed for their maintenance, much less paid the taxes due thereon.

Answering [respondents Sps. Azares] further alleged that sometime in 1985, [petitioner Logrosa], being their cousin, used to work for them as their trusted laborer together with the other [respondents] at their gold mining tunnel in Mt. Diwata, Diwalwal, Monkayo. [Petitioner Logrosa], being young and inadequately schooled, was sent to school at the expense of the answering [respondents Sps. Azares]. They also allowed [petitioner Logrosa] to construct his house at Nova Tierra, Lanang, Davao City upon condition that [petitioner Logrosa] would pay and reimburse them for all his expenses thereto when [petitioner Logrosa's] finances allow.

Sometime in 1986, answering [respondents Sps. Azares] purchased all the properties subject of this case to provide one place for all the parties herein to live near each other for easy access and mutual security. [Petitioner Logrosa] and the other [respondents] have not contributed to their acquisition. As time went by, [petitioner Logrosa] and the other [respondents] turned hostile against the answering [respondents Sps. Azares].

During trial, [petitioner Logrosa] testified in court to support his claim. He likewise presented to the witness stand [respondent Antonieta] to identify the document in connection with the acquisition of the aforementioned properties.

> Answering [respondents Sps. Azares] presented only one (1) witness, in the person of [respondent] Cesar Azares who debunked the claims of [petitioner Logrosa], asserting that he did not make [petitioner Logrosa] and the other [respondents] as co-owners of the properties subject of this case. [Respondent Cesar] further claimed that [petitioner Logrosa] as well as the other [respondents] had no capacity to acquire the said properties way back to the time the properties were purchased as they were only his employees in his mining business in Mt. Diwata, Diwalwal, Monkayo.

After trial, the RTC dismissed the complaint for lack of merit [in its Decision[14] dated February 27, 2012.]

Hence, [petitioner Logrosa appealed the RTC's Decision before the CA, alleging, in the main, that the RTC erred in holding that there is no co-ownership that exists between petitioner Logrosa and respondents Sps. Azares.][15]

The Ruling of the CA

In its assailed Decision, the CA denied petitioner Logrosa's appeal. The dispositive portion of the assailed Decision of the CA reads:

> WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated February 27, 2012 of the Regional Trial Court, 11th Judicial Region, Branch 30, Tagum City, Davao del Norte, in Civil Case No. 4026, is **AFFIRMED**.
>
> SO ORDERED.[16]

In the assailed Decision, the CA held that "after a careful scrutiny of the records, the [CA] finds that the evidence adduced by [petitioner Logrosa] were insufficient to warrant a positive finding of co-ownership."[17]

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[14] *Id.* at 62-68. Penned by Presiding Judge Rowena Apao-Adlawan.

[15] *Id*. at 45-46.

[16] *Id*. at 50.

[17] *Id*. at 47-48.

Petitioner Logrosa filed a Motion for Reconsideration[18] dated August 22, 2014, which was denied by the CA in its assailed Resolution dated February 26, 2015.

Hence, the instant Petition.

Respondents Sps. Azares filed their Comment[19] dated July 17, 2017, to which petitioner Logrosa responded with a Reply[20] dated November 29, 2017.

Issue

The central question to be resolved by the Court is whether the CA was correct in upholding the RTC's Decision dated February 27, 2012, which dismissed petitioner Logrosa's complaint for partition because of its finding that the latter is not a co-owner and is a mere trustee of the subject properties.

The Court's Ruling

The instant Petition is meritorious.

After a careful review of the records of the instant case, the Court finds that the evidence on record sufficiently substantiates petitioner Logrosa's claim that he is a co-owner of the subject properties.

The Court notes that petitioner Logrosa does not rely merely on his own testimony to prove that he is a co-owner of the subject properties. No one disputes the fact that there are **eight certificates of title**, *i.e.*, TCT No. T-52508,[21] TCT No. T-52509,[22] TCT No. T-52510,[23] TCT No. T-52511,[24] TCT No. T-52512,[25]

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[18] *Id*. at 51-58

[19] *Id.* at 187-189.

[20] *Id*. at 194-197.

[21] *Id*. at 73.

[22] *Id*. at 74.

[23] *Id*. at 75.

[24] *Id*. at 76.

[25] *Id*. at 77.

TCT No. T-52513,[26] TCT No. T-52514,[27] and TCT No. T-52515,[28] **all of which clearly and unequivocally identify petitioner Logrosa as one of the co-owners of the subject properties**.

It is a fundamental principle in land registration that **the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein**.[29] It becomes the **best proof of ownership of a parcel of land**. Such principle of indefeasibility has long been well-settled in this jurisdiction and it is only when the acquisition of the title is attended with fraud or bad faith that the doctrine finds no application.[30] In the instant case, there is no accusation whatsoever that petitioner Logrosa was included as co-owner in the TCTs through means of fraud or bad faith.

Aside from the foregoing, it is also not disputed by any party that a **duly notarized Deed of Absolute Sale dated April 14, 1987** was executed by all the parties, wherein it clearly states without ambiguity that one of the vendees of the subject properties is petitioner Logrosa. It must be stressed that respondents Sps. Azares do not deny whatsoever that petitioner Logrosa is a co-vendee under the Deed of Absolute Sale. In fact, respondent Cleofe was even a co-signatory of the said Deed of Absolute Sale, evidencing her assent and consent to petitioner Logrosa's status as a co-vendee of the subject properties.

The Court has previously held that a document evidencing a sale transaction, such as a deed of sale, which is duly notarized is considered a public document and therefore enjoys the

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[26] *Id*. at 78.

[27] *Id*. at 79

[28] *Id*. at 80.

[29] *Heirs of Brusas v. Court of Appeals*, 372 Phil. 47, 54 (1999).

[30] *Federated Realty Corp. v. Court of Appeals*, 514 Phil. 93, 104 (2005).

presumption of validity as to its authenticity and due execution.[31] Section 23, Rule 132 of the Rules of Court likewise state that public documents are *prima facie* evidence of the fact which gave rise to their execution. Moreover, as held in *Heirs of Santiago v. Heirs of Santiago*,[32] one's assertion of ownership is further strengthened and buttressed by the fact of possession, *i.e.*, by building and occupying a house on the subject lot, coupled with the lack of opposition of such possession on the part of the other parties.[33] In the instant case, it is not disputed that petitioner Logrosa possesses a portion of the subject property with no opposition by the other parties, aside from respondents Sps. Azares, who disclaimed petitioner Logrosa's status as co-owner **only after more than two decades since the execution of the Deed of Absolute Sale, and only as a mere reaction to the Complaint for Partition filed by petitioner Logrosa**.

Hence, with the strong legal presumption created by the eight certificates of title and duly notarized Deed of Absolute Sale that petitioner Logrosa is a co-buyer and co-owner of the subject properties, the burden to prove otherwise was shifted to respondents Sps. Azares.

From the evidence on record, the Court finds that respondents Sps. Azares have not successfully hurdled this burden.

To controvert the strong legal presumption in favor of petitioner Logrosa's co-ownership over the subject properties, respondents Sps. Azares can only muster the sole testimony of respondent Cesar. A solitary, self-serving testimony cannot successfully overturn petitioner Logrosa's *prima facie* status as co-owner brought about by the execution of a notarized Deed of Absolute Sale and the issuance of the certificates of title.

It is the main contention of respondents Sps. Azares that despite the inclusion in the documents of title of petitioner Logrosa and the other parties, *i.e.*, respondents Sps. Torres,

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[31] *Heirs of Santiago v. Heirs of Santiago*, 452 Phil. 238, 250 (2003).

[32] 452 Phil. 238 (2003).

[33] See *id.* at 250.

Sala, and Baruiz, the latter are only co-owners on paper and that respondents Sps. Azares are the sole buyers of the subject properties. According to respondents Sps. Azares, the sole reason why they included the other parties in the documents of title is "to provide one place for all the parties herein to live near each other for easy access and mutual security."[34]

First and foremost, respondent Cesar's testimony is self-serving. The self-serving testimony of a party to an instrument cannot be given more weight and reliability than the contents of such instrument, especially if such instrument enjoys presumptive weight.[35]

Further, the Court finds respondents Sps. Azares' theory perplexing and contrary to ordinary human experience. Assuming *arguendo* that respondents Sps. Azares are indeed the true sole owners of the subject properties, there was absolutely no need for them to include the other parties in the documents of title if only to allow the latter to stay within the premises of the subject properties.

In other words, if respondents Sps. Azares' mere motivation was to provide one place for all of the parties to live near each other, respondents Sps. Azares could have easily achieved such objective without including the parties in the sale transaction. The inclusion of persons in a deed of sale and a certificate of title is by no means a prerequisite to allow such persons to occupy such property.

Hence, no one in his right mind would include non-buyers or non-owners in a notarized deed of absolute sale and in indefeasible certificates of title if he truly believes that he is the sole owner of the property. Bearing in mind the strong presumption created by public documents such as a notarized instrument and certificates of title, if respondents Sps. Azares really believed that they are the sole owners of the subject

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[34] *Rollo*, p. 66

[35] *Development Bank of the Phils. v. National Merchandising Corp.*, 148-B Phil. 310, 332 (1971).

properties, one would expect that they would, at the very least, execute another document evidencing their true agreement as a precautionary measure. But no such precautionary measure was employed by respondents Sps. Azares to protect their supposed right as sole owners of the subject properties.

Likewise striking is the nonchalant and unassertive attitude adopted by respondents Sps. Azares in claiming sole ownership of the subject properties. To reiterate, it took respondents Sps. Azares more than two decades from the execution of the Deed of Absolute Sale and issuance of the certificates of title to assert their sole ownership. Not only that, such assertion was only a reaction to the Complaint for Partition filed by petitioner Logrosa.

Simply stated, the Court is convinced that the actuations and demeanor of respondents Sps. Azares are wholly inconsistent with their contention that they are the sole owners of the subject properties.

With respect to the tax declarations presented by respondents Sps. Azares, jurisprudence holds that tax declarations and tax receipts as evidence of ownership cannot prevail over a certificate of title which, to reiterate, is an incontrovertible proof of ownership.[36] Hence, in order for respondents Sps. Azares' tax declarations to successfully overturn the strong presumption of petitioner Logrosa's co-ownership, it was incumbent upon respondents Sps. Azares to fortify their position with other supporting evidence. As stated above, respondents Sps. Azares were not able to do so.

Moreover, the Court takes notice of petitioner Logrosa's unrebutted allegation that the tax payments made by respondents Sps. Azares were only made in 2010, which was already after the filing of the Complaint for Partition in 2009. In addition, it is likewise unrebutted by respondents Sps. Azares that respondent Abundio, who testified under oath in open court, paid for the real property taxes covering the subject properties for at least two years. Respondent Abundio was able to submit

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[36] *Heirs of Vencilao, Sr. v. Court of Appeals*, 351 Phil. 815, 823 (1998).

before the RTC an official receipt of his tax payment; a tax declaration issued in the name of respondents Cleofe, Abundio, and Nelson, and petitioner Logrosa; and Owner's Duplicate Copies of TCT Nos. T-52510 and T-52508 registered in the name of the abovementioned parties.[37] This demolishes respondents Sps. Azares' assertion that they exclusively paid the real property taxes covering the subject properties and that their payment of real property taxes is sufficient proof of their sole ownership over the subject properties.

Lastly, both the RTC and CA put much emphasis on respondents Sps. Azares' contention that petitioner Logrosa has no capacity to purchase the subject properties on account of the latter's status as a lowly employee of respondents Sps. Azares.

The Court finds the lower courts' heavy reliance on petitioner Logrosa's supposed incapacity to purchase the subject properties misplaced; it made a mountain out of a molehill.

Assuming for argument's sake that petitioner Logrosa did not contribute in the payment of the purchase price of the subject properties, it does not necessarily mean that he could not become a co-owner of the subject properties who can compel partition.

A person may exercise the right to compel the partition of real estate if he/she sets forth in his/her complaint the nature and extent of his title and subsequently proves the same.[38] The law does not make a distinction as to how the co-owner derived his/her title, may it be through gratuity or through onerous consideration. In other words, a person who derived his title and was granted co-ownership rights through gratuity may compel partition.

Respondents Sps. Azares maintain that there was no gratuitous granting of title and co-ownership rights to petitioner Logrosa and that they only intended to designate petitioner Logrosa as

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[37] *Rollo*, pp. 30-32

[38] RULES OF COURT, Rule 69, Sec. 1, in relation to CIVIL CODE, Arts. 484 and 48.

a mere trustee of the subject properties. However, to reiterate, this self-serving testimony of respondents Sps. Azares based on their mere say-so cannot stand, vis-a-vis the strong legal presumption created by the certificates of title and the notarized Deed of Absolute Sale that petitioner Logrosa is a co-owner of the subject property

As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated.[39]

To the contrary, as pointed out by petitioner Logrosa, the testimony of respondent Cesar actually lends credence to petitioner Logrosa's claim that respondent Cesar really intended to designate the former, together with the other respondents, as co-owners of the subject properties.

During the trial, when he was asked why he did not require petitioner Logrosa and the other parties to execute a document acknowledging his status as sole owner of the subject properties, respondent Cesar explained that there was no need to do so because "we previously agreed x x x with each other that whatever they would decide to till the land in that particular area that would be given to them. x x x I have my intention to give that house constructed to them then, I will give that particular land to them."[40]

With this clear admission against interest on the part of respondents Sps. Azares that there was indeed an intention on their part to make petitioner Logrosa and the other respondents as co-owners of the subject properties, the Court cannot subscribe to the CA's view that there is insufficiency of evidence

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[39] *Oco v. Limbaring*, 516 Phil. 691, 703 (2006).

[40] *Rollo*, p. 27; underscoring supplied.

confirming petitioner Logrosa's status as co-owner of the subject properties.

As a parting note, while it is true that the Court has previously held that the mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the registrant may only be a trustee,[41] to controvert the legal presumption brought about by the execution and issuance of public documents pointing to the existence of co-ownership, the opposing party must carry and satisfy the burden of proving with clear, convincing and persuasive evidence to repudiate the co-ownership. In this case, the Court finds that respondents Sps. Azares failed to fulfill such burden.

WHEREFORE, premised considered, the instant Petition is hereby **GRANTED**. The Decision dated July 30,2014 and Resolution dated February 26, 2015 promulgated by the Court of Appeals - Cagayan de Oro City, Special Twenty-First Division and Former Special Twenty-First Division, respectively, in CA-G.R. CV No. 02878-MIN are **REVERSED** and **SET ASIDE**.

Accordingly, the Decision dated February 27, 2012 promulgated by Regional Trial Court of Tagum City, Davao del Norte, Branch 30 in Civil Case No. 4026 is likewise **REVERSED** and **SET ASIDE**. The Regional Trial Court is **DIRECTED** to issue an Order under Rule 69 of the Rules of Court for the partition of the subject properties.

SO ORDERED.

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

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[41] *Lacbayan v. Samoy, Jr.*, 661 Phil. 306, 317 (2011).

SECOND DIVISION

[G.R. No. 218516. March 27, 2019]

DAVAO ACF BUS LINES, INC., *petitioner, vs.* **ROGELIO ANG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI; CERTIORARI* IS A REMEDY DESIGNED FOR THE CORRECTION OF ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. EVEN IF THE FINDINGS OF THE COURT ARE INCORRECT, AS LONG AS IT HAS JURISDICTION OVER THE CASE, SUCH CORRECTION IS NORMALLY BEYOND THE PROVINCE OF *CERTIORARI*.— [I]it must be stressed that, as correctly held by the CA, *certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. Otherwise, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original civil action of *certiorari*. **Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*.** In the instant case, the primary argument of ACF is centered on the supposed erroneous award of damages against the ACF's employee, accused Tanio, made by the MTCC in its Judgment dated December 27, 2005 convicting the latter. But as amply explained by the court *a quo*, **such supposed errors merely pertain only to mistakes of law and not of jurisdiction, thus putting them beyond the ambit of *certiorari***.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY AND FINALITY OF JUDGMENTS; ONCE A JUDGMENT ATTAINS FINALITY, IT THEREBY BECOMES IMMUTABLE AND UNALTERABLE, SUCH THAT 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 THE MODIFICATION IS ATTEMPTED TO BE MADE BY THE COURT RENDERING IT OR BY THE HIGHEST COURT OF THE LAND.— [A]CF's act of assailing the award of damages made by the MTCC in its Judgment dated December 27, 2005 is tantamount to an attack against a final and executory judgment, being a clear violation of the doctrine of immutability of judgment. It must be emphasized that the aforesaid Judgment of the MTCC awarding civil indemnity, which is now being assailed by ACF, was not appealed; thus making it final and executory. Hence, ACF cannot now assail the MTCC's Judgment lest the elementary principle of immutability of judgments be disregarded. It is established that once a judgment attains finality, it thereby becomes immutable and unalterable. Such 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. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.

3. **ID.; ID.; ID.; ID.; A WRONG JUDGMENT IS NOT A VOID JUDGMENT, PROVIDED THE COURT WHICH RENDERS IT HAD JURISDICTION TO TRY THE CASE.—** While it is true that the rule on the immutability and finality of judgments admits of certain exceptions, such as when the questioned final and executory judgment is void, a *catena* of cases has held that a mere erroneous judgment, though rendered according to the course and practice of the court is contrary to law, is not a void judgment. A wrong judgment is not a void judgment, provided the court which renders it had jurisdiction to try the case. To reiterate, ACF merely questions the issuance of the MTCC's Judgment dated December 27, 2005 mainly on the basis of the supposed erroneous awarding of civil indemnity. Hence, assuming *arguendo* that the MTCC's act of awarding damages was wrong, such does not make the Judgment void as an exception to the principle of immutability

of judgments, considering that the court indisputably had jurisdiction to try the case.

4. ID.; ID.; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND IS NOT DETERMINED BY THE AMOUNT ULTIMATELY SUBSTANTIATED AND AWARDED BY THE TRIAL COURT.— [A]CF inserted a novel argument raised for the first time on appeal in the instant Petition: that is, assuming *arguendo* that Ang is entitled to civil indemnity, the MTCC was supposedly divested with jurisdiction to render judgment on the damages "considering that the aggregate amount of damages is ₱900,000.00 which amount is way beyond the jurisdiction of the MTCC to grant." Not only is the foregoing assertion an argument that should be denied for being raised for the first time on appeal, such argument is patently erroneous. As it is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint, it is an established principle that **jurisdiction is not determined by the amount ultimately substantiated and awarded by the trial court.**

APPEARANCES OF COUNSEL

Glenn Polinar for petitioner.
Genevieve F. Basillo for respondent.
William G. Carpentero for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Davao ACF Bus Lines, Inc. (ACF) assailing the Decision[2] dated

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[1] *Rollo*, pp. 4-20.

[2] *Id.* at 22-31. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring.

June 27, 2014 (assailed Decision) and Resolution[3] dated May 5, 2015 (assailed Resolution) of the Court of Appeals[4] (CA) in CA-G.R. SP No. 04400-MIN, which affirmed the Regional Trial Court of Davao City, Branch 16's (RTC) Decision[5] dated February 23, 2011 (RTC Decision) in SP Civil Case No. 31,984-07.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

> The present controversy is a consequence of the execution of judgment in the case of *People of the Phils. vs. Rodolfo Borja Tanio*, " for Reckless Imprudence Resulting in Serious Physical Injuries, docketed as Criminal Case No. 99,282-E-2000 filed before the Municipal Trial Court in Cities (MTCC), Branch 5, Davao City, wherein accused Rodolfo Borja Tanio [(Tanio)], then the driver of a Daewoo Bus with plate number LVX-883, registered under the name of [ACF] was charged with reckless imprudence resulting in serious physical injuries.[6] The crime charged was an offshoot of an incident wherein Tanio bumped a Mitsubishi sedan driven by one Leo B. Delgara causing damage to the said vehicle and inflicting serious physical injuries upon its passenger, [herein] respondent Rogelio Bajao Ang [(Ang)].
>
> In a Judgment[7] dated December 27, 2005, the MTCC convicted Tanio and awarded in favor of [Ang] the following damages: ₱500,000.00 as nominal damages; ₱250,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees. No appeal from the judgment was interposed, and in time, the decision became final and executory. In view of its finality, the prosecution filed a Motion for Execution against the accused Tanio which was granted. However, the writ was returned unsatisfied as the latter had allegedly no properties that can be levied to satisfy the

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[3] *Id.* at 33-34.

[4] Twenty-Third Division.

[5] *Rollo*, pp. 70-74. Penned by Presiding Judge Emmanuel C. Carpio.

[6] *Id.* at 35-40.

[7] *Id.* at 41-44.

money judgment. Hence, upon motion, the MTCC issued a writ of execution against [ACF,] being the employer of accused Tanio.

Consequently, [ACF] filed a Motion to Recall and/or Quash The Writ of Execution[8] against it which was, however, denied by the MTCC in its Order[9] dated March 21, 2007, thus:

> WHEREFORE, PREMISES CONSIDERED, the Motion to Recall and/or Quash The Writ of Execution filed by ACF Bus Lines, Inc. is hereby DENIED for the reasons above stated. However, the implementation of the Writ of Execution issued against ACF Bus Lines, Inc. is hereby ordered to be held in abeyance pending the determination of the existence of the requisites for subsidiary liability under Article 103 of the Revised Penal Code to attach. For this reason, for the purpose of determining (1) the existence of an employer-employee relationship; (2) that the employer is engaged in some kind of industry; (3) that the employee is adjudged guilty of the wrongful act and found to have committed the offense in the discharged (sic) of his duties (not necessarily any offense he commits "while" in the discharge of such duties; (4) that said employee is insolvent, this case is set for hearing on May 03, 2007, at 8:30 in the morning where both the prosecution and [ACF] shall be required to present evidence to prove or disprove the existence of the foregoing elements.
>
> SO ORDERED.

[ACF] moved for a reconsideration [of the said Order,[10]] but [this] was denied by the MTCC in its Order[11] dated May 18, 2007.

In view of the denial, petitioner filed before [the] [RTC] a Petition for Review on *Certiorari*[12] under Rule 65 of the Rules of Court, docketed as Civil Case No. 31,984-07, praying among others, that the March 21, 2007 and May 18, 2007 Orders of the MTCC be nullified.

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[8] *Id*. at 45-49.

[9] *Id*. at 50-53-A. Penned by Presiding Judge Daydews D. Villamor.

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

[11] *Id*. at 56.

[12] *Id*. at 57-69.

In its now assailed [Decision], the RTC denied [ACF's] petition for *certiorari*, to wit:

> **WHEREFORE, premises considered**, the Petition is **DENIED**. The Municipal Trial Court in Cities, Branch 5, Davao City is directed to proceed with the hearing for the determination of whether or not the requisites under Article 103 of the Revised Penal Code are present to issue the Writ of Execution against the employer.
>
> **SO ORDERED**. [(Emphasis in the original)]

[ACF's] motion for reconsideration[13] was denied by the RTC in its Order dated April 4, 2011.

On May 27, 2011, [ACF] filed a Notice of Appeal.[14]

The Ruling of the CA

In its assailed Decision, the CA denied the appeal filed by ACF, the dispositive portion of which states that:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED** and the assailed Decision dated February 23, 2011 of the Regional Trial Court, Branch 16, Davao City in Civil Case No. 31,984-07 is **AFFIRMED**.
>
> **SO ORDERED**.[15]

The CA held that the RTC did not err in holding that the Municipal Trial Court in Cities (MTCC) did not commit grave abuse of discretion in issuing its Order denying ACF's Motion to Recall and/or Quash The Writ of Execution and ordering the conduct of a hearing to determine whether ACF should be held subsidiarily liable under Article 103 of the Revised Penal Code for the civil liability *ex delicto* of its employee, accused Tanio.

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[13] *Id.* at 75-83.

[14] *Id*. at 22-24.

[15] *Id*. at 31.

ACF filed a Motion for Reconsideration[16] assailing the aforesaid Decision of the CA, which was eventually denied by the latter in its Resolution dated May 5, 2015.[17]

Hence, ACF filed the instant Petition under Rule 45 of the Rules of Court, asking this Court to reverse the CA's assailed Decision and Resolution.

Issue

Stripped to its core, the critical question to be resolved by the Court is whether the CA was correct in affirming the RTC's holding that the MTCC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Order denying ACF's Motion to Recall and/or Quash The Writ of Execution and ordering the conduct of a hearing to determine whether or not ACF should be held subsidiarily liable under Article 103 of the Revised Penal Code for the civil liability *ex delicto* of its employee, accused Tanio.

The Court's Ruling

The aforesaid question should be answered in the affirmative; the instant appeal is denied.

ACF's argument that grave abuse of discretion was purportedly committed by the MTCC centers primarily on the latter court's supposed erroneous Order directing the execution of judgment against ACF with respect to the civil liability *ex delicto* of its employee, accused Tanio, for nominal, moral, and exemplary damages, and attorney's fees. ACF alleges that the said order of execution was issued by the MTCC with grave abuse of discretion because, to begin with, the MTCC's final and executory Judgment dated December 27, 2005 convicting accused Tanio is supposedly null and void.

Simply stated, ACF ascribes grave abuse of discretion on the part of the MTCC for ordering the execution upon ACF for subsidiary civil liability *ex delicto* of the latter's employee based on a judgment that is supposedly void.

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[16] *Id*. at 84-93.

[17] *Id.* at 33-34.

ACF's arguments fail to convince.

First and foremost, it must be stressed that t**he basic factual premise of ACF is mistaken**. ACF alleges that the MTCC has ordered the execution upon ACF as regards the subsidiary civil liability *ex delicto* of ACF's employee, accused Tanio. The facts clearly belie that assertion.

In the Order dated March 21, 2007 issued by the MTCC, which ACF alleges is tainted with grave abuse of discretion, the MTCC actually ordered that "the implementation of the Writ of Execution issued against ACF Bus Lines, Inc. is **hereby ordered to be held in abeyance** pending the determination of the existence of the requisites for subsidiary liability under Article 103 of the Revised Penal Code to attach."[18] In fact, the MTCC ordered the conduct of a hearing "where both, the prosecution and [ACF] shall be required to present evidence to prove or disprove the existence of the foregoing elements."[19]

Hence, with the very act alleged to be stained with grave abuse of discretion on the part of the MTCC, *i.e.*, the implementation of the Writ of Execution against ACF, having not been committed at all, on this point alone, the instant Petition should already be dismissed for lack of merit.

Further, it must be stressed that, as correctly held by the CA, *certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. Otherwise, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed.[20]

The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit

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[18] *Id.* at 53-A; emphasis and underscoring supplied.

[19] *Id.*

[20] *Vios v. Pantangco, Jr.*, 597 Phil. 705, 720 (2009), citing *People v. Judge Laguio, Jr.*, 547 Phil. 296, 316 (2007).

in the exercise of its jurisdiction is not correctible through the original civil action of *certiorari*.[21] **Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*.**[22]

In the instant case, the primary argument of ACF is centered on the supposed erroneous award of damages against the ACF's employee, accused Tanio, made by the MTCC in its Judgment dated December 27, 2005 convicting the latter. But as amply explained by the court *a quo*, **such supposed errors merely pertain only to mistakes of law and not of jurisdiction, thus putting them beyond the ambit of *certiorari***.

Furthermore, ACF's act of assailing the award of damages made by the MTCC in its Judgment dated December 27, 2005 is tantamount to an attack against a final and executory judgment, being a clear violation of the doctrine of immutability of judgment.

It must be emphasized that the aforesaid Judgment of the MTCC awarding civil indemnity, which is now being assailed by ACF, was not appealed; thus making it final and executory. Hence, ACF cannot now assail the MTCC's Judgment lest the elementary principle of immutability of judgments be disregarded. It is established that once a judgment attains finality, it thereby becomes immutable and unalterable. Such 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. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[23]

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[21] *Id*.

[22] *Vios v. Pantangco, Jr*., *id*., citing *People v. Judge Laguio, Jr., id*. at 317.

[23] *Office of the Ombudsman v. Borja*, 772 Phil. 470, 479-480 (2015).

While it is true that the rule on the immutability and finality of judgments admits of certain exceptions, such as when the questioned final and executory judgment is void,[24] a *catena* of cases has held that a mere erroneous judgment, though rendered according to the course and practice of the court is contrary to law, is not a void judgment.[25] A wrong judgment is not a void judgment, provided the court which renders it had jurisdiction to try the case.[26]

To reiterate, ACF merely questions the issuance of the MTCC's Judgment dated December 27, 2005 mainlyon the basis of the supposed erroneous awarding of civil indemnity. Hence, assuming *arguendo* that the MTCC's act of awarding damages was wrong, such does not make the Judgment void as an exception to the principle of immutability of judgments, considering that the court indisputably had jurisdiction to try the case.

Lastly, ACF inserted a novel argument raised for the first time on appeal in the instant Petition: that is, assuming *arguendo* that Ang is entitled to civil indemnity, the MTCC was supposedly divested with jurisdiction to render judgment on the damages "considering that the aggregate amount of damages is ₱900,000.00 which amount is way beyond the jurisdiction of the MTCC to grant."[27]

Not only is the foregoing assertion an argument that should be denied for being raised for the first time on appeal,[28] such argument is patently erroneous. As it is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint,[29] it is an established principle that

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[24] See *Heirs of Maura So v. Obliosca*, 566 Phil. 397, 408 (2008).

[25] *Barco v. Court of Appeals*, 465 Phil. 39, 62 (2004).

[26] *Villanueva v. CFI of Oriental Mindoro, Pinamalayan, Br. II*, 204 Phil. 629 (1982).

[27] *Rollo*, p. 14.

[28] *Chinatrust (Phils.) Commercial Bank v. Turner*, G.R. No. 191458, July 3, 2017, 828 SCRA 499, 515.

[29] *Mendoza v. Germino*, 650 Phil. 74, 81 (2010).

jurisdiction is not determined by the amount ultimately substantiated and awarded by the trial court.[30]

Therefore, for the foregoing reasons, the instant Petition is without merit and should be denied.

WHEREFORE, the appeal is hereby **DENIED**. The Decision dated June 27, 2014 and Resolution dated May 5, 2015 issued by the Court of Appeals in CA-G.R. SP No. 04400-MIN are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 218581. March 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LARRY LUMAHANG *y* TALISAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; APPELLATE COURTS WILL NOT OVERTURN THE FACTUAL FINDINGS OF THE TRIAL COURT IN THE ABSENCE OF FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE THAT WOULD AFFECT THE RESULT OF THE CASE.— Lumahang 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,

[30] *Dionisio v. Puerto*, 158 Phil. 671, 677 (1974).

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 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. 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.

2. **ID.; ID.; ID.; A CATEGORICAL TESTIMONY WHICH HAS THE RING OF TRUTH GENERALLY PREVAILS OVER DENIAL AND ALIBI.—** As against the positive identification by an eyewitness, Lumahang could only interpose the defense of denial and a blanket claim of defense of relative. To repeat, his version was that the group of Poraso, Velitario, and Pornelos made indecent advances to his cousin. According to him, he tried to intervene and protect his cousin, but one of them stabbed him on his thigh. He then grappled with the knife and ran away when the first opportunity to do so presented itself. The Court has oft pronounced that denial is an inherently weak defense 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 the ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.

3. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; DEFENSE OF RELATIVE; ELEMENTS; THE ELEMENT OF UNLAWFUL AGGRESSION IS THE MOST ESSENTIAL AND PRIMARY AMONG THE REQUISITES, WITHOUT WHICH ANY DEFENSE IS NOT POSSIBLE OR JUSTIFIED.—** The justifying circumstance of defense of relative may be invoked by proving the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person attacked, the one making the defense had no part therein. Of these three requisites, the first element - the presence of unlawful aggression - is said to be the most essential and primary, without which any defense is not possible or justified. This must be so, because "[i]f there is no unlawful aggression there would be nothing to prevent or repel." In this

case, the CA correctly held that Lumahang failed to prove that there was unlawful aggression. x x x Thus, the claim of defense of relative must necessarily fail for the failure of the defense to establish the element of unlawful aggression.

4. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS WHERE THE MODE ADOPTED BY THE ASSAILANT IS POSITIVELY SHOWN TO HAVE BEEN KNOWINGLY INTENDED TO ENSURE THE ACCOMPLISHMENT OF THE CRIMINAL PURPOSE WITHOUT ANY RISK TO HIMSELF ARISING FROM THE DEFENSE THAT THE VICTIM MIGHT OFFER.— Treachery undoubtedly exists on the attack against Pornelos because (1) the parties were attending a wake, and were thus not expecting an attack from happening; (2) the attack was made suddenly and from behind. The attack on Pornelos was therefore clearly attended by treachery. The same is not true, however, for the attack on Velitario. x x x Even if it was possible that Velitario was so surprised by the attack that he was unable to do anything, this does not automatically make the attack on Velitario treacherous. It is true that Velitario was unable to defend himself from Lumahang's attacks **not because he was not given an opportunity to do so**, but simply because he was not able to react in time from the initial attack on Pornelos. The Court stresses that the essence of treachery is where the mode adopted by the assailant is positively shown to have been **knowingly intended** to x x x [ensure] the accomplishment of the criminal purpose without any risk to himself arising from the defense that the victim might offer. The mode adopted by Lumahang in this case **was not unexpected**; it did not necessarily ensure that the act would be executed without any defense from the victim, or that the victim would not be able to retaliate, as the latter had the opportunity to run away or even defend himself. Unfortunately, the victim was just unable to do so. In other words, the fact that the victim was unable to defend himself would not automatically mean that the killing was attended by treachery if the prosecution - as in this case - failed to show that the means used by Lumahang was consciously or deliberately adopted to ensure the execution of the crime without any risk to himself arising from the defense that the victim might offer.

5. ID.; ID.; ID.; ID.; WHILE A FRONTAL ATTACK, BY ITSELF, DOES NOT NEGATE THE EXISTENCE OF TREACHERY, WHEN THE SAME IS CONSIDERED ALONG WITH OTHER CIRCUMSTANCES, LIKE THE ATTACK NOT BEING UNEXPECTED, IT ALREADY CREATES A REASONABLE DOUBT IN THE EXISTENCE OF THE QUALIFYING CIRCUMSTANCE.— [T]he attack itself was frontal. In *People v. Tugbo*, the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances, like the attack not being unexpected, it already creates a reasonable doubt in the existence of the qualifying circumstance.

6. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES; THE ESSENCE OF VOLUNTARY SURRENDER IS SPONTANEITY AND THE INTENT OF THE ACCUSED TO GIVE HIMSELF UP AND SUBMIT HIMSELF TO THE AUTHORITIES EITHER BECAUSE HE ACKNOWLEDGES HIS GUILT OR HE WISHES TO SAVE THE AUTHORITIES THE TROUBLE AND EXPENSE THAT MAY BE INCURRED FOR HIS SEARCH AND CAPTURE.— With regard to the presence of the mitigating circumstance of voluntary surrender, the Court agrees with both the RTC and the CA that Lumahang is entitled to the same. In *De Vera v. De Vera*, the Court held that for voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance. In the present case, Lumahang voluntarily surrendered to the barangay officers on the same night the incident happened because he was

convinced to do so by his aunt. This satisfies all the aforementioned three requisites, thus entitling Lumahang to claim the mitigating circumstances of voluntary surrender.

APPEARANCES OF COUNSEL

The Solicitor General *for plaintiff-appellee.*
Public Attorney's Office *for accused-appellant.*

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Larry Lumahang y Talisay (Lumahang) assailing the Decision[2] dated July 14, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05819, which affirmed with modifications the Judgment[3] dated October 23, 2012 of the Regional Trial Court (RTC) of Quezon City, Branch 217 in Criminal Case Nos. Q-08-156459 and Q-08-156460, finding Lumahang guilty beyond reasonable doubt of the crimes of Murder and Slight Physical Injuries.

The Facts

Two Informations were filed against Lumahang for killing Rodel Velitario (Velitario) and stabbing Augusto Pornelos (Pornelos), the accusatory portions of which read:

Criminal Case No. Q-08-156459

That on or about the 14th day of December 2008, in Quezon City, Philippines, the [appellant], with intent to kill, with the qualifying aggravating circumstances of treachery did then and there willfully, unlawfully and feloniously commence the commission and evident

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[1] *See* Notice of Appeal dated August 7, 2014; *rollo*, pp. 18-19.

[2] *Id*. at 2-17. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba concurring.

[3] CA *rollo*, pp. 43-61. Penned by Judge Santiago M. Arenas.

premeditation of the crime of murder directly by overt acts, by then and there stabbing one AUGUSTO PORNELOS Y Buizon, with a knife, but the said accused did not perform all the acts of execution which would have produced the crime of murder by reason of some cause other than their spontaneous desistance, that is, the timely intervention of another and non-fatal nature of the wounds inflicted to the damage and prejudice of said offended party.[4]

Criminal Case No. Q-08-156460

That on or about the 14th day of December 2008, in Quezon City, Philippines, the said accused, did, then and there willfully, unlawfully and feloniously, with intent to kill, with the qualifying aggravating circumstances of evident premeditation and treachery, did, then and there willfully, unlawfully, and feloniously attack, assault and employ personal violence upon the person of one RODEL VELITARIO y CAPACIO, by then and there stabbing him several times, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said victim.[5]

The version of the prosecution, as summarized in its Brief for the Appellee,[6] is as follows:

On December 14, 2008, around nine o'clock in the evening, Alberto Poraso, Rodel Velitario and Augusto Pornelos were attending a wake in Joan of Arc Street, Barangay Gulod, Novaliches, Quezon City when appellant appeared fuming mad. Suddenly, appellant approached Pornelos from behind and stabbed him in a hook motion with knife in his left hand. Pornelos, who was hit on the buttocks, quickly ran towards an alley. Without warning, appellant then turned his ire on Velitario and stabbed him repeatedly on different parts of his body.

Dr. Joseph Palmero, medico-legal examiner of Velitario, found two (2) stab wounds in the latter's abdomen, one (1) incise wound on the left shoulder and another on the left posterior thigh. He found multiple abrasions on the (sic) Velitario's right collar bone and on both toes which were presumably caused by a scuffle between said victim and his assailant. It was determined that the cause of Velitario's

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[4] *Rollo*, p. 2-A.

[5] *Id.* at 3.

[6] CA *rollo*, pp. 74-89.

death was the multiple stab wounds he sustained on the abdomen, which among others, hit his left kidney. Dr. Palmero estimated that based on the depth of the wounds, the assailant was within an arm's length from the victim and that the weapon used was a bladed knife measuring around eight (8) cm. long.

On the other hand, Dr. Engelbert Ednacot of the Quezon City General Hospital, examining physician of Pornelos, found a stab wound on the latter's right buttocks, which he concluded to be a non-fatal wound that required treatment for around seven (7) days. In his medical opinion, the victim was attacked from behind.[7]

On the other hand, the version of the defense, as summarized in its Brief for the Accused-appellant,[8] is as follows:

On December 14, 2008, at around 9:00 o'clock in the evening, accused **LARRY LUMAHANG** and his cousin LL were on their way home from buying barbecue when five (5) bystanders who were under the influence of alcohol blocked their way. The bystanders approached Larry and LL. Suddenly, two (2) of them touched the hands, shoulders and breasts of LL while the others laughed. LL said "Huwag!" while the accused asked them to stop and told them that if they like LL, they should do it the right way and go to their house to court her. Upon hearing that, the bystanders approached the accused and one of them punched him while another pulled out a knife. The person who drew the knife stabbed the accused but he was able to thwart the thrust. However, he was hit on his left thigh and they grappled with the knife. When he saw a chance to run away, he ran towards the direction of his aunt's house with the bystanders running after him. They were not able to catch him but they tried to destroy the house of his aunt by kicking it but still, they were not able to pull him out of the house.

He identified Augusto Pornelos as one of the bystanders who blocked their way. When the BPSO went to his aunt's house looking for him, he voluntarily surrendered, after which, he was brought to the hospital and thereafter, to Camp Karingal. He was surprised of the charges of murder and attempted murder against him because he only grappled with the knife and did not stab anyone.

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

[8] *Id.* at 26-41.

The first time he met the private complainant Pornelos and the deceased Velitario was during the incident and he could not recall any disagreement or confrontations that happened between them before December 14, 2008.

He had also sustained injuries from being punched in the head and had a stab wound on his left thigh. Due to these injuries, he was confined in a clinic in Novaliches which name he could no longer remember. As proof, he showed to the court a one-inch scar with five stitches on his left thigh. When he voluntarily surrendered to the police authorities, no knife was recovered from him.[9]

When Lumahang was arraigned, he pleaded "not guilty" to the crime charged.[10] Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Judgment[11] dated October 23, 2012, the RTC convicted Lumahang of the crimes of Murder and Less Serious Physical Injuries. The dispositive portion of the said Judgment reads:

WHEREFORE, judgment is hereby rendered:

1) In Criminal Case No. Q-08-156459, finding accused LARRY LUMAHANG Y TALISAY guilty beyond reasonable doubt of LESS SERIOUS PHYSICAL INJURIES and there being attendant aggravating and mitigating circumstance (*sic*), he is thereby sentenced to suffer an imprisonment of 4 months and 1 day to 6 months;

2) In Criminal Case No. Q-156460 for Murder, likewise finding accused LARRY LUMAHANG Y TALISAY guilty beyond reasonable doubt of the offense charged and hereby sentences him to the penalty of *reclusion perpetua*. He is also ORDERED to pay the heirs of the deceased Rodel Velitario the sums of ₱75,000.00 as death indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

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[9] *Id*. at 33.

[10] *Rollo*, p. 3.

[11] *Supra* note 3.

SO ORDERED.[12]

The RTC convicted Lumahang on the basis of the testimony of the prosecution eyewitness Alberto Poraso (Poraso), who positively identified him as the assailant of Velitario and Pornelos. The RTC held that the stabbing of Pornelos and the killing of Velitario were attended by treachery because the attacks were sudden, the victims were unarmed, and they were not able to defend themselves. However, as to the attack on Pornelos, the RTC only convicted Lumahang of less serious physical injuries as it could not be inferred from the attack, or the wound sustained by Pornelos, that Lumahang had the intent to kill Pornelos.

Aggrieved, Lumahang appealed to the CA.

Ruling of the CA

In the assailed Decision[13] dated July 14, 2014, the CA affirmed with modifications the RTC's conviction of Lumahang on the basis of Poraso's testimony. It reiterated the rule that the testimony of a lone witness, if found by the trial court to be positive, categorical, and credible, is sufficient to support a conviction.[14]

The CA held that Lumahang's defense of denial could not prevail over the positive and categorical testimony of the eyewitness who identified him as the assailant of Velitario and Pornelos. As to Lumahang's claim of defense of relative, the CA did not give credence to the claim because the element of unlawful aggression was insufficiently proven. As Lumahang's cousin, who was supposedly harassed by the group of Velitario, was not presented in court, the CA concluded that the supposed aggression relied on by Lumahang was not sufficiently proven. Moreover, the CA held that when Lumahang used the plea of

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[12] CA *rollo*, pp. 60-61.

[13] *Supra* note 2.

[14] *Rollo*, p. 6.

defense of relative, he had, in fact, admitted to doing the acts charged against him as the plea was in the nature of a confession in avoidance.[15]

The CA likewise upheld the RTC finding that the attacks were attended with treachery. As to the attack against Pornelos, Lumahang effected the attack from behind; as to Velitario, the attack, while made frontally, was made by Lumahang in a sudden, unexpected, and swift manner.[16] The CA also upheld the RTC's finding that Lumahang was entitled to the mitigating circumstance of voluntary surrender because he surrendered to the barangay at the night of the incident after having been convinced by his aunt, Virginia Lumahang.[17]

While the CA upheld Lumahang's conviction for Murder for the killing of Velitario, it did, however, downgrade Lumahang's conviction for the stabbing of Pornelos. The CA convicted Lumahang of only Slight Physical Injuries, as Pornelos needed only seven days of confinement in the hospital to recover from the injury.

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by Lumahang:

(1) Whether the CA erred in convicting Lumahang despite the prosecution's failure to prove his guilt beyond reasonable doubt;

(2) Whether the CA erred in appreciating the qualifying circumstance of treachery.

The Court's Ruling

The appeal is partially meritorious. The Court affirms the conviction of Lumahang but for the crime of Homicide, instead

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

[16] *Id*. at 13.

[17] *Id*. at 13-14.

of Murder, as the qualifying circumstance of treachery was not present in the killing of Velitario. The Court likewise affirms the conviction of Lumahang for the crime of Slight Physical Injuries for stabbing Pornelos.

On whether Lumahang's guilt was proven beyond reasonable doubt

In questioning his conviction, Lumahang again reiterates his argument that he cannot be convicted on the basis of a single, uncorroborated testimony of an eyewitness.[18] He argues that the prosecution was unable to present evidence that was contrary to his version of the facts, and this supposedly raises reasonable doubt on his guilt.[19]

The arguments deserve scant consideration.

At the outset, it bears mentioning that Lumahang 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.[20] Thus, when the case pivots on the issue of the 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.[21] 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. In this connection, the Court quotes with approval the following disquisition by the CA on the credibility of the testimony of eyewitness Porazo:

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[18] CA *rollo*, p. 36.

[19] *Id*.

[20] *People v. Gerola*, G.R. No. 217973, July 19, 2017, 831 SCRA 469, 478.

[21] See *People v. Aguilar*, 565 Phil. 233, 247 (2007).

It bears stressing that [Porazo] was only about a meter and a half away from appellant when he saw the latter stab [Pornelos]. Also, [Porazo] was about 3 meters away from [Velitario] when he saw appellant turned to stab [Velitario]. Even if it was already 9:00 in the evening, and he is not familiar with appellant, [Porazo]'s proximity to the two victims and the appellant gave him unimpeded view of the stabbing incident. Thus, appellant easily and unmistakably identified appellant in open court as the assailant of the victims.

Of marked relevance is the failure of appellant to impute and show ill-motive on the part of [Porazo] to wrongly implicate him in the present criminal cases. Appellant's admission that he does not know [Porazo] and is unaware of any reason for the latter to falsely testify against him, serves to bolster the credibility of [Porazo] 's testimony. The rule is that when there is no evidence to show any dubious reason or improper motive for a prosecution witness, like [Porazo] to testify falsely against an accused, his testimony is worthy of full faith and credit.[22]

As against the positive identification by an eyewitness, Lumahang could only interpose the defense of denial and a blanket claim of defense of relative. To repeat, his version was that the group of Poraso, Velitario, and Pornelos made indecent advances to his cousin. According to him, he tried to intervene and protect his cousin, but one of them stabbed him on his thigh. He then grappled with the knife and ran away when the first opportunity to do so presented itself.

The Court has oft pronounced that denial is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.[23] Thus, as between a categorical testimony which has the ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[24]

In this case, Lumahang simply denies that he stabbed the victims, and, at the same time, claims that he was just protecting

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[22] *Rollo*, pp. 9-10.

[23] *People v. Piosang*, 710 Phil. 519, 527 (2013).

[24] *Id.*

his cousin. The Court, however, cannot give more weight to Lumahang's denial over the testimonial evidence presented by the prosecution. Moreover, the Court cannot also give credence to Lumahang's claim of defense of relative, as none of the elements to successfully invoke the same was sufficiently proven in this case.

The justifying circumstance of defense of relative may be invoked by proving the following elements:

(1) unlawful aggression;

(2) reasonable necessity of the means employed to prevent or and repel it;

(3) in case the provocation was given by the person attacked, the one making the defense had no part therein.[25]

Of these three requisites, the first element - the presence of unlawful aggression - is said to be the most essential and primary, without which any defense is not possible or justified.[26] This must be so, because "[i]f there is no unlawful aggression there would be nothing to prevent or repel."[27]

In this case, the CA correctly held that Lumahang failed to prove that there was unlawful aggression. As the RTC aptly noted:

> At any rate, accused owned up to being present during the stabbing incident as he stated that they grappled for the possession of the knife but he could not recall how the victim Rodel Velitario and Augusto Pornelos were stabbed which is highly incredible to be believed by the court. **Further if indeed it is true that he was with his cousin when Rodel Velitario, Alberto Porazo and Augusto Pornelos molested his cousin "LL", why did LL did not (sic) file charges against them? Or even then, why did his cousin did not (sic) testify to corroborate his testimony**?[28] (Emphasis supplied)

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[25] *People v. Francisco*, 386 Phil. 709, 716 (2000).

[26] *People v. Agapinay*, G.R. No. 77776, June 27, 1990, 186 SCRA 812, 823.

[27] *Id.*

[28] CA *rollo*, p. 52.

With regard to the stab wound on his thigh, this, by itself and without any medical examination conducted on the same, only proves that he had a stab wound. As the CA stated, "it does not show how and when he sustained such injury or who inflicted it and under what circumstances."[29] Thus, the claim of defense of relative must necessarily fail for the failure of the defense to establish the element of unlawful aggression.

Without doubt, therefore, Lumahang should be liable for the killing of Velitario and the stabbing of Pornelos

Second Issue: Existence of the Qualifying Circumstance of Treacher

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance was present, thereby making Lumahang liable for Murder instead of Homicide for the death of Velitario. The CA reasoned as follows:

> Appellant walked and approached [Pornelos] from behind, and suddenly stabbed him with a knife on his right gluteal area. Dr. EDNACOT confirmed that [Pornelos] was attacked from behind, as it would be difficult for the assailant to stab [Pornelos] 's buttocks if he was facing him. Clearly, the execution of appellant's attack made it impossible for [Pornelos] to defend himself or retaliate. Fortunately, [Pornelos] was able to run away before appellant could stab him any further.
>
> Meanwhile, granted that [Velitario] noticed the commotion between [Pornelos] and appellant, as he was not more than 2 meters away from [Pornelos], the swiftness and unexpected attack of appellant nonetheless caught [Velitario] off guard. Thus, instead of running away from appellant, [Velitario] remained standing and was unable to defend himself. Within a couple of seconds, appellant's right arm hooked on [Velitario]'s nape and stabbed him four (4) times on the stomach with a six-inch double blade knife. The mere fact that the attack on Rodel was frontal does not negate the presence of treachery. A frontal attack would qualify as treachery when the assault is sudden and unexpected and not even preceded by a dispute, to the point of

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[29] *Rollo*, p.11.

incapacitating the person attacked the opportunity to repel the assault or to escape from it. Appellant's attack being sudden and unexpected, and with his right armed (*sic*) locked on Rodel's nape, any attempt at excape (*sic*) by the latter would be all for naught.[30]

The Court disagrees with the CA insofar as it holds that treachery attended the attack on Velitario.

Treachery undoubtedly exists on the attack against Pornelos because (1) the parties were attending a wake, and were thus not expecting an attack from happening; (2) the attack was made suddenly and from behind. The attack on Pornelos was therefore clearly attended by treachery.

The same is not true, however, for the attack on Velitario. As the CA itself correctly pointed out:

> Suddenness of the attack by itself, is inadequate to support a Finding of treachery. It must be coupled with proof that the victim was completely deprived of a real chance to defend himself against the attack thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. It is, thus, decisive that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[31]

The CA, however, oddly did not follow the foregoing standard. The CA held that the swiftness and unexpectedness of the attack caught Velitario off guard, which rendered him unable to defend himself.[32] This conclusion is erroneous.

To borrow the words of the Court in *People v. Santos*,[33]

> [t]reachery, just like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that "the attack

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[30] *Id*. at 13.

[31] *Id*. at 12, citing *People v. Peralta*, 403 Phil. 72 (2011) and *People v. Satonero*, 617 Phil. 983 (2009).

[32] *Id*. at 13

[33] 175 Phil. 113 (1978).

was sudden"; there must be a clear showing from the narration of facts why the attack or assault is said to be "sudden."[34]

Stated differently, mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the aggressor does not positively tend to prove that he thereby **knowingly intended** to insure the accomplishment of his criminal purpose without any risk to himself arising from the defense that the victim might offer.[35] Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.[36]

In the case at bar, Lumahang had already made an attack against Pornelos who, after being stabbed on the buttocks, was able to successfully run away towards safety. Velitario was already apprised that there was danger nearby as he saw the commotion between Pornelos and Lumahang. As eyewitness Porazo testified:

> Q: Mr. Witness, if you know, after [Pornelos] was stabbed by [appellant] what was the reaction of [Velitario]?
>
> A: [Velitario] just stood there, Sir.[37]

Even if it was possible that Velitario was so surprised by the attack that he was unable to do anything, this does not automatically make the attack on Velitario treacherous. It is true that Velitario was unable to defend himself from Lumahang's attacks **not because he was not given an opportunity to do so**, but simply because he was not able to react in time from the initial attack on Pornelos.

The Court stresses that the essence of treachery is where the mode adopted by the assailant is positively shown to have been **knowingly intended** to insure the accomplishment of the criminal

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[34] *Id*. at 122.

[35] *People v. Delgado*, 11 Phil. 11, 15-16 (1946).

[36] *People v. Bacho*, 253 Phil. 451, 458 (1989)

[37] *Rollo*, p. 8.

purpose without any risk to himself arising from the defense that the victim might offer.[38] The mode adopted by Lumahang in this case **was not unexpected**; it did not necessarily ensure that the act would be executed without any defense from the victim, or that the victim would not be able to retaliate, as the latter had the opportunity to run away or even defend himself. Unfortunately, the victim was just unable to do so. In other words, the fact that the victim was unable to defend himself would not automatically mean that the killing was attended by treachery if the prosecution - as in this case - failed to show that the means used by Lumahang was consciously or deliberately adopted to ensure the execution of the crime without any risk to himself arising from the defense that the victim might offer. As the Court similarly held in *People v. Tumaob*:[39]

> The qualifying circumstance of treachery can not logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as **to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate**.[40] (Emphasis supplied)

In addition, the attack itself was frontal. In *People v. Tugbo*,[41] the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances, like the attack not being unexpected, it already creates a reasonable doubt in the existence of the qualifying circumstance. From the foregoing, the Court must perforce rule in favor of the accused and not appreciate the said circumstance.

With regard to the presence of the mitigating circumstance of voluntary surrender, the Court agrees with both the RTC

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[38] *People v. Delgado*, *supra* note 35.

[39] 83 Phil. 738 (1949)

[40] *Id*. at 742.

[41] 273 Phil. 346, 352 (1991).

and the CA that Lumahang is entitled to the same. In *De Vera v. De Vera*,[42] the Court held that for voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[43] Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[44]

In the present case, Lumahang voluntarily surrendered to the barangay officers on the same night the incident happened because he was convinced to do so by his aunt.[45] This satisfies all the aforementioned three requisites, thus entitling Lumahang to claim the mitigating circumstances of voluntary surrender.

With the removal of the qualifying circumstance of treachery, the crime committed by Lumahang against Velitario is therefore Homicide andj not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. However, since Lumahang is entitled to the mitigating circumstance of the voluntary surrender, the penalty shall be imposed in its minimum period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years. Thus, Lumahang shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum,

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[42] 602 Phil. 877 (2009).

[43] *Id*. at 886

[44] *Id*. at 886-887.

[45] *Rollo*, p. 14.

to thirteen (13) years and ten (10) months of *reclusion temporal*, as maximum.

As to the Slight Physical Injuries committed against Pornelos, the Court upholds the sentence of twenty (20) days of *arresto menor* imposed by the CA, as the generic aggravating circumstance of treachery was offset by, the generic mitigating circumstance of voluntary surrender.

Finally, in view of the Court's ruling in *People v. Jugueta*,[46] the damages awarded to the heirs of Velitario 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 LARRY LUMAHANG y TALISAY **GUILTY** of the crimes of (a) **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to thirteen (13) years and ten (10) months of *reclusion temporal*, as maximum; and (b) **SLIGHT PHYSICAL INJURIES**, for which he is sentenced to suffer the penalty of twenty (20) days of *arresto menor*. He is further ordered to pay the heirs of Rodel Velitario 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 (*Chairperson*), *Perlas-Bernabe, Reyes, Jr.*, *J.,* and *Lazaro-Javier, JJ.*, concur.

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[46] 783 Phil. 806 (2016).

SECOND DIVISION

[G.R. No. 220826. March 27, 2019]

HUN HYUNG PARK, *petitioner, vs.* **EUNG WON[*] CHOI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; THE GRANT OR DENIAL OF A MOTION FOR POSTPONEMENT IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT, WHICH SHOULD ALWAYS BE PREDICATED ON THE CONSIDERATION THAT THE ENDS OF JUSTICE AND FAIRNESS ARE SERVED BY THE GRANT OR DENIAL OF THE MOTION.— x x x [C]ontrary to the ruling of the CA, the MeTC, as affirmed by the RTC - Branch 142, was correct in ruling that Choi had waived his right to present evidence. Claiming that substantive justice must be the determinative end of courts, Choi argues that any grant of postponement must take into consideration the reason for the postponement and the merits of the case of the movant. To that extent, the Court agrees, and so holds, that Choi had been provided with more than ample opportunity to present his case. To begin with, the grant or denial of a motion - or, in this case, motions - for postponement is addressed to the sound discretion of the court, which should always be predicated on the consideration that the ends of justice and fairness are served by the grant or denial of the motion. As the Court enunciated in *Sibay v. Bermudez*: x x x After all, postponements and continuances are part and parcel of our procedural system of dispensing justice. When no substantial rights are affected and the intention to delay is not manifest with the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated. Thus, in considering motions for postponements, two things must be borne in mind: (1) the reason for the postponement, and (2) the merits of the case of the movant.

[*] Also spelled as "Wong" in some parts of the *rollo*.

Unless grave abuse of discretion is shown, such discretion will not be interfered with either by *mandamus* or appeal. **Because it is a matter of privilege, not a right, a movant for postponement should not assume beforehand that his motion will be granted**.

2. ID.; ID.; ID.; IN GRANTING OR DENYING MOTIONS FOR POSTPONEMENTS, COURTS MUST EXERCISE THEIR DISCRETION CONSTANTLY MINDFUL OF THE CONSTITUTIONAL GUARANTEE AGAINST UNREASONABLE DELAY IN THE DISPOSITION OF CASE, AS JUSTICE DELAYED IS JUSTICE DENIED.— x x x [P]ursuant to Sections 2 and 3 of the Rule 30 of the Rules of Court, although a court may adjourn a trial from day to day, a motion to postpone trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality or relevancy of such evidence, and that due diligence has been used to procure it. Rules governing postponements serve a clear purpose - to avert the erosion of people's confidence in the judiciary. Consequently, in granting or denying motions for postponements, courts must exercise their discretion constantly mindful of the Constitutional guarantee against unreasonable delay in the disposition of cases. In other words, while it is true that cases must be adjudicated in a manner that is in accordance with the established rules of procedure, so is it crucial that cases be promptly disposed to better serve the ends of justice. After all, justice delayed is justice denied. Excessive delay in the disposition of cases renders inutile the rights of the people guaranteed by the constitution and by various legislations. Here, Choi bewails the MeTC *Order* dated March 7, 2011 in which the court, after several warnings, declared Choi to have waived his right to present evidence. The facts leading up to the MeTC *Order* dated March 7, 2011, however, clearly show that the MeTC had been very liberal in granting Choi's numerous motions for postponement, each time reminding Choi to come prepared to present his evidence. In all these, Choi's propensity to disregard the opportunity given to him to present his evidence is palpable.

3. CONSTITUTIONAL LAW; DUE PROCESS; THERE IS NO DEPRIVATION OF DUE PROCESS WHEN A PARTY IS GIVEN AN OPPORTUNITY TO BE HEARD, NOT ONLY THROUGH HEARINGS, BUT EVEN THROUGH

PLEADINGS, SO THAT ONE MAY EXPLAIN ONE'S SIDE OR ARGUMENTS; THE UNPREPAREDNESS OF THE RESPONDENT'S COUNSEL CANNOT JUSTIFY FURTHER DELAY IN THE PROCEEDINGS TO THE DETRIMENT OF THE PETITIONER'S RIGHT TO AN EXPEDITIOUS RESOLUTION OF HIS SIMPLE MONEY CLAIM.— x x x. [I]t does not escape the Court's attention that from the time the MeTC gave Choi the opportunity to present his evidence on July 16, 2008 until the issuance of the MeTC *Order* dated March 7, 2011 declaring Choi's right to present evidence to have been waived, Choi had been given several opportunities — spanning almost three (3) years — to present his evidence. There is no deprivation of due process when a party is given an opportunity to be heard, not only through hearings, but even through pleadings, so that one may explain one's side or arguments. Inasmuch as Choi had been given more than enough opportunity to present his case, the Court agrees with the MeTC and the RTC that Choi had waived his right to present evidence. In this regard, Choi cannot claim that he was "prevented from testifying" by the trial court, considering that all the postponements in the proceedings were at the instance of Choi. In any event, the unpreparedness of counsel that led to the MeTC Order of March 7, 2011 cannot, by any stretch of imagination, justify further delay in the proceedings to the detriment of Park's right to an expeditious resolution of what really is, at the end of the day, a simple money claim.

4. ID.; EVIDENCE; JUDICIAL ADMISSIONS; JUDICIAL ADMISSIONS MADE BY PARTIES IN THE COURSE OF THE TRIAL IN THE SAME CASE ARE CONCLUSIVE AND DO NOT REQUIRE FURTHER EVIDENCE TO PROVE THEM. THEY ARE LEGALLY BINDING ON THE PARTY MAKING THEM EXCEPT WHEN IT IS SHOWN THAT THEY HAVE BEEN MADE THROUGH PALPABLE MISTAKE, OR THAT NO SUCH ADMISSION WAS MADE; EXCEPTIONS NOT PRESENT.— Suffice it to state that based on the records, it is clear that Choi is liable to Park for the loan extended by the latter to him. This is so because, Choi in his *Counter-Affidavit*, already admitted that he borrowed money from Park, arguing only regarding the *extent* of his liability — *i.e.*, that what he owed was ₱1,500,000.00 and not

₱1,875,000.00. Judicial admissions made by parties in the course of the trial in the same case are conclusive and do not require further evidence to prove them. They are legally binding on the party making them except when it is shown that they have been made through palpable mistake, or that no such admission was made, neither of which was shown to exist in this case. Thus, Choi himself having admitted liability, the only question that remains for the Court to resolve is the extent of such liability.

5. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; SIMPLE LOAN; NO INTEREST SHALL BE DUE UNLESS IT HAS BEEN EXPRESSLY STIPULATED IN WRITING.— [T]he Court finds that Choi is liable to pay Park the face value of the check in the amount of ₱1,875,000.00 as principal. The Court notes that the only bases relied upon by Choi in support of his contention that ₱1,500,000.00 is the principal and ₱375,000.00 to be the interest are his own allegations in his *Counter-Affidavit*. Without more, Choi's bare allegations on the terms of the loan fail to persuade. This is so because in accordance with Article 1956 of the Civil Code, no interest shall be due unless it has been expressly stipulated in writing. Here, without further proof of any express agreement that ₱375,000.00 of the ₱1,875,000.00 pertains to interest, the Court is predisposed, based on the facts of the case, to rule that the entire principal amount owed by Choi to Park is the face value of the check, or ₱1,875,000.00.

6. ID.; ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; A PARTY CLAIMING THAT AN OBLIGATION HAS BEEN DISCHARGED BY PAYMENT HAS THE BURDEN OF PROVING THE SAME.— In an attempt to further minimize liability, Choi raises the defense of payment and insists that he already paid the sum of ₱1,590,000.00 (₱1,500,000.00 as principal and ₱90,000.00 as interest), and that the remaining amount that he owes Park is ₱285,000.00. x x x. Yet, other than mere allegation of payment of ₱1,590,000.00, Choi has adduced no evidence to prove the fact of payment. A party claiming that an obligation has been discharged by payment has the burden of proving the same. As aptly elucidated by the Court in *Alonzo v. San Juan*: The law requires in civil cases that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party

to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. In this case, the burden of proof is on the respondents because they allege an affirmative defense, namely payment. **As a rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege [non-payment], the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove**[**non-payment**]. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. As against Choi's allegation of payment, Park's categorical testimony that Choi owed him ₱1,875,000.00, coupled with the presentation of the subject check constituting evidence of indebtedness and absent evidence on the part of Choi to the contrary, leads to the conclusion that Choi in fact owes Park the full amount of ₱1,875,000.00.

7. ID.; ID.; SIMPLE LOAN; INTEREST; MONETARY INTEREST AND COMPENSATORY INTEREST DISTINGUISHED; RIGHT TO INTEREST ARISES ONLY BY VIRTUE OF A CONTRACT OR BY VIRTUE OF DAMAGES FOR DELAY OR FAILURE TO PAY THE PRINCIPAL LOAN ON WHICH INTEREST IS DEMANDED.— There are two types of interest - monetary interest and compensatory interest. Interest as a compensation fixed by the parties for the use or forbearance of money is referred to as monetary interest, while interest that may be imposed by law or by courts as penalty for damages is referred to as compensatory interest. Right to interest therefore arises only by virtue of a contract *or* by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.

8. ID.; ID.; ID.; COMPENSATORY INTEREST; THE ABSENCE OF EXPRESS STIPULATION ON THE IMPOSITION OF INTEREST OPERATES TO PRECLUDE THE IMPOSITION AND RUNNING OF MONETARY INTEREST ON THE PRINCIPAL. NEVERTHELESS, THE MOMENT A DEBTOR INCURS IN DELAY IN THE PAYMENT OF A SUM OF MONEY, THE CREDITOR IS ENTITLED TO THE PAYMENT OF INTEREST AS INDEMNITY FOR DAMAGES ARISING OUT OF THAT DELAY; ABSENT STIPULATION AS TO THE RATE OF COMPENSATORY INTEREST, THE RATE IS SIX PERCENT (6%) PER ANNUM.— Inasmuch as the parties

did not execute a written loan agreement, and consequently, did not stipulate on the imposition of interest, Article 1956 of the Civil Code, which states that "[n]o interest shall be due unless it has been expressly stipulated in writing," operates to preclude the imposition and running of monetary interest on the principal. In other words, no monetary interest having been agreed upon between the parties, none accrues in favor of Park. Nevertheless, the moment a debtor incurs in delay in the payment of a sum of money, the creditor is entitled to the payment of interest as indemnity for damages arising out of that delay. Article 2209 of the Civil Code provides that: "[i]f the obligation consists in the payment of sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) *per annum*." Consequently, by operation of Article 2209 of the Civil Code, Choi becomes liable to pay Park **compensatory interest** to indemnify Park for the damages the latter suffered as a result of Choi's delay in the payment of the loan. Delay in this case, pursuant to Article 1169 of the Civil Code, begins to run from the time Park extrajudicially demanded from Choi the fulfillment of his loan obligation that is, on May 19, 2000. There being no stipulation as to the rate of compensatory interest, the rate is six percent (6%) *per annum* pursuant to Article 2209 of the Civil Code.

9. ID.; ID.; ID.; INTEREST; IN THE ABSENCE OF AN EXPRESS STIPULATION AS TO THE RATE OF INTEREST THAT WOULD GOVERN THE PARTIES, THE RATE OF LEGAL INTEREST FOR LOANS OR FORBEARANCE OF ANY MONEY, GOODS OR CREDITS AND THE RATE ALLOWED IN JUDGMENTS IS TWELVE PERCENT (12%) *PER ANNUM* COMPUTED FROM THE DATE OF JUDICIAL OR EXTRAJUDICIAL DEMAND; 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.— [I]n accordance *Eastern Shipping Lines, Inc. v. Court of Appeals* as further clarified by the Court in *Nacar v. Gallery Frames*, in the absence of an express stipulation as to the rate of interest that would govern the parties,

the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments is twelve percent (12%) *per annum* computed from default (*i.e.*, the date of judicial or extrajudicial demand). With the issuance of Bangko Sentral ng Pilipinas (BSP-MB) Circular No. 799 (s. 2013), said rate of 12% *per annum* applies until June 30, 2013, and, from July 1, 2013, the new rate of six percent (6%) *per annum* applies. Finally, 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, the interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioner.
Britanico & Britanico Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Petitioner Hun Hyung Park (Park) against Respondent Eung Won Choi (Choi), assailing the Court of Appeals' (CA) *Decision*[2] dated March 30, 2015 and *Resolution*[3] dated September 30, 2015 in CA-G.R. SP No. 124173.

In the assailed *Decision* and *Resolution*, the CA reversed and set aside the *Decision*[4] dated December 23, 2011 and *Order*[5] dated March 28, 2012 of the Regional Trial Court of Makati

[1] *Rollo*, pp. 8-20.

[2] *Id.* at 118-129. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Melchor Q.C. Sadang, concurring.

[3] *Id.* at 139-140.

[4] *Id.* at 55-59. Through Presiding Judge Dina Pestaño Teves.

[5] *Id.* at 61.

City - Branch 142 (RTC - Branch 142), which affirmed the *Decision*[6] dated April 26, 2011 of the Metropolitan Trial Court of Makati City - Branch 65 (MeTC), holding Choi civilly liable to pay Park the amount of One Million Eight Hundred Seventy-Five Thousand Pesos (₱1,875,000.00) plus interest of 12% percent per annum from August 31, 2000 until the whole amount is paid, ₱200,000.00 as attorney's fees, and ₱9,322.25 as reimbursement for filing fees.[7]

The Antecedent Facts

The present petition arose from a complaint[8] for *estafa* and violation of Batas Pambansa Blg. (B.P.) 22 filed by Park against Choi.

On June 28, 1999, Park, who was engaged in the business of lending money, extended a loan to Choi in the amount of 1,875,000.00.[9] As payment for the loan, Choi issued PNB Check No. 0077133[10] in the same amount dated August 28, 1999 in favor of Park.[11] On October 5, 1999, Park attempted to deposit the check to his bank account but the same was returned to him dishonored for having been drawn against a closed account.[12] Thereafter, Park, through counsel, sent a letter to Choi on May 11, 2000 informing the latter of the dishonored check.[13] Based on the registry return receipt attached to Park's *Complaint-Affidavit*,[14] and as stipulated by Choi during the pre-trial conference,[15] Choi received the demand letter on May 19, 2000

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[6] *Id*. at 63-66. Through Presiding Judge Henry E. Laron.

[7] *Id*. at 66.

[8] *Id.* at 75.

[9] *Id*. at 65.

[10] *Id*. at 58, 76.

[11] *Id*. at 105.

[12] *Id.* at 9, 79-80.

[13] *Id*. at 75.

[14] *Id*. at 78.

[15] See *id*. at 9.

through a certain Ina Soliven.[16] Nevertheless, Choi failed to resolve the dishonored check.

With the loan remaining unpaid, Park instituted a complaint against Choi for *estafa* and violation of B.P. 22. Following Park's complaint, the Office of the City Prosecutor of Makati,[17] in an Information[18] dated August 31, 2000, charged Choi with one count of violation of B.P. 22. The case was later docketed as Criminal Case No. 294690 before the MeTC.[19]

On arraignment,[20] Choi pleaded not guilty.[21] After the pre-trial conference and the prosecution's presentation of evidence, Choi filed a *Motion for Leave of Court to File Demurrer to Evidence* along with his *Demurrer*. In his *Demurrer*, Choi asserted that the prosecution failed to prove that he received the notice of dishonor.[22] Thus, Choi argued that since receipt of the notice of dishonor was not proven, then the presumption of knowledge of insufficiency of funds — an element for conviction of violation of B.P. 22 — did not arise.[23]

Proceedings before the MeTC

The MeTC **granted** Choi's *Demurrer* in an *Order* dated **February 27, 2003**[24] and **dismissed** the criminal complaint. The prosecution's *Motion for Reconsideration* of the dismissal was likewise denied, leading Park to appeal to the RTC of Makati City - Branch 60 (RTC - Branch 60).[25] In his appeal, Park

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[16] *Id*. at 78.

[17] *Id*. at 80. Through Prosecutor Elba G. Tayo-Chua.

[18] *Id*. at 81.

[19] *Id*. at 63.

[29] April 16, 2001, *id*. at 55, 64.

[21] *Id.*

[22] *Id*. at 55.

[23] *Id*.

[24] The MeTC Order dated February 27, 2003 is not attached to the record, see *id.*

[25] The Motion for Reconsideration of the MeTC Order dated February 27, 2003 is not attached to the record, see *id.*

contended that the dismissal of the criminal case should not carry with it the dismissal of the civil aspect of the case.[26]

Ruling of the RTC - Branch 60

The RTC - Branch 60,[27] in a *Decision*[28] dated September 11, 2003, **granted** Park's appeal. The RTC - Branch 60 held that while the evidence presented was insufficient to prove Choi's criminal liability for B.P. 22, it did not altogether extinguish his civil liability.[29] Accordingly, the RTC - Branch 60 ordered Choi to pay Park the face value of the check (₱1,875,000.00) with legal interest.[30]

Aggrieved by the RTC - Branch 60 *Decision*, Choi filed a Motion for Reconsideration. Acting on Choi's Motion for Reconsideration, the RTC -Branch 60 **reversed** its September 11, 2003 *Decision* (finding that Choi was liable to Park for ₱1,875,000.00) and instead ordered the **remand** of the case to the MeTC so that Choi may adduce evidence on the civil aspect of the case.[31]

Meanwhile, aggrieved by the RTC - Branch 60's remand of the case to the MeTC, Park elevated the matter to the CA.[32] The CA, however, dismissed Park's petition on procedural grounds (*i.e.*, the verification and certification of non-forum shopping failed to comply with Section 4, Rule 7 of the Rules of Court;[33] failure to attach copies of the MeTC Order dismissing the criminal case, the *motion for leave to file demurrer to evidence* and the *demurrer*; and finally, for attaching an uncertified and

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[26] *Rollo*, p. 55.

[27] See *id.* at 56.

[28] The RTC - Branch 60 Decision dated September 11, 2003 is not attached to the record, see *id*. at 64.

[29] *Rollo*, p. 56.

[30] *Id*.

[31] *Id.*

[32] See *id.* at 64.

[33] See *id*.

illegible copy of the RTC - Branch 60 *Decision* of September 11, 2003).[34]

Unsatisfied with the CA's dismissal of his petition on procedural grounds, Park assailed the CA dismissal of his petition before the Court, and, in G.R. No. 165496 entitled "*Hun Hyung Park v. Eung Won Choi*,"[35] the Court, through its Second Division,[36] ruled that the remand of the case to the MeTC for reception of Choi's evidence on the civil aspect of the case was **proper**, *viz.*:

> This Court therefore upholds respondent's right to present evidence as reserved by his filing of leave of court to file the demurrer.
>
> **WHEREFORE**, the petition is, in light of the foregoing discussions, *DENIED*.
>
> The case is *REMANDED* to the court of origin, Metropolitan Trial Court of Makati City, Branch 65 which is *DIRECTED* to forthwith set Criminal Case No. 294690 for further proceedings only for the purpose of receiving evidence on the civil aspect of the case.
>
> Costs against petitioner.
>
> **SO ORDERED.**[37]

In a *Resolution*[38] dated June 29, 2007, the Court denied Park's Motion for Reconsideration from the above *Decision*. The Court's *Decision* in G.R. No. 165496 attained finality on January 18, 2008.

Proceedings before the MeTC

With the proceedings now before the MeTC, the MeTC ordered the presentation of Choi's evidence on the civil aspect of the

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[34] See *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431 (2007).

[35] *Id.*

[36] *Id.* Penned by Associate Justice Conchita Carpio-Morales with Associate Justices Antonio T. Carpio, Dante O. Tinga, Presbitero Velasco, Jr., and Leonardo Quisumbing (on official leave), concurring.

[37] *Id*. at 447.

[38] *Hun Hyung Park v. Eung Won Choi,* 553 Phil. 96, 99 (2007).

case. However, in the course of the proceedings before MeTC, Choi repeatedly moved for several postponements, which postponements eventually led the MeTC to issue its *Order*[39] dated March 7, 2011, declaring that Choi had waived his right to present evidence.

The specific incidents leading up to the MeTC *Order* dated March 7, 2011 are as follows:

The MeTC initially scheduled the case for reception of Choi's evidence on July 16, 2008, but the same was declared a holiday. Hearing was then reset to January 7, 2009, then to April 7, 2009 and to May 19, 2009 upon the instance of Choi. The case was again rescheduled to August 5, 2009, but the same was again declared a holiday. On September 15, 2010, Choi asked for postponement on the ground that he needed the assistance of an interpreter to assist him in translating his testimony from Korean to English.[40]

The MeTC granted Choi's request to reset the hearing from September 15, 2010 to November 23, 2010 in an *Order*[41] issued the same day. In the *Order*, the court warned that "[i]n the event that the defense fails to present its evidence on the next scheduled hearing, its right to do so will be deemed waived and the case will be considered submitted for resolution based on the prosecution's evidence."[42]

Notwithstanding the court's warning, in the scheduled hearing on November 23, 2010, Choi asked for another postponement on the ground that the *Certification as a Qualified Interpreter*[43] issued by the Korean Embassy of the Philippines and presented by Choi's interpreter, Han Jong[43a] Oh (Oh), certifies Oh's qualification as an interpreter in another case and not to the case then before the court.[44]

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[39] *Rollo*, p. 10.

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

[41] *Id*. at 67.

[42] *Id*.

[43] *Id*. at 69. [43a] Also referred to as "Jung" in some parts of the *rollo*.

[44] *Rollo*, p. 68.

The MeTC again granted Choi's motion for postponement, with a warning that the grant of postponement on November 23, 2010 would be the last. The MeTC cautioned Choi that should he still be not ready by the next hearing, his right to present evidence would be considered waived.[45]

Despite the warning, on the scheduled hearing of March 7, 2011, Choi asked for yet another postponement on the ground that his previous counsel was retired from the practice of law and his new counsel was not prepared for the day's hearing. On that day, Park objected to further postponement of the case considering that the last two postponements had already come with the court's warning against further postponements.[46]

Ruling on what was by then the sixth motion for postponement by Choi, the MeTC, in an *Order* dated March 7, 2011, **denied** Choi's motion for postponement and declared that his right to present evidence had been waived. Accordingly, the MeTC ruled that the case was submitted for resolution.[47]

Subsequently, on **April 26, 2011**, the MeTC, rendered a *Decision* finding Choi civilly liable to Park, the dispositive portion of which reads:

> WHEREFORE, premises considered, Eung Won Choi is ordered to pay private complainant Hun Hyung Park the amount of ₱1,875,000.00 representing the face value of the check subject of this case plus interest of 12% percent *per annum* from August 31, 2000 until the whole amount is paid, the amount of ₱200,000.00 by way of attorney's fees, and the amount of ₱9,322.25 as reimbursement for the filing fees.
>
> Costs against the accused.
>
> **SO ORDERED.**[48]

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[45] *Id.* at 10.

[46] *Id*.

[47] *Id*. at 70.

[48] *Id*. at 66.

Insofar as Choi's alleged indebtedness was concerned, the MeTC held that the prosecution had proven that the check subject matter of the case was issued by Choi to Park in exchange of the cash loaned to him.[49] Choi, on the other hand, did not even adduce any evidence to controvert Park's claim of indebtedness.[50] Consequently, finding that Choi had no valid defense against Park's claim of indebtedness, the MeTC held that Choi was civilly liable to Park for the loan.[51]

On Choi's repeated motions for postponement, the MeTC observed that:

> As early as May 12, 2008, the defense was ordered to present its evidence. In the interim, the parties negotiated for the settlement of the case. The reception of defense evidence was postponed on several dates to accommodate the alleged negotiation for the settlement of the case as well as due to the unavailability of a Korean interpreter to aid the accused.
>
> In the Order of September 15, 2010, the defense was given one last chance to present evidence on November 23, 2010. Accused again failed to present its evidence. In order to afford the accused his constitutional right to defend himself and to present evidence, he was again given one last chance to present evidence on March 7, 2011. On said date, the handling lawyer, sent his son, Atty. Rainald Paggao, who manifested that his father can no longer handle the case. On the same day, Atty. Jesus F. Fernandez verbally entered his appearance as new counsel for the accused. Atty. Fernandez moved for a resetting of the case, which the Court denied considering the objection of the private prosecutor, as well as due to the repeated warnings issued, and considering further the length of time afforded the accused to present its (sic) evidence. The defense right (sic) to present evidence was deemed waived and the case was considered submitted for resolution.[52]

Unsatisfied, Choi appealed the above MeTC *Decision* dated April 26, 2011 to the RTC - Branch 142.

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[49] *Id*. at 65.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 64-65.

The Ruling of the RTC - Branch 142

In its *Decision*, dated **December 23, 2011**, the RTC - Branch 142 **affirmed** the MeTC *Decision* and **denied** Choi's appeal, *viz.*:

> All told, this Court finds that the imposition of civil liability against the accused-appellant is correctly decided by the lower court.
>
> **WHEREFORE**, the instant appeal is hereby **DENIED** and the *Decision* dated 26 April 2011, rendered by the Metropolitan Trial Court, Branch 65, Makati City is **AFFIRMED IN TOTO**.[53]

In this regard, the RTC - Branch 142 observed that:

> In the 15 September 2010 Order of the lower [court], [Choi] was already given the last opportunity to present his defense on 23 November 2010, but still failed to introduce any. [In spite] of the warning, the lower court cancelled the hearing to afford the defense another day, on 7 March 2011. It was on said date that the lower court was constrained to declare the right of [Choi] to present evidence as deemed waived considering the prosecution's vigorous objection, the repeated warnings to [Choi] and the length of time afforded to [Choi] to present his defense.
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> x x x x
>
> [Choi's] failure to adduce his evidence[,] is, clearly, attributable not to the lower court but to himself due to his repeated postponements. If it were true that [Choi] wanted to adduce his evidence, he could have taken advantage of the ample opportunity to present, to be heard and to testify in open court with the assistance of his counsel.[54]

Maintaining his position that he did not waive his right to present evidence, Choi filed a *Motion for Reconsideration*[55] of the above *Decision* on March 6, 2012, scheduled for hearing on March 9, 2012.[56]

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[53] *Id.* at 59.

[54] *Id.* at 57.

[55] *Id.* at 82-103.

[56] *Id.* at 16.

On March 7, 2012, the RTC - Branch 142 gave Park ten (10) days within which to file an Opposition (to the Motion for Reconsideration) and ten (10) days to Choi to file a Reply to the Opposition upon receipt thereof.[57] On March 13, 2012, Park filed his opposition, which was received by Choi on March 20, 2012.[58]

On March 28, 2012, the RTC - Branch 142 issued an *Order* **denying** Choi's Motion for Reconsideration. On March 30, 2012 - that is, the day on which his ten (10) day period to file his Opposition to the Motion for Reconsideration was to expire - Choi filed a motion for extension of time to file his reply.[59] Notably, the court had already denied Choi's Motion for Reconsideration two days prior, or on March 28, 2012. Based on the record, Choi did not file a Reply to the Opposition to the Motion for Reconsideration.

Aggrieved, Choi filed a petition for review[60] under Rule 42 of the Rules of Court with the CA.

In his petition before the CA, Choi's arguments were two-fold: (i) the RTC violated his constitutional right to due process in denying his motion for reconsideration even before his period to file a reply to Park's opposition had expired (*i.e.*, Choi had until March 30, 2012 to file a reply to the opposition, while the RTC - Branch 142 *Order* dismissing the motion for reconsideration was issued on March 28, 2012)[61] and (ii) the RTC erred in declaring his right to present evidence to have been waived for the simple reason that the day of presentation of evidence was the day of the retirement of his lawyer.[62]

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[57] See *id*. at 16, 60.

[58] *Id*. at 16.

[59] *Id*. at 12.

[60] *Id*. at 21-53.

[61] *Id*. at 27.

[62] *Id*. at 12.

The Ruling of the CA

In its *Decision* dated **March 30, 2015**, the CA reversed the RTC -Branch 142 *Decision*dated December 23, 2011 and *Order* dated March 28, 2012, *viz.*:

> **WHEREFORE**, foregoing considered, the petition is **GRANTED**. The assailed Regional Trial Court's *Decision* dated December 23, 2011 and its Order of March 28, 2012 are **REVERSED** and **SET ASIDE**.
>
> The Case is hereby **REMANDED** to the Metropolitan Trial Court, Branch 65, Makati City, for the reception of petitioner's evidence.
>
> **SO ORDERED.**[63]

First, in remanding the case to the MeTC, the CA held that only a full-blown hearing would guarantee a fair resolution of the case.[64] To the CA, the courts' strict adherence to the rules of procedure may be relaxed when a strict implementation of the rules would cause substantial injustice to the parties. In particular, the CA held that several postponements were with "justifiable reasons,"[65] such as, in the instances of the erroneous certification and the substitution of counsel.[66]

As to the other instances of postponement, the CA noted that:

> While it is true that several motions for postponements have been recorded, it behooves on the courts to rationalize the reasons for the postponements and to treat each case accordingly. What is foremost is to render substantive justice and give the parties their day in court.
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> x x x x
>
> We shall not touch on the claim of payments posed by [Choi] as the same can be best validated when [Choi] is allowed to present his evidence.[67]

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[63] *Id*. at 128.

[64] *Id*.

[65] *Id*. at 125.

[66] *Id*.

[67] *Id*. at 125-126.

Second, with respect to the RTC - Branch 142's denial of Choi's Motion for Reconsideration two (2) days before the expiration of the period within which he was to file a reply to the opposition, the CA, without making a categorical ruling on whether Choi was deprived of his right to due process, simply ruled that "the failure of [Choi] to present [his] evidence was because of justified reasons beyond his control."[68]

In a *Resolution* dated September 30, 2015, the CA denied Park's Motion for Reconsideration[69] for lack of merit.

Hence, this petition.

In a *Resolution*[70] dated January 11, 2016, the Court required Choi to comment on Park's petition. Choi filed his *Comment*[71] on January 16, 2017. On February 3, 2017, Park filed his *Reply*.[72]

Issue

The sole issue for the Court's resolution is whether the CA committed any reversible error in the issuance of the assailed *Decision* dated March 30, 2015 and *Resolution* dated September 30, 2015.

Our Ruling

The petition is meritorious.

In resolving the issues raised in the present petition, the Court emphasizes at the outset that the dispute between the parties arose in 2000, or almost eighteen (18) years ago, and that the case has already been remanded to the MeTC on two occasions (*i.e.*, by the Court's Second Division in 2007 and by the CA in the assailed *Decision* and *Resolution* in 2015). Justice dictates, therefore, that the Court resolve the present petition instead of

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[68] *Id*. at 122-123.

[69] *Id*. at 130-137.

[70] *Id.* at 142.

[71] *Id.* at 148-171.

[72] *Id*. at 179-182.

remanding the same to the lower court. In this regard, the Court finds that the CA **erred**in reversing the RTC - Branch 142) *Decision* dated December 23, 2011 and Order dated March 28, 2012, for the reasons that follow.

Contrary to the CA's ruling, Choi was not deprived of due process.

The totality of circumstances painstakingly detailed above reveals that Choi was not deprived of due process, either: (i) in the MeTC *Order* dated March 7, 2011, as affirmed by the RTC - Branch 142, declaring Choi to have waived his right to present evidence after he moved for a sixth postponement; or (ii) in the RTC - Branch 142 *Order* dated March 28, 2012 denying his Motion for Reconsideration two days before the lapse of the ten (10) day period given to him by the RTC to file his *Reply to the Opposition (to the Motion for Reconsideration).*

First, contrary to the ruling of the CA, the MeTC, as affirmed by the RTC - Branch 142, was correct in ruling that Choi had waived his right to present evidence.

Claiming that substantive justice must be the determinative end of courts,[73] Choi argues that any grant of postponement must take into consideration the reason for the postponement and the merits of the case of the movant.[74] To that extent, the Court agrees, and so holds, that Choi had been provided with more than ample opportunity to present his case.

To begin with, the grant or denial of a motion - or, in this case, motions - for postponement is addressed to the sound discretion of the court, which should always be predicated on the consideration that the ends of justice and fairness are served by the grant or denial of the motion.[75] As the Court enunciated in *Sibay v. Bermudez*:[76]

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[73] *Id*. at 37.

[74] Citing *Simon v. Canlas*, 521 Phil. 558, 572 (2006); see id. at 37-38.

[75] *Sibay v. Bermudez*, G.R. No. 198196, July 17, 2017, 831 SCRA 191, 197.

[76] *Id.*

x x x After all, postponements and continuances are part and parcel of our procedural system of dispensing justice. When no substantial rights are affected and the intention to delay is not manifest with the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow the same to the end that the merits of the case may be fully ventilated. Thus, in considering motions for postponements, two things must be borne in mind: (1) the reason for the postponement, and (2) the merits of the case of the movant. Unless grave abuse of discretion is shown, such discretion will not be interfered with either by *mandamus* or appeal.[77] **Because it is a matter of privilege, not a right, a movant for postponement should not assume beforehand that his motion will be granted**.[78]

Thus, We agree with the appellate court's finding that **in the absence of any clear and manifest grave abuse of discretion resulting in lack or in excess of jurisdiction**, We cannot overturn the decision of the court *a quo*.More so, in this case, where the denial of the motion for postponement appears to be justified.[79] (Emphasis and underscoring supplied)

In fact, pursuant to Sections 2[80] and 3[81] of Rule 30 of the Rules of Court, although a court may adjourn a trial from day

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[77] *Id*. at 197-198, citing *Simon v. Canlas*, supra note 74.

[78] *Id*. at 198, citing T*he Philippine American Life & General Insurance Company v. Enario*, 645 Phil. 166, 178 (2010).

[79] *Id*.

[80] SEC. 2. *Adjournments and postponements*.— A court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require, but shall have no power to adjourn a trial for a longer period than one month for each adjournment, nor more than three months in all, except when authorized in writing by the Court Administrator, Supreme Court. (3a, R22).

[81] SEC. 3. *Requisites of motion to postpone trial for absence of evidence*.— A motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality or relevancy of such evidence, and that due diligence has been used to procure it. But if the adverse party admits the facts to be given in evidence, even if he objects or reserves the right to object to their admissibility, the trial shall not be postponed. (4a, R22; Bar Matter No. 803, July 21, 1998).

to day, a motion to postpone trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality or relevancy of such evidence, and that due diligence has been used to procure it. Rules governing postponements serve a clear purpose — to avert the erosion of people's confidence in the judiciary.[82]

Consequently, in granting or denying motions for postponements, courts must exercise their discretion constantly mindful of the Constitutional guarantee against unreasonable delay in the disposition of cases. In other words, while it is true that cases must be adjudicated in a manner that is in accordance with the established rules of procedure, so is it crucial that cases be promptly disposed to better serve the ends of justice. After all, justice delayed is justice denied.[83] Excessive delay in the disposition of cases renders inutile the rights of the people guaranteed by the constitution and by various legislations.[84]

Here, Choi bewails the MeTC *Order* dated March 7, 2011 in which the court, after several warnings, declared Choi to have waived his right to present evidence. The facts leading up to the MeTC *Order* dated March 7, 2011, however, clearly show that the MeTC had been very liberal in granting Choi's numerous motions for postponement, each time reminding Choi to come prepared to present his evidence. In all these, Choi's propensity to disregard the opportunity given to him to present his evidence is palpable.

To be clear, trial was initially scheduled on **July 16, 2008**. After four motions for postponement (July 16, 2008 to January 7, 2009, then to April 7, 2009, then to May 19, 2009, and to September 15, 2010) at Choi's instance, trial was set to proceed on **September 15, 2010**. Come September 15, 2010, however, Choi again moved that the trial be postponed to **November 23,**

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[82] *Rosauro v. Judge Villanueva, Jr.*, 389 Phil. 699 (2000).

[83] *Marcelo v. Peroxide Phils., Inc.*, G.R. No. 203492, April 24, 2017, 824 SCRA 91, 105, citing *Biggel v. Judge Pamintuan*, 581 Phil. 319, 325 (2008).

[84] *Matias v. Judge Plan*, 355 Phil. 274, 282 (1998).

2010, asking for the first time the assistance of an interpreter in translating his testimony from Korean to English.[85]

While the lower court granted Choi's by then sixth postponement, it did so with a stern warning that his failure to present evidence on the scheduled date would result in his right to present evidence being deemed waived. Yet, on **November 23, 2010**, Choi again moved for postponement on the excuse that the Korean Interpreter who was present to assist him had an erroneous certification (*i.e.*, was a Certified Qualified Interpreter, but the *Certification* issued by the Korean embassy was for another case). Using the certification issue as reason, Choi again asked that the trial be postponed to **March 7, 2011**. On that day, Choi's counsel moved for another postponement on the ground that Choi's previous counsel was retiring and this new counsel was not prepared to present evidence that day.

Based on the foregoing, it does not escape the Court's attention that from the time the MeTC gave Choi the opportunity to present his evidence on July 16, 2008 until the issuance of the MeTC *Order* dated March 7, 2011 declaring Choi's right to present evidence to have been waived, Choi had been given several opportunities — spanning almost three (3) years — to present his evidence.

There is no deprivation of due process when a party is given an opportunity to be heard, not only through hearings, but even through pleadings, so that one may explain one's side or arguments.[86] Inasmuch as Choi had been given more than enough opportunity to present his case, the Court agrees with the MeTC and the RTC that Choi had waived his right to present evidence. In this regard, Choi cannot claim that he was "prevented from testifying"[87] by the trial court, considering that all the postponements in the proceedings were at the instance of Choi.

In any event, the unpreparedness of counsel that led to the MeTC Order of March 7, 2011 cannot, by any stretch of

[85] *Rollo*, p. 10.

[86] *Cabanting v. BPI Family Savings Bank, Inc.*, 781 Phil. 164, 171 (2016).

[87] *Rollo*, p. 28.

imagination, justify further delay in the proceedings to the detriment of Park's right to an expeditious resolution of what really is, at the end of the day, a simple money claim.

Second, that the RTC - Branch 142 denied Choi's Motion for Reconsideration on March 28, 2012, or two days before the lapse of the ten (10) day period given to Choi by the RTC to file his *Reply to the Opposition (to the Motion for Reconsideration)* does not, by and of itself, support Choi's claim of a violation of due process considering that, to begin with, the *Reply to Opposition* is limited to issues and arguments raised in Park's *Opposition*, which in turn, is limited to the issues and arguments raised in Choi's own Motion for Reconsideration.

Choi is liable to pay Park the principal amount of ₱1,875,000.00 and corresponding legal interests thereon.

Having dispensed with the procedural issues, the Court proceeds to determine the extent of Choi's liability to Park.

Suffice it to state that based on the records, it is clear that Choi is liable to Park for the loan extended by the latter to him. This is so because, Choi in his *Counter-Affidavit*, already admitted that he borrowed money from Park, arguing only regarding the *extent*of his liability — *i.e.*, that what he owed was ₱1,500,000.00 and not ₱1,875,000.00. In his *Counter-Affidavit*, Choi himself stipulated:

"2. That the truth of the matter is that **I borrowed from said complainant the amount of P1,500,000.00 on June 29, 1999** and he thereupon issued to me two (2) International Bank Manager's Checks, to wit:

IEB Check No. 01022 6/29/99	-	₱1,000,000.00
IEB Check No. 01023 6/29/99	-	[₱]500,000.00
Total:		₱1,500,000.00

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3. That in place of a formal document such as a promissory note, [Park] required me instead to give him the subject check in the amount

of P1,875,000.00 which includes the interest of Twenty-Five percent (25%) which is equivalent to P375,000.00 and the date of said check of August 28, 1999 served to indicate the maturity date of the two-month period within which the aforementioned loan was to be paid. In other words, the subject check was not intended by us to be in payment of the loan but to serve merely as an evidence of my indebtedness to the complaint in lieu of a promissory note as I have duly informed the complainant of the lack of sufficient funds to cover the same check when I handed over to him that check.[88] (Emphasis and underscoring supplied)

Judicial admissions made by parties in the course of the trial in the same case are conclusive and do not require further evidence to prove them.[89] They are legally binding on the party making them[90] except when it is shown that they have been made through palpable mistake, or that no such admission was made,[91] neither of which was shown to exist in this case. Thus, Choi himself having admitted liability, the only question that remains for the Court to resolve is the extent of such liability.

In this regard, the Court finds that Choi is liable to pay Park the face value of the check in the amount of ₱1,875,000.00 as principal. The Court notes that the only bases relied upon by Choi in support of his contention that ₱1,500,000.00 is the principal and ₱375,000.00 to be the interest are his own allegations in his *Counter-Affidavit*. Without more, Choi's bare allegations on the terms of the loan fail to persuade. This is so because in accordance with Article 1956 of the Civil Code, no interest shall be due unless it has been expressly stipulated in writing.[92] Here, without further proof of any express agreement

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[88] See Motion for Reconsideration (of the Decision dated 23 December 2011), id. at 98-99.

[89] *Odiamar v. Valencia*, 788 Phil. 451, 459 (2016), citing *Josefa v. Manila Electric Company*, 739 Phil 114, 129 (2014).

[90] *Id*., citing *Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp*., 750 Phil. 95, 118 (2015).

[91] *Id*., citing *Josefa v. Manila Electric Company*, supra note 89.

[92] See *Anchor Savings Bank v. Pinzman Realty and Dev't Corp.*, 741 Phil. 190, 194 (2014).

that ₱375,000.00 of the ₱1,875,000.00 pertains to interest, the Court is predisposed, based on the facts of the case, to rule that the entire principal amount owed by Choi to Park is the face value of the check, or ₱1,875,000.00.

In an attempt to further minimize liability, Choi raises the defense of payment and insists that he already paid the sum of ₱1,590,000.00 (₱1,500,000.00 as principal and ₱90,000.00 as interest), and that the remaining amount that he owes Park is ₱285,000.00.[93] In his *Counter-Affidavit*, Choi claims:

"5. That complainant is now demanding still for the payment of the face value of the check which is ₱1,875,000.00 notwithstanding his awareness of the fact that **I have already paid to him the total amount of ₱1,590,000.00 as of this date**, thereby leaving an unpaid balance of only ₱285,000.00.

6. That, attached hereto as Annex "A" the LIST of the instalment payments I made to complainant from August 28, 1999 up to February 22, 2000, together with documents evidencing some of such payments, as Annexes "B", "C" and "D"."[94] (Emphasis and underscoring supplied; italics omitted)

Yet, other than mere allegation of payment of P1,590,000.00, Choi has adduced no evidence to prove the fact of payment. A party claiming that an obligation has been discharged by payment has the burden of proving the same.[95] As aptly elucidated by the Court in *Alonzo v. San Juan*:[96]

The law requires in civil cases that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to

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[93] *Rollo*, p. 58.

[94] See Motion for Reconsideration (of the Decision dated 23 December 2011), *id*. at 92.

[95] *Multi-International Business Data System, Inc. v. Martinez*, 113 Phil. 1 (2015); *Philippine National Bank v. Spouses Caibal*, G.R. No. 199779, February 12, 2018, pp. 4-5 (Unsigned Resolution), citing *Alonzo v. San Juan*, 491 Phil. 233 (2005).

[96] *Id*.; see also *Philippine National Bank v. Spouses Caibal*, *id*.

prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. In this case, the burden of proof is on the respondents because they allege an affirmative defense, namely payment. **As a rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege [non-payment], the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove**[**non-payment**]. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[97] (Emphasis supplied)

As against Choi's allegation of payment, Park's categorical testimony that Choi owed him ₱1,875,000.00, coupled with the presentation of the subject check constituting evidence of indebtedness and absent evidence on the part of Choi to the contrary, leads to the conclusion that Choi in fact owes Park the full amount of ₱1,875,000.00.[98]

More importantly, Park, in his *Reply-Affidavit*, categorically testified that although Choi gave him a check for ₱1,590,000.00, that amount was not in payment of PNB Check No. 0077133 (the ₱1,875,000.00 check dated June 28,1999), but was for the payment of PNB Check No. 0077134 in the amount of ₱750,000.00 dated August 28, 1999 and PNB Check No. 0008013 in the amount of ₱700,000.00 dated September 7, 1999.[99]

Given these facts, as correctly observed by the RTC - Branch 142, if Choi really did make a partial payment on the loan, then he would have taken the check back as debtors would in the ordinary course of business.[100] Quite the contrary, the check for ₱1,875,000.00 remained in Park's possession who continued to make demands on the basis of the check.

Finally, even if the Court were to indulge Choi's claim that he handed Park a check for ₱1,590,000.00, it has not been shown, much less proven, to the satisfaction of the Court whether those

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[97] *Alonzo v. San Juan*, *id*. at 243-244.

[98] *Rollo*, p. 58.

[99] *Id*. at 93.

[100] *Id.*

payments were made specifically by Choi for the purpose of discharging his loan obligations to Park. As shown in Park's *Reply-Affidavit*:

"2. That after I gave him the cash of ₱1,875,000.00, he gave ₱100,000.00 to Moo Pyung Park as the latter's commission for bringing him to me; then he handed P196,000.00 to me to pay for and in his behalf the rentals for 14 months of the warehouse he is renting through me from Mr. Tony Arellano located at Cubao, Quezon City; likewise, **he handed P1,500,000.00 to me to change it to manager's checks which he said he will use in paying Samsung Electric Company which he did not want to pay in cash for fear of bringing that much with him** and which account (sic) for IEB Checks Nos. 01022 and 01023; and lastly[,] **he gave me the balance of P69,000.00 in payment on interest on the P1,875,000.00 for two months, i.e., July and August.**

3. That I admit that he had indorsed in my favor several checks from different owners as enumerated in Annex "A" of his counter-affidavit and he had issued two checks in my favor in the sum total of P1,590,000.00 but **not in payment of the PNB Check No. 0077133 in the amount of P1,875,000.00 he issued to me in June 28, 1999 but of PNB Check No. 0077134 in the amount of P750,000.00 dated August 28, 1999 and the PNB Check No. 0008013 in the amount of P700,000.00 dated September 7, 1999 which he encash** (sic) **with me also in July 1999** and which he told me not to present for payment anymore as he will just replace them with other checks. Copies of said checks are hereto attached as Annexes "D" and "E" and made as integral parts hereof."[101] (Emphasis and underscoring supplied)

Given the foregoing, the Court therefore finds that: ***first***, Choi was not deprived of due process, and was in fact, given more than ample opportunity to present his case; and ***second***, that, as correctly observed by the MeTC and subsequently affirmed by the RTC - Branch 142, Choi is liable to pay Park the amount ₱1,875,000.00 along with its corresponding legal interest.

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[101] See Motion for Reconsideration (of the Decision dated 23 December 2011), *id.*

A final note on interest. There are two types of interest - monetary interest and compensatory interest.[102] Interest as a compensation fixed by the parties for the use or forbearance of money is referred to as monetary interest,[103] while interest that may be imposed by law or by courts as penalty for damages is referred to as compensatory interest.[104] Right to interest therefore arises only by virtue of a contract *or* by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.[105]

Inasmuch as the parties did not execute a written loan agreement, and consequently, did not stipulate on the imposition of interest, Article 1956 of the Civil Code, which states that "[n]o interest shall be due unless it has been expressly stipulated in writing," operates to preclude the imposition and running of monetary interest on the principal. In other words, no monetary interest having been agreed upon between the parties, none accrues in favor of Park.

Nevertheless, the moment a debtor incurs in delay in the payment of a sum of money, the creditor is entitled to the payment of interest as indemnity for damages arising out of that delay. Article 2209 of the Civil Code provides that: "[i]f the obligation consists in the payment of sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) *per annum*."

Consequently, by operation of Article 2209 of the Civil Code, Choi becomes liable to pay Park **compensatory interest** to

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[102] *Siga-an v. Villanueva*, 596 Phil. 760 (2009); *Isla v. Estorga*, G.R. No. 233974, July 2, 2018, p. 5.

[103] *Siga-an v. Villanueva*, id. at 769.

[104] *Id*., citing Paras, CIVIL CODE OF THE PHILIPPINES ANNOTATED (13th Edition, 1995, Volume V), p. 854; Caguioa, COMMENTS AND CASES ON CIVIL LAW, (1st Edition, Volume VI), p. 260.

[105] *Id*., citing *Baretto v. Santa Marina and "La Insular,"* 37 Phil. 568, 571 (1918).

indemnify Park for the damages the latter suffered as a result of Choi's delay in the payment of the loan. Delay in this case, pursuant to Article 1169 of the Civil Code,[106] begins to run from the time Park extrajudicially demanded from Choi the fulfillment of his loan obligation that is, on May 19, 2000. There being no stipulation as to the rate of compensatory interest, the rate is six percent (6%) *per annum* pursuant to Article 2209 of the Civil Code.

To be clear, however, Article 2212 of the Civil Code, which provides that "[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point," does not apply because "interest due" in Article 2212 refers only to *accrued* interest. A look at the counterpart provision of Article 2212 of the new Civil Code, Article 1109 of the old Civil Code, supports this. It provides:

> Art. 1109. **Accrued interest** shall draw interest at the legal rate from the time the suit is filed for its recovery, even if the obligation should have been silent on this point.
>
> In commercial transactions the provisions of the Code of Commerce shall govern.
>
> Pawnshops and savings banks shall be governed by their special regulations. (Emphasis and underscoring supplied)

In interpreting the above provision of the old Civil Code, the Court in *Zobel v. City of Manila*,[107] ruled that Article 1109 applies only to conventional obligations containing a stipulation on interest. Similarly, Article 2212 of the new Civil Code contemplates, and therefore applies, only when there exists stipulated or conventional interest.[108]

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[106] ART. 1169 Those obliged to deliver or do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

[107] 47 Phil. 169, 187 (1925).

[108] *The Phil. American Accident Insurance Co., Inc. v. Hon. Flores*, 186 Phil. 563, 566 (1980); *David v. Court of Appeals*, 375 Phil. 177 (1999).

Finally, in accordance *Eastern Shipping Lines, Inc. v. Court of Appeals*[109] as further clarified by the Court in *Nacar v. Gallery Frames*,[110] in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments is twelve percent (12%) *per annum* computed from default (*i.e.*, the date of judicial or extrajudicial demand). With the issuance of Bangko Sentral ng Pilipinas (BSP-MB) Circular No. 799 (s. 2013), said rate of 12% *per annum* applies until June 30, 2013, and, from July 1, 2013, the new rate of six percent (6%) *per annum* applies. Finally, 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, the interim period being deemed to be by then an equivalent to a forbearance of credit.[111]

WHEREFORE, premises considered, the petition is **GRANTED**. The Court of Appeals' *Decision* dated March 30, 2015 and *Resolution* dated September 30, 2015 in CA-G.R. SP No. 124173 are hereby **REVERSED** and **SET ASIDE**. The *Decision* of the Regional Trial Court, Branch 142 dated December 23, 2011 and *Order* dated March 28, 2012, which affirmed the Metropolitan Trial Court of Makati City - Branch 65 *Decision* dated April 26, 2011, are hereby **REINSTATED**.

Respondent Eung Won Choi is hereby ordered to pay Petitioner Hun Hyung Park the amount of One Million Eight Hundred Seventy-Five Thousand Pesos **(₱1,875,000.00)**representing the principal amount of the unpaid PNB Check No. 0077133 dated August 28, 1999, with legal interest at the rate of twelve percent (12%) *per annum* from May 19, 2000, the date of extrajudicial

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[109] 304 Phil. 236 (1994).

[110] 716 Phil. 267 (2013).

[111] *Id*. at 283.

demand, until June 30, 2013;[112] and thereafter, six percent (6%) *per annum*[113] until this *Decision* becomes final and executory.

Further, this sum shall further earn interest at the rate of six percent (6%) *per annum* from the date of finality of this *Decision* until full payment,[114] in accordance with the Monetary Board of the Bangko Sentral ng Pilipinas Circular No. 799 (s. 2013).

SO ORDERED.

C*arpio* (*Chairperson*), *Perlas-Bernabe, Reyes, Jr., J.,* and *Lazaro-Javier, JJ*., concur.

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[112] *Rep. of the Phils. v. Judge Mupas*, 769 Phil. 21 (2015), citing *Eastern Shipping Lines v. Court of Appeals*, *supra* note 109; see *Reyes v. National Housing Authority*, 443 Phil. 603 (2003); *Land Bank of the Phils. v. Wycoco*, 464 Phil. 83 (2004); *Republic v. Court of Appeals*, 494 Phil. 494 (2005); *Land Bank of the Phils. v. Imperial*, 544 Phil. 378 (2007), P*hilippine Ports Authority v. Rosales-Bondoc*, 557 Phil. 737 (2007); *Sps. Curata v. Philippine Ports Authority*, 608 Phil. 9 (2009); *Evergreen Manufacturing Corp. v. Republic*, G.R. Nos. 218628 & 218631, September 6, 2017, 839 SCRA 200.

[113] *Rep. of the Phil., v. Judge Mupas*, id., citing *Eastern Shipping Lines v. Court of Appeals*, id.; *Republic v. Court of Appeals*, id.; *Land Bank of the Phils. v. Imperial*, id.; *Sps. Curata v. Philippine Ports Authority*, id.; *Evergreen Manufacturing Corp. v. Republic*, id.

[114] See *Land Bank of the Phils. v. Alfredo Hababag, Sr*., 786 Phil. 503, 509-510 (2016).

SECOND DIVISION

[G.R. No. 224466. March 27, 2019]
(Formerly UDK-15574)

KAREN NUÑEZ[*] VITO, LYNETTE[**] NUÑEZ MASINDA, WARREN NUÑEZ, AND ALDEN[***] NUÑEZ, *petitioners, vs.* **NORMA MOISES-PALMA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR *CERTIORARI,* EXCEPT WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THE TRIAL COURT.— The general rule is that only questions of law may be raised in a Rule 45 petition for *certiorari*. There are, however, admitted exceptions. One of them is when the findings of the CA are contrary to the trial court. Indeed, the findings of the CA and the RTC with respect to the DAS dated June 28, 1995 are divergent, requiring a review of their factual findings.

2. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; A CONTRACT OF SALE IS ABSOLUTE WHEN THERE IS NO STIPULATION IN THE CONTRACT THAT TITLE TO THE PROPERTY REMAINS WITH THE VENDOR UNTIL FULL PAYMENT OF THE PURCHASE PRICE AND THERE IS NO STIPULATION GIVING THE VENDOR THE RIGHT TO CANCEL UNILATERALLY THE CONTRACT THE MOMENT THE VENDEE FAILS TO PAY WITHIN A FIXED PERIOD. ON THE OTHER HAND, IN A CONTRACT TO SELL, OWNERSHIP REMAINS WITH THE VENDOR AND DOES NOT PASS TO THE VENDEE UNTIL FULL PAYMENT OF THE PURCHASE PRICE.—

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[*] Also spelled as "Nunez" in other parts of the records.

[**] Also spelled as "Lyneth" in some parts of the records.

[***] Also spelled as "Aldin" in some parts of the records.

> [T]he CA erred in its finding that the transaction between the parties is a dation in payment or *dacion en pago*. The MTC and RTC were, therefore, correct in considering the transaction as a contract of sale. A contract of sale is defined in Article 1458 of the Civil Code x x x The Court in *Sps. Ramos v. Sps. Heruela* (*Ramos*) differentiated an absolute sale from a conditional sale as follows: Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold. A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price. The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price. The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising. Pursuant to *Ramos*, the DAS is an absolute sale because there is no stipulation in the contract that title to the property remains with the sellers until full payment of the purchase price and there is no stipulation giving the vendors the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. It will be recalled that after the execution of the DAS, Norma immediately took possession of the subject lot and there was no retention of ownership by the heirs of Vicentico until full payment of the purchase price by Norma that was stipulated in the DAS.

3. ID.; ID.; ID.; ID.; IN A CONTRACT OF SALE, THE PRESTATION OF THE SELLER IS TO TRANSFER THE OWNERSHIP OF AND TO DELIVER A DETERMINATE THING WHILE THE PRESTATION OF THE BUYER IS THE FULL PAYMENT OF THE PURCHASE PRICE; THE NON-PAYMENT OF THE PURCHASE PRICE BY THE BUYER AFTER THE SELLER HAS DELIVERED THE OBJECT OF THE SALE TO THE BUYER CONSTITUTES A BREACH OF THE BUYER'S PRESTATION.— Pursuant to Article 1458 of the Civil Code, a contract of sale is a reciprocal obligation to give; and the prestation or obligation of the seller or vendor is "to transfer the ownership of and to deliver a

determinate thing" while the prestation or obligation of the buyer or vendee is "to pay therefor a price certain in money or its equivalent." The full payment of the purchase price is the buyer's prestation. The non-payment of the purchase price by the buyer after the seller has delivered the object of the sale to the buyer constitutes a breach of the buyer's prestation in a contract of sale. The buyer has contravened the very tenor of the contract.

4. ID.; ID.; ID.; ID.; REMEDIES OF THE UNPAID SELLER; AN UNPAID SELLER, AFTER OWNERSHIP OF THE REAL PROPERTY HAS BEEN VESTED TO THE BUYER, MAY COMPEL SPECIFIC PERFORMANCE BY FILING AN ACTION AGAINST THE BUYER FOR THE AGREED PURCHASE PRICE, OR RESCIND OR RESOLVE THE CONTRACT OF SALE, AND TO RECOVER DAMAGES FOR THE BREACH OF THE CONTRACT IN EITHER CASE.—Generally, under Article 1594 of the Civil Code, "[a]ctions for breach of the contract of sale of goods shall be governed particularly by the provisions of this Chapter [Chapter 6 on 'Actions for Breach of Contract of Sale of Goods'], and as to matters not specifically provided for herein, by other applicable provisions of this Title [Title VI on 'Sales']." One remedy is provided in Article 1595, to wit: ART. 1595. Where, under a contract of sale, the ownership of the goods has passed to the buyer, and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale, the seller may maintain an action against him for the price of the goods. In addition, the buyer may be held liable for damages under Article 1596 x x x. Also, an unpaid seller, who is deemed as such "[w]hen the whole of the price has not been paid or tendered" as provided in Article 1525(1), has the right to rescind the sale under Article 1526. With respect to the sale of immovable properties, the remedies of the vendor are provided in [Articles 1591, 1592, 2242(2) of the Civil Code]. x x x. The above remedies in case of breach of a contact of sale mirror the rights of a creditor in an obligation to give a determinate thing, as in the sale of a specific real property, which are: (1) To compel specific performance. This right is expressly recognized by the first paragraph of Art. 1165 of the Code which states that the creditor may compel the debtor to make the delivery. x x x (2) To recover damages for breach of the obligation. Besides the right to compel specific performance, the creditor has also the right to recover damages from the debtor in case of breach of the

obligation through delay, fraud, negligence or contravention of the tenor thereof. With respect to reciprocal obligations, rescission or more appropriately resolution is another remedy pursuant to Article 1191 of the Civil Code.

5. ID.; ID.; ID.; ID.; RECIPROCAL OBLIGATIONS DEFINED AND EXPLAINED; IF ONE OF THE PARTIES FAILS TO COMPLY WITH WHAT IS INCUMBENT UPON HIM, THERE IS A RIGHT ON THE PART OF THE OTHER TO "RESCIND" OR "RESOLVE" THE OBLIGATION. SINCE THIS CONDITION, WHICH IS IMPLIED IN ALL RECIPROCAL OBLIGATIONS, HAS THE EFFECT OF EXTINGUISHING RIGHTS WHICH ARE ALREADY ACQUIRED OR VESTED, IT IS RESOLUTORY IN CHARACTER, THUS A TACIT RESOLUTORY CONDITION.— [R]eciprocal obligations are those which are created or established at the same time, out of the same cause, and which result in mutual relationships of creditor and debtor between the parties; and their outstanding characteristic is reciprocity arising from identity of cause by virtue of which one obligation is a correlative of the other. Justice Eduardo P. Caguioa explained: x x x A reciprocal obligation has been defined as that where each of the parties is a promisee of a prestation and promises another in return as a counterpart or equivalent of the other. Article 1191 refers to this kind of obligation. The most salient feature of this obligation is reciprocity. In order that there be reciprocity, it is not sufficient that two persons be mutually debtor and creditor of each other; the reciprocity must be so perfect as to cause both relations to arise from the same source; each obligation being correlative with the other, it not being possible to conceive one without the other. x x x In a contract of sale, as in the DAS in this case, the obligation of the vendee to pay the price is a correlative of the obligation of the vendor to deliver the thing sold. Proceeding from the fact that the obligation of one party is the correlative of the obligation of the other in reciprocal obligations, the Civil Code in the first paragraph of Article 1191 has established the principle that if one of the parties fails to comply with what is incumbent upon him, there is a right on the part of the other to rescind (or "resolve" in accordance with accepted translations of the Spanish Civil Code) the obligation. Since this condition, which is implied as a general rule in all reciprocal obligations, has the effect of

extinguishing rights which are already acquired or vested, it is resolutory in character, thus a tacit resolutory condition.

6. ID.; ID.; ID.; ID.; ID.; TERMS "RESOLUTION" AND "RESCISSION" DISTINGUISHED.— In the words of Justice Eduardo P. Caguioa, "Article 1191 provides for the implied or tacit resolutory condition even if there is no corresponding agreement between the parties," unlike in unilateral obligations where the right to resolve the obligation must always be express. He further opined that although the said Article uses the term "rescind" the same should be understood in the sense of "resolve"; and distinguished the two terms as follows: x x x Between the two terms, there are several differences: (1) resolution can only be availed of by a party to the obligation while rescission may be availed of by a third person (creditor); (2) resolution can be obtained only on the ground of non-performance by the other party while rescission may be based on fraud, lesion, etc.; (3) resolution may be refused by the court on valid grounds while rescission may not be refused by the court if all requisites are present; (4) resolution is a primary remedy while rescission is subsidiary, available only when there is no other remedy; and (5) resolution is based on mutuality of the parties while rescission is based on prejudice or damage suffered.

7. ID.; ID.; ID.; ID.; WHEN THE REMEDY OF RESOLUTION OF RECIPROCAL OBLIGATIONS, AS IN RESCISSION, IS SOUGHT, THE OBLIGATION TO RETURN THE THINGS WHICH WERE THE OBJECT OF THE CONTRACT, TOGETHER WITH THEIR FRUITS, AND THE PRICE WITH ITS INTERESTS IS CREATED.— Since the cause of action of Alden had been finally and fully settled in the Compromise Agreement in Civil Case No. 499, he no longer has a cause of action against Norma with respect to his *pro indiviso* right in the subject lot. What is clear from the amended complaint is that the remedy of specific performance was not availed of by petitioners. They do not seek to collect from Norma the purchase price of ₱50,000.00. While they have not expressly sought the resolution of the DAS on account of Norma's non-payment of the purchase price, such remedy could be implied when they sought the nullification of Norma's TCT, the reconveyance to them of the subject lot and the return of the possession to them. When the remedy of resolution of

reciprocal obligations, as in rescission, is sought, "the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests" is created pursuant to Article 1385 of the Civil Code.

8. ID.; ID.; ID.; ID.; THE JUDICIAL RESOLUTION OR RESCISSION OF THE SALE TRANSACTION EXTINGUISHES THE CONTRACT OF SALE; THE COURT MAY NOT GRANT THE BUYER A NEW TERM WHEN A DEMAND FOR RESCISSION OF THE CONTRACT HAS BEEN MADE UPON HIM JUDICIALLY.— As to the ruling of the MTC, it erred when it concluded that the DAS could be considered as not consummated because no consideration was effected or given by Norma; and, thus, it is void and non-existent. The sale was partly consummated on account of the transfer of ownership by the vendors to Norma. The DAS is not void for lack of consideration, but it has been extinguished by the happening of the tacit resolutory condition, which is judicial resolution or rescission of the sale. Likewise, the RTC erred in ruling that the DAS is valid, notwithstanding the non-payment of the consideration, because there was delivery pursuant to Article 147 in relation to Article 1498 of the Civil Code. It further erred when it ordered Norma to pay the ₱50,000.00 with interest at the legal rate of 12% per annum starting on June 28, 1995 (DAS' date of execution) until the full amount is paid. The error is because, firstly, the remedy availed of by the vendors is not specific performance, and secondly, under Article 1592 of the Civil Code, the court may not grant the buyer a new term when a demand for rescission of the contract has been made upon him judicially. x x x. Based on Justice J.B.L. Reyes' opinion in *Sing, Yee & Cuan, Inc.* that the non-payment of the purchase price in a contract of sale is a negative resolutory condition, the happening or fulfillment thereof will extinguish the obligation or the sale pursuant to Article 1231 of the Civil Code, which provides that fulfillment of a resolutory condition is another cause of extinguishment of obligations. Despite its extinguishment, since the vendor has lost ownership of the land, the contract must itself be resolved and set aside. It is noted, however, that the resolution of the sale is the tacit resolutory condition under Article 1191, x x x which is implied in reciprocal obligations. Consequently, the Court rules that the sale transaction in the DAS is deemed resolved.

9. ID.; ID.; ID.; ID.; THE SELLER IS ENTITLED TO AN AWARD OF DAMAGES WHERE THE BUYER FAILED TO PAY THE ENTIRE PURCHASE PRICE DESPITE REPEATED ASSURANCES THEREOF TO PAY THE SAME, WHICH CONSTITUTES A SUBSTANTIAL AND FUNDAMENTAL BREACH OF THE CONTRACT.— The non-payment of the entire purchase price, despite repeated assurances by Norma to pay the same clearly constitutes a substantial and fundamental breach as would defeat the very object of the parties in making the agreement. In contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner pursuant to Article 2232 of the Civil Code. Under Article 2219, moral damages may be recovered with respect to acts and actions referred to in Article 21: "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." As provided in Article 2208, as to attorney's fees and expenses of litigation, other than judicial costs, they cannot be recovered in the absence of stipulation, except: when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest; where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim; and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, they must be reasonable. The MTC Decision has adequately explained the award of damages and the Court is in full agreement based on the statutory bases afore-cited.

10. ID.; ID.; ID.; ID.; THE MEASURE OF DAMAGES IS THE ESTIMATED LOSS DIRECTLY AND NATURALLY RESULTING IN THE ORDINARY COURSE OF EVENTS FROM THE BUYER'S BREACH OF CONTRACT FOR REFUSING TO PAY THE PURCHASE PRICE; PETITIONERS ARE ENTITLED TO A REASONABLE COMPENSATION FOR THE USE AND OCCUPANCY OF THEIR PREMISES.— The Court is aware that while petitioners alleged the amount of at least ₱10,000.00 a year as reasonable value of the use of the premises in the amended complaint, no evidence was adduced by them to support such claim. Nonetheless, the Court deems it just and equitable to award reasonable compensation in the amount as alleged by

petitioners for the use and occupation of the premises by Norma because petitioners have been unjustly deprived of the use of the subject lot. They are entitled to recover possession of the subject lot because of the failure of Norma to pay the agreed purchase price and she has not been paying any rental for her use and occupancy of the premises. Under Article 1596, the measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract for refusing to pay the purchase price.

APPEARANCES OF COUNSEL

Del Castillo Law Office for petitioners.
Marites Dela Pieza Layo for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated July 31, 2015 and Resolution[3] dated March 15, 2016 of the Court of Appeals[4] (CA) in CA-G.R. SP. No. 07390. The CA Decision affirmed with modifications the Decision[5] dated December 11, 2012 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz (RTC) in Civil Case No. M-12-0360-07 AP. The RTC Decision, in turn, modified the

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[1] *Rollo*, pp. 2-26, excluding Annexes.

[2] *Id*. at 27-35. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring.

[3] *Id*. at 39-40. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez concurring.

[4] Twentieth (20th) Division and Special Former Twentieth (20th) Division, Visayas Station, Cebu City.

[5] *Rollo*, pp. 84-90. Penned by Judge Daniel Antonio Gerardo S. Amular.

Decision[6] dated June 8, 2012 of the Municipal Trial Court, 6th Judicial Region, Mambusao, Capiz (MTC) in Civil Case No. 515. The CA Resolution denied the motion for reconsideration filed by the petitioners.

Facts and Antecedent Proceedings

Petitioners' father, Vicentico Nuñez (Vicentico), was the original owner of Lot No. 2159-A, with an area of 429 square meters, located in Mambusao, Capiz (subject lot) as evidenced by Transfer Certificate of Title No. (TCT)T-16612.[7]

Sometime in May 1992, Vicentico, who was then suffering from diabetes, borrowed ₱30,000.00 from Rosita Moises (Rosita) and as security, executed a real estate mortgage over his property (Lot No. 2159-A). Since Rosita had no money, the funds came from Norma Moises-Palma (Norma), Rosita's daughter. According to petitioners, the P30,000.00 loan of Vicentico was subsequently paid as evidenced by an Affidavit Authorizing Release of Mortgage[8] (AARM).[9]

Upon Vicentico's death on September 27, 1994, the subject lot was transmitted to his heirs, namely: petitioners Karen Nuñez Vito (Karen), Warren Nuñez (Warren), Lynette Nuñez Macinda (Lynette), Alden Nuñez (Alden) (collectively, petitioners) and Placida Hisole[10] Nuñez (Placida), Vicentico's surviving spouse.[11] Each heir had an undivided 1/5 share in the subject lot equivalent to 85.8[12] square meters.[13]

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[6] *Id*. at 59-81. Penned by Judge Rommel L. Leonor.

[7] CA Decision dated July 31, 2015, *rollo*, p. 28.

[8] Records (Vol. II), p. 353.

[9] *Rollo*, pp. 29, 66.

[10] Also stated as "Nizole" and "Placeda Hesole" in some parts of the records.

[11] *Rollo*, p. 28.

[12] Stated as "85.5" in the CA Decision, *id*.

[13] CA Decision dated July 31, 2015, *id*.

Placida died on August 1, 1997 and her 1/5 share was inherited equally by her heirs. Thus, petitioners each had a *pro indiviso* 1/4 share in the subject lot equivalent to 107.25 square meters.[14]

On June 28, 1995, Norma was able to have all petitioners, except Alden, sign a Deed of Adjudication and Sale[15] (DAS) wherein petitioners purportedly sold to Norma their respective *pro indiviso* shares in the subject lot for ₱50,000.00, but the DAS reflected ₱30,000.00 as the consideration in order to reduce the amount to be paid for capital gains tax and documentary stamp tax. After the execution of the DAS, Norma immediately took possession of the subject lot.[16]

Instead of paying cash, Norma executed a Promissory Note[17] (PN) on July 1, 1995 in favor of petitioners whereby she obligated herself to pay ₱50,000.00, which "amount represents the cost of a parcel of land [Norma] bought from them described as follows: TITLE NO. T-16612 Lot No 2159-A situated at Poblacion Tabuc Mambusao, Capiz[,] [containing an area of FOUR HUNDRED TWENTY NINE (429) SQUARE METERS, more or less"[18] on or before July 1, 1998, without interest.[19] Upon prodding of petitioners, Norma executed an Acknowledgment of Debt[20] (AOD) dated February 22, 2007, whereby she admitted that she owed petitioners P50,000.00, representing the purchase price of the DAS.[21]

Despite non-payment of the purchase price and the absence of Alden's signature on the DAS, Norma was able to cause the

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[14] *Rollo*, p. 28.

[15] Records (Vol. I), pp. 15-16.

[16] CA Decision dated July 31, 2015, *rollo*, pp. 28-29.

[17] Records (Vol. I), p. 17.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 18.

[21] *Rollo*, p. 29.

registration of the document with the Register of Deeds of Capiz and TCT T-35460[22] was issued to her on August 2, 2005.[23]

On July 10, 2006, Alden instituted a case against respondent for *Annulment of Transfer Certificate of Title No. T-35460, Declaring Deed of Adjudication and Sale Null and Void, Partition, Reconveyance and Recovery of Possession of a Portion of Land with Damages*[24] docketed as Civil Case No. 499 before the MTC. During the pendency of this case, Alden and Norma entered into a Compromise Agreement (Compromise Agreement) on September 7, 2006, whereby Alden agreed to respect Norma's ownership and possession of 85.8 square meters of the subject lot, the share being claimed by him.[25]

About a year later, or on August 15, 2007, petitioners Karen, Warren and Lynette, represented by their brother and attorney-in-fact Alden, filed against Norma a case for *Declaration of Nullity of Deed of Adjudication and Sale, Cancellation of Transfer Certificate of Title No. T-35460, Recovery of Ownership and/or Possession of Lot No. 2159-A and Damages*[26] before the MTC. After trial on the merits, the MTC, on February 27, 2009 rendered a Decision in favor of petitioners. Norma filed a Notice of Appeal on April 22, 2009 which was given due course by the MTC. On October 19, 2009, the RTC rendered a Decision setting aside the MTC's Decision on the ground that Alden, who was merely acting as attorney-in-fact of Karen, Warren and Lynette, was not included as indispensable party. The RTC ordered the MTC to include Alden as an indispensable party and to conduct further proceedings on the case.[27]

On February 19, 2010, Karen, Warren and Lynette, through Alden, and Alden, in his own capacity, filed an amended

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[22] Records (Vol. I), p. 19.

[23] *Rollo*, p. 29.

[24] Records (Vol. II), pp. 305-311.

[25] *Rollo*, p. 30.

[26] Records (Vol. I), pp. 2-9.

[27] MTC Decision dated June 8, 2012, *rollo*, pp. 59-60.

complaint before the MTC for *Declaration of Nullity of Deed of Adjudication and Sale, Cancellation of Transfer Certificate of Title No. T-35460, Recovery of Ownership and/or Possession of Lot No. 2159-A and Damages*.[28] The allegations of the amended complaint are basically the same as those of the original, except the addition of Alden as an indispensable party.[29] Even up to the filing of the amended complaint, Norma was not able to pay the consideration of ₱50,000.00.[30]

The MTC Ruling

After trial, the MTC rendered on June 8, 2012 a Decision[31] in favor of petitioners, the dispositive portion of which states:

WHEREFORE, preponderance of evidence point in favor of plaintiffs and against defendant, judgment is hereby rendered:

1.) **DECLARING** the Deed of Adjudication and Sale dated June 28, 1995 **NULL AND VOID**;

2.) **ORDERING** the **CANCELLATION** of Transfer Certificate of Title No. T-35460 in the name of defendant Norma Moises Palma and the **REINSTATEMENT** of Transfer Certificate of Title No. T-16612 in the name of Vicentico Nuñez married to Placida Hisole;

3.) **DECLARING** plaintiffs as the rightful owners of Lot No. 2159-A subject to the right of defendant Norma Moises Palma with respect to the share of Alden Nuñez in the total area of 85.8 square meters;

4.) **ORDERING** defendant to turn over ownership and possession of Lot No. 2159-A to plaintiffs except the share of Alden Nuñez with an area of 85.8 square meters;

5.) **ORDERING** defendant Norma Moises Palma to pay plaintiffs the following:

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[28] Records (Vol. II), pp. 1-9.

[29] *Rollo*, p. 60.

[30] See *id*. at 29.

[31] *Id*. at 59-81.

a.) Fifty Thousand (Php50,000.00) pesos as attorney's fees;

b.) Five Thousand (Php5,000.00) pesos as litigation expenses;

c.) Seventy-Five Thousand (Php75,000.00) pesos as moral damages; and

d.) Fifteen Thousand (Php15,000.00) pesos as exemplary damages; and

6.) **ORDERING** defendant to pay the cost of the suit.

SO ORDERED.[32]

Norma appealed[33] the MTC Decision to the RTC.

The RTC Ruling

The RTC in its Decision[34] dated December 11, 2012 granted respondent's appeal. The dispositive portion of the RTC Decision states:

WHEREFORE, premises considered, the decision of the Court a quo is hereby modified as follows:

1. Ordering the defendant-appellant to pay the plaintiffs except Alden Nuñez, the amount of ₱50,000.00 with legal interest rate of 12% starting on April 28, 1995 until the full amount price is paid;

2. Ordering defendant Norma Moises Palma to pay plaintiffs the following:

   a.) Fifty Thousand (₱50,000.00) pesos as attorney's fees;

   b.) Five Thousand (₱5,000.00) pesos as litigation expenses;

   c.) Seventy Five Thousand (₱75,000.00) pesos as moral damages; and

   d.) Fifteen Thousand (₱15,000.00) pesos as exemplary damages; and

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

[33] *Id*. at 82-83.

[34] *Id*. at 84-90.

3. Declaring as valid the Deed of Adjudication and Sale, dated June 28, 1995, with judicial notice on the decision based on the Compromise Agreement rendered by the Municipal Trial Court of Mambusao in Civil Case No. 499, dated September 20, 2006, involving the share of Alden Nuñez with an area of 85.8 square meters.

No pronouncement as to costs.

SO ORDERED.[35]

Dissatisfied, petitioners filed a petition for review under Rule 42 before the CA.

The CA Ruling

The CA in its Decision[36] dated July 31, 2015 affirmed the RTC Decision with modification. The dispositive portion of the CA Decision states:

WHEREFORE, the Decision dated December 11, 2012 of the RTC, Branch 21, Mambusao, Capiz in Civil Case No. M-12-0360-07 AP is **AFFIRMED** with the following **MODIFICATION**. The order directing respondent to pay petitioners the amount of P50,000.00 as consideration for the sale is **DELETED**. The award of attorney's fees, litigation expenses, moral damages and exemplary damages is likewise **DELETED**. No pronouncement as to costs.

SO ORDERED.[37]

Petitioners filed a motion for reconsideration[38] and pointed to the CA the AARM as proof of payment of Vicentico's loan. The CA denied the motion for reconsideration.[39]

Hence, the Petition. To date, Norma has not filed her Comment despite the Resolution[40] dated July 11, 2016 of the Court requiring

[35] *Id*. at 90.

[36] *Id*. at 27-35.

[37] *Id*. at 34.

[38] Petitioners' Motion for Reconsideration of Decision Promulgated on July 31, 2015, *id*. at 36-38.

[39] CA Resolution dated March 15, 2016, *id*. at 39-40.

[40] *Rollo*, pp. 111-112.

her to comment on the Petition within 10 days from receipt thereof; accordingly, she is deemed to have waived her right to do so.

Issues

The petitioners raise the following issues in the Petition:

1. whether the CA, in ruling that the transaction between petitioners and Norma is *dacion en pago*, erred in applying Article 1245 of the Civil Code; and

2. whether the CA erred in deleting the award of attorney's fees, litigation expenses, moral damages and exemplary damages.[41]

The Court's Ruling

The general rule is that only questions of law may be raised in a Rule 45 petition for *certiorari*.[42] There are, however, admitted exceptions. One of them is when the findings of the CA are contrary to the trial court.[43]

Indeed, the findings of the CA and the RTC with respect to the DAS dated June 28, 1995 are divergent, requiring a review of their factual findings.

The CA ruled that the transaction between the parties is in reality a *dacion en pago*[44] based on the following:

x x x *First*. Both parties agreed that Vicentico's pre-existing debt of ₱30,000.00 should be considered as the consideration for the Deed of Adjudication and Sale. Notably too, the dation in payment was not only with the creditor's consent, it was upon her proposal. *Second*. There is no showing that other creditors would be prejudiced by the

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[41] *Id*. at 16.

[42] RULES OF COURT, Rule 45, Sec. 1 partly provides: "x x x The petition x x x shall raise only questions of law, which must be distinctly set forth."

[43] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

[44] *Rollo*, p. 33.

agreement. *Lastly*, petitioners had not been judicially declared insolvent. Accordingly, We uphold the validity of the Deed of Adjudication and Sale.[45]

On the other hand, the RTC ruled that the DAS "showed that the consequent sale of the lot in question was by way of constructive delivery x x x [and] the defendant-appellant took possession of the property right after the execution of the Deed of Adjudication. Clearly, there has been transfer of ownership x x x."[46] The RTC, thus, considered the transaction of the parties as a valid contract of sale, notwithstanding the non-payment of the consideration.[47]

The RTC in effect agreed with the MTC's finding that the DAS is a contract of sale. But, it disagreed with the MTC's ruling that it is null and void. The MTC reasoned out as follows:

> By the testimonies of plaintiffs that no money or consideration was ever paid to them by defendant despite repeated demands and coupled with the presentation [by] plaintiffs of the Promissory Note (Exhibit "E") and the Acknowledgment of Debt (Exhibit "F") all of which was executed by the defendant Norma Moises Palma, the burden of proof x x x now has shifted on the shoulder of the defendant to prove that she paid the consideration of the sale of Lot No. 2159-A, because the plaintiffs categorically testified and told this Court that they did not receive even a single centavo from the defendant x x x much so that the defendant never rebutted such testimony of plaintiffs. Likewise, the execution of defendant of the Promissory Note (Exhibit "E") which expressly points to Lot No. 2159-A as the subject of sale between plaintiffs and defendant, will add to the belief of this Court that indeed no consideration was given to plaintiffs, because it is very unnatural for defendant to still execute a Promissory Note (Exhibit "E"), whose amount of Fifty Thousand (Php50,000.00) pesos is even greater than the amount of Thirty Thousand (Php30,000.00) pesos as reflected in the Deed of Adjudication and Sale (Exhibit "D"), had she already paid the latter amount to plaintiffs.

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[45] *Id*. at 34.

[46] RTC Decision dated December 11, 2012, *id*. at 88.

[47] *Id*.

x x x x x x x x x

In short, [the defendant failed to render proof that she paid the purchase price of lot No. 2159-A, because, as] the burden of proof had already shifted [upon her] to prove she [had] paid the [consideration], she failed to introduce [any evidence that would tend] to prove [the payment of the purchase price.] x x x[48]

Having ruled that no consideration was ever given to plaintiffs (herein petitioners) by defendant (Norma), the DAS was considered by the MTC as null and void on the ground that a contract of sale is void and produces no effect whatsoever where the price, which appears thereon paid, has in fact never been paid by the vendee to the vendor.[49]

The following documentary exhibits adduced and admitted are crucial in the resolution of the first issue:

1. DAS - Deed of Adjudication and Sale[50] dated June 28, 1995 (Exhibit "D" and "1"), notarized on July 14, 1995, but inscribed as Entry No. 155331[51] on August 2, 2005 in TCT T-16612. It provides:

We, PLACIDA HISOLE NUÑEZ, widow, KAREN NUÑEZ, single, WARREN NUÑEZ, single, ALDIN NUÑEZ, single AND LYNETH NUÑEZ, single, all of legal ages, Filipinos and residents of Mambusao, Capiz, do by these presents hereby declare:

1.) That a certain VICENTICO NUÑEZ died in Mambusao, Capiz on Sept. 27, 1994 leaving as forced heirs the herein parties;

x x x x x x x x x

3.) That upon his death he left Real Property hereunder described:

TITLE NO. T-16612

"A parcel of land (Lot 2159-A of the Subd. plan (LRC) Psd-213453, being a portion of Lot 2159, Mambusao cadastre, LRC

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[48] MTC Decision dated June 8, 2012, *id*. at 72-74.

[49] *Id*. at 74, citing *Mapalo v. Mapalo*, 123 Phil. 979, 987 (1966).

[50] Records (Vol. I), pp. 15-16.

[51] *Id*. at 12 (dorsal side).

Cad. Record No. N-449), situated in the Barrio of Municipality of Mambusao, province of Capiz, Island of Panay. x x x Containing an area of FOUR HUNDRED TWENTY NINE (429) Square meters, more or less. x x x"

4.) That pursuant to the provision of Rule 74, Sec. 1 of the Rules of Court, We the parties of these instrument do hereby adjudicate unto ourselves the above described property in pro indiviso share;

5.) That for and in consideration of the sum of THIRTY THOUSAND PESOS (P30,000.00), Philippine Currency which we have received from NORMA MOISES PALMA, of legal age, widow and resident of Mambusao, Capiz, do by these presents hereby CEDE, SELL, CONVEY and TRANSFER by way of Absolute Sale unto the above named NORMA MOISES PALMA, her heirs and successors the above described property free from all liens and encumbrances and whatever kind.

This instrument concerns a residential lot, hence, it is not within the provision of Land Reform Code nor any tenancy contract.

By virtue of this instrument that certain Real Estate Mortgage executed before Jesus V. Rivas dated May 19, 1992 and docketed in the Notarial Register as Doc. No. 112; Page No. 57; Book No. 6; Series of 1992 is cancell (sic) and considered null and void and no effect.

WITNESS our signature hereunder this 28th day of June 1995, at Roxas City.

(SGD.)
PLACIDA HISOLE NUNEZ

(SGD.)
KAREN NUNEZ

(SGD.)
WARREN NUNEZ

(SGD.)
LYNETH NUNEZ[52]

2. PN - Promissory Note[53] executed by Norma and notarized on July 1, 1995 (Exhibit "E"), which provides:

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[52] *Id*. at 15.

[53] *Id*. at 17.

That I, NORMA MOISES PALMA, of legal age, [FJilipino, widow and a resident of Mambusao, Capiz by these presents promise to pay the heirs of VICENTICO NUÑEZ: namely PLACIDA NIZOLE NUÑEZ, widow, KAREN NUNE[Z], single, WARREN NUÑEZ, single, ALDIN NUÑEZ, single, and LYNETTE NUÑEZ, single x x x the sum of FIFTY THOUSAND (P50,000.00) PESOS, Philippine Currency; on or before July 1, 1998. This amount do (sic) not bear interest.

This amount represents the cost of a parcel of land I bought from them described as follows: TITLE NO. T-16612 Lot No 2159-A situated at Poblacion Tabuc Mambusao, Capiz. Containing an area of FOUR FIUNDRED TWENTY NINE (429) SQUARE METERS, more or less.[54]

3. AOD - Acknowledgment of Debt[55] notarized on February 22, 2007 (Exhibit "F") executed by Norma which provides

That I am indebted to **KAREN NUÑEZ VITO, WARREN NUÑEZ AND LYNETTE NUÑEZ** x x x in the sum of **FIFTY THOUSAND PESOS (PHP 50,000.00)**.

That I promise, to pay **KAREN NUÑEZ VITO, WARREN NUÑEZ AND LYNETTE NUÑEZ** the amount of **FIFTY THOUSAND PESOS (PHP 50,000.00)** within a period of five (5) days after I have sold my parcel of land, [Lot No. 2159-A of the Subdivision plan (LRC) Psd-213453 being a portion of Lot 2159, Mambusao Cadastre, LRC Cad. Record No. N-449] situated at Poblacion Tabuc, Mambusao, Capiz and covered by Transfer Certificate of Title No. T-35460.[56]

4. AARM - Affidavit Authorizing Release of Mortgage[57] dated July 8, 2005 (Exhibit "I" and "6") which states:

WE, NORMA MOISES-PALMA, widow; CESAR N. MOISES, married; LACERIANO N. MOISES, widower; JOSE N. MOISES, single; and GILDA MOISES FELONIA, widow, Filipinos, all of

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[54] *Id*.

[55] *Id*. at 18.

[56] *Id*.

[57] Records (Vol. II), p. 353.

legal ages, and all residents of Mambusao, Capiz, after having been duly sworn to according to law, depose and say:

That we are the children of the late Rosita Nuñez Moises who died on May 09, 2003;

That during her lifetime, his brother, the late Vicentico Nuñez who died on September 27, 1994 was indebted to her in the amount of THIRTY THOUSAND PESOS (₱30,000.00) under and by virtue of Real Estate Mortgage notarized by Notary Public Jesus V. Rivas under Doc. No. 112, Page No. 57, Book No. 6, Series of 1992, dated May 19, 1992 and inscribed by the Acting Register of Deeds, Paterno Kapunan on December 1, 1993 at 10:25 A.M.;

That by these presents, we are releasing this Real Estate Mortgage, the fact being that the late Vicentico Nuñez had already paid our late mother indebtedness of THIRTY THOUSAND PESOS (₱30,000.00);

That we are executing this affidavit to attest further to the fact that the late Vicentico Nuñez has paid his total obligation of THIRTY THOUSAND PESOS (₱30,000.00) to our late mother;

That furthermore, we are executing this affidavit absolving the late Vicentico Nuñez of any liabilities whatsoever, thus releasing this Deed of Real Estate Mortgage

IN WITNESS WHEREOF, We have hereunto set our hands 8th day of July 2005, at Roxas City[,] Philippines.

(SGD.)
NORMA M. PALMA
Affiant

(SGD.)
CESAR N. MOISES
Affiant

(SGD.)
LACERIANO N. MOISES
Affiant

(SGD.)
JOSE N. MOISES
Affiant

(SGD.)
GILDA M. FELONIA
Affiant[58]

[58] *Id.*

5. TCT T-16612[59] (Exhibit "B") registered in the name of "VICENTICO NUÑEZ, married to Placeda Hesole" with the following annotations:[60]

Entry No. 118493 - Mortgage - executed by Vicentico Nuñez in favor of Rosita Nuñez covering the whole parcel of land described in this title for the sum of THIRTY THOUSAND PESOS (30,000.00) subject to all conditions stipulated therein and acknowledged before Notary Public Jesus V. Rivas under Doc. No. 112, Page No. 57, Book No. 6, Series of 1992. Date of document May 19, 1992. Inscription December 1, 1993 at 10:25 A.M.

x x x x x x x x x

Entry No. 155188 - Affidavit Authorizing Release of Mortgage - executed by the children of Rosita Nuñez Moises namely: Norma Moises-Palma; Cesar N. Moises, Lacer[ia]no N. Moises; Jose N. Moises and Gilda Moises Felonia in favor of Vicentico Nuñez, affecting Entry No. 118493. Subscribed by Notary Public Erico V. Abalajon under Doc. No. 405; Page No. 82; Book No. XXXVIII; Series of 2005. Date of Doc. July 8, 2005. Inscription: July 13, 2005 at 1:30 P.M.

x x x x x x x x x

Entry No. 155331 - Deed of Adjudication and Sale - executed by the heirs of the late Vicentico Nuñez, stating that they are the only heirs who survived the deceased, namely: Placida Hisole Nuñez, Karen, Warren, and Lynette, all surnamed Nuñez, have adjudicated and partitioned the parcel of land described in this title in pro indiviso equal share and thereby sold to Norma Moises Palma for the sum of THIRTY THOUSAND PESOS (₱30,000.00). Acknowledged before Notary Public Eleuterio F. Martinez, under Doc. No. 901; Page No. 84; Book No. II; Series of 1995. Date of Document: June 28, 1995. Inscription: August 2, 2005 at 10:55 A.M. This title is cancelled by TCT No. T-35460[61].

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[59] Records (Vol. I), pp, 12-13.

[60] *Id*. at 12 (dorsal side).

[61] Exhibit "G," id. at 19. Registered in the name of Norma Moises Palma and entered at Roxas City on August 2, 2005 at 10:55 a.m.

6. Compromise Agreement[62] dated September 7, 2006 executed by Alden and Norma in connection with Civil Case No. 499, wherein they agreed as follows:

> 1. As settlement, the private defendant [Norma] undertakes to pay the amount of Eighty Eight Thousand Pesos (Php88,000.00) Philippine Currency as payment for the purchase of the 85.8 square meters undivided portion of Lot 2159-A, which amount shall be delivered on or before January 31, 2007;
>
> 2. The plaintiff [Alden], in return, shall respect defendant's ownership and possession over the same. He further waives and renounce (*sic*) his interest over Lot 2159-A in favor of defendant.[63]

It can be gathered from the last paragraph of the DAS wherein the Real Estate Mortgage (REM) which Vicentico executed was "cancell[ed] and considered null and void and no effect" that a dation in payment might have been intended by the parties therein. Under Article 1245 of the Civil Code, there is dation in payment when property is alienated to the creditor in satisfaction of a debt in money and is governed by the law of sales.

This scheme was affirmed by Laceriano N. Moises (Laceriano), the brother of Norma, who testified on direct examination that his uncle Vicentico together with his wife mortgaged Lot 2159-A, the subject lot, to his mother Rosita for the amount of ₱30,000.00 and the source of the amount came from his younger sister Norma,[64] and that since no payment was made regarding the ₱30,000.00, Vicentico and Placida offset the subject lot for their indebtedness.[65]

While the DAS seems to suggest a dation in payment, the subsequent actuations of the parties, especially Norma, negate

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[62] Records (Vol. II), p. 55. Pursuant to the Compromise Agreement, Norma became a co-owner of the subject lot to the extent of 85.8 square meters undivided portion of Lot 2159-A or 1/5 *pro indiviso* share therein.

[63] *Id*.

[64] TSN, June 15, 2011, pp. 3-4; records (Vol. II), pp. 266-267.

[65] *Id*. at 12; *id*. at 275.

the same or the contemplated offset. If the DAS was intended to be a dation in payment, the execution of the PN and AOD by Norma as well as the Compromise Agreement by Alden and Norma on September 7, 2006, whereby Alden agreed, for an agreed consideration, to respect Norma's ownership and possession of 85.8 square meters of the subject lot, the share being claimed by him, shows an opposite declaration, *i.e.*, there was no dation in payment or offset.

If the intention by the parties was that the heirs of Vicentico were ceding the subject lot to Norma as payment of the ₱30,000.00 loan of their father to Rosita, it would be out of the ordinary for Norma to execute a PN two days after the DAS, acknowledging her indebtedness of the ₱50,000.00 to them, promising to pay the same within a specified period, and declaring against her interest that the said amount represented the "cost" of the land that she bought from them. Subsequently, in 2007, it would be unlikely for her to execute the AOD wherein she acknowledged that she owed Karen, Warren and Lynette ₱50,000.00 if the consideration of the DAS was Vicentico's indebtedness of ₱30,000.00. Alden was no longer included because by then Norma had already paid the ₱88,000.00 which she agreed to pay him pursuant to their Compromise Agreement. And, Norma should have insisted in the case filed by Alden against her that there was an offset of his father's loan to her, through Rosita, her mother.

Moreover, in the AARM, a duly notarized document which the heirs of Rosita executed in July 2005, they acknowledged that: "[they] are releasing this Real Estate Mortgage, the fact being that the late Vicentico Nuñez had already paid [their] late mother indebtedness of THIRTY THOUSAND PESOS (₱30,000.00) [and] absolving the late Vicentico Nuñez of any liabilities whatsoever."[66] Indeed, as claimed by petitioners in the Petition, the ₱30,000.00 loan of their father Vicentico had been paid as duly acknowledged in a registered public instrument by the heirs of Rosita, including Norma.

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[66] Records (Vol. II), p. 353.

Thus, there is preponderant evidence that supports the finding that the DAS was **not**intended by the parties to be a dation in payment. And, even assuming that the DAS was a dation in payment, the documents that were subsequently executed had the effect of novating the same.

Under Article 1291 of the Civil Code, obligations may be modified by: (1) changing their object or principal conditions; (2) substituting the person of the debtor; and (3) subrogating a third person in the rights of the creditor.

When Norma executed the PN, AOD and Compromise Agreement, she was acknowledging that the principal condition or stipulation on the payment of the purchase price in the DAS had been modified from the offset or cancellation of Vicentico's indebtedness secured by the REM, without which would have amounted to a dation in payment, to a loan payable within a certain period, which converted the transaction to a sale on credit.

Given the foregoing, the CA erred in its finding that the transaction between the parties is a dation in payment or *dacion en pago*. The MTC and RTC were, therefore, correct in considering the transaction as a contract of sale.

A contract of sale is defined in Article 1458 of the Civil Code, to wit:

> ART. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> A contract of sale may be absolute or conditional.

The Court in *Sps. Ramos v. Sps. Heruela*[67] (*Ramos*) differentiated an absolute sale from a conditional sale as follows:

> Article 1458 of the Civil Code provides that a contract of sale may be absolute or conditional. A contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing

[67] 509 Phil. 658 (2005).

sold.[68] A deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price.[69] The sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period.[70] In a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price.[71] The full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising.[72]

Pursuant to *Ramos*, the DAS is an absolute sale because there is no stipulation in the contract that title to the property remains with the sellers until full payment of the purchase price and there is no stipulation giving the vendors the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period. It will be recalled that after the execution of the DAS, Norma immediately took possession of the subject lot[73] and there was no retention of ownership by the heirs of Vicentico until full payment of the purchase price by Norma that was stipulated in the DAS.

What then is the legal effect of the non-payment of the purchase price of ₱50,000.00[74] by Norma to petitioners?

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[68] *Id.* at 665, citing *Universal Robina Sugar Milling Corp. v. Heirs of Teves*, 438 Phil. 26, 34-35 (2002).

[69] *Id.*, citing *Adelfa Properties, Inc. v. CA*, 310 Phil. 623, 637 (1995).

[70] *Id.*, citing *Adelfa Properties, Inc. v. CA*, *id.* at 637.

[71] *Id.*, citing *Adelfa Properties, Inc. v. CA*, *id.*

[72] *Id.*, citing *Chua v. Court of Appeals*, 449 Phil. 25, 42 (2003).

[73] *Rollo*, p. 29.

[74] While the DAS states the purchase price as P30,000.00, the PN wherein Norma declared that P50,000.00 was the "cost" of the land which she bought from the heirs of Vicentico should control, being a subsequent declaration against interest. Under Section 38, Rule 130 of the Rules of Court, the declaration made by a person who was unable to testify, like Norma, who was not presented as witness, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to the declarant's own interest, that a reasonable man in his position would

Pursuant to Article 1458 of the Civil Code, a contract of sale is a reciprocal obligation to give; and the prestation or obligation of the seller or vendor is "to transfer the ownership of and to deliver a determinate thing" while the prestation or obligation of the buyer or vendee is "to pay therefor a price certain in money or its equivalent." The full payment of the purchase price is the buyer's prestation.

The non-payment of the purchase price by the buyer after the seller has delivered the object of the sale to the buyer constitutes a breach of the buyer's prestation in a contract of sale. The buyer has contravened the very tenor of the contract.

Generally, under Article 1594 of the Civil Code, "[a]ctions for breach of the contract of sale of goods shall be governed particularly by the provisions of this Chapter [Chapter 6 on 'Actions for Breach of Contract of Sale of Goods'], and as to matters not specifically provided for herein, by other applicable provisions of this Title [Title VI on 'Sales']."

One remedy is provided in Article 1595, to wit:

> ART. 1595. Where, under a contract of sale, the ownership of the goods has passed to the buyer, and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale, the seller may maintain an action against him for the price of the goods.

In addition, the buyer may be held liable for damages under Article 1596, to wit:

> ART. 1596. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.
>
> The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

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not have made the declaration unless she believed it to be true, may be received in evidence against herself or her successors in interest and against third persons. Besides, the PN was notarized.

Also, an unpaid seller, who is deemed as such "[w]hen the whole of the price has not been paid or tendered" as provided in Article 1525(1), has the right to rescind the sale under Article 1526.

With respect to the sale of immovable properties, the remedies of the vendor are provided in the following Civil Code provisions:

ART. 1591. Should the vendor have reasonable grounds to fear the loss of immovable property sold and its price, he may immediately sue for the rescission of the sale:

Should such ground not exist, the provisions of Article 1191 shall be observed.

ART. 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

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ART. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

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(2) For the unpaid price of real property sold, upon the immovable sold[.][75]

The above remedies in case of breach of a contract of sale mirror the rights of a creditor in an obligation to give a determinate thing, as in the sale of a specific real property, which are:

(1) To compel specific performance. This right is expressly recognized by the first paragraph of Art. 1165 of the Code which

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[75] See Araceli T. Baviera, HANDBOOK ON THE LAW ON SALES, p. 120 (1976).

states that the creditor may compel the debtor to make the delivery.
x x x

(2) To recover damages for breach of the obligation. Besides the right to compel specific performance, the creditor has also the right to recover damages from the debtor in case of breach of the obligation through delay, fraud, negligence or contravention of the tenor thereof.[76]

With respect to reciprocal obligations, rescission or more appropriately resolution is another remedy pursuant to Article 1191 of the Civil Code, to wit:

ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

To recall, reciprocal obligations are those which are created or established at the same time, out of the same cause, and which result in mutual relationships of creditor and debtor between the parties; and their outstanding characteristic is reciprocity arising from identity of cause by virtue of which one obligation is a correlative of the other.[77]

Justice Eduardo P. Caguioa[78] explained:

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[76] Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS (1987 Ninth Revised Edition), pp. 42-43. Citations omitted.

[77] Desiderio P. Jurado, *id.* at 125.

[78] Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Vol. IV (1983 Rev. Second Ed.).

x x x A reciprocal obligation has been defined as that where each of the parties is a promisee of a prestation and promises another in return as a counterpart or equivalent of the other.[79] Article 1191 refers to this kind of obligation. The most salient feature of this obligation is reciprocity. In order that there be reciprocity, it is not sufficient that two persons be mutually debtor and creditor of each other; the reciprocity must be so perfect as to cause both relations to arise from the same source; each obligation being correlative with the other, it not being possible to conceive one without the other. x x x[80]

In a contract of sale, as in the DAS in this case, the obligation of the vendee to pay the price is a correlative of the obligation of the vendor to deliver the thing sold.[81]

Proceeding from the fact that the obligation of one party is the correlative of the obligation of the other in reciprocal obligations, the Civil Code in the first paragraph of Article 1191 has established the principle that if one of the parties fails to comply with what is incumbent upon him, there is a right on the part of the other to rescind (or "resolve" in accordance with accepted translations of the Spanish Civil Code) the obligation.[82] Since this condition, which is implied as a general rule in all reciprocal obligations, has the effect of extinguishing rights which are already acquired or vested, it is resolutory in character, thus a tacit resolutory condition.[83]

In the words of Justice Eduardo P. Caguioa, "Article 1191 provides for the implied or tacit resolutory condition even if there is no corresponding agreement between the parties," unlike in unilateral obligations where the right to resolve the obligation must always be express.[84] He further opined that although the

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[79] *Id.* at 174, citing 3 Castan, 8th ed., p. 79, citing Enneccerus.

[80] *Id*., citing Decision of Supreme Court of Spain of Oct. 30, 1917.

[81] See Desiderio P. Jurado, *supra* note 76, at 125-126.

[82] *Id*. at 126.

[83] *Id*.

[84] Eduardo P. Caguioa, *supra* note 78, at 176, citing 4 Reyes & Puno, p. 52.

said Article uses the term "rescind" the same should be understood in the sense of "resolve"; and distinguished the two terms as follows:

> x x x Between the two terms, there are several differences: (1) resolution can only be availed of by a party to the obligation while rescission may be availed of by a third person (creditor); (2) resolution can be obtained only on the ground of non-performance by the other party while rescission may be based on fraud, lesion, etc.; (3) resolution may be refused by the court on valid grounds while rescission may not be refused by the court if all requisites are present; (4) resolution is a primary remedy while rescission is subsidiary, available only when there is no other remedy; and (5) resolution is based on mutuality of the parties while rescission is based on prejudice or damage suffered.[85]

To summarize, the remedies of the unpaid seller, after ownership of the real property not covered by Republic Act No. 6552[86] or the Maceda Law, has been vested to the buyer, are:

1. To compel specific performance by filing an action against the buyer for the agreed purchase price; or

2. To rescind or resolve the contract of sale either judicially or by a notarial act; and

3. In either (1) or (2), to recover damages for the breach of the contract.

Based on the amended complaint, petitioners seek to declare the DAS null and void *ab initio* and non-existent since Norma, the vendee, did not pay the purchase price to them pursuant to the doctrine that where the price which appears in the contract of sale to have been paid but has in fact not or never been paid, the contract is void; and the absence of Alden's signature in the DAS showed that he did not sign the same and it lacked his consent.[87] The DAS being null and void, TCT T-35460 that

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

[86] AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS, September 14, 1972.

[87] Records (Vol. II), pp. 5-6.

was issued in the name of Norma should be cancelled; the ownership of the subject lot should be reconveyed to the heirs of Vicentico; and possession thereof should be delivered to them.[88]

Since the cause of action of Alden had been finally and fully settled in the Compromise Agreement in Civil Case No. 499, he no longer has a cause of action against Norma with respect to his *pro indiviso* right in the subject lot.

What is clear from the amended complaint is that the remedy of specific performance was not availed of by petitioners. They do not seek to collect from Norma the purchase price of ₱50,000.00. While they have not expressly sought the resolution of the DAS on account of Norma's non-payment of the purchase price, such remedy could be implied when they sought the nullification of Norma's TCT, the reconveyance to them of the subject lot and the return of the possession to them. When the remedy of resolution of reciprocal obligations, as in rescission, is sought, "the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests" is created pursuant to Article 1385 of the Civil Code.

Aside from attorney's fees, litigation expenses, moral damages and exemplary damages, they also seek from Norma in their amended complaint the "reasonable value of the use of the premises in the estimated amount of at least ₱10,000.00 a year, the property in question being a prime commercial lot," having been deprived thereof.[89]

As to the ruling of the MTC, it erred when it concluded that the DAS could be considered as not consummated because no consideration was effected or given by Norma; and, thus, it is void and non-existent.[90] The sale was partly consummated on

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[88] *Id*. at 7.

[89] *Id*. at 6.

[90] MTC Decision dated June 8, 2012, *rollo*, p. 76.

account of the transfer of ownership by the vendors to Norma. The DAS is not void for lack of consideration, but it has been extinguished by the happening of the tacit resolutory condition, which is judicial resolution or rescission of the sale.

Likewise, the RTC erred in ruling that the DAS is valid, notwithstanding the non-payment of the consideration, because there was delivery pursuant to Article 1477[91] in relation to Article 1498[92] of the Civil Code.[93] It further erred when it ordered Norma to pay the ₱50,000.00 with interest at the legal rate of 12% per annum starting on June 28, 1995 (DAS' date of execution) until the full amount is paid.[94] The error is because, firstly, the remedy availed of by the vendors is not specific performance, and secondly, under Article 1592 of the Civil Code, the court may not grant the buyer a new term when a demand for rescission of the contract has been made upon him judicially.

The applicability of Article 1592 was discussed by the Court in *Cabrera v. Ysaac*:[95]

> For the sale of immovable property, the following provision governs its rescission:
>
> > Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by notarial act. After the demand, the court may not grant him a new term.

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[91] Art. 1477 of the Civil Code provides: "The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof."

[92] First paragraph, Art. 1498 of the Civil Code provides: "When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred."

[93] RTC Decision dated December 11, 2012, *rollo*, p. 88.

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

[95] 747 Phil. 187 (2014).

This provision contemplates (1) a *contract of sale* of an immovable property and (2) a stipulation in the contract that failure to pay the price at the time agreed upon will cause the rescission of the contract. The vendee or the buyer can still pay even after the time agreed upon, if the agreement between the parties has these requisites. This right of the vendee to pay ceases when the vendor or the seller demands the rescission of the contract judicially or extrajudicially. In case of an extrajudicial demand to rescind the contract, it should be notarized.

Hence, this provision does not apply if it is not a contract of sale of an immovable property and merely a *contract to sell* an immovable property. A contract to sell is "where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force."[96]

The Court is mindful of the opinion of Justice J.B.L. Reyes in the consolidated cases of *Sing, Yee & Cuan, Inc. v. Santos, et al.*[97] and *Santos, et al. v. Sing Yee & Cuan, Inc.*[98](*Sing, Yee & Cuan, Inc.*), *viz.*:

x x x [I]t is nevertheless clear that a distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell (or of "exclusive right and privilege to purchase," as in this case) where by agreement the ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made. In the first case, nonpayment of the price is a negative resolutory condition; in the second place, full payment is a positive suspensive condition. Being contraries, their effect in law can not be identical. In the first case, the vendor has lost and can not recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. Hence, when the seller, because of noncompliance with the suspensive condition stipulated, seeks to

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[96] *Id*. at 211-212, citing *Roque v. Lapuz*, 185 Phil. 525, 540 (1980).

[97] No. 2081-R, January 20, 1950 (CA), 47 O.G. 6372.

[98] No. 2082-R, January 20, 1950, *id*.

eject the buyer from the land object of the agreement, said vendor is enforcing the contract and is not resolving the same. That article 1504 [(of the Civil Code of Spain or old Civil Code, now Article 1592 of the new Civil Code)] refers to nonpayment as a resolutory condition and does not contemplate an agreement to sell in which title is reserved by the vendor until the vendee has complied first with conditions specified, is clear from its terms:

> "ART. 1504. In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place *ipso jure*, the purchaser may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time."[99]

Based on Justice J.B.L. Reyes' opinion in *Sing, Yee & Cuan, Inc.* that the non-payment of the purchase price in a contract of sale is a negative resolutory condition, the happening or fulfillment thereof will extinguish the obligation or the sale pursuant to Article 1231 of the Civil Code, which provides that fulfillment of a resolutory condition is another cause of extinguishment of obligations. Despite its extinguishment, since the vendor has lost ownership of the land, the contract must itself be resolved and set aside. It is noted, however, that the resolution of the sale is the tacit resolutory condition under Article 1191, as discussed above, which is implied in reciprocal obligations.

Consequently, the Court rules that the sale transaction in the DAS is deemed resolved.

Proceeding to the second issue, the MTC justified the award of damages in this wise:

> It is an elementary rule that when a person causes injury to another by reason of a breach of contract or by a wrongful act or negligent act or omission, the person injured can recover damages for the injury he sustained from the one who causes it and that the damages he may receive will be commensurate to the injuries he sustained.

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[99] *Id.* at 6374-6375.

It was testified to by the plaintiffs, particularly Karen Nuñez Vito and Lynette Nuñez Macinda, that due to the non-payment of defendant Norma Moises Palma of the purchase price of their property (Lot No. 2159-A) despite their demands and the transfer of the defendant in her name the certificate of title over the subject property, it causes them sleepless nights, serious anxiety and other sufferings because, they said, they might lose their property to defendant for nothing. The plaintiff further testified that they had no other choice but to protect their rights and hired the services of a lawyer for thirty thousand (Php30,000.00) pesos.

It is already ruled by this Court that defendant Norma Moises Palma never paid plaintiffs the purchase price of Lot No. 2159-A and as such, her action caused breached (sic) of faith, which lead to the nullification of the Deed of Adjudication and Sale. Defendant's action indeed caused apprehension to plaintiffs that their property will go to waste considering that defendant had already registered and acquired in her name a Transfer Certificate of Title. The worry of plaintiffs are real and justice and equity dictates that moral damages be given to them just to alleviate and or (sic) compensate their moral sufferings caused by the action of defendant Norma Moises Palma. Likewise, the attitude of defendant, despite the lapse of twelve (12) years from the time the Deed of Adjudication and Sale was executed (June 28, 1995) by the plaintiffs up to the time of the filing of this case which was on August 15, 2007, in not paying plaintiffs, shows that defendant acted in a wanton, fraudulent and even oppressive manner which this Court will not countenance and therefore so as to give an example to similarly minded persons, the award for exemplary damages is proper.

Plaintiffs action in filing a case against defendant was borne out of fear that they may lose their property. They were forced to litigate and incurred expenses to protect their rights, hence, an award of attorney's fees and litigation expenses is just and equitable.[100]

The non-payment of the entire purchase price, despite repeated assurances by Norma to pay the same clearly constitutes a substantial and fundamental breach as would defeat the very object of the parties in making the agreement.[101]

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[100] MTC Decision dated June 8, 2012, *rollo*, pp. 79-80.

[101] See *Universal Food Corporation v. Court of Appeals*, 144 Phil. 1, 18 (1970).

In contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner pursuant to Article 2232 of the Civil Code. Under Article 2219, moral damages may be recovered with respect to acts and actions referred to in Article 21: "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." As provided in Article 2208, as to attorney's fees and expenses of litigation, other than judicial costs, they cannot be recovered in the absence of stipulation, except: when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest; where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim; and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, they must be reasonable.

The MTC Decision has adequately explained the award of damages and the Court is in full agreement based on the statutory bases afore-cited.

The Court is aware that while petitioners alleged the amount of at least ₱10,000.00 a year as reasonable value of the use of the premises in the amended complaint,[102] no evidence was adduced by them to support such claim. Nonetheless, the Court deems it just and equitable to award reasonable compensation in the amount as alleged by petitioners for the use and occupation of the premises by Norma because petitioners have been unjustly deprived of the use of the subject lot.[103] They are entitled to recover possession of the subject lot because of the failure of Norma to pay the agreed purchase price and she has not been paying any rental for her use and occupancy of the premises.

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[102] Records (Vol. II), p. 6.

[103] See *De los Reyes v. Pastorfide*, 112 Phil. 610 (1961). In forcible entry and unlawful detainer cases, the court shall render a judgment in favor of the plaintiff for the restitution of the premises and reasonable compensation of the premises, attorney's fees and costs, if after trial it finds the allegations of the complaint are true. (Section 17, Rule 70, Rules of Court).

Under Article 1596, the measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract for refusing to pay the purchase price.

WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals (Visayas Station) Decision dated July 31, 2015 and Resolution dated March 15, 2016 in CA-G.R. SP No. 07390 are hereby **REVERSED** and **SET ASIDE**. Likewise, the Decision dated December 11, 2012 of the Regional Trial Court, 6th Judicial Region, Branch 21, Mambusao, Capiz in Civil Case No. M-12-0360-07 AP is hereby **REVERSED** and **SET ASIDE**. The Decision dated June 8, 2012 of the Municipal Trial Court, 6th Judicial Region, Mambusao, Capiz in Civil Case No. 515 is **REINSTATED** and **AFFIRMED** with **MODIFICATION** as follows:

WHEREFORE, preponderance of evidence points in favor of plaintiffs and against defendant, judgment is hereby rendered:

1.) **DECLARING** the Deed of Adjudication and Sale dated June 28, 1995 **RESOLVED in so far as the sale in favor of Norma Moises Palma is concerned**;

2.) **ORDERING** the proper Register of Deeds to **CANCEL** Transfer Certificate of Title No. T-35460 in the name of defendant Norma Moises Palma and, in lieu thereof, to **ISSUE** a new Transfer Certificate of Title in the names of Placida Hisole Nuñez, Karen Nuñez, Warren Nuñez, Lynette Nuñez and Norma Moises Palma, as co-owners to the extent of 1/5 pro indiviso each or 85.8 square meters undivided portion;

3.) **DECLARING** plaintiffs as the rightful co-owners of Lot No. 2159-A subject to the co-owner's right of defendant Norma Moises Palma with respect to the share of Alden Nuñez in the total area of 85.8 square meters;

4.) **ORDERING** defendant Norma Moises Palma to recognize and respect the rights of ownership and possession of Placida Hisole Nuñez, Karen Nuñez, Warren Nuñez and Lynette Nuñez as co-owners of Lot No. 2159-A;

5.) **ORDERING** defendant Norma Moises Palma to pay plaintiffs the following:

a.) Ten Thousand (Php10,000.00) pesos per year from 1995 up to the actual turnover of possession of Lot No. 2159-A to plaintiffs except the share of Alden Nuñez with an area of 85.8 square meters;

b.) Fifty Thousand (Php50,000.00) pesos as attorney's fees;

c.) Five Thousand (Php5,000.00) pesos as litigation expenses;

d.) Seventy-Five Thousand (Php75,000.00) pesos as moral damages; and

d.) Fifteen Thousand (₱15,000.00) pesos as exemplary damages;

with the foregoing amounts bearing legal interest at 6% per annum from finality of this Decision until full payment; and

6.) **ORDERING** defendant to pay the cost of the suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224854. March 27, 2019]

LUCITA S. PARDILLO, *petitioner, vs.* **DR. EVELYN DUCAY BANDOJO, OWNER AND MEDICAL DIRECTOR OF E & R HOSPITAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; GENERALLY LIMITED TO QUESTIONS OF LAW, AS THE COURT IS NOT A TRIER OF FACTS, EXCEPT

WHEN THE FINDINGS OF THE LABOR ARBITER, NATIONAL LABOR RELATIONS COMMISSION, AND COURT OF APPEALS ARE CONFLICTING.— [T]he Court notes that Rule 45 petitions are generally limited to questions of law, as the Court is not a trier of facts. However an exceptional circumstance exists when the findings of the LA, NLRC, and CA are conflicting, as in this case.

2. LABOR AND SOCIAL LEGISLATION; THE LABOR CODE; TERMINATION OF EMPLOYMENT; SUBSTANTIVE DUE PROCESS; AN EMPLOYER SHALL NOT TERMINATE THE SERVICES OF AN EMPLOYEE EXCEPT FOR A JUST OR AUTHORIZED CAUSE; JUST CAUSES FOR DISMISSAL ENUMERATED.— In determining the legality of an employee's dismissal, the Court must determine the legality of the act of dismissal which pertains to substantive due process, and the manner of dismissal which constitutes procedural due process. Under Article 294 of Presidential Decree No. 442 or the Labor Code of the Philippines (Labor Code), the employer shall not terminate the services of an employee except for a just or authorized cause. The just causes for dismissal are listed under Article 297: *Termination by Employer*. — An employer may terminate an employment for any of the following causes: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and (e) Other causes analogous to the foregoing.

3. ID.; ID.; ID.; PROCEDURAL DUES PROCESS ; AN EMPLOYER MUST COMPLY WITH THE TWO-NOTICE RULE.— Anent the procedural aspect, the employer must comply with the two-notice rule, as mandated under the Implementing Rules of Book VI of the Labor Code. The employer must serve the erring employee a first notice which details the ground/s for termination, giving the employee a reasonable opportunity to explain his side. In practice, this is commonly referred to as the notice to explain (NTE). The second notice

pertains to the written notice of termination indicating that upon due consideration of all circumstances, the employer has decided to dismiss the employee.

4. **ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; TERMINATION OF EMPLOYMENT ON GROUND OF LOSS OF TRUST AND CONFIDENCE, REQUISITES TO BE VALID; THERE MUST BE SOME BASIS OR REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR THE MISCONDUCT AND THE BREACH OR ACT COMPLAINED OF MUST BE RELATED TO THE WORK PERFORMED BY THE EMPLOYEE.—** Article 297(c) allows an employer to terminate the services of an employee on the ground of loss of trust and confidence. There are two requisites for this ground; first, the employee must be holding a position of trust and confidence; and second, there must be a willful act that would justify the loss of trust and confidence which is based on clearly established facts. x x x. [T]here must be some basis or reasonable ground to believe that the employee is responsible for the misconduct and the breach or act complained of must be related to the work performed by the employee. Although the employer is given more leeway in the dismissal of managerial employees on the ground of loss of trust and confidence, the dismissal must not be based on the mere whims or caprices of the employer. The dismissal must have reasonable basis.

5. **ID.; ID.; ID.; ID.; IN ILLEGAL DISMISSAL CASES, THE BURDEN TO PROVE THAT THE TERMINATION OF EMPLOYMENT WAS FOR A JUST AND VALID CAUSE IS ON THE EMPLOYER.—** In illegal dismissal cases, the burden to prove that the termination of employment was for a just and valid cause is on the employer. In this case, the Court holds that the CA committed reversible error in overturning the findings of the NLRC. After a judicious review of the facts as borne by the records, the Court finds that Dr. Bandojo failed to prove with substantial evidence Pardillo's alleged acts which led to loss of trust and confidence.

6. **ID.; ID.; ID.; ID.; REQUIREMENTS OF PROCEDURAL DUE PROCESS NOT COMPLIED WITH.—** Dr. Bandojo also failed to comply with the requirements of procedural due process. x x x [P]ardillo was served with an NTE that charged her only

with tardiness on two dates. However, the notice of termination charged her with additional and more serious grounds of loss of trust and confidence, habitual tardiness, texting insulting words and uttering offensive words to Dr. Bandojo, and threatening to kill Dr. Bandojo and her family. The additional grounds cited in the notice of termination which were not mentioned in the NTE violated Pardillo's right to be informed of the administrative charges against her. The NTE and the notice of termination did not state the specific acts that constituted breach of company policies resulting in loss of trust and confidence and the specific company policies that were violated.

7. ID.; ID.; ID.; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED FROM WORK IS ENTITLED TO FULL BACKWAGES AND SEPARATION PAY, IN LIEU OF REINSTATEMENT, WHERE REINSTATEMENT IS NO LONGER ADVISABLE BECAUSE OF STRAINED RELATIONS BETWEEN THE EMPLOYEE AND THE EMPLOYER.— The Court affirms the NLRC's award of backwages and separation pay. Article 294 of the Labor Code grants to an employee who is unjustly dismissed from work, reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. In *Aliling v. Feliciano*, citing *Golden Ace Builders v. Talde*, the Court awarded both backwages and separation pay: The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working. The relationship between the parties in the case are undoubtedly strained and reinstatement would no longer be viable. Thus, the grant of separation pay is fully justified.

8. ID.; ID.; ID.; ID.; AN AWARD OF ATTORNEY'S FEES SHALL BE DENIED ABSENT ANY FACTUAL, LEGAL, OR EQUITABLE BASIS FOR THE SAME.— [T]he Court

modifies the NLRC award and deletes the award of attorney's fees. The award of attorney's fees is the exception rather than the general rule based on the policy that no premium should be placed on the right to litigate. That a party was compelled to initiate an action does not automatically entitle them to attorney's fees. In A*BS-CBN Broadcasting Corp. v. CA*, the Court ruled: The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause. Thus, in the absence of any factual, legal, or equitable basis for the award of attorney's fees, the Court denies the same.

9. ID.; ID.; ID.; ID.; LEGAL INTEREST OF 12% AND 6% PER ANNUM GRANTED.— [T]he monetary award herein granted shall earn legal interest of 12% per annum from November 18, 2010, the date of illegal dismissal, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*. From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.

APPEARANCES OF COUNSEL

Pizarro & Dela Cruz for petitioner.
Moises G. Dalisay, Jr. for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court, filed by Lucita S. Pardillo (Pardillo)

[1] *Rollo*, pp. 3-41.

against Dr. Evelyn Ducay Bandojo (Dr. Bandojo), owner of E & R Hospital in Iligan City, assailing the Decision[2] dated September 17, 2015 and Resolution[3] dated May 4, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 05365-MIN which had overturned the Decision[4] of the National Labor Relations Commission (NLRC).

Facts

The facts, as summarized by the CA, are quoted below:

> Sometime in November of 1990, x x x Lucita S. Pardillo was hired as midwife of E & R Hospital and Pharmacy in Iligan City, which is owned and managed by spouses Prof. Rogelio B. Bandojo and x x x Dr. Evelyn D. Bandojo. In 1991, [Pardillo] was transferred to a new position as Billing Clerk/Cashier. In 2001, she was promoted and became the Business Office Manager and held such position until November 18, 2010 when her employment was terminated by [Dr. Bandojo].
>
> According to [Pardillo], she was surprised when she received a Notice of Termination on November 18, 2010 which reads:
>
> To: Ms. Lucita S. Pardillo
> From: The Medical Director
>
> Subject: Notice of Termination of Service
>
> You are hereby informed that your services as Business Office Manager will be terminated effective thirty (30) days from receipt of this memorandum.
>
> Due to the following causes:
>
> 1. Loss of confidence
> 2. Habitual Tardiness

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[2] *Id*. at 43-61. Penned by Associate Justice Pablito A. Perez with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles.

[3] *Id*. at 110-112. Penned by Associate Justice Romulo V. Borja with the concurrence of Associate Justices Edgardo T. Lloren and Oscar V. Badelles.

[4] CA *rollo*, pp. 348-355. Penned by Presiding Commissioner Bario-Rod M. Talon with the concurrence of Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr.

3. Texting insulting words to me, your employer
4. Uttering offensive words against me, your employer
5. Texting me, threatening to kill me or any of my family

Your (sic) need not report to work thirty days from today but you will still received(sic) your salary equivalent to one (1) month as if you were on regular duty.

You are advised to prepare all clearance as required from all terminated employees at the end of your tour of duty which is thirty (30) days from receipt of this notice.

For your proper guidance.

(SGD)Evelyn D. Bandojo, MD, DFM
Medical Director

On the other hand, x x x Dr. Bandojo alleged that [Pardillo's] termination was brought about by several infractions she committed and her habitual tardiness totaling to about 16,000 minutes.

[Dr. Bandojo] avers that E & R Hospital suffered losses due to the negligence of [Pardillo] in failing to process and send the records of certain patients to PhilHealth for refund of their paid claims. [Dr. Bandojo] cited the case of a patient named Jamal Alim, whose claim was not processed or sent to PhilHealth; Moises Servano whose claim was returned to E & R Hospital due to the lack of original official receipt[;] and Stephen Chiu, a non-PhilHealth patient who was discharged from the hospital on September 6, 2007 with an unsettled bill of Php 5[,]968.00 and with no promissory note on record.

Moreover, that sometime on August 2010, [Pardillo] allegedly tried to borrow, for her personal use the hospital's "Pay to Cash" check which was intended for the payment of the newborn screening kits.

The proverbial last straw that broke the camel's back was the incident on September 27, 2010 when [Pardillo] reported very late for work; specifically at past ten in the morning. [Dr. Bandojo] caught Mrs. Natividad Labadan, [Pardillo's] subordinate, punching [Pardillo's] time card in the bundy clock located at the pharmacy area.

Thus, on September 30, 2010, an administrative investigation was conducted. In the said investigation, [Pardillo] denied [the] accusations against her.

Due to the alleged incessant breach of trust exhibited by [Pardillo], [Dr. Bandojo] issued the memorandum dated November 18, 2010 terminating the employment of [Pardillo] as Business Office Manager of E&R Hospital.

On April 5, 2011, Pardillo filed a Complaint for Illegal Dismissal with the Labor Arbiter. x x x[5]

Findings of the labor tribunals

In its Decision[6] dated October 24, 2011, Labor Arbiter Nicodemus G. Palangan (LA) dismissed Pardillo's complaint for lack of merit. The LA held that Pardillo was a managerial employee whose employment may be terminated on the ground of loss of trust and confidence.[7] The LA held that Pardillo committed several infractions inimical to the business of Dr. Bandojo such as failing to process PhilHealth refunds, allowing the release of a patient with unpaid hospital bills without a promissory note, trying to take a personal loan on the "pay to cash" check intended for payment of newborn screening kits, and tardiness. The LA also found that Dr. Bandojo had observed procedural due process in dismissing Pardillo as an administrative hearing was conducted.

On appeal the NLRC, reversed and set aside the ruling of the LA in its Decision dated July 31, 2012. The NLRC held that Pardillo was dismissed without substantive and procedural due process. Pardillo was able to explain the alleged infractions levelled against her by Dr. Bandojo. With regard to patient Moises Servano, he had died and his relatives could no longer find the original receipt so that upon instruction of Dr. Bandojo, Pardillo did not refile the claim to PhilHealth.[8] As to patient Jamal Alim, he had no financial obligation to the hospital, a fact which was not controverted by Dr. Bandojo. As regards to patient Adam Stephen Chiu, his grand uncle Victor Chiu, hospital

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[5] *Rollo*, pp. 43-45.

[6] CA *rollo*, pp. 124-132.

[7] *Id.* at 129.

[8] *Id.* at 351.

accountant, executed an affidavit alleging that he was responsible for his nephew's hospitalization and that the balance of his unpaid medical bills were to be offset against his professional fees.[9] The NLRC concluded that Pardillo caught the ire of Dr. Bandojo when the latter witnessed Pardillo's subordinate Natividad Ladaban punched in her superior's time card. The NLRC held that while such act was a violation of the hospital's policies, it did not amount to the wilful breach of trust that would justify dismissal from employment. The NLRC also noted that during the time-card incident, Pardillo was actually present in the hospital premises. This negated the perception that she had the intention to be absent that day and directed her subordinate to punch in her time card to make it appear that she was present.[10]

On the issue of tardiness, the NLRC found that Pardillo was able to explain the same. The NLRC noted a memorandum[11] dated October 30, 2010 issued by Dr. Bandojo to Pardillo stating that her usual 8:00 A.M. to 12:00 noon; 1:00 P.M. to 5:00 P.M. schedule will resume on November 1, 2010 in lieu of other schedules granted or allowed previously. The NLRC held that the memorandum bolstered Pardillo's claim that she was allowed to arrive late because she first attended to outside activities related to her functions like PhilHealth and bank transactions. The NLRC ordered Pardillo's reinstatement with full backwages, inclusive of allowances and other benefits and attorney's fees.

Dr. Bandojo filed a Motion for Reconsideration[12] (MR) which was denied by the NLRC in its Decision[13] dated December 12, 2012. The NLRC however, modified its earlier Decision as to the order of reinstatement. Pardillo had manifested that her relationship with her former employer Dr. Bandojo had become

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[9] *Id.*

[10] *Id*. at 352.

[11] *Id.* at. 287.

[12] *Id*. at 357-367.

[13] *Id*. at 387-390.

strained and prayed for separation pay in lieu of reinstatement. Dr. Bandojo did not controvert this. Thus, the NLRC granted her prayer for separation pay in lieu of reinstatement.

Aggrieved, Dr. Bandojo elevated the case to the CA via petition for *certiorari*[14] under Rule 65 of the Rules of Court.

The CA Decision

The CA granted the petition. The CA held that Dr. Bandojo was able to prove with substantial evidence that Pardillo's termination was for a just cause. The CA ruled that Dr. Bandojo was able to prove the habitual tardiness of Pardillo which resulted in her neglect of duties and poor work performance. As a managerial employee, the CA held that Pardillo should be a sterling example of honesty, trustworthiness, and efficiency in the workplace. The CA also found that Pardillo's act of ordering her subordinate to punch in her time card was an act of falsification.[15]

On the issue of procedural due process, the CA held that Dr. Bandojo was able to comply with the two-notice rule. Pardillo was given a chance to present her side, numerous memoranda and warnings were issued to her due to tardiness, as well as a separate memorandum regarding the time-card incident. Two administrative conferences were held where Pardillo was given a chance to explain her side. Finally, a notice of termination[16] was sent to Pardillo on November 18, 2010.[17] Thus, the CA overturned the findings of the NLRC and reinstated the LA Decision. Pardillo's MR was denied by the CA in the Assailed Resolution.

Pardillo filed the instant petition alleging that there were no valid grounds for her dismissal.[18] As well, Pardillo claims that

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[14] *Id*. at 2-25.

[15] *Rollo*, p. 58.

[16] CA *rollo*, p. 234.

[17] *Rollo*, pp. 59-60.

[18] *Id*. at 16-27.

Dr. Bandojo failed to comply with procedural due process. She did not receive any notice to explain prior to receiving the notice of termination.[19] Dr. Bandojo filed her Comment[20] praying for the dismissal of the petition.

Issue

Whether the CA committed reversible error in reversing the NLRC Decision and reinstating the LA Decision.

The Court's Ruling

At the outset, the Court notes that Rule 45 petitions are generally limited to questions of law, as the Court is not a trier of facts.[21] However an exceptional circumstance exists when the findings of the LA, NLRC, and CA are conflicting, as in this case.[22]

Requirements of substantive and procedural due process

In determining the legality of an employee's dismissal, the Court must determine the legality of the act of dismissal which pertains to substantive due process, and the manner of dismissal which constitutes procedural due process.

Under Article 294 of Presidential Decree No. 442 or the Labor Code of the Philippines (Labor Code),[23] the employer shall not

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[19] *Id*. at 34-37.

[20] *Id*. at 129-146.

[21] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 211-213 (2005).

[22] *Id*. at 212-213, citing *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

[23] As renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department of Labor and Employment, Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.

terminate the services of an employee except for a just or authorized cause.

The just causes for dismissal are listed under Article 297:

Termination by Employer. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

Anent the procedural aspect, the employer must comply with the two-notice rule, as mandated under the Implementing Rules of Book VI of the Labor Code.[24] The employer must serve the erring employee a first notice which details the ground/s for termination, giving the employee a reasonable opportunity to explain his side. In practice, this is commonly referred to as the notice to explain (NTE). The second notice pertains to the

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[24] "For termination of employment based on just causes as defined in Article 282 of the Labor Code:

"(i) A written notice served on the employee specifying the ground or grounds for termination and giving said employee reasonable opportunity within which to explain his side;

"(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

"(iii) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (AMENDING THE RULES IMPLEMENTING BOOKS III AND VI OF THE LABOR CODE AS AMENDED, Department Order No. 010-97 [1997], Art. III).

written notice of termination indicating that upon due consideration of all circumstances, the employer has decided to dismiss the employee.

Loss of trust and confidence as ground for dismissal

Article 297(c) allows an employer to terminate the services of an employee on the ground of loss of trust and confidence. There are two requisites for this ground; first, the employee must be holding a position of trust and confidence; and second, there must be a willful act that would justify the loss of trust and confidence which is based on clearly established facts.[25]

Pardillo's status as a managerial employee holding the position of Business Office Manager was never disputed in this case. The pivotal issue thus before the Court is the existence of the second requisite.

In *Prudential Guarantee and Assurance Employee Labor Union v. NLRC*,[26] the Court expounded on loss of trust and confidence as a ground for dismissal:

> While the law and this Court recognize the right of an employer to dismiss an employee based on loss of trust and confidence, the evidence of the employer must clearly and convincingly establish the facts upon which the loss of trust and confidence in the employee is based.
>
> To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would remain eternally at the mercy of the employer. Further, in order to constitute a just cause for dismissal, the act complained of must be work-related and show that the employee concerned is unfit

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[25] *Bristol Myers Squibb (Phils.), Inc. v. Baban,* 594 Phil. 620, 628-629 (2008).

[26] 687 Phil. 351 (2012).

to continue working for the employer. Such ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature.[27]

Jurisprudence has also distinguished the treatment of managerial employees and rank-and-file personnel with regard to the ground of loss and trust and confidence. In *Etcuban Jr. v. Sulpicio Lines*,[28] the Court held:

> x x x [W]ith respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[29]

Thus, there must be some basis or reasonable ground to believe that the employee is responsible for the misconduct and the breach or act complained of must be related to the work performed by the employee. Although the employer is given more leeway in the dismissal of managerial employees on the ground of loss of trust and confidence, the dismissal must not be based on the mere whims or caprices of the employer. The dismissal must have reasonable basis.

In illegal dismissal cases, the burden to prove that the termination of employment was for a just and valid cause is on the employer.[30] In this case, the Court holds that the CA

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[27] *Id*. at 368-369.

[28] 489 Phil. 483 (2005).

[29] *Id*. at 496-497.

[30] LABOR CODE, Art. 292 (277).

committed reversible error in overturning the findings of the NLRC. After a judicious review of the facts as borne by the records, the Court finds that Dr. Bandojo failed to prove with substantial evidence Pardillo's alleged acts which led to loss of trust and confidence.

The records show that in a NTE[31] dated November 5, 2010, Pardillo was made to explain her alleged tardiness committed on November 4 and 5, 2010. Pardillo replied in a letter[32] dated November 6, 2010, apologizing for her tardiness. However, in the notice of termination dated November 18, 2010, Dr. Bandojo indicated the following grounds for Pardillo's dismissal:

> You are hereby informed that your services as Business Office Manager will be terminated effective thirty (30) days from receipt of this memorandum.
>
> Due to the following causes:
>
> 1. Loss of trust and confidence
> 2. Habitual [t]ardiness
> 3. Texting insulting words to me, your employer
> 4. Uttering offensive words against me, your employer
> 5. Texting me, threatening to kill me or any of my family[.][33]

The inclusion of the new allegations in the notice of termination was not sufficiently explained by Dr. Bandojo. The notice does not also state the alleged acts purportedly committed by Pardillo which resulted in loss of trust and confidence. Pardillo was not served with any NTE so that she could proffer her defense with regard to the new allegations. Dr. Bandojo also did not expound on the allegations regarding the insults and threats to her life and her family, in the pleadings that she filed before the labor tribunals and the courts. To the mind of the Court, these circumstances cast serious doubt on the veracity of Dr. Bandojo's contentions in the notice of termination.

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[31] CA *rollo*, p. 288.

[32] *Id*. at 379.

[33] *Id.* at 234.

The Court also affirms the findings of the NLRC regarding the allegation of habitual tardiness. In order to justify the dismissal of Pardillo, Dr. Bandojo submitted several notices from as early as 1994 addressed to Pardillo regarding her tardiness which allegedly amounted to 16,333 minutes.[34] However, as correctly held by the NLRC, Pardillo was able to explain the reason why she could not come to the office on the scheduled time because it was necessary for her to go directly to the bank or to the PhilHealth office to perform official business for the hospital. Moreover, the letter dated October 30, 2010 sent by Dr. Bandojo to Pardillo supports Pardillo's claim that she had a flexible work schedule. The letter states:

TO: MS. LUCITA S. PARDILLO, B.O Manager

FROM: THE MEDICAL DIRECTOR

SUBJECT: IMPLEMENTATION OF THE SCHEDULE OF DUTY HOURS

In our latest conversation, we have agreed that your usual 8 am-12pm, 1pm-5pm schedule of duty hours will **resume** effective November 1, 2010.

All other schedules granted or allowed in the past per your various requests and which have been granted and adjusted to suit your past request in your schedule of duty hours shall now become moot and academic.

To reiterate what we have agreed, your new schedule of duty hours will be 8- 12 in the morning and 1- 5 in the afternoon, Monday to Saturday.

For your guidance.

(Sgd.)
Dr. Evelyn [Ducay] Bandojo, DFM[35]
(Emphasis supplied)

The records do not indicate when Pardillo's flexible schedule was granted, but the above letter satisfactorily confirms that

[34] *Id.* at 270-271.

[35] *Id.* at 287.

Pardillo was allowed some leeway in her work schedule as her job required her to go to government agencies and banks to process transactions of the hospital. The tardiness of Pardillo earlier than October 30, 2010 cannot thus be taken against her because prior thereto, she was not strictly required to be at the office from 8:00 A.M. to 12:00 noon and 1:00 P.M. to 5:00 P.M. The letter refers to the 8:00 A.M. to 5:00 P.M. scheme as Pardillo's "new" schedule.

Pardillo was also sent a document entitled "Warning: This is your nth offense" on August 10, 2010 regarding her tardiness on several dates. However, the warning itself contains the following proviso: "Suspension to Termination will be meted out to erring personnel who incurred tardiness beyond the allowable limit unless you can prove to management that your tardiness was due to laudable acts beneficial to [the] hospital business and service."[36] This confirms that the hospital policy recognized that there may be reasonable grounds for an employee's tardiness, which includes performing tasks beneficial to the hospital outside of its premises. The Court also observes that the warning did not contain a notice to explain but was merely a notice to Pardillo that she had been tardy on specific dates.

With regard to the other allegations of Pardillo, the Court quotes with approval the findings of the NLRC:

> x x x The supposed claims of patients Moises Servano and Jamal Alim have been adequately explained by complainant. x x x [T]he Phil[H]ealth claim of patient Moises Servano, who is her relative, was returned to the hospital because only the machine copy of the original receipt of the blood purchased by the patient was submitted. Servano died and his relatives could no longer find the original copy of the official receipt so that upon [the] instruction of [Dr. Bandojo], complainant did not refile the claim to P[hil]H[ealth]. As to patient Jamal Alim, complainant averred that Mr. Alim has no financial obligation to the [h]ospital, which is not being controverted by [Dr. Bandojo] x x x In the case of patient Adam Stephen Chiu, his grand uncle Victor L. Chiu, who was responsible for his hospitalization,

[36] *Id*. at 509; underscoring supplied.

duly executed a statement under oath contesting as without bases the charges levelled by [Dr. Bandojo] against complainant and categorically declared that Mr. Chiu's balance of P 4,968.16 with the hospital has been offsetted (*sic*) with his professional fees as an accountant of the hospital.[37]

The absence of any NTEs on the new allegations (*i.e.*, failure to process PhilHealth claims, attempting to borrow money for personal use, and allowing the release of patients with unpaid hospital bills without any promissory note, uttering offensive words and making death threats) can only be described as bemusing. If the less serious offense of tardiness merited the sending of several NTEs to Pardillo, why was it that Dr. Bandojo did not send any NTEs for the more serious allegations? In her position paper,[38] Dr. Bandojo admitted that the derogatory text messages she received were from an unknown number. She concluded that the sender was Pardillo merely because the messages stopped after Pardillo stopped reporting for work.[39] Dr. Bandojo likewise did not submit these text messages to the labor tribunals or the courts. All in all, it is quite apparent that the loss of trust and confidence in this case was not genuine and was merely used as a convenient means to dismiss Pardillo.

Considering the foregoing, the Court finds that Dr. Bandojo failed to prove with substantial evidence the acts constituting willful breach of company policy, resulting to loss of trust and confidence. Thus, Pardillo's dismissal was illegal.

The Court is not unaware of its Decision in *Alvarez v. Golden Tri Bloc, Inc.*,[40] in which a supervisory employee was also caught directing his subordinate to punch-in his time card and the Court upheld the validity of his dismissal. However, in Alvarez, the incident for which the employee was disciplined was already his second offense and the Court also considered the totality

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[37] *Id.* at 351.

[38] *Id.* at 37-55.

[39] *Id.* at 40.

[40] 718 Phil. 415 (2013).

of circumstances that included several prior offenses committed by the employee relating to product shortages, negligence, and tardiness, which were duly proven with substantial evidence. Thus, it is not on all fours with this case.

Non-compliance with procedural due process

Dr. Bandojo also failed to comply with the requirements of procedural due process. As discussed above, Pardillo was served with an NTE that charged her only with tardiness on two dates. However, the notice of termination charged her with additional and more serious grounds of loss of trust and confidence, habitual tardiness, texting insulting words and uttering offensive words to Dr. Bandojo, and threatening to kill Dr. Bandojo and her family. The additional grounds cited in the notice of termination which were not mentioned in the NTE violated Pardillo's right to be informed of the administrative charges against her. The NTE and the notice of termination did not state the specific acts that constituted breach of company policies resulting in loss of trust and confidence and the specific company policies that were violated.

The Court notes that there was an earlier memorandum[41] dated September 27, 2010 (memorandum) addressed to Pardillo and other officers requesting them to attend a conference on September 28, 2010 to explain the incident in which Pardillo's subordinate, Mrs. Natividad Ladaban, was caught punching Pardillo's time card in the bundy clock. However, this cannot be considered the NTE required under the Labor Code. In *King of Kings Transport, Inc. v. Mamac*[42] the Court elucidated on the required contents of an NTE:

> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance

[41] CA *rollo*, p. 518.

[42] 553 Phil. 108 (2007).

that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.[43]

The memorandum did not state the grounds for dismissal or disciplinary action, the specific acts of Pardillo constituting breach of company policy, and the actual company policy violated. The memorandum did not also direct Pardillo to submit a written explanation within a reasonable period of time. In fact, the conference was scheduled on the very next day.[44] Thus, the said memorandum was not a proper NTE. Moreover, after the conference, Dr. Bandojo did not inform Pardillo of her findings or impose any disciplinary action against Pardillo with regard to the allegations about the time-card incident. It was only on November 18, 2010 that Dr. Bandojo sent the notice of termination which included new allegations.

In fine, Dr. Bandojo failed to comply with the requirements of procedural and substantive due process in effecting the termination of Pardillo's employment. There was no substantial evidence to prove that she committed serious breaches of company policy resulting in loss of trust and confidence. Moreover, Pardillo was not afforded procedural due process.

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[43] *Id*. at 115-116.

[44] The actual meeting was conducted on September 30, 2010 after a postponement, see Minutes of Meeting dated September 30, 2010, CA *rollo*, pp. 279-281.

Pardillo is entitled to backwage and separation pay

The Court affirms the NLRC's award of backwages and separation pay. Article 294 of the Labor Code grants to an employee who is unjustly dismissed from work, reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

In *Aliling v. Feliciano*,[45] citing *Golden Ace Builders v. Talde*,[46] the Court awarded both backwages and separation pay:

> The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.[47]

The relationship between the parties in the case are undoubtedly strained and reinstatement would no longer be viable. Thus, the grant of separation pay is fully justified.

However, the Court modifies the NLRC award and deletes the award of attorney's fees. The award of attorney's fees is the exception rather than the general rule based on the policy that no premium should be placed on the right to litigate.[48] That a party was compelled to initiate an action does not automatically entitle them to attorney's fees. In A*BS-CBN Broadcasting Corp. v. CA*,[49] the Court ruled:

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[45] 686 Phil. 889 (2012).

[46] 634 Phil. 364 (2010).

[47] *Aliling v. Feliciano*, *supra* note 45, at 916, citing *id.* at 369.

[48] *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499, 529 (1999).

[49] *Id.*

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[50]

Thus, in the absence of any factual, legal, or equitable basis for the award of attorney's fees, the Court denies the same. Finally, the monetary award herein granted shall earn legal interest of 12% per annum from November 18, 2010, the date of illegal dismissal, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*.[51] From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.[52]

WHEREFORE, premises considered, the petition is **GRANTED**. The Court further **RESOLVES** to:

1. **REVERSE** and **SET ASIDE** the assailed Court of Appeals Decision dated September 17, 2015 and Resolution dated May 4, 2016 in CA-G.R. SP No. 05365-MIN;
2. **AWARD** petitioner Lucita S. Pardillo the following:
    a. **FULL BACKWAGES**, inclusive of allowances, and other benefits or their monetary equivalent from November 18, 2010 until finality of this judgment;
    b. **SEPARATION PAY** in lieu of reinstatement at one-month salary for every year of service, with

[50] *Id*. at 529.

[51] 716 Phil. 267, (2013). Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable* (Id. at 281).

[52] *Id*.

a fraction of at least six (6) months considered as one whole year computed from November 1990 (the date of hiring) until finality of this judgment;

3. The monetary award shall earn legal interest of 12% per annum from November 18, 2010 until June 30, 2013 and 6% from July 1, 2013 until full satisfaction of the award; and

4. **REMAND** the case to the Labor Arbiter for the proper computation of backwages and separation pay and for execution of the award.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 225052. March 27, 2019]

HEIRS OF DOMINADOR S. ASIS, JR., LUZON STEAM LAUNDRY, INC., DOMINADOR R. ASIS III, ANDREA ASIS OLEDAN, MARIA MARTA ASIS GARCIA, MARIAANAASIS ANGON, *petitioners, vs.* **G.G. SPORTSWEAR MANUFACTURING CORPORATION AND NARI K. GIDWANI,** *respondents.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES CANNOT BE PRESUMED BUT MUST BE PROVED WITH REASONABLE DEGREE OF CERTAINTY, AS THE COURT CANNOT RELY ON

SPECULATIONS, CONJECTURES OR GUESSWORK AS TO THE FACT OF DAMAGE BUT MUST DEPEND UPON COMPETENT PROOF THAT THEY HAVE INDEED BEEN SUFFERED BY THE INJURED PARTY AND ON THE BASIS OF THE BEST EVIDENCE OBTAINABLE AS TO THE ACTUAL AMOUNT THEREOF.— As correctly observed by the CA, x x x this Court could not find any basis for the grant of such amount for actual damages. This Court has, time and again, ruled in no uncertain terms that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty. A court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the *actual amount* thereof. It must point out specific facts that could provide the gauge for measuring whatever compensatory or actual damages were borne. In this case, petitioners argue that, contrary to the CA's conclusion, Branch 268 has a basis in awarding the Php 12,568,493.18 actual damages, *i.e.*, Exhibits "E" to "BB". The fact, however, that said exhibits were presented before Branch 263, coupled with the fact that said vital evidence were not transmitted to Branch 268 for examination to aid it in its decision, leave clouds of doubts to our minds as to how the latter court arrived at said figures. It is noteworthy, that even up to present, the said vital exhibits are nowhere to be found. To be clear, this Court's ruling on the matter of actual damages is not merely based on the Branch 263's failure to transmit the subject evidence to Branch 268 and Branch 268's failure to specifically explain the basis of its award of actual damages. A careful reading of the transcript of stenographic notes (TSN) of the hearings before Branch 263 on the matter, would also show that no such amount of actual damages was proven with the reasonable certainty contemplated by our jurisprudential rules on the matter.

2. ID.; ID.; OBLIGATIONS AND CONTRACTS; RESCISSION OF CONTRACTS; RESCISSION IS NOT MERELY TO TERMINATE THE CONTRACT AND RELEASE THE PARTIES FROM FURTHER OBLIGATIONS TO EACH OTHER, BUT TO ABROGATE IT FROM THE BEGINNING AND RESTORE THE PARTIES TO THEIR RELATIVE POSITIONS AS IF NO CONTRACT HAS

BEEN MADE.— Mutual restitution is required in cases involving rescission like in this case. This means bringing the parties back to their original status prior to the inception of the contract. These loan obligations are petitioners' outstanding loan obligations prior to the Letter-Agreement. While respondents undertook to assume said liabilities in the Letter-Agreement, they cannot be made to answer therefor, by virtue of the rescission of the said agreement. Rescission is not merely to terminate the contract and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made. Hence, petitioners' outstanding loan obligations with the banks cannot be made part of the consequential damages it suffered due to the rescission of the Letter-Agreement.

3. ID.; ID.; DAMAGES; TEMPERATE OR MODERATE DAMAGES MAY BE RECOVERED WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY. THE AMOUNT THEREOF IS USUALLY LEFT TO THE DISCRETION OF THE COURTS BUT THE SAME SHOULD BE REASONABLE, BEARING IN MIND THAT TEMPERATE DAMAGES SHOULD BE MORE THAN NOMINAL BUT LESS THAN COMPENSATORY; AWARD OF TEMPERATE DAMAGES PROPER.—[I]n the absence of competent proof on the amount of actual damages suffered, petitioners correctly argue that they are entitled to temperate damages. Temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. There is no question that petitioners suffered damages due to the breach committed by the respondents. The cessation of FWC's operations, the termination of its employees, and the process of re-operating the business due to the failed turn over to the respondents necessarily entailed expenses. However, x x x petitioners failed to present competent proof of the exact amount of such pecuniary loss to warrant an award of actual damages. In view of the circumstances obtaining in

this case, the Court finds the amount of ₱500,000.00 just and reasonable.

4. **ID.; ID.; ID.; EXEMPLARY OR CORRECTIVE DAMAGES ARE INTENDED TO SERVE AS A DETERRENT TO SERIOUS WRONG DOINGS, AND AS A VINDICATION OF UNDUE SUFFERINGS AND WANTON INVASION OF THE RIGHTS OF AN INJURED; AWARD OF EXEMPLARY DAMAGES TO PETITIONER DUE TO BREACH COMMITTED BY THE RESPONDENTS PROPER IN CASE AT BAR.—** In view of the courts *a quo's* findings that respondents committed breach in their agreement with petitioners, we also find it proper to award exemplary damages in this case. Exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured. "Business owners must always be forthright in their dealings. They cannot be allowed to renege on their obligations, considering that theses obligations were freely entered into by them." We, thus, find the grant of ₱500,000.00 exemplary damages proper in this case.

5. **ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES IS PROPER WHERE THE PETITIONERS WERE CONSTRAINED TO LITIGATE TO PROTECT THEIR INTERESTS DUE TO RESPONDENTS' BREACH.—** Anent the award of attorney's fees, the CA did not err in ruling that the factual and legal justification in granting the same should be expressly stated in the decision; granting it in the dispositive portion of the judgment is not enough as its basis is being improperly left to speculation and conjecture. However, in view of the award of exemplary damages, in consonance with Article 2208(1) of the New Civil Code, and petitioners were constrained to litigate to protect their interests due to respondents' breach, this Court finds the award of attorney's fees in the amount of ₱100,000.00 which is equivalent to 10% of the total amount adjudged the petitioners, proper.

6. **ID.; ID.; ID.; INTEREST; LEGAL INTEREST OF 6% PER ANNUM IMPOSED.—** [P]ursuant to the latest jurisprudence, the monetary awards adjudged being in the nature of forbearance of money, shall earn an interest at the rate of 6% *per annum* from finality of this judgment until full satisfaction thereof.

APPEARANCES OF COUNSEL

Medialdea Ata Bello & Suarez for petitioners.
Angelito R. Villarin for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 12, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 92867, only insofar as it deleted the amount of actual damages and attorney's fees. The CA's Resolutions dated November 12, 2015[3] and June 2, 2016, [4] which denied petitioners' Manifestation and Urgent Motion (Re: Decision dated 12 September 2013)[5] and Motion for Reconsideration[6] of the November 12, 2015 Resolution, respectively, are likewise impugned herein.

The Antecedents

On April 2, 1996, G.G. Sportswear Manufacturing Corporation and Nari K. Gidwani (respondents) signified their intent to purchase Filipinas Washing Company, Inc. (FWC) through a letter addressed to the latter's President, Dominador S. Asis, Jr. (Dominador). Dominador and petitioners Dominador R. Asis III, Andrea Asis Oledan, Maria Marta Asis Garcia, and Maria Ana Asis Angon, are all stockholders of record of FWC.[7] After

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[1] Rollo,pp.11-47.

[2] Penned by Associate Justice Fiorito S. Macalino, with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring; id. at 55-65.

[3] *Id*. at67-71.

[4] *Id*. at 73-74.

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

[6] *Id*. at 373-386.

[7] *Id*. at 56.

more than two months of negotiations, the parties entered into an agreement, whereby the respondents undertook to purchase FWC under the terms and conditions set forth in the Letter-Agreement dated June 17, 1996. [8]

In accordance with the Letter-Agreement, respondents remitted ₱1,462,642.00 as partial payment of FWC obligations to Westmont Bank. Respondents also issued a check amounting to ₱10,000,000.00 in favor of Dominador, also to be used as partial payment of FWC obligation to the said bank. [9]

On the other hand, petitioners performed the following acts in accordance with the Letter-Agreement: (a) made representations with Westmont Bank and Equitable Banking Corporation relative to the restructuring of FWC loan obligations in preparation for respondents' assumption thereof; (b) ceased FWC operations in preparation for the turnover of the facilities to respondents; (c) advised the FWC employees about the sale of the company and gave them their separation pay and other benefits. [10]

Respondents, however, failed to comply with their obligation under the Letter-Agreement to assume the payment of FWC with Westmont Bank and Equitable Banking Corporation. This prompted petitioners to demand, through a letter dated August 14, 1996, from respondents full compliance with their contractual obligations under the Letter-Agreement. [11]

In response thereto, respondents wrote a letter to petitioners cancelling the Letter-Agreement for the latter's failure to comply with their obligation to deliver the FWC shares of stocks to respondents. [12]

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[8] *Id*. at 56-58.

[9] *Id.* at 57.

[10] *Id*. at 58.

[11] *Id*. at 58-59.

[12] *Id*. at 59.

On August 30, 1996, petitioners filed a Complaint for rescission of contract with damages against respondents. [13]

Regional Trial Court's Ruling

The case was originally raffled to the Regional Trial Court (RTC) of Pasig, Branch 263 on September 5, 1996 but was re-raffled to Branch 268 on June 19, 2006 pursuant to the Order of the former Court dated May 25, 2006. [14] After trial on the merits, the RTC, Branch 268 found respondents to have breached the Letter-Agreement for failure to assume FWC's loan obligations with the banks. The RTC found that while petitioners admittedly have not yet transferred the shares of stock to respondents, such transfer was not a condition for the latter to undertake its contractual duty to accomplish the restructuring of FWC loans with the banks. According to the RTC, the Letter-Agreement did not state when exactly the shares of stocks should be transferred. The agreement, however, provides that all shares shall be transferred "for and in consideration of the sum of [₱63,500,000.00.]" Hence, since said amount was never fully paid, no transfer of shares can occur and respondents cannot use the same to justify their failure to comply with their obligations under the Letter-Agreement. For such breach, the RTC ruled that rescission was proper. [15]

The RTC also found that due to respondents' failure to comply with their contractual obligations, petitioners were constrained to place FWC under rehabilitation, for which they suffered consequential damages in the amount of ₱12,568,493.18 **"per Exhibits** 'E' **to 'BB'**." [16] In conclusion, the RTC ruled that by virtue of the rescission, respondents' partial payment amounting to ₱11,462,000.00 should be restituted, while the consequential damages amounting to ₱12,568,493.18 should be awarded to petitioners. It disposed, thus:

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[13] *Id*.

[14] *Id*. at 243.

[15] *Id*. at 254-256.

[16] *Id*. at 256.

WHEREFORE, foregoing premises considered, judgment is hereby rendered as follows:

1. The JUNE 12, 1996 letter-agreement entered into by the parties is RESCINDED and is declared of no force and effect;

2. Ordering [respondents] to pay [petitioners] jointly and severally the following sums:

2.1 Php 1,106,493 .18 representing the actual damages caused by the stoppage of operation. (Php 12,568,493.18 less Phpl 1,462,000.00).

2.2 Php250,000.00 as and by way of attorney's fees; and

2.3 Cost of Suit.

SO ORDERED. [17]

Court of Appeals' Ruling

In its assailed Decision, the CA affirmed the findings of the RTC as to respondents' breach and the rescission of the Letter-Agreement. It deleted, however, the award of actual damages for failure to find basis therefor, as there were no receipts or any competent evidence on record to prove the alleged cost; and the RTC Decision did not explain how it arrived with the said figures. The CA found on record, only a summary of the rehabilitation cost, which reflects a lower amount and is, at any rate, self-serving. Citing jurisprudence, the CA ruled the credence can be given only to claims which are duly supported by receipts. The CA further deleted the attorney's fees, also, for failure of the RTC to explain such award in its decision.[18] The CA, thus, disposed as follows:

WHEREFORE, premises considered, the instant Appeal is hereby **PARTLY GRANTED.** Accordingly, the 1 September 2008 Decision of the Regional Trial Court of Pasig City, Branch 268 in Civil Case No. 65881 is **AFFIRMED with MODIFICATION.** The award of actual damages and attorney's fees to [petitioners] are deleted for

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[17] *Id*. at 256-257.

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

lack of basis. Meanwhile, [petitioners] are ordered to return to [respondents] the amount of PhP11,462,642.00.

SO ORDERED. [19]

Petitioners received a copy of the said Decision on September 26, 2013. [20] Hence, it has until October 11, 2013 to file a motion for reconsideration thereto. Petitioners, however, discovered that Exhibits "Eseries" through "S-series", *i.e.,* documentary evidence, which include receipts, vouchers, requisition slips, invoices, and purchase orders, on the rehabilitation cost and other pecuniary losses allegedly sustained as a result of respondents' non-performance of their contractual obligations, were nowhere to be found in the records transmitted by the RTC to the CA. Thus, instead of filing a motion for reconsideration, petitioners filed a Manifestation and Urgent Motion on October 8, 2013, praying that the CA issue an order directing the Branch Clerk of Court of Branch 268, to transmit the said documentary evidence to the CA. Petitioners also prayed that the period for the filing of their partial motion for reconsideration be suspended until such time that the subject exhibits be transmitted to the CA. [21]

Acting upon the said manifestation and motion, the CA issued a Resolution[22] dated September 3, 2014, ordering the Branch Clerk of Court, Branch 268, RTC, Pasig, to transmit to the CA the missing Exhibits "Eseries" to "S-series" and their sub-markings, within 10 days from notice.

No compliance, however, was undertaken with the said Resolution.

Hence, on March 13, 2015, the CA issued a Resolution[23] directing the Branch Clerk of Court to show cause why no

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[19] *Id*. at 64.

[20] *Id*. at 21.

[21] *Id*. at 21-22.

[22] *Id.* at 369-371.

[23] *Id*. at 372.

disciplinary action should be meted against him/her and ordering him/her to comply anew within the same period of 10 days.

On April 16, 2015, the Acting Branch Clerk of Court of Branch 268, filed a Letter-Compliance stating that she failed to comply with the Resolution due to inadvertence. She also stated that she could not transmit the subject exhibits considering that the same were not among those transmitted to Branch 268 by Branch 263 when the case was re-raffled to the former as shown in the transmittal letter dated February 26, 2009. [24]

On November 12, 2015, the CA issued the assailed Resolution, denying petitioners' Manifestation and Urgent Motion.

The CA ruled that the period for filing the motion for reconsideration is non-extendible. Petitioners filing of the Manifestation and Urgent Motion did not toll the running of the period to file the motion for reconsideration. Having failed to file its motion for partial reconsideration within the 15-day period, the CA's September 12, 2013 Decision has already attained finality. [25]

The CA continued to rule that even if petitioners were able to timely file a motion for partial reconsideration to question the deletion of the actual damages and attorney's fees, still it would not merit the reversal or modification of the CA Decision, considering that it did not have any basis in awarding the said actual damages and attorney's fees, thus:

> **WHEREFORE,** premises considered, [petitioners'] Manifestation and Urgent Motion praying that the running of the prescriptive period for filing Motion for Partial Reconsideration be suspended pending transmittal of the documentary exhibits is **DENIED.**
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> **SO ORDERED.** [26]

Undaunted, petitioners filed a motion for reconsideration of the CA's November 12, 2015 Resolution, which was likewise

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[24] *Id*. at 68.

[25] *Id*. at 69.

[26] *Id*. at 70.

denied in its June 2, 2016 assailed Resolution, the dispositive portion thereof reads:

WHEREFORE, premises considered, [petitioners'] Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED. [27]

Hence, this petition.

Issues

(1) Did the CA err in deleting the award for actual damages?

(2) Did the CA err in deleting the attorney's fees?

This Court's Ruling

The petition is partly meritorious.

In awarding actual damages, the RTC, Branch 268 merely has this to say:

Due to the non-compliance by the [respondents] of their obligations, [petitioners] were compelled to rehabilitate the plant of FWC and suffered consequential damages in the amount of Php12,568,493.18 as per Exhibits "E" to "BB". Considering that [respondents] already made a partial payment in the amount of Php 11,462,000.00, equity and fair play dictates that said amount s[h]ould be set off with the amount spent by [petitioners] in the rehabilitation of [FWC]. [28] (Emphasis supplied)

As correctly observed by the CA, however, this Court could not find any basis for the grant of such amount for actual damages. This Court has, time and again, ruled in no uncertain terms that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty. A court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the *actual amount* thereof. It must point out specific facts that could provide the

[27] *Id*. at 74.

[28] *Id*. at 256.

gauge for measuring whatever compensatory or actual damages were borne. [29]

In this case, petitioners argue that, contrary to the CA's conclusion, Branch 268 has a basis in awarding the Php12,568,493.18 actual damages, *i.e.,* Exhibits "E" to "BB". The fact, however, that said exhibits were presented before Branch 263, coupled with the fact that said vital evidence were not transmitted to Branch 268 for examination to aid it in its decision, leave clouds of doubts to our minds as to how the latter court arrived at said figures.

It is noteworthy, that even up to present, the said vital exhibits are nowhere to be found.

To be clear, this Court's ruling on the matter of actual damages is not merely based on the Branch 263's failure to transmit the subject evidence to Branch 268 and Branch 268's failure to specifically explain the basis of its award of actual damages. A careful reading of the transcript of stenographic notes (TSN)[30] of the hearings before Branch 263 on the matter, would also show that no such amount of actual damages was proven with the reasonable certainty contemplated by our jurisprudential rules on the matter.

Further, the TSNs would show that aside from alleged rehabilitation costs and business closure expenses, the alleged consequential damages claimed include the amount shelled out to update their loan obligations with the banks. Petitioners argue that these should have been respondents' obligation had they proceeded with the sale of FWC. [31] This position is erroneous.

Mutual restitution is required in cases involving rescission like in this case. This means bringing the parties back to their original status prior to the inception of the contract.[32] These

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[29] *Mr. & Mrs. Tan v.* G*.V.T Engineering Services,* 529 Phil. 751, 770 (2006) (emphasis supplied).

[30] *Rollo,* pp. 390-470.

[31] *Id*. at 43.

[32] *Unlad Resources Development Corporation v. Dragon,* 582 Phil. 61, 79 (2008).

loan obligations are petitioners' outstanding loan obligations prior to the Letter-Agreement. While respondents undertook to assume said liabilities in the Letter-Agreement, they cannot be made to answer therefor, by virtue of the rescission of the said agreement. Rescission is not merely to terminate the contract and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made. [33] Hence, petitioners' outstanding loan obligations with the banks cannot be made part of the consequential damages it suffered due to the rescission of the Letter-Agreement.

Thus, the CA did not err in deleting the award of actual damages for lack of evidentiary basis.

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, petitioners correctly argue that they are entitled to temperate damages. Temperate or moderate damages may be recovered when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. [34]

There is no question that petitioners suffered damages due to the breach committed by the respondents. The cessation of FWC's operations, the termination of its employees, and the process of re-operating the business due to the failed tum over to the respondents necessarily entailed expenses. However, as above-discussed, petitioners failed to present competent proof of the exact amount of such pecuniary loss to warrant an award of actual damages. In view of the circumstances obtaining in this case, the Court finds the amount of ₱500,000.00 just and reasonable.

In view of the courts *a quo's* findings that respondents committed breach in their agreement with petitioners, we also

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[33] *Id*. at 80.

[34] *Engr. Duenas v. Guce-Africa,* 618 Phil. 10, 22 (2009).

find it proper to award exemplary damages in this case. Exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured. "Business owners must always be forthright in their dealings. They cannot be allowed to renege on their obligations, considering that these obligations were freely entered into by them." [35] We, thus, find the grant of ₱500,000.00 exemplary damages proper in this case.

Anent the award of attorney's fees, the CA did not err in ruling that the factual and legal justification in granting the same should be expressly stated in the decision; granting it in the dispositive portion of the judgment is not enough as its basis is being improperly left to speculation and conjecture.[36] However, in view of the award of exemplary damages, [37] in consonance with Article 2208(1) [38] of the New Civil Code, and petitioners were constrained to litigate to protect their interests due to respondents' breach, this Court finds the award of attorney's fees in the amount of ₱100,000.00 which is equivalent to I0% of the total amount adjudged the petitioners, proper.

In accordance with the principle of mutual restitution, the RTC's order upon petitioners, as affirmed by the CA, to return the amount of ₱11,462,642.00 to the respondents, stands.

Finally, pursuant to the latest jurisprudence, [39] the monetary awards adjudged being in the nature of forbearance of money, shall earn an interest at the rate of 6% *per annum* from finality of this judgment until full satisfaction thereof.

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[35] *Arco Pulp and Paper Co, Inc. v. Lim,* 737 Phil. 133, 153 (2014).

[36] *Abobon v. Abobon,* 692 Phil. 530, 545 (2012).

[37] *Tan v. OMC Carriers, Inc.,* 654 Phil. 443, 458(2011)

[38] CIVIL CODE, Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except: (I) When exemplary damages are awarded.

[39] *Nacar v. Gallery Frames,* 716 Phil. 267, 279 (2013).

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED.** The Decision dated September 12, 2013, of the Court of Appeals in CA-G.R. CV No. 92867 is hereby **AFFIRMED with MODIFICATION.** Accordingly, the order to delete the actual damages awarded to petitioners, STANDS. In lieu thereof, respondents are ordered to pay petitioners temperate damages in the amount of ₱500,000.00. Respondents are further ordered to pay petitioners exemplary damages in the amount of ₱500,000.00 and attorney's fees in the amount of ₱100,000.00. On the other hand, the order upon petitioners to return to respondents the amount of ₱11,462,642.00, also STANDS. The monetary awards adjudged to both parties shall earn an interest rate of 6% *per annum* from finality of this judgment until full satisfaction thereof.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Lazaro-Javier*, *JJ*., concur.

SECOND DIVISION

[G.R. No. 225752. March 27, 2019]

SEVERINO A. YU, RAMON A. YU, AND LORENZO A. YU, *petitioners, vs.* **DAVID MIRANDA, MORNING STAR HOMES CHRISTIAN ASSOCIATION - SAN JOSE BIÑAN - HOMEOWNERS ASSOCIATION, INC., TIMMY RICHARD T. GABRIEL, AND LILIBETH GABRIEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; INTERVENTION CAN NO LONGER BE ALLOWED IN

A CASE ALREADY TERMINATED BY FINAL JUDGMENT.— [I]t is not disputed by any party that Civil Case No. B-8623 has already been decided with finality; the RTC's Decision dated May 19, 2013 is already final and executory. The case where the petitioners Yu seek to intervene in has already ceased. Jurisprudence has made it clear that **"[i]ntervention can no longer be allowed in a case already terminated by final judgment."**

2. ID.; ID.; PARTIES; NECESSARY PARTIES; THE NON-INCLUSION OF NECESSARY PARTIES DOES NOT PREVENT THE COURT FROM PROCEEDING IN THE ACTION, AND THE JUDGMENT RENDERED THEREIN SHALL BE WITHOUT PREJUDICE TO THE RIGHTS OF SUCH NECESSARY PARTY.— The only involvement of the petitioners Yu in Civil Case No. B-8623 is their claim over the subject properties registered in the name of respondent Morning Star, which were subjected to preliminary attachment to secure the judgment debt. The only purpose of the petitioners Yu's attempt to intervene is to question the inclusion of the subject properties in the coverage of the preliminary attachment imposed by the RTC. It is apparent that the involvement of the petitioners Yu in the instant case is incidental to the cause of action subject of Civil Case No. B-8623, *i.e.,* recovery of sum of money based on an obligation to pay. The issue on the ownership of the subject properties and the propriety of their inclusion in the preliminary attachment is not determinative whatsoever as to whether respondent Miranda has a cause of action for recovery of money against respondents Morning Star, Timmy, and Lilibeth. In other words, the petitioners Yu are not parties in interest without whom no final determination of the recovery of sum of money case can be had - they are not indispensable parties. At most, the petitioners Yu may only be considered necessary parties as they are not indispensable, but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. It must be stressed that **the non-inclusion of necessary parties does not prevent the court from proceeding in the action,** and the judgment rendered therein shall be without prejudice to the rights of such necessary party.

3. ID.; ID.; INTERVENTION; THE FILING OF A MOTION FOR INTERVENTION IS NOT NECESSARY AND INDISPENSABLE FOR THE PARTIES TO QUESTION THE INCLUSION OF THE SUBJECT PROPERTIES IN THE COVERAGE OF THE WRIT OF PRELIMINARY ATTACHMENT .— [U]nder the Rules of Court, the filing of a motion for intervention was not even absolutely necessary and indispensable for the petitioners Yu to question the inclusion of the subject properties in the coverage of the Writ of Preliminary Attachment. Under Rule 57, Section 14 of the Rules of Court, if the property attached is claimed by any third person, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. No such affidavit was filed by the petitioners Yu.

4. ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; AN ATTACHMENT OR GARNISHMENT IS GENERALLY ANCILLARY TO, AND DEPENDENT ON, A PRINCIPAL PROCEEDING, EITHER AT LAW OR IN EQUITY, WHICH HAS FOR ITS PURPOSE A DETERMINATION OF THE JUSTICE OF A CREDITOR'S DEMAND. ANY RELIEF AGAINST SUCH ATTACHMENT COULD BE DISPOSED OF ONLY IN THAT CASE.—[J]urisprudence has held that a writ of preliminary attachment is only a provisional remedy issued upon order of the court where an action is pending; it is an ancillary remedy. **Attachment is only adjunct to the main suit. Therefore, it can have no independent existence apart from a suit on a claim of the plaintiff against the defendant.** In other words, an attachment or garnishment is generally ancillary to, and dependent on, a principal proceeding, either at law or in equity, which has for its purpose a determination of the justice of a creditor's demand. **Any relief against such attachment could be disposed of only in that case.** Hence, with the cessation of Civil Case No. B-8623, with the RTC's Decision having

attained the status of finality, the attachment sought to be questioned by the petitioners Yu has legally ceased to exist.

5. ID.; ID.; PARTIES; A JUDGMENT CANNOT BIND PERSONS WHO ARE NOT PARTIES TO THE ACTION.— The petitioners Yu bemoan that there is supposedly no other remedy available on their part to protect their interests over the subject properties. Such supposition is incorrect. Under Rule 3, Section 9 of the Rules of Court, while the non-inclusion of necessary parties does not prevent the court from proceeding in the action, **the judgment rendered therein shall be without prejudice to the rights of such necessary party.** It is elementary that **a judgment cannot bind persons who are not parties to the action.**

6. ID.; ID.; JUDGMENTS; IF THE JUDGMENT OBLIGOR NO LONGER HAS ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY LEVIED UPON, THEN THERE CAN BE NO LIEN THAT MAY BE CREATED IN FAVOR OF THE JUDGMENT OBLIGEE BY REASON OF THE LEVY.— [T]he petitioners Yu themselves acknowledged that **they are already pursuing another remedy to recover the subject properties from respondent Morning Star when it filed Civil Case No. B-9126 before Branch 25 of the RTC.** The petitioners Yu readily admit that in Civil Case No. B-9126, which is currently pending before Branch 25 of the RTC, they filed an action for specific performance or rescission of contract to sell, annulment of deed of sale, cancellation of titles, reconveyance and damages against respondents Morning Star, Lilibeth, and Timmy precisely to gain ownership over the subject properties, which is the exact same reason that impelled the petitioners Yu to intervene in Civil Case No. B-8623. In the eventuality that the petitioners Yu's action in Civil Case No. B-9126 will prosper, consequently, the subject properties would not be levied in favor of respondent Miranda in satisfaction of the final and executor Decision in Civil Case No. B-8623 :and would necessarily be awarded to the petitioners Yu. As held in the recently decided case of *Miranda v. Sps. Mallari, et al.,* "[i]f the judgment obligor no longer has any right, title or interest in the property levied upon, then there can be no lien that may be created in favor of the judgment obligee by reason of the levy." Hence, it cannot be said that there is no remedy available on the part of the petitioners Yu.

APPEARANCES OF COUNSEL

The Law Firm Of Balagtas-gupo & Associates for petitioners.
Tomas J. Caspe for respondent David Miranda.
Edgardo A. Arandia for respondents Timmy Richard T. Gabriel and Lilibeth P. Gabriel.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Severino A. Yu (Severino), Ramon A. Yu (Ramon) and Lorenzo A. Yu (Lorenzo) (collectively the petitioners Yu), assailing the Decision[2] dated April 22, 2016 (assailed Decision) and Resolution[3] dated July 13, 2016 (assailed Resolution) of the Court of Appeals, Special Fifth Division (CA) in CA-G.R. SP. No. 132394.

The Facts and Antecedent Proceedings

As culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

The instant case arose from an action for Sum of Money with Prayer for Issuance of Preliminary Attachment (Complaint)[4] filed on March 8, 2012 by respondent David Miranda (respondent Miranda) against respondents Morning Star Homes Christian Association (respondent Morning Star), Timmy Richard T. Gabriel (Timmy) and Lilibeth Gabriel (Lilibeth) before the Regional Trial Court of Biñan City, Laguna, Branch 24 (RTC).

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[1] *Rollo*, pp. 10-54.

[2] *Id.* at 56-65; penned by Associate Justice Stephen C. Cruz, with Associate Justices Elihu A. Ybañez and Ramon Paul L. Hernando (now a Member of this Court) concurring.

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

[4] *Id.* at 110-117.

The case was docketed as Civil Case No. B-8623, titled *David Miranda v. Miranda Morning Star Homes Christian Association, Timmy Richard T. Gabriel and Lilibeth Gabriel.*

In the Complaint, respondent Miranda alleged that respondent Morning Star sought to establish a housing project to be financed by the Home Development Mutual Fund (HDMF) or Pag-IBIG through the Group Land Acquisition and Development (GLAD) Financing Program. Respondent Miranda entered into a contract with respondent Morning Star for the supply and financing of the backfilling material for the latter's housing project. Upon the delivery of the filling material, respondent Morning Star issued checks to respondent Miranda with "[t]he principal amount of x x x P1,285,667.60 with agreed interests of 5% per month at ₱2,814,341.70."[5] However, it was alleged that respondent Morning Star defaulted on its obligation to pay respondent Miranda, with the total amount of unpaid obligation of respondent Morning Star ballooning to P4,100,009.30. Respondent Miranda also prayed for the issuance of preliminary attachment over 1.56 hectares of land registered under the name of respondent Morning Star located in Calamba Laguna, covered by Transfer Certificate of Title (TCT) Nos. T-788493 to T-788751.

On March 12, 2012, the RTC issued an Order[6] granting respondent Miranda's prayer for preliminary attachment. Consequently, a Writ of Preliminary Attachment[7] was issued. As evidenced by the Notice of Attachment[8] issued by the Sheriff of the RTC, the properties covered by TCT Nos. T-788493 to T-788751 (subject properties), which are registered in the name of respondent Morning Star, were attached to secure the outcome of the trial and to answer for the pecuniary liability of respondent Morning Star to respondent Miranda.

Sometime in March 2013, the petitioners Yu became aware of Civil Case No. B-8623. On April 29, 2013, they filed their

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[5] *Id.* at 112.

[6] *Id.* at 118-121. Issued by Presiding Judge Marino E. Rubia.

[7] *Id.* at 122-123.

[8] *Id.* at 124-139. Document labeled as "Notice of Attachment Upon Realty."

Motion for Leave to Intervene,[9] claiming that they have legal interest in the properties subject of the preliminary attachment. The petitioners Yu claimed that while the subject properties were registered in the name of respondent Morning Star, the latter is a mere nominal owner of the subject properties since they were the real owners; and that they had transferred the titles covering the subject properties to respondent Morning Star only to facilitate the latter's loan with HDMF under the GLAD program. The petitioners Yu further averred that the Deed of Absolute Sale which they executed in favor of respondent Morning Star was null and void *ab initio* for lack of consideration.

On May 19, 2013, the RTC, through public respondent Presiding Judge Marino E. Rubia (Rubia), rendered its Decision[10] granting the respondent Miranda's Complaint. The said Decision eventually became final and executory.

Thereafter, in an Order[11] dated July 29, 2013, the RTC denied the petitioners Yu's Motion for Leave to Intervene, stating that they are not the registered owners of the properties, and that their rights may be protected in a separate proceeding.

On October 25, 2013, the petitioners Yu filed a Rule 65 Petition for *Certiorari* (Rule 65 Petition)[12] before the CA. The Rule 65 Petition was docketed as CA-G.R. SP No. 132394.

On December 23, 2013, respondent Miranda filed his Comment[13] on the Petition for *Certiorari* before the CA, alleging that the petitioners Yu did not file a motion for reconsideration of the RTC's Order dated July 29, 2013, and that the petitioners Yu had already filed before the RTC a complaint for nullification of the Deed of Sale, docketed as Civil Case No. B-9126. Thus,

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[9] *Id*. at 140-151.

[10] *Id*. at 293-303.

[11] *Id*. at 105.

[12] *Id.* at 71-104.

[13] *Id*. at 233-243. Document labeled as "Comment with Motion to Admit."

according to respondent Miranda, the petitioners Yu would be able to pursue their claims in that proceeding instead. On January 13, 2014, the petitioners Yu filed their Reply to Respondent's Comment.[14]

On June 14, 2014, the petitioners Yu filed an Urgent Motion for Issuance of Temporary Restraining Order (TRO) and Preliminary Injunction before the CA to prohibit the RTC from implementing/executing its Decision dated May 19, 2013 in Civil Case No. B-8623. On June 18, 2014, the CA granted the petitioners Yu's prayer for TRO. Thereafter, the petitioners Yu verified the status of Civil Case No. B-8623 with the RTC. It was only then that the petitioners Yu discovered that the RTC had already rendered the Decision dated May 19, 2013. Hence, the petitioners Yu filed a Supplemental Motion dated June 16, 2014 to enjoin the implementation of the RTC's Decision dated May 19, 2013. On July 21, 2014, the CA issued a Resolution granting the petitioners Yu's prayer for the issuance of a preliminary injunction.

The Ruling of the CA

In the assailed Decision, the CA dismissed the petitioners Yu's Rule 65 Petition.

Even as the CA expressed its view that the RTC should have allowed the petitioners Yu to intervene because the latter are claiming they are the real owners of the properties subject of a writ of preliminary attachment. Without a doubt, if their allegations were later proven to be valid claims, the petitioners Yu would surely have a legal interest in the matter in litigation. To the mind of the CA, if the petitioners Yu would not be allowed to intervene, the proceedings would become more unnecessarily complicated, expensive and interminable since it might turn out that the properties attached do not belong to respondent Morning Star,[15] it nevertheless denied the Rule 65 Petition because the issue has already been rendered **moot and academic**

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[14] *Id.* at 273-283.

[15] *Id.* at 62.

in view of the fact that the Decision dated May 19, 2013 of the RTC already became **final and executory**, *viz.*:

> In view of the final and executory Decision dated May 19, 2013 of the RTC in Civil Case No. B-8623, the present petition is now moot and academic. It must be stressed that once a judgment is issued by the court in a case, and that judgment becomes final and executory, the principle of immutability of judgments automatically operates to bar any modification of the judgment. The modification of a judgment requires the exercise of the court's discretion. At that stage, when the judgment has become final and executory, the court is barred from exercising discretion on the case; the bar exists even if the modification is only meant to correct an erroneous conclusion of fact or law as these are discretionary acts that rest outside of the court's purely ministerial jurisdiction.[16]

Owing to the status of the RTC's Decision dated May 19, 2013 as final and executory, the CA clarified that its discussion on the Motion for Leave to Intervene of the petitioners Yu was only "to indulge in purely academic discussion."[17]

The petitioners Yu filed their Motion for Partial Reconsideration on May 17, 2016, which was denied by the CA in the assailed Resolution.

Hence, the instant appeal.

Respondent Miranda filed his Comment with Manifestation[18] on February 6, 2017. In response, the petitioners Yu filed their Reply to Comment[19] on March 14, 2017. On their part, respondents Timmy and Lilibeth filed their Comment[20] on July 7, 2017. The petitioners Yu responded by filing their Reply[21] on March 14, 2018.

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[16] *Id*. at 59.

[17] *Id*.

[18] *Id*. at 439-447.

[19] *Id*. at 448-461.

[20] *Id*. at 465-467.

[21] *Id*. at 470-478.

Issue

The arguments raised by the petitioners Yu in the instant Petition can be encapsulated in this singular issue — whether the petitioners Yu may still be allowed to intervene in Civil Case No. B-8623 despite the unassailable fact that the said case has already been decided upon with finality.

The Court's Ruling

The instant appeal is unmeritorious.

The instant Petition centers on the RTC's Order dated July 29, 2013. The petitioners Yu maintain that the CA erred when it failed to render a judgment setting aside the said Order, which denied the petitioners Yu's Motion for Leave to Intervene in Civil Case No. B-8623, and failed to allow the latter to intervene and participate in the said case. In addition, the petitioners Yu also allege that the CA was mistaken in not nullifying and setting aside the Decision that was rendered by the RTC during the pendency of their Rule 65 Petition.

Foremost, it is not disputed by any party that Civil Case No. B-8623 has already been decided with finality; the RTC's Decision dated May 19, 2013 is already final and executory. The case where the petitioners Yu seek to intervene in has already ceased. Jurisprudence has made it clear that "**[i]ntervention can no longer be allowed in a case already terminated by final judgment**."[22]

Further, it must be noted that Civil Case No. B-8623 is centered on the recovery of sum of money pursued by respondent Miranda against respondents Morning Star, Timmy, and Lilibeth on the basis of the latter's obligation to pay the former for the supply and financing of the backfilling materials provided by respondent Miranda for the respondents' housing project. The petitioners Yu have no participation whatsoever in the transaction entered

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[22] *Chavez v. Presidential Commission on Good Government*, 366 Phil. 863, 867 (1999), citing *Rabino v. Cruz*, 294 Phil. 480 (1993). (Emphasis supplied)

into by the respondents Morning Star, Timmy, and Lilibeth with respondent Miranda. The said case does not concern itself with the question of ownership over the subject properties.

The only involvement of the petitioners Yu in Civil Case No. B-8623 is their claim over the subject properties registered in the name of respondent Morning Star, which were subjected to preliminary attachment to secure the judgment debt. The only purpose of the petitioners Yu's attempt to intervene is to question the inclusion of the subject properties in the coverage of the preliminary attachment imposed by the RTC. It is apparent that the involvement of the petitioners Yu in the instant case is incidental to the cause of action subject of Civil Case No. B-8623, *i.e.*, recovery of sum of money based on an obligation to pay. The issue on the ownership of the subject properties and the propriety of their inclusion in the preliminary attachment is not determinative whatsoever as to whether respondent Miranda has a cause of action for recovery of money against respondents Morning Star, Timmy, and Lilibeth. In other words, the petitioners Yu are not parties in interest without whom no final determination of the recovery of sum of money case can be had - they are not indispensable parties.[23]

At most, the petitioners Yu may only be considered necessary parties as they are not indispensable, but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.[24] It must be stressed that **the non-inclusion of necessary parties does not prevent the court from proceeding in the action**, and the judgment rendered therein shall be without prejudice to the rights of such necessary party.[25]

In fact, under the Rules of Court, the filing of a motion for intervention was not even absolutely necessary and indispensable

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[23] RULES OF COURT, Rule 3, Sec. 7.

[24] *Id*. at Sec. 8.

[25] *Id*. at Sec. 9.

for the petitioners Yu to question the inclusion of the subject properties in the coverage of the Writ of Preliminary Attachment.

Under Rule 57, Section 14 of the Rules of Court, if the property attached is claimed by any third person, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. No such affidavit was filed by the petitioners Yu.

Moreover, jurisprudence has held that a writ of preliminary attachment is only a provisional remedy issued upon order of the court where an action is pending; it is an ancillary remedy. **Attachment is only adjunct to the main suit. Therefore, it can have no independent existence apart from a suit on a claim of the plaintiff against the defendant**. In other words, an attachment or garnishment is generally ancillary to, and dependent on, a principal proceeding, either at law or in equity, which has for its purpose a determination of the justice of a creditor's demand. **Any relief against such attachment could be disposed of only in that case.**[26]

Hence, with the cessation of Civil Case No. B-8623, with the RTC's Decision having attained the status of finality, the attachment sought to be questioned by the petitioners Yu has legally ceased to exist.

The petitioners Yu maintain that the Court has at times allowed the intervention of parties even if judgment has been rendered and the Decision has attained finality, citing the case of *Navarro v. Ermita*.[27]]The invocation of the said case is grossly misplaced, considering that in the cited case, the primordial consideration

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[26] *Adlawan v. Tomol*, 262 Phil. 893, 904-905 (1990).

[27] 626 Phil. 23 (2010).

was the grave violation of the Constitution involved therein. It goes without saying that the instant case does not involve such an issue.

The petitioners Yu bemoan that there is supposedly no other remedy available on their part to protect their interests over the subject properties. Such supposition is incorrect. As already explained above, under Rule 3, Section 9 of the Rules of Court, while the non-inclusion of necessary parties does not prevent the court from proceeding in the action, t**he judgment rendered therein shall be without prejudice to the rights of such necessary party.** It is elementary that **a judgment cannot bind persons who are not parties to the action**.[28]

To once more, Civil Case No. B-8623 did not deal whatsoever as to who has the right of ownership over the subject properties. The said case only concerned itself with the action for recovery of sum of money instituted by respondent Medina against respondents Morning Star, Timmy, and Lilibeth. Hence, any action by the petitioners Yu questioning the registration of the TCTs in the name of respondent Morning Star in another proceeding will not interfere nor intrude whatsoever with the RTC's final and executory Decision in Civil Case No. B-8623.

In fact, the petitioners Yu themselves acknowledged that **they are already pursuing another remedy to recover the subject properties from respondent Morning Star when it filed Civil Case No. B-9126 before Branch 25 of the RTC.**[29] The petitioners Yu readily admit that in Civil Case No. B-9126, which is currently pending before Branch 25 of the RTC, they filed an action for specific performance or rescission of contract to sell, annulment of deed of sale, cancellation of titles, reconveyance and damages against respondents Morning Star, Lilibeth, and Timmy precisely to gain ownership over the subject properties, which is the exact same reason that impelled the petitioners Yu to intervene in Civil Case No. B-8623.

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[28] *Rabino v. Cruz*, 294 Phil. 480, 486 (1993).

[29] *Rollo*, p. 451.

In the eventuality that the petitioners Yu's action in Civil Case No. B-9126 will prosper, consequently, the subject properties would not be levied in favor of respondent Miranda in satisfaction of the final and executory Decision in Civil Case No. B-8623 and would necessarily be awarded to the petitioners Yu. As held in the recently decided case of *Miranda v. Sps. Mallari, et al.*,[30] "[i]f the judgment obligor no longer has any right, title or interest in the property levied upon, then there can be no lien that may be created in favor of the judgment obligee by reason of the levy."[31] Hence, it cannot be said that there is no remedy available on the part of the petitioners Yu.

For the foregoing reasons, the instant Petition is denied for lack of merit.

WHEREFORE, the instant appeal is hereby **DENIED**. The Decision dated April 22, 2016 and Resolution dated July 13, 2016 of the Court of Appeals, Special Fifth Division in CA-G.R. SP. No. 132394 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 226648-49. March 27, 2019]

PROCESO T. DOMINGO, ANGELITO D. TWAÑO and SUSAN M. SOLO, *petitioners, vs.* **HON. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,** *respondent.*

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[30] G.R. No. 218343, November 28, 2018.

[31] *Id*. at 12.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE CHARGES; AN ACT DONE IN GOOD FAITH, WHEN THE SAME CONSTITUTES ONLY AN ERROR OF JUDGMENT WITH NO ULTERIOR MOTIVES AND/OR PURPOSES, CONSTITUTES SIMPLE NEGLIGENCE.— [T]he CA correctly affirmed the OP's finding of simple negligence on the part of petitioners. Negligence is the omission of the diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation. Specifically, an act done in good faith, when the same constitutes only an error of judgment with no ulterior motives and/or purposes, constitutes simple negligence.

2. ID.; ID.; ID.; ID.; WHILE IT IS TRUE THAT THE ACT OF AFFIXING A PUBLIC OFFICER'S SIGNATURE ON A DOCUMENT IN THE ORDINARY COURSE OF BUSINESS DOES NOT AUTOMATICALLY MEAN THAT HE/SHE BECOMES A PARTICIPANT IN AN ILLEGAL OR ANOMALOUS TRANSACTION, HOWEVER, WHEN THE VERY FACE OF THE DOCUMENT REFLECTS A POSSIBLE IRREGULARITY, THEN THERE ARISES AN ADDITIONAL REASON FOR THE PUBLIC OFFICER TO EXAMINE THE DOCUMENT IN MORE DETAIL AND EXERCISE A GREATER DEGREE OF DILIGENCE BEFORE SIGNING THE DOCUMENT. — Here, as ranking officials in their respective offices and as members of the CESB, petitioners certainly cannot justify the lack of diligence in the performance of their functions as CESB members by the mere expediency of claiming that they did not know the documents they were signing or that they were unable to verify the relevant CESB Resolutions before signing because the documents were "lumped together." While it is true that the act of affixing a public officer's signature on a document in the ordinary course of business does not automatically mean that he/she becomes a participant in an illegal or anomalous transaction, however,

when the very face of the document reflects a possible irregularity, then there arises an additional reason for the public officer to examine the document in more detail and exercise a greater degree of diligence before signing the document. Here, considering that they allegedly - albeit the Minutes of the Meetings do not support it — "stepped out" during the CESB deliberations when it was time to discuss their respective applications, petitioners were aware of the possible conflict of interest that would arise in their participation in the CESB deliberations and should have, when presented with the Resolutions, been more circumspect in reviewing the same before affixing their signatures thereon. Failure to do so results in negligence in the performance of their functions.

3. ID.; ID.; ID.; THE POWER OF APPOINTMENT AND CONVERSELY, THE POWER TO REMOVE, IS ESSENTIALLY DISCRETIONARY AND CANNOT BE CONTROLLED, NOT EVEN BY THE COURT, AS LONG AS IT IS EXERCISED PROPERLY BY THE APPOINTING AUTHORITY; THE INVALIDITY OF THE RECOMMENDATIONS RENDERED INVALID THE CONFERMENT OF CAREER EXECUTIVE SERVICE OFFICER (CESO) RANKS FLOWING FROM IT. — [T]he revocation of petitioners' CESO conferment necessarily flows from the invalidity of Resolution Nos. 871 and 872 insofar as petitioners' appointments are concerned. To be clear, persons occupying positions in the CES are under the disciplinary authority of the President. Since petitioners' act of signing the Resolutions recommending their own appointments is contrary to the ethical standards imposed on, and the due diligence demanded of, public officers, then necessarily, the OP validly considered the CESB recommendations concerning their own appointments as invalid. As aptly pointed out by the ES, the recommendations being invalid, the conferment of CESO ranks flowing from those invalid recommendations are likewise invalid. In this regard, suffice it to state that the power of appointment and conversely, the power to remove, is essentially discretionary and cannot be controlled, not even by the Court, as long as it is exercised properly by the appointing authority.

APPEARANCES OF COUNSEL

The Law Firm of Peig Peig & Liberato for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] (*Petition*) under Rule 45 of the Rules of Court filed by petitioners Proceso T. Domingo (Domingo), Angelito D. Twaño (Twaño) and Susan M. Solo (Solo), against herein respondent Executive Secretary (ES) Paquito N. Ochoa, Jr., assailing the Court of Appeals (CA): (1) ***Decision***[2] **dated September 21, 2015** and (2) ***Resolution***[3] **dated August 19, 2016** in CA-G.R. SP No. 130590 and SP No. 130591.

In the assailed *Decision* and *Resolution*, the Office of the President (OP), through the ES, found petitioners guilty of simple negligence and imposed on them the penalty of suspension for three (3) months. The OP likewise revoked the Career Executive Service Officer (CESO) ranks previously conferred upon petitioners.[4]

The Antecedent Facts

The Career Executive Service Board (CESB) was created by virtue of Presidential Decree No. 1, dated September 24, 1972, to serve as the governing body of the Career Executive Service (CES). One of the functions of the CESB is to review,

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[1] *Rollo*, pp. 3-32.

[2] *Id*. at 33-43. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Agnes Reyes Carpio, concurring.

[3] *Id*. at 44-45.

[4] *Id*. at 139.

deliberate and vote upon applications for original appointments or promotion of CESO ranks of government officials.[5] In January 2010, Domingo, then Undersecretary of the Department of National Defense (DND), Twaño, the Regional Director of the Department of Public Works and Highways (DPWH)[6] and Solo, then Director IV at the Presidential Management Staff (PMS), were appointed by President Gloria Macapagal-Arroyo as members of the CESB to serve for a term of six (6) years.[7]

On June 2, 2010, the CESB convened in Tacloban City to deliberate on the applications for 30 presidential appointees — included in these applications were those of petitioners. Following the deliberations, the CESB passed several resolutions recommending candidates for appointment by the President to CESO ranks. Among these resolutions were: **Resolution No. 871**[8] and **Resolution No. 872**.[9] Resolution No. 871 recommended, among others, the appointment of Twaño to CESO III,[10] while Resolution No. 872 recommended, among others, the adjustment of Domingo's rank from CESO VI to CESO I, and Solo's rank from CESO IV to CESO III.[11] Petitioners affixed their signatures on Resolution Nos. 871 and 872.[12]

The signed CESB Resolutions were subsequently forwarded by the CESB to the OP. Acting on the CESB Resolutions and the recommendations therein, the OP, on June 20, 2010, issued

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[5] *Id*. at 277.

[6] In October 2010, however, Twaño was reassigned by the Secretary of the DPWH as Officer in Charge-Director of the Bureau of Maintenance, see *id*. at 6.

[7] *Id*. at 3.

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

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

[10] *Id*. at 55.

[11] *Id*. at 143.

[12] *Id*. at 119-120, 144.

new appointments to the CESO ranks. Domingo was upgraded to the rank of CESO I, Twaño was upgraded to CESO III and Solo was appointed to CESO III.[13]

Later that year, the CESB Chairman, in a Memorandum dated December 14, 2010, resubmitted to the President a list of CESB recommendations for original, adjustment, and promotional appointments to CES ranks. Included in the list were petitioners' names. Subsequently, in a Memorandum[14] issued in 2012, the OP confirmed the appointment of 10 appointees, excluding petitioners.

Thereafter, the ES, in an *Order*[15] dated February 22, 2012, directed petitioners to submit their written explanation as to why no administrative disciplinary proceedings should be taken against them for violating the ethical standards on conflict of interest under Republic Act (R.A.) Nos. 3019[16] and 6713[17] in signing the CESB Resolutions recommending their own appointments.

In their answer[18] to the ES' *Order* dated February 22, 2012, petitioners all argued that there is no personal gain in signing the Resolutions and that it was only by mere inadvertence that they signed the Resolutions without specifying that their

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[13] *Id*. at 8.

[14] *Id*. at 148-151.

[15] *Id*. at 152-153.

[16] ANTI-GRAFT AND CORRUPT PRACTICES ACT, AUGUST 17, 1960.

[17] AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES, OTHERWISE KNOWN AS THE "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES," FEBRUARY 20, 1989.

[18] *Rollo*, pp. 87-95, 154-159.

signatures and participation were with respect only to the other recommended applicants.[19]

On September 25, 2012, the ES issued a *Formal Charge*[20] against petitioners, charging them with Conduct Prejudicial to the Best Interest of the Service and Gross Violation of the Ethical Standard on Conflict of Interest as Provided under R.A. Nos. 3019 (Anti-Graft and Corrupt Practices Act) and 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), directing them to file an answer[21] within ten (10) days from receipt of the Formal Charge.[22]

For their part, while all three petitioners admitted signing the Resolutions, they nevertheless argued that they should not be held administratively liable for affixing their signatures on the Resolutions, putting forward their respective arguments, *viz.*:

Twaño admitted signing the pertinent Resolution but denied acting with improper motive.[23] He claims that he inhibited himself and went outside the meeting room when his application was discussed by the CESB and was only informed when he returned to the room that the CESB had resolved to recommend him to the rank of CESO III.[24] Further, he argued that the CESB acted as a collegial body in issuing the Resolutions and that he was unaware of the practice of writing "no part" beside his signature in signing a CESB Resolution.[25]

Domingo likewise admitted signing the pertinent Resolution but claims that he did not exert any influence on the CESB to

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[19] *Id*. at 36.

[20] *Id*. at 160-161.

[21] *Id*. at 98-106, 162-169, 170-174.

[22] *Id*. at 160.

[23] *Id*. at 98, 137.

[24] *Id*. at 100-101, 277.

[25] *Id*. at 101, 278.

recommend his rank adjustment. Further, he argues that his signature on the said Resolution was immaterial because the votes (other than his) were already sufficient for the approval of the said Resolution.[26]

Solo claims that affixing her signature to the pertinent Resolution was her ministerial duty as CESB Member. Like Domingo, she claims that her signature was no longer necessary as the other votes were sufficient to recommend her rank adjustment.[27]

Ruling of the OP

In its *Decision*[28] dated January 30, 2013 in OP-DC Case No. 12-B-013, the OP, through the ES, found petitioners guilty of simple negligence, *viz.*:

> Finally, for violating the ethical standard on conflict of interest, Resolution Nos. 871 and 872 are declared invalid insofar as the [petitioners] are concerned. Conformably, their CESO ranks are revoked.
>
> **WHEREFORE**, respondents Director Angelito D. Twaño, Undersecretary Proceso T. Domingo and Director Susan M. Solo are hereby found **GUILTY** of **SIMPLE NEGLIGENCE** and meted the penalty of **SUSPENSION** for **THREE (3) MONTHS**. In addition, the CESO ranks conferred to them are **REVOKED**.
>
> **SO ORDERED.**[29]

The OP found *prima facie* evidence that petitioners signed the Resolutions recommending their original appointment and/or rank adjustment knowingly, willfully, and with intent to gain.[30] Further, as CESB members, conflict of interest should have compelled petitioners to inhibit themselves from the CESB

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[26] *Id*. at 163-165.

[27] *Id*. at 171-172.

[28] *Id.* at 136-139.

[29] *Id.* at 139.

[30] *Id*. at 136.

deliberations and from voting on matters involving the assessment of their qualifications.[31]

Thus, although petitioners claim that they took no part in the deliberations, they did not formally inhibit themselves from the CESB meeting while their respective CESO rank recommendations were being deliberated upon.[32] More importantly, there was likewise nothing in the Minutes[33] of the CESB Meeting that indicated that petitioners in fact inhibited themselves when their applications were presented in the agenda.[34]

In any event, to the OP, petitioners' act of affixing their signatures on the CESB Resolutions goes against the norms of conduct in Sections 2[35] and 4(a)[36] of R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, requiring public officials to always uphold the public interest above personal interest.[37] Consequently, the OP found that petitioners: (1) committed simple negligence when they failed to carefully examine whether the Resolutions were in

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[31] *Id*. at 137.

[32] *Id*. at 337.

[33] *Id*. at 241-261.

[34] *Id*. at 333.

[35] SEC. 2. *Declaration of Policy*.— It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest. (February 20, 1989).

[36] SEC. 4. x x x

(a). *Commitment to public interest*.— Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues. (February 20, 1989).

[37] *Rollo*, pp. 137-138.

order and determine the propriety of affixing their signatures thereto;[38] and (2) violated the ethical standard on conflict of interest.

In a *Resolution*[39] dated June 5, 2013, the OP denied petitioners' motions for reconsideration[40] for lack of merit. Aggrieved by the OP *Decision* and *Resolution*, petitioners filed a petition for *certiorari* under Rule 65[41] before the CA.

Ruling of the CA

In a *Decision* dated September 21, 2015, the CA found that the OP did not commit grave abuse of discretion in rendering the assailed *Decision* and *Resolution*. Accordingly, the CA **dismissed** petitioners' petitions for *certiorari*, *viz*.:

> [a]ll told, We find no grave abuse of discretion amounting to lack or in excess of jurisdiction was committed by the Executive Secretary in rendering the assailed decision finding all the petitioners guilty of simple negligence and providing penalties therefore.
>
> **FOR THESE REASONS**, the instant petitions for *certiorari* are **DISMISSED**. The assailed Decision dated 30 January 2013 and Resolution dated 05 June 2013 of the Executive Secretary is **AFFIRMED**.
>
> **SO ORDERED.**[42]

In upholding the OP's finding that petitioners were guilty of simple negligence, the CA held that petitioners' excuse that they were unable to check the CESB Resolutions before signing them because the documents were "lumped together"[43] was flimsy, at best.[44] As CESB Members, petitioners were mandated

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

[39] *Id*. at 140-141.

[40] *Id*. at 107-113, 175-198.

[41] *Id*. at 66-86, 114-133.

[42] *Id*. at 42-43.

[43] *Id*. at 41.

[44] *Id*.

to scrutinize every document presented to them before affixing their signatures thereon not only to avoid personal liability, but more so because of the significance of their signatures in a given document.[45]

In any event, the CA echoes the OP's finding that the Minutes of the Meeting do not support petitioners' claim that they were outside the meeting room during the deliberations on their applications.[46] Consequently, there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the OP in finding petitioners guilty of simple negligence.

In a *Resolution* dated August 19, 2016, the CA **denied** petitioners' motions for reconsideration[47] for lack of merit.

Thus, on September 16, 2016, petitioners submitted the present *Petition*. In a *Comment*[48] dated September 28, 2017, the OP argued that the finding of simple negligence against petitioners and the revocation of their CESO conferment are valid under the Code for Ethical Standards.[49]

Issue

The sole issue for the Court's resolution is whether the CA committed any reversible error in issuing its *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016 in CA-G.R. SP No. 130590 and SP No. 130591.

Our Ruling

The *Petition* lacks merit.

In determining whether the CA committed any reversible error in its *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016, the Court necessarily proceeds from

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[45] *Id*.

[46] *Id*.

[47] *Id*. at 298-320.

[48] *Id*. at 329-344.

[49] *Id*. at 332.

the prism of whether the OP acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding petitioners guilty of simple negligence and in revoking their CESO ranks.[50] The Court finds that no such grave abuse of discretion existed on the part of the OP. Consequently, the CA correctly affirmed the OP *Decision* and *Resolution*, for the following reasons:

First, the CA correctly affirmed the OP's finding of simple negligence on the part of petitioners. Negligence is the omission of the diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[51] In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation.[52] Specifically, an act done in good faith, when the same constitutes only an error of judgment with no ulterior motives and/or purposes, constitutes simple negligence.[53]

Here, as ranking officials in their respective offices and as members of the CESB, petitioners certainly cannot justify the lack of diligence in the performance of their functions as CESB members by the mere expediency of claiming that they did not know the documents they were signing or that they were unable to verify the relevant CESB Resolutions before signing because the documents were "lumped together."[54]

While it is true that the act of affixing a public officer's signature on a document in the ordinary course of business does not automatically mean that he/she becomes a participant in an illegal or anomalous transaction, however, when the very

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[50] *Id.* at 12.

[51] *Atty. Navarro v. Office of the Ombudsman*, 793 Phil. 453, 475 (2016).

[52] *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017, 823 SCRA 44, 56, citing *Office of the Ombudsman v. Atty. Bernardo*, 705 Phil. 524, 543 (2013), *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 910 (2007).

[53] *Daplas v. Department of Finance*, *id*., citing *Pleyto v. PNP-Criminal Investigation & Detection Group*, *id*.

[54] *Rollo*, p. 41.

face of the document reflects a possible irregularity, then there arises an additional reason for the public officer to examine the document in more detail and exercise a greater degree of diligence before signing the document.[55]

Here, considering that they allegedly — albeit the Minutes of the Meetings do not support it — "stepped out"[56] during the CESB deliberations when it was time to discuss their respective applications, petitioners were aware of the possible conflict of interest that would arise in their participation in the CESB deliberations and should have, when presented with the Resolutions, been more circumspect in reviewing the same before affixing their signatures thereon. Failure to do so results in negligence in the performance of their functions.

Second, the revocation of petitioners' CESO conferment necessarily flows from the invalidity of Resolution Nos. 871 and 872 insofar as petitioners' appointments are concerned. To be clear, persons occupying positions in the CES are under the disciplinary authority of the President.

Since petitioners' act of signing the Resolutions recommending their own appointments is contrary to the ethical standards imposed on, and the due diligence demanded of, public officers, then necessarily, the OP validly considered the CESB recommendations concerning their own appointments as invalid. As aptly pointed out by the ES, the recommendations being invalid, the conferment of CESO ranks flowing from those invalid recommendations are likewise invalid. In this regard, suffice it to state that the power of appointment and conversely, the power to remove, is essentially discretionary and cannot be controlled, not even by the Court, as long as it is exercised properly by the appointing authority.[57]

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[55] *Peralta v. Hon. Desierto*, 510 Phil. 111 (2005); *Veloso v. Sandiganbayan*, 265 Phil. 536 (1990); *Arias v. Sandiganbayan*, 259 Phil. 794 (1989).

[56] *Rollo*, p. 41.

[57] *Erasmo v. Home Insurance & Guaranty Corp*., 436 Phil. 689, 697-698 (2002).

The Court thus ends where it began - petitioners in this case failed to prove that the CA committed any reversible error in its *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016, considering that, based on the records of the case, there is no showing that the OP acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding petitioners guilty of simple negligence and in revoking their CESO ranks[58]

Given the foregoing considerations, the Court resolves to **DENY** the present Petition. The Court of Appeals' *Decision* dated September 21, 2015 and *Resolution* dated August 19, 2016 in CA-G.R. SP No. 130590 and SP No. 130591 are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 227741. March 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLARD LAWAY *y* CANOY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); SECTION 21 ARTICLE II THEREOF; PHYSICAL INVENTORY AND PHOTOGRAPH OF THE ILLEGAL

[58] *Rollo*, p. 12

DRUG SEIZED; IN CASE ANY OF THE NECESSARY WITNESSES ARE NOT AVAILABLE, THE PROSECUTION MUST ALLEGE AND PROVE THE REASONS FOR THEIR ABSENCE AND CONVINCE THE COURT THAT EARNEST EFFORTS WERE EXERTED TO SECURE THEIR ATTENDANCE; JUSTIFIABLE REASONS FOR THE ABSENCE OF THE REQUIRED WITNESSES.— In *People v. Lim*, the Court ruled that, in case any of the necessary witnesses are not available, the prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were exerted to secure their attendance. The Court explained - 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 obtaining the presence of the required witnesses even before the offenders could escape.**

2. ID.; ID.; ID.; ID.; ID.; A SHEER STATEMENT THAT REPRESENTATIVES WERE UNAVAILABLE WITHOUT SHOWING SERIOUS ATTEMPTS EMPLOYED TO LOOK FOR OTHER REPRESENTATIVES, GIVEN THE CIRCUMSTANCES, IS REGARDED AS A FLIMSY EXCUSE.— Earnest effort[s] 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.

3. **ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO PROVIDE A JUSTIFIABLE REASON FOR NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE CREATES DOUBT AS TO THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS, WARRANTING THE ACQUITTAL OF THE APPELLANT BASED ON REASONABLE DOUBT.—** In this case, the physical inventory and the taking of photographs of the seized items were witnessed by media representative Jun Lino Bacus and *Kagawad* Emnace. Since there was no representative from the Department of Justice (DOJ) present at that time, the required witnesses rule was not complied with. Thus, it was incumbent upon the prosecution to justify the absence of the DOJ representative and convince the Court that earnest efforts were exerted to secure the presence of the same. Unfortunately, records show that no justification was offered by the prosecution. Neither did it show that earnest efforts were exerted to secure the presence of the DOJ representative. In view of the failure of the prosecution to provide a justifiable reason for the non-compliance with

Section 21, Article II of RA 9165 which created doubt as to the integrity and evidentiary value of the seized items, the Court is constrained to acquit the appellant based on reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal filed by appellant Willard Laway y Canoy from the August 12, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 01425-MIN, affirming the May 25, 2015 Decision[2] of the Regional Trial Court (RTC) of Lanao Del Norte, Iligan City, Branch 6, in Criminal Case No. 06-16101 finding appellant guilty of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Factual Antecedents

Appellant was charged under the following Amended Information:

That on or about the 14th [day] of May 2012, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court[,] the above named [appellant], not being lawfully authorized by law, did then and there willfully and feloniously sell, give away, distribute, and deliver a total of zero point zero eight (0.08) [gram] of met[h]amph[e]tamine Hydrochloride (shabu), a dangerous drug, which is contained in four (4) pcs[.] heat[-]sealed transparent cellophane each containing 0.02 [gram] of Met[h]amph[e]tamine Hy[dr]ochloride for the amount of six hundred pesos (Php600.00) Philippine Currency.

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[1] *Rollo*, pp. 3-16; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas.

[2] CA *rollo*, pp. 50-58; penned by Judge Leonor S. Quiñones.

Contrary to and in violation of Article II, Sec. 5 of Republic Act 9165 otherwise known as [the] Comprehensive Dangerous Drugs Act of 2002.[3]

When arraigned, appellant pleaded not guilty to the crime charged.[4]

Version of the Prosecution

During the trial, the prosecution presented the testimonies of the following witnesses: (1) PO3 Duane Acain, the poseur-buyer; (2) SPO1 Sedric[5] Sansarona, the arresting officer; (3) SPO1[6] Rusto Ceniza, the field investigator; (4) P/Supt. Mary Leocy M. Jabonillo, the Forensic Chemist; and (5) *Kagawad* Ma. Ella Villaroya Emnace (Emnace), an elected public official.

The evidence of the prosecution, as summarized by the CA is, as follows:

On 14 May 2012, the Office of the Philippine National Police (PNP), Police Station 2 of N[o]nucan, Iligan City (PNP Station 2) received an information from a confidential informant that [appellant] was engaged in the selling of prohibited drugs in Purok 1-A, Buru-un, Iligan City. Upon receiving the information, the Station Commander of PNP Station 2, PC/Insp. Sherwin Molina Lapiz, conducted a briefing to plan a buy-bust operation to be undertaken against [appellant]. A buy-bust team was formed composed of PO3 Acain, SPO1 [C]edric Sansarona, PO3 Luceno, and PO3 Labares. Also present during the briefing were PC/Insp. Lapiz and the investigator, PO3 Rusto Ceniza, as well as media representative Jun Bacus, Barangay Kagawad Ella Emnace, and the confidential informant. During the briefing, PO3 Acain was designated as the poseur-buyer while the rest of the team were designated as the apprehending officers. It was also discussed in the briefing that, as the pre-arranged signal, PO3 Acain will tap his head to indicate that the buy-bust transaction has been consummated. The buy-bust team then prepared a marked Php 500

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[3] Records, 1-A.

[4] *Rollo*, p. 5.

[5] Referred to as "Cedric" in some parts of the records.

[6] Referred to as "PO3" in some parts of the records.

bill and a marked Php 100 bill to be used by the poseur-buyer, PO3 Acain, in transacting with [appellant]. The two marked bills were then handed by PC/Insp. Lapiz to PO3 Acain. At 9 o'clock in the evening of 14 May 2012, the buy-bust team proceeded to Purok 1-A, Buru-un, Iligan City.

Upon arriving at the target area, the confidential informant asked PO3 Acain how much shabu he intended to buy from [appellant] to which they both agreed that PO3 Acain will buy Php 600 worth of shabu. At this point, the confidential informant pointed PO3 Acain to [appellant] who was at the target area. On the other hand, the other members of the buy-bust team positioned themselves about nine to ten meters away from PO3 Acain. Thereafter, the confidential informant approached [appellant] and told him that the buyer wanted to purchase Php 600 worth of shabu. Then, [appellant] went inside his house and later came back and approached PO3 Acain. [Appellant] then handed to PO3 Acain three sachets containing white crystalline substance. In turn, PO3 Acain gave the two marked bills worth a total of Php 600 to [appellant]. PO3 Acain then signaled to his companions by tapping his head, which was the pre-arranged signal that the buy-bust transaction with [appellant] was already consummated. Thereupon, SPO1 Sansarona and PO3 Labares, who were able to see what PO3 Acain and [appellant] were doing, moved in and arrested [appellant]. The police officers then searched [appellant] and found in his possession another sachet containing white crystalline substance and six pieces of aluminum foil. The police officers also recovered from [appellant] the two marked bills used in the buy-bust transaction.

Immediately after the arrest and search conducted by the police officers and while still at the crime scene, an inventory was conducted by PO3 Ceniza, the evidence custodian. The police officers likewise took photographs of the seized items. The inventory was done in the presence of Jim Bacus, representing the media, and Kagawad Emnace who acted as witnesses, as well as [appellant]. During this time, PO3 Acain marked the three sachets containing white crystalline substance which were subject of the buy-bust transaction with the initials "WL-1," "WL-2," and "WL-3." On the other hand, the sachet containing white crystalline substance which was recovered from [appellant] was marked by PO3 Acain with the initials, "WL-4." Thereafter, the police officers brought the seized items, as well as [appellant] to the PNP Station 2.

At the PNP Station 2, PO3 Ceniza prepared a Letter Request for the laboratory examination of the items seized during the buy-bust operation. The said Letter Request was then signed by PC/Insp. Lapiz. Thereafter, PO3 Acain, PO3 Ceniza, and SPO1 Sansarona brought the seized items, along with the Letter Request, to the PNP Crime Laboratory for examination. At the PNP Crime Laboratory, the seized items were subjected to qualitative examination for the presence of dangerous drugs. After the laboratory examination, the items seized were found to be positive for methamphetamine hydrochloride as shown by Chemistry Report No. D-55-2012 dated 15 May 2012.[7]

Version of the Appellant

The defense, on the other hand, presented the lone testimony of appellant who denied the accusations against him. He testified that, on the said date at around 10:00 p.m., he was outside of the waiting shed of the mini-terminal in Buru-un, Iligan City,[8] on his way to Camague, Iligan City, to borrow money from his sister;[9] that while he was waiting for a passenger jeepney, he was suddenly arrested by policemen who accused him of "selling" drugs;[10] that they told him not to run;[11] that he did not run because he did nothing wrong;[12] that they frisked him but did not find anything;[13] that he was handcuffed and made to board a service vehicle;[14] and that he was detained at the police station in Nonucan, Iligan City.[15]

Ruling of the Regional Trial Court

On May 25, 2015, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt of the crime of illegal

[7] *Rollo*, pp. 5-7

[8] *Id*. at 8; CA *rollo*, p. 56. (See TSN dated February 4, 2015, p. 3.)

[9] *Id*.; *id*, (See *id*. at 4.)

[10] *Rollo*, p. 8. (See *id*. at 4-5.)

[11] *Id*. (See *id*. at 5.)

[12] *Id*. (See *id*.)

[13] *Id*. (See *id*. at 5-6.

[14] *Id*. (See *id*. at 6.)

[15] *Id*. (See *id*.)

sale of dangerous drugs under Section 5, Article II of RA 9165. The RTC gave more weight and credence to the testimonies of the prosecution witnesses than to the defense of denial of appellant, especially since appellant failed to show any ill motive on the part of the prosecution witnesses to falsely accuse him of the crime charged.[16] Although the RTC noted inconsistencies in the statements of the prosecution's witnesses, it ruled that these were minor and did not affect the credibility of the witnesses.[17] Thus -

> WHEREFORE, premises considered, this Court hereby finds [appellant] WILLARD LAWAY y Canoy GUILTY beyond reasonable doubt for Violation of Section 5, Article II of Republic Act 9165, and sentences him to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand pesos (₱500,000.00).
>
> Meanwhile, Exhibits I, I-1, I-2, J, J-1, J-2, J-3, J-4, J-5, J-6, K, K-1, K-2, K-3 and K-4 are ordered confiscated in favor of the government.
>
> The [appellant] has been under preventive imprisonment since May 13, 2012. The period of such detention shall be credited in full in the service of his sentence.
>
> SO ORDERED.[18]

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On August 12, 2016, the CA rendered the assailed Decision affirming the RTC Decision. The CA found that all the elements of the crime charged were sufficiently established by the prosecution. As to the alleged inconsistencies pointed out by appellant, the CA agreed with the RTC that these were minor inconsistencies which did not touch on any of the elements of the crime of illegal sale of dangerous drugs. The CA likewise found that all the links in the chain of custody were established by the prosecution.

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[16] CA *rollo*, pp. 57-58.

[17] *Id*. at 57.

[18] *Id*. at 58.

Unfazed, appellant filed the instant appeal.

Our Ruling

The appeal is meritorious.

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt as there was a failure on the part of the police officers to preserve the integrity of the alleged seized items.[19]

The Court agrees with appellant.

Section 21, Article II of RA 9165,[20] 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 (DOT), 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

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[19] *Id*. at 41.

[20] 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: June 7, 2002.

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.

x x x x x x x x x

Under the said provision, the physical inventory and taking of photographs of the seized items must be witnessed by three necessary witnesses (*i.e.* any elected public official and representatives from the media and the DOJ).

In *People v. Lim*,[21] the Court ruled that, in case any of the necessary witnesses are not available, the prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were exerted to secure their attendance. The Court explained -

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**

[21] G.R. No. 231989, September 4, 2019.

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.

Earnest effort[s] 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.

In this case, the physical inventory and the taking of photographs of the seized items were witnessed by media representative Jun Lino Bacus and *Kagawad* Emnace.[22]Since

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[22] Records, p. 51, Certificate of Inventory, Exhibit "D".

there was no representative from the Department of Justice (DOJ) present at that time, the required witnesses rule was not complied with. Thus, it was incumbent upon the prosecution to justify the absence of the DOJ representative and convince the Court that earnest efforts were exerted to secure the presence of the same. Unfortunately, records show that no justification was offered by the prosecution. Neither did it show that earnest efforts were exerted to secure the presence of the DOJ representative. In view of the failure of the prosecution to provide a justifiable reason for the non-compliance with Section 21, Article II of RA 9165 which created doubt as to the integrity and evidentiary value of the seized items, the Court is constrained to acquit the appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The August 12, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 01425-MIN, which affirmed the May 25, 2015 Decision of the Regional Trial Court of Lanao Del Norte, Iligan City, Branch 6, in Criminal Case No. 06-16101, finding appellant Willard Laway y Canoy guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Willard Laway y Canoy is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another case.

SO ORDERED.

Bersamin, C. J., Gesmundo, and *Carandang, JJ.*, concur.

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 230412. March 27, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TEAM ENERGY CORPORATION (FORMERLY MIRANT PAGBILAO CORPORATION),** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND OR TAX CREDIT OF UNUTILIZED INPUT VALUE ADDED TAX (VAT); A TAXPAYER WHO FAILED TO SUBMIT A CERTIFICATE OF COMPLIANCE (COC) ISSUED BY THE ENERGY REGULATORY COMMISSION IS NOT DISQUALIFIED FROM CLAIMING FOR REFUND OF UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES OF ELECTRICITY TO NATIONAL POWER CORPORATION (NPC) WHERE ITS CLAIM FOR REFUND IS NOT BASED ON THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) BUT ON SECTION 108(B) 3 OF THE 1997 NIRC, WHICH ALLOWS ZERO-RATING OF SERVICES RENDERED TO PERSONS OR ENTITIES WHOSE EXEMPTION UNDER SPECIAL LAW EFFECTIVELY SUBJECTS THE SUPPLY OF SUCH SERVICE TO ZERO-RATE.— In the recent case of *Team Energy Corporation v. Commissioner of Internal Revenue,* the Court likewise rejected the contention of the CIR that Team Energy is not entitled to tax refund or tax credit because it cannot qualify for VAT zero-rating for its failure to submit its ERC Registration and COC required under the EPIRA. In this case, the Court ruled: Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4,.108-1 of Revenue Regulations No. 7-95. Given that respondent in this case likewise anchors its claim for tax refund

or tax credit under Section 108(B)(3) of the Tax Code, it cannot be required to comply with the requirements under the EPIRA before its sale of generated power to NPC should qualify for VAT zero-rating. Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, clearly provide that sale of electricity to NPC is effectively zero-rated for VAT purposes.

2. ID.; ID.; ID.; ID.; EFFECTIVE ZERO-RATING IS NOT INTENDED AS A BENEFIT TO THE SUPPLIER OF THE SERVICES, THE PERSON LEGALLY LIABLE TO PAY THE TAX, BUT TO RELIEVE THE EXEMPT ENTITY SUCH AS THE NPC FROM BEING BURDENED WITH THE INDIRECT TAX WHICH IS OR WHICH WILL BE SHIFTED TO IT HAD THERE BEEN NO EXEMPTION.— As correctly argued by the respondent, the basis for the VAT zero-rated treatment of the supplier is the tax exemption of the purchaser of services, and not the qualification of the supplier itself, in order to relieve the tax-exempt purchaser from tax burden considering that it may not be able to offset or utilize any input tax passed on by its supplier of services, had the services it purchased been subject to VAT of 12%. It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, such as the [respondent,] but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after, the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption. In this case, respondent is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that respondent may shift to NPC by adding to the cost of the electricity sold to the latter.

3. ID.; ID.; ID.; THE COMMISSIONER OF INTERNAL REVENUE (CIR) CANNOT CLAIM THAT THE TAXPAYER'S JUDICIAL CLAIM FOR REFUND WAS PREMATURELY FILED FOR NON-SUBMISSION OF COMPLETE SUPPORTING DOCUMENTS FOR ITS

ADMINISTRATIVE CLAIM WHERE IT FAILED IN ITS OBLIGATION TO INFORM THE TAXPAYER OF THE NEED TO SUBMIT ADDITIONAL SUPPORTING DOCUMENTS FOR CLAIMS FOR TAX REFUND OR TAX CREDIT.— Petitioner's argument that respondent's judicial claim for refund was prematurely filed for its failure to exhaust administrative remedies when it failed to submit complete supporting documents for its administrative claim, deserves scant consideration. The authority of the CIR to require additional supporting documents necessary to determine the taxpayer's entitlement to a refund of input tax, and the consequences of the CIR's failure to inform the taxpayer of the need to submit additional documents for claims for tax refund, or credit filed prior to June 11, 2014, such as this case, had been settled in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* in this wise x x x. *Second,* the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents. Thus, as correctly found by the CTA *En Banc*: Upon perusal of the records, there is no showing that the CIR sent a written notice requiring respondent to submit additional documents – a process that is indispensable in computing the 120+30[-] day period. x x x.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Follosco Morallos & Herce for respondent.

D E C I S I O N

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

The Facts and the Case

Before this Court is a petition for review on *certiorari*[1] seeking to reverse and set aside the August 31, 2016 Decision[2] and the January 30, 2017 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1364 which affirmed the May 29, 2015 and September 9, 2015 Resolutions of the CTA Special First Division which reinstated the July 13, 2010 Decision of the CTA First Division in CTA Case No. 7617.

The facts, as found by the CTA *En Banc* are as follows:

> x x x Respondent is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer Scheme.
>
> Respondent is also registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code of 1977 [now Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997)] with Tax Identification No. 001-726-870 as shown on its BIR Certificate of Registration bearing RDO Control No. 96-600-002498.
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> x x x x x x x x x
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> On December 17, 2004, respondent filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for Effective Zero-Rate for the supply of electricity to the NPC for the period January 1, 2005 to December 31, 2005, which was subsequently approved.

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[1] *Rollo*, pp. 11-23.

[2] Penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis Liban; *id*. at 30-46.

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

Respondent filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005, July 26, 2005, and October 25, 2005, respectively. Respondent also filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005, which was subsequently amended on May 24, 2006. These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/ Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	₱3,044,160,148.16	₱1,397,107.80	₱139,710.78	₱16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	₱9,207,813,372.81	₱4,002,045.24	₱400,204.52	₱80,136,251.60

On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of [₱]80,136,251.60.

Due to petitioner's inaction on its claim, respondent filed a Petition for Review before the Court in Division on April 18, 2007, docketed as CTA Case No. 7617.

In her *Answer* filed on May 25, 2007, petitioner interposed the following Special and Affirmative Defenses:

(1) The alleged claim for refund is subject to administrative investigation/examination;

(2) Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law;

(3) Respondent failed to prove compliance with: (a) the registration requirements of a value-added taxpayer; (b) the invoicing and accounting requirements for VAT-registered persons; (c) the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended; (d) the submission of complete documents in support of the administrative claim pursuant to Section 112 (D). Respondent likewise failed to prove that the input taxes paid were attributable to zero-rated sales,

used in the course of its trade or business, and have not been applied against any output tax and that the claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended; (e) the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.

(4) The burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit; and,

(5) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

During trial, respondent presented documentary and testimonial evidence. The exhibits enumerated in respondent's Formal Offer of Evidence were admitted in the Resolution dated January 29, 2009. Petitioner, on the other hand, waived her right to present evidence.

The case was submitted for Decision on July 13, 2009.

On July 13, 2010, the Court in Division issued a Decision partially granting respondent's Petition, the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED SEVENTEEN AND 33/100 PESOS (P79,185,617.33)** in favor of petitioner, representing petitioner's unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.
>
> **SO ORDERED.**

On August 5, 2010, petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 13 July 2010)."

On November 26, 2010, the Court in Division issued an Amended Decision which granted petitioner's Motion for Reconsideration,

reversed and set aside the Decision dated July 13, 2010, and dismissed the Petition for Review for having been filed prematurely.

On December 17, 2010, respondent filed a "Petition for Review" before the Court *En Banc* docketed as CTA *En Banc* Case No. 706.

In a Resolution dated May 2, 2011, the Court *En Banc* denied due course to respondent's Petition for Review for lack of merit. Respondent filed a "Motion for Reconsideration" on May 24, 2011 [,] assailing the 2 May 2011 Resolution, but the same was denied in the Court *En Banc*'s Resolution dated July 15, 2011 [,] for lack of merit.

On September 8, 2011, respondent filed a "Motion to Admit Attached Petition for Review on [*Certiorari*]" before the Supreme Court. The Supreme Court Third Division issued a Resolution on November 28, 2011 granting respondent's Motion.

On January 13, 2014, the Supreme Court issued a Decision granting respondent's Petition for Review on *Certiorari*, reversing and setting aside the May 2, 2011 and July 15, 2011 Resolutions issued by the Court *En Banc* in CTA EB No. 706, and remanding the case to this Court for the proper determination of the refundable amount. The Court in Division received the Notice of Judgment and Decision from the Supreme Court on February 26, 2014. The dispositive portion of the Supreme Court's Decision reads:

> WHEREFORE, the foregoing considered, the instant Petition for Review on [*Certiorari*] is hereby GRANTED. The May 2, 2011 and the July 15, 2011 Resolutions of the Court of Tax Appeals [*En Banc*] in CTA EB Case No. 706 are REVERSED and SET ASIDE. Let this case be remanded to the Court of Tax Appeals for the proper determination of the refundable amount.
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> SO ORDERED.

The said Supreme Court Decision became final and executory on March 10, 2014[,] and was recorded in the Book of Entries of Judgments by the Deputy Clerk of Court & Chief, Judicial Records Office of the Supreme Court. The Court received the Entry of Judgement on July 15, 2014.

On January 9, 2015, respondent filed a "Manifestation with Motion for Reinstatement of the 13 July 2010 Decision of the Court of Tax Appeals."

On May 29, 2015, the Court in Division issued a Resolution granting respondent's Motion for Reinstatement and reinstated the July 13, 2010 Decision of the Court in Division. Petitioner posted a "Motion for Reconsideration (re: Resolution dated 29 May 2015)" on June 23, 2015.

On September 9, 2015, the Court in Division denied petitioner's Motion for Reconsideration.

On October 16, 2015, which is within the extended period, petitioner Commissioner of Internal Revenue [CIR] filed the present Petition for Review before the Court *En Banc*. Respondent filed its "Comment/ Opposition (To: Petitioner's Petition for Review dated 16 October 2015)" on February 19, 2016.[4]

On August 31, 2016, the CTA *En Banc* rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, petitioner Commissioner of Internal Revenue's *Petition for Review* is **DENIED**. The assailed Resolutions dated May 29, 2015 and September 9, 2015 reinstating the July 13, 2010 Decision of the Court Special First Division in CTA Case No. 7617 are **AFFIRMED**.

SO ORDERED.[5]

It held that the failure of the respondent to present its Certificate of Compliance (COC) is not fatal to its claim for refund of unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005 because its claim for refund is not based on Republic Act (R.A.) No. 9136 or the Electric Power Industry Reform Act (EPIRA) but on Section 108(B)(3) of the 1997 NIRC, as amended (Tax Code). According to the CTA *En Banc*, Section 108(B)(3) of the Tax Code allows zero-rating of services rendered to persons or entities whose exemption under special law effectively subjects the supply of such services to zero-rate. It is undisputed that the respondent is principally engaged in the business of power generation and subsequent sale thereof,

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[4] *Rollo*, pp. 31-36.

[5] *Id.* at 45.

to NPC under a Build, Operate, Transfer Scheme, and that it actually generated receipts from power generation services rendered to NPC. Thus, such sale of power generation services to NPC qualifies for zero-rating under Section 108(B)(3) of the Tax Code since NPC is an entity enjoying exemption from payment of all taxes pursuant to Section 13 of R.A. No. 6395,[6] as amended by Section 10 of Presidential Decree No. 938[7] (Section 13 of the NPC Chapter). Since NPC is exempt from the payment of all taxes including VAT, respondent should be allowed to claim a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005 pursuant to Section 108 (B)(3) of the Tax Code, despite the absence of a COC.

The Court, also found to be bereft of merit, the claim of the petitioner that the respondent filed its judicial claim prematurely as it did not exhaust administrative remedies when it failed to submit complete supporting documents for its administrative claim. It held that the set of documents enumerated in Revenue Memorandum Order No. 53-98 (RMO 53-98) is not a requirement for a grant of refund of input tax as it is merely a checklist of documents to be submitted by a taxpayer in relation to an audit of tax liabilities. Moreover, the petitioner had the obligation to inform the taxpayer that the documents submitted were incomplete, and to require it to submit additional documents. Since the petitioner did not send any written notice to the respondent requiring it to submit additional documents, petitioner can no longer validly argue that the judicial claim was premature on account of alleged non-submission of complete documents in the administrative level.

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[6] AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION. Approved on September 10, 1971.

[7] FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED, "ACT ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED BY PRESIDENTIAL DECREES NOS. 380, 395 AND 758. Approved on May 27, 1976.

Petitioner moved for reconsideration, but the same was denied in a Resolution dated January 30, 2017.

Issue Presented

Hence, the present petition on the ground that the CTA *En Banc* erred in reinstating the Decision of the CTA dated July 13, 2010, which ordered the petitioner to refund or, in the alternative, issue a tax credit certificate in the amount of ₱79,185,617.33 in favor of the respondent.

Arguments of the Parties

Petitioner did not agree with the CTA that respondent need not secure a COC before it may be entitled to a refund on the ground that its claim for a refund is anchored on Section 108(B)(3) of the Tax Code and not under the EPIRA. He argued that before VAT registered persons may be considered to be subject to zero percent (0%) rate of VAT on its sale of services under Section 108(B)(3), it is imperative that it be authorized and qualified under the law to render such services. Thus, a generation company supplying services to the NPC must prove that it has complied with all the relevant regulatory requirements under the law, including the EPIRA. It is clear from Section 4 of the EPIRA as well as Sections 1 and 4 (a) of Rule 5 of its Implementing Rules and Regulations, that before an entity may engage in the business of generation of electricity, the ERC must authorize it to carry out such operations and issue in its favor a COC. Otherwise, it cannot be considered as a generation company as contemplated under the law. Since respondent miserably failed to prove its authority to operate as a generation company, as defined by the EPIRA, by presenting its COC from the ERC, it has no vested right or legal basis to claim for a refund of excess and/or unutilized input VAT attributable to its zero-rated sales of power generation services under Section 108(B)(3) of the Tax Code.[8]

Petitioner also stood pat on its claim that the judicial claim for refund that was filed by the respondent was filed prematurely

[8] *Id.* at 14-16, 18-21.

for its failure to exhaust administrative remedies. He explained that as part of every taxpayer's duty to exhaust administrative remedies, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue (BIR) before the 120-day audit period shall apply, and before the taxpayer can avail of judicial remedies provided by law. Given that the respondent failed to substantiate its administrative claim with documents that would prove its entitlement to tax refund, or credit, its judicial claim for refund must, perforce, be denied.[9]

Respondent, on the other hand, reiterated that its claim for refund of unutilized input VAT attributable to its zero-rated sales of electricity to NPC is based on Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, and not the EPIRA. Given NPC's exemption from all direct and indirect taxes as provided in its Charter and applying Section 108(B)(3) of the Tax Code, the only conclusion that can be drawn is that respondent's sale of power generation services to NPC are subject to VAT zero-rating. Respondent also contended that there is nothing in Section 112(A), in relation to Section 108(B)(3) of the Tax Code and Section 13 of the NPC Charter which requires the respondent to qualify as a "generation company" under the EPIRA before its sale of services to NPC may be subject to VAT zero-rating. The Tax Code provision on VAT zero-rating only provides that for an entity to be subject to VAT zero-rated treatment, its services must be rendered to entities which are tax exempt under special laws or international agreements to which the Philippines is a signatory. Simply put, the basis for the VAT zero-rated treatment of the supplier, respondent in this case, is the tax exemption of NPC, the purchaser of services, and not the qualification of the supplier itself.[10]

Furthermore, the respondent averred that contrary to the claim of the petitioner, it submitted the complete supporting documents to the BIR to support its administrative claim on December 20,

[9] *Id*. at 16-17.

[10] *Id*. at 63-69.

2006. Had there been documents it did not submit, petitioner failed to specifically point out what document was not submitted. Petitioner's failure to inform the respondent of the need to submit additional documents, bars the former from validly arguing that the judicial claim was premature on account of the alleged non-submission of complete documents. Moreover, in a judicial claim due to the inaction of the petitioner, the CTA may consider all evidence presented including those that may not have been submitted, to the petitioner.[11]

Ruling of the Court

Respondent's failure to submit a Certificate of Compliance issued by the Energy Regulatory Commission does not disqualify it from claiming a tax refund or tax credit

Petitioner's argument against the grant of tax refund or tax credit in favor of the respondent is mainly hinged on respondent's lack of COC from the ERC. Petitioner insisted that without a COC, respondent may not be considered a generation company under the EPIRA, and therefore, its sales of generated power to the NPC may not be subject to zero percent VAT rate and enjoy the benefits under Section 108(B)(3) of the Tax Code as would entitle it to claim a tax refund or tax credit of its unutilized input VAT attributable to its sale of electricity to NPC. According to the petitioner, its assertion that COC is indispensable to a claim for refund finds support in the case decided by the CTA entitled, *Toledo Power Company v. Commissioner of Internal Revenue*.[12]

Petitioner's contention lacks merit.

Petitioner was less than truthful when he lifted only portions of the CTA Decision in *Toledo*[13] that were favorable to him. In

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[11] *Id*. at 69-75.

[12] CTA Case No. 6961, Nov. 11, 2009.

[13] *Id.*

the said case, while it may be true that the CTA ruled that the failure of Toledo to submit its approved COC from the ERC cannot qualify its sales of generated power for VAT zero-rating under the EPIRA, the same decision likewise granted Toledo's claim for refund of unutilized input VAT attributable to its sales of electricity to NPC under Section 108(B)(3) of the Tax Code. In short, the decision differentiated the requirements for a claim for refund under the EPIRA, and a claim for refund based on Section 108(B)(3) of the Tax Code. In *Commissioner of Internal Revenue v. Toledo Power Company*[14] which affirmed the said CTA decision, this Court essentially held that the requirements of the EPIRA must be complied with only if the claim for refund is based on EPIRA. The pertinent portion of the decision reads:

> Now, as to the validity of TPC's claim, there is no question that TPC is entitled to a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002 pursuant to Section 108 (B) (3) of the NIRC, as amended, in relation to Section 13 of the Revised Charter of the NPC, as amended. Hence, the only issue to be resolved is whether TPC is entitled to a refund of its unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.
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> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.
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> x x x x x x x x x
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> In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application

[14] 774 Phil. 92(2015).

for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.[15] (Citations omitted)

In the recent case of *Team Energy Corporation v. Commissioner of Internal Revenue*,[16] the Court likewise rejected the contention of the CIR that Team Energy is not entitled to tax refund or tax credit because it cannot qualify for VAT zero-rating for its failure to submit its ERC Registration and COC required under the EPIRA. In this case, the Court ruled:

> Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4,.108-1 of Revenue Regulations No. 7-95.[17]

Given that respondent in this case likewise anchors its claim for tax refund or tax credit under Section 108(B)(3) of the Tax Code, it cannot be required to comply with the requirements under the EPIRA before its sale of generated power to NPC should qualify for VAT zero-rating. Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, clearly provide that sale of electricity to NPC is effectively zero-rated for VAT purposes. The said provisions read:

Section 108(B)(3) of the Tax Code

> Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
>
> x x x x x x x x x

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[15] *Id.* at 109-114.

[16] G.R. Nos. 197663 and 197770, March 14, 2018.

[17] *Id.*

(B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

x x x x x x x x x

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**. (Emphasis supplied)

Section 13 of the NPC Charter, as amended by Section 10 of P.D. No. 938 —

Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. - The Government shall be non-profit and shall devote all its return from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.** (Emphasis supplied)

As correctly argued by the respondent, the basis for the VAT zero-rated treatment of the supplier is the tax exemption of the purchaser of services, and not the qualification of the supplier itself, in order to relieve the tax-exempt purchaser from tax burden considering that it may not be able to offset or utilize any input tax passed on by its supplier of services, had the services it purchased been subject to VAT of 12%.[18]

It bears emphasis that effective zero-rating is not intended as benefit to the person legally liable to .pay the tax, such as the [respondent,] but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after,

[18] *Rollo*, pp. 65-66.

the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption. In this case, respondent is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that respondent may shift to NPC by adding to the cost of the electricity sold to the latter.[19]

The judicial claim was not prematurely filed

Petitioner's argument that respondent's judicial claim for refund was prematurely filed for its failure to exhaust administrative remedies when it failed to submit complete supporting documents for its administrative claim, deserves scant consideration.

The authority of the CIR to require additional supporting documents necessary to determine the taxpayer's entitlement to a refund of input tax, and the consequences of the CIR's failure to inform the taxpayer of the need to submit additional documents for claims for tax refund, or credit filed prior to June 11, 2014, such as this case, had been settled in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[20] in this wise:

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which

[19] *San Roque Power Corp. v. Commissioner of Internal Revenue*, 620 Phil 554, 580 (2009).

[20] 774 Phil. 473 (2015).

to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120[-]day period allowed to the CIR begins to run from the date of filing.[21]

The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. *First*, the 120-day period had commenced to run and the 120+30[-]day period was, in fact, complied with. As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.*

Second, the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.[22]

Thus, as correctly found by the CTA *En Banc*:

Upon perusal of the records, there is no showing that the CIR sent a written notice requiring respondent to submit additional documents — a process that is indispensable in computing the 120+30[-] day period. Thus, petitioner could no longer validly argue that the judicial claim was premature on account of alleged non-submission of complete documents as it is petitioner himself who fails to inform respondent about the need to submit additional documents in the administrative level.[23]

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[21] *Id*. at 495.

[22] *Id*. at 502-503.

[23] *Rollo*, p. 45.

In fine, respondent is entitled to a refund or credit of its unutilized input VAT attributable to its effectively zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005, pursuant to Section 108(B)(3) of the Tax Code, in relation to Section 13 of the NPC Charter.

WHEREFORE, premises considered, the petition is **DENIED**. The August 31, 2016 Decision and January 30, 2017 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1364 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Lazaro-Javier, JJ.*, concur.

THIRD DIVISION

[G.R. No. 233598. March 27, 2019]

JUVY DESMOPARAN A.K.A. "MASYADOR," *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF COMMERCIAL DOCUMENTS UNDER ARTICLE 172 (1), IN RELATION TO ARTICLE 171, OF THE REVISED PENAL CODE, AS AMENDED BY REPUBLIC ACT No. (RA) 10951; ELEMENTS; ESTABLISHED.— The elements of the crime of falsification of commercial documents under Article 172 (1), in relation to Article 171, of the Revised Penal Code, as amended by Republic Act No. (*RA*) 10951, are: "(1) that the offender is a private individual x x x; (2) that [the offender] committed any of the acts of falsification enumerated in Article 171 of the [Revised

Penal Code]; and, (3) that the [act of] falsification [is] committed in a x x x commercial document." In the instant case, we likewise find that all the above-mentioned elements were sufficiently established.

2. ID.; ID.; ID.; IN THE ABSENCE OF A SATISFACTORY EXPLANATION, ONE WHO IS FOUND IN POSSESSION OF A FORGED DOCUMENT AND WHO USED OR UTTERED IT IS PRESUMED TO BE THE FORGER.— The absence of a direct proof that Desmoparan was the author of the falsification is of no moment for the rule remains that whenever someone has in his possession falsified documents and uttered or used the same for his advantage and benefit, the presumption that he authored it arises. This is especially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and therefore, had complicity in the forgery. In the absence of a satisfactory explanation, as in this case, one who is found in possession of a forged document and who used or uttered it is presumed to be the forger.

3. ID.; ID.; ESTAFA; ELEMENTS; ESTABLISHED.— Corrollarily, after the existence of falsification of commercial documents has been established, we also find that the falsification of loan documents was a necessary means to commit estafa. In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury. In the instant case, Desmoparan used the falsified documents bearing the name and qualifications of Cordura in fraudulently applying for a salary loan, which resulted in the eventual release and withdrawing of the cash advance amounting to a total of ₱40,000.00 from CFI. Clearly, Desmoparan employed deceit by falsifying loan documents in order to take hold of the money and, thereafter, convert it to

his own personal use and benefit, resulting in the damage and prejudice of CFI and Cordura.

4. ID.; ID.; COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF COMMERCIAL DOCUMENTS; FALSIFICATION OF PUBLIC, OFFICIAL OR COMMERCIAL DOCUMENT AS A NECESSARY MEANS TO COMMIT ESTAFA; THE CRIME OF FALSIFICATION HAS ALREADY BEEN CONSUMMATED EVEN BEFORE THE FALSIFIED DOCUMENTS WERE ACTUALLY UTILIZED TO DEFRAUD ANOTHER. THE DAMAGE IS CAUSED BY THE COMMISSION OF ESTAFA, NOT BY THE FALSIFICATION OF THE DOCUMENT.— It must be emphasized anew that when the offender commits on a public, official, or commercial document any of the acts of falsification enumerated in Article 171 of the Revised Penal Code as a necessary means to commit another crime like estafa, the two crimes form a complex crime. Under Article 48 of the Revised Penal Code, there are two classes of a complex crime. A complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another. In *Domingo v. People*, we have held that falsification of a commercial document may be a means of committing estafa because, before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated; damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage is caused by the commission of estafa, not by the falsification of the document. In this case, Desmoparan could not have succeeded in getting hold of the money without falsifying the loan documents bearing the name and qualifications of Cordura, and make it appear that he is actually the real Cordura. The falsification was, therefore, a necessary means to commit estafa, and falsification was already consummated even before the falsified documents were used to defraud CFI.

5. ID.; ID.; ID.; PROPER IMPOSABLE PENALTY.— Desmoparan is found guilty of the complex crime of estafa through falsification of commercial documents since the crime

of falsification was established to be a necessary means to commit estafa. In *De Castro v. People*, citing Article 48 of the Revised Penal Code, the Court held that in the complex crime of estafa through falsification of commercial documents, the penalty for the graver offense should be imposed in the maximum period. However, with the passage of RA 10951, the penalties of some crimes which are dependent on the value of the subject matter of the crimes have been greatly affected, and one of these is estafa. The law being more favorable to the petitioner, the same is given a retroactive effect. x x x. [B]oth under the Revised Penal Code and RA 10951, the imposable penalty for estafa is based on the amount of damage. In this case, the amount defrauded is Forty Thousand Pesos (₱40,000.00), representing the total amount of money actually released and received by Desmoparan from CFI. As such, the prescribed penalty as provided under paragraph 4, Article 315 of the Revised Penal Code, as amended by RA 10951, is *arresto mayor* in its medium and maximum periods, since the amount does not exceed Forty Thousand Pesos (₱40,000.00). Meanwhile, under the old provisions of the Revised Penal Code, the imposable penalty is *prision correccional*, in its maximum period, to *prision mayor*, in its minimum period, if the amount of the fraud is over Twelve Thousand Pesos (₱12,000.00), but does not exceed Twenty-Two Thousand Pesos (₱22,000.00); and, if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Ten Thousand Pesos (₱10,000.00). Thus, the penalty for estafa under the new law should be given retroactive effect, being more favorable to the petitioner. In contrast, for falsification of a commercial document, the penalty of imprisonment is the same for both Article 172 (1), in relation to Article 171 (2), of the Revised Penal Code and RA 10951 which is *prision correccional* in its medium and maximum periods, *albeit*, the imposable fine is different. Under the Revised Penal Code, the imposable fine is not more than Five Thousand Pesos (₱5,000.00); while under RA 10951, the imposable fine is not more than One Million Pesos (₱1,000,000.00). Thus, the penalty of imprisonment in the crime of estafa under RA 10951 is now lighter than the penalty of imprisonment for falsification of commercial documents. Applying then the provisions of Article 48 of the Revised Penal Code for the complex crime of estafa through falsification of commercial documents, the penalty for

the graver offense should be imposed in the maximum period. Thus, the penalty for falsification of commercial documents should be imposed in the maximum period, being the more serious crime than estafa. However, the penalty of fine of not more than Five Thousand Pesos (₱5,000.00) under the old law should be imposed because this is more favorable to the petitioner than the penalty of fine of not more than One Million Pesos (₱1,000,000.00) under the present law. We, thus, modify the indeterminate sentence imposable on Desmoparan so that the minimum term should, come from the penalty next lower in degree which is *arresto mayor*, maximum, to *prision correccional*, minimum (4 months and 1 day to 2 years and 4 months), and the maximum term should come from *prision correccional*, medium, to *prision correccional*, maximum, in its maximum period (4 years, 9 months and 11 days to 6 years).

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before this Court is an appeal from the Decision and Resolution dated March 14, 2017[1] and July 20, 2017,[2] respectively, of the Court of Appeals (*CA*) in CA-G.R. CEB CR No. 02680, where the CA affirmed the Judgment[3] dated November 6, 2015 of the Regional Trial Court (*RTC*) of Negros Oriental, 7th Judicial Region, Branch 35, Dumaguete City, in Criminal Case No. 21334 which convicted petitioner Juvy Desmoparan (*Desmoparan*) of estafa through falsification of commercial documents.

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[1] *Rollo*, pp. 68-80; penned by Associate Justice Gabriel T. Ingles, and concurred in by Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi.

[2] *Id.* at 91-92.

[3] *Id.* at 46-50.

The facts are as follows:

On February 27, 2012, Desmoparan applied for a salary loan in the amount of ₱105,000.00 from Cebu CFI Community Cooperative -Dumaguete City Branch (*CFI*). He misrepresented himself to be an employee of the City Engineer's Office, by using the name "Rodulfo M. Cordura," to Chiyenne Mirasol (*Mirasol*), loan clerk of CFI. When Mirasol asked for his identification card, Desmoparan presented his employee's I.D. from the City Engineer's Office with his picture on it, but bearing the name "Rodulfo M. Cordura." To support his application for loan, Desmoparan submitted the following documents, namely: a) application for membership form of CFI; b) special power of attorney coupled with interest; c) deed of assignment; d) certification from the City Human Resource Office; e) certificate of employment from the City Human Resource Office; f) service record signed by Henrietta N. Zerna; and g) promissory note dated February 27, 2012. All said documents reflected the name of "Rodulfo M. Cordura" as the loan applicant and debtor.[4]

In order to receive the initial cash advance, Desmoparan also presented his purported employee's I.D., bearing the name "Rodulfo M. Cordura," to Menerva Perocho (*Perocho*), Cashier/ Teller of CFI.[5] Thus, because of Desmoparan's misrepresentation, Perocho released to him the cash advances amounting to ₱20,000.00 on March 2, 2012, an additional ₱10,000.00 on March 9, 2012, and another ₱10,000.00 on March 10, 2012. Upon receipt of the said monies, Desmoparan also signed the name of "Rodulfo Cordura" in all three cash vouchers.[6]

However, on March 16, 2012, the real Rodulfo Cordura (*Cordura*) went to CFI to verify the information that somebody had fraudulently applied for a salary loan using his name and qualifications. He identified himself as the real Cordura, a retired

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[4] *Id.* at 56.

[5] *Id.* at 18.

[6] *Id.* at 56-57.

government employee previously connected with the City Engineer's Office. Cordura informed CFI that he discovered the fraud after he received the bill for his alleged loan transaction from CFI, through their payroll maker. He told them that he did not apply for any loan nor did he apply for membership with CFI. Cordura then requested an investigation and withholding of the remaining check in the amount of ₱69,000.00 as part of the salary loan.[7]

On the same day, Arden Sinco (*Sinco*), branch manager of CFI,[8] and his team caught one Efrain Baena Mercado (*Mercado*) using the name and credentials of a certain Aldrin John Z. Catan to apply for a loan. During the investigation, Mercado revealed that it was Desmoparan who recruited him to submit bogus loan applications with CFI.[9]

In his judicial affidavit, Mercado testified that sometime on March 14, 2012, Desmoparan approached him at JT's Pocket Billiard Hall and told him that he has a simple job for him. He alleged that Desmoparan told him that all he needed to do was submit documents to CFI. Desmoparan assured Mercado that he had already done this twice and was even able to have a check encashed in his favor. Mercado further alleged that Desmoparan brought him to a carwash shop in Larena Drive, Dumaguete City, where he was introduced to a certain "Bossing." Desmoparan told his Bossing that Mercado would be the one to go to CFI since he cannot do it anymore as he had already done it twice. Mercado added that Desmoparan later brought him to a house in Purok Kalubihan, Barangay Daro, Dumaguete City, where he saw a number of documents bearing the mark "CFI," as well as several persons practicing imitation of signatures.[10] On cross-examination, Mercado admitted all he has stated in his judicial affidavit.

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

[8] *Id.* at 19.

[9] *Id.* at 58.

[10] *Id.*

Desmoparan was eventually apprehended. He was charged with estafa through falsification of commercial documents. The information reads as follows:

> That on or about 27 February 2012 in the City of Dumaguete, Philippines and within the jurisdiction of the Honorable Court, the said accused, JUVY DESMOPARAN a.k.a. "MASYADOR", did then and there, willfully, unlawfully and feloniously falsify the following documents, to wit:
>
> (1) application for membership of CFI;
> (2) special power of attorney coupled with interest;
> (3) deed of assignment;
> (4) certification from the City Human Resource Office;
> (5) Certificate of Employment;
> (6) Service Record; and
> (7) a promissory note dated 27 February 2012
>
> by making and causing it to appear that one Rodulfo Cordura applied for a salary loan and executed and filed afore-mentioned documents at Cebu CFI Community Cooperative - Dumaguete Branch when in truth and in fact, Rodulfo M. Cordura neither applied for any loan at CFI nor execute and file the afore-mentioned documents and that by virtue of said falsification, false pretenses, deceit, and fraudulent acts and with intent to cause damage, has been able to obtain and receive from CFI the loan proceeds/cash advances amounting to a total of Forty Thousand Pesos (₱40,000.00), Philippine Currency, on 2 March 2012 and 9 March 2012 and thereafter converted the same amount to his own personal gain and benefit to the damage and prejudice of CFI in the said amount of Forty Thousand Pesos (₱40,000.00), Philippine Currency
>
> CONTRARY TO LAW.[11]

Subsequently, Desmoparan was arraigned and pleaded "not guilty" to the crime charged.[12]

Trial ensued. The prosecution presented the following witnesses: Mirasol, Mercado, Perocho, Cordura and Sinco.

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[11] *Id.* at 71.

[12] *Id.*

On the other hand, Desmoparan did not present any testimonial evidence.

On November 6, 2015, the RTC of Negros Oriental, 7th Judicial Region, Branch 35, Dumaguete City, in Criminal Case No. 21334, rendered Judgment, the dispositive portion of which reads:

> WHEREFORE, the court finds the accused, JUVY DESMOPARAN a.k.a. "Masyador," guilty beyond reasonable doubt of the offense of Estafa through Falsification of Commercial Documents and there being no mitigating and aggravating circumstances proven in the trial, the Court hereby sentences the accused to an indeterminate penalty of Four (4) years and two (2) months of Prision Correccional as minimum to Nine (9) years of Prision Mayor as maximum and to pay FORTY THOUSAND (Php40,000.00) PESOS for the amount he has taken from Cebu CFI Community Cooperative, Dumaguete branch with legal interest of six (6%) percent from the filing of this case.
>
> SO ORDERED.[13]

Aggrieved, Desmoparan filed an appeal and sought the reversal of his conviction before the CA. However, on March 14, 2017, the appellate court denied his appeal. The dispositive portion of the CA decision reads:

> WHEREFORE, the appeal is DENIED. The Judgment dated November 6, 2015, of the Regional Trial Court of Negros Oriental, Seventh Judicial Region, Branch 35, Dumaguete City, in Crim. Case No. 21334 is AFFIRMED with MODIFICATION in that accused-appellant shall suffer indeterminate penalty of four (4) years of prision correccional, as minimum, to seven (7) years, eight months and 21 days of prision mayor, as maximum. The amount of P40,000.00 must earn 6% per annum computed from finality of the Court's Decision until satisfied.
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> Costs against accused-appellant.
>
> SO ORDERED.[14]

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[13] *Id.* at 50.

[14] *Supra* note 1, at 80.

Desmoparan moved for reconsideration. However, in the assailed Resolution[15] dated July 20, 2017, the CA denied the motion for lack of merit.

Hence, this petition for review on *certiorari*,[16] raising the sole issue of:

WHETHER THE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[17]

Desmoparan would like to impress upon this Court that the prosecution failed to prove that he was the one who falsified the loan documents. He claimed that the prosecution witnesses admitted that they never saw him fill up the loan documents. He argued that, assuming that he personally appeared at CFI, the only documents that he personally signed were the cash vouchers representing the receipt of cash advances. Desmoparan, however, insisted that cash vouchers are not commercial documents; thus, he cannot be convicted of estafa through falsification of commercial documents.

The petition lacks merit.

The elements of the crime of falsification of commercial documents under Article 172 (1),[18] in relation to Article 171,[19]

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[15] *Supra* note 2.

[16] *Rollo*, pp. 14-26.

[17] *Id.* at 22.

[18] ART. 172. *Falsification by private individual and use of falsified documents*. - The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than One million pesos (P1,000,000) shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article; and

of the Revised Penal Code, as amended by Republic Act No. (RA) 10951,[20] are: "(1) that the offender is a private individual x x x; (2) that [the offender] committed any of the acts of falsification enumerated in Article 171 of the [Revised Penal Code]; and, (3) that the [act of] falsification [is] committed in a x x x commercial document."[21]

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3. Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[19] ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister*. - The penalty of *prision mayor* and a fine not to exceed One million pesos (P1,000,000) shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original;

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document, of such character that its falsification may affect the civil status of persons

[20] An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, otherwise known as "The Revised Penal Code," effective August 29, 2017.

[21] *Tanenggee v. People*, 712 Phil. 310, 332-333 (2013); citation omitted.

In the instant case, we likewise find that all the above-mentioned elements were sufficiently established. *First*, Desmoparan is a private individual; *second*, the acts of falsification consisted in Desmoparan's act of causing it to appear that Cordura had participated in the act of applying for a loan when, in fact, he did not do so; and *third*, the falsification was committed in a loan application, a deed of assignment, and a promissory note dated February 27, 2012, which are all commercial documents considering that, in general, these documents or instruments are "used by merchants or businessmen to promote or facilitate trade or credit transactions."[22] Promissory notes facilitate credit transactions, while a check is a means of payment used in business, in lieu of money, for convenience in business transactions.[23]

While Desmoparan alleged that the prosecution failed to prove that he was the perpetrator of the falsified loan documents, we note that he never denied, however, that he was actually the one who personally came to CFI to apply for a salary loan using Cordura's name. He also never denied to be the one in possession of the falsified loan documents which were submitted to CFI to support the loan application purportedly under Cordura's name. He likewise never denied that he fraudulently used Cordura's name and qualifications to apply for the salary loan.

It must be likewise stressed that the loan clerks who processed the loan transactions were consistent in their testimonies that it was Desmoparan, and not Cordura, who: (1) personally applied for the salary loan; (2) submitted the documentary requirements under the name of Cordura; (3) presented an I.D. with his photo, but bearing the name of Cordura; (4) received the initial cash advances amounting to a total of ₱40,000.00; and (5) signed Cordura's name on the cash voucher. It cannot be said that just because none of the prosecution witnesses actually saw Desmoparan do the act of falsifying, the latter cannot be held liable for falsification. Clearly, given the enumerated

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[22] *Id.* at 333.

[23] *Id.*

circumstances, and considering that Desmoparan had in his possession the falsified loan documents and had actually took advantage of and profited from them, the presumption is that he is the material author of the falsification.

The absence of a direct proof that Desmoparan was the author of the falsification is of no moment for the rule remains that whenever someone has in his possession falsified documents and uttered or used the same for his advantage and benefit, the presumption that he authored it arises.[24]

> This is especially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and therefore, had complicity in the forgery.[25]

In the absence of a satisfactory explanation, as in this case, one who is found in possession of a forged document and who used or uttered it is presumed to be the forger.[26]

Corrollarily, after the existence of falsification of commercial documents has been established, we also find that the falsification of loan documents was a necessary means to commit estafa.

In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury.[27]

In the instant case, Desmoparan used the falsified documents bearing the name and qualifications of Cordura in fraudulently

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[24] *Chua v. People*, 681 Phil. 476, 483 (2012).

[25] *Id.*

[26] *Id.*; and *Serrano v. Court of Appeals*, 452 Phil. 801, 819-820 (2003).

[27] *Domingo v. People*, 618 Phil. 499, 518 (2009).

applying for a salary loan, which resulted in the eventual release and withdrawing of the cash advance amounting to a total of ₱40,000.00 from CFI. Clearly, Desmoparan employed deceit by falsifying loan documents in order to take hold of the money and, thereafter, convert it to his own personal use and benefit, resulting in the damage and prejudice of CFI and Cordura.

It must be emphasized anew that when the offender commits on a public, official, or commercial document any of the acts of falsification enumerated in Article 171[28] of the Revised Penal Code as a necessary means to commit another crime like estafa, the two crimes form a complex crime. Under Article 48 of the Revised Penal Code,[29] there are two classes of a complex crime. A complex crime may refer to a single act which constitutes

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[28] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister*. - The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. **Counterfeiting or imitating any handwriting, signature or rubric;**

2. **Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;**

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing to an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such x x x copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book. (Emphasis supplied.)

[29] Art. 48. *Penalty for complex crimes*. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

two or more grave or less grave felonies or to an offense as a necessary means for committing another.

In *Domingo v. People*,[30] we have held that falsification of a commercial document may be a means of committing estafa because, before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated; damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage is caused by the commission of estafa, not by the falsification of the document.

In this case, Desmoparan could not have succeeded in getting hold of the money without falsifying the loan documents bearing the name and qualifications of Cordura, and make it appear that he is actually the real Cordura. The falsification was, therefore, a necessary means to commit estafa, and falsification was already consummated even before the falsified documents were used to defraud CFI.

PENALTY

Desmoparan is found guilty of the complex crime of estafa through falsification of commercial documents since the crime of falsification was established to be a necessary means to commit estafa.

In *De Castro v. People*,[31] citing Article 48 of the Revised Penal Code, the Court held that in the complex crime of estafa through falsification of commercial documents, the penalty for the graver offense should be imposed in the maximum period.

However, with the passage of RA 10951,[32] the penalties of some crimes which are dependent on the value of the subject

[30] *Supra* note 27, at 517-518

[31] 752 Phil. 424,435 (2015).

[32] An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed Under the Revised

matter of the crimes have been greatly affected, and one of these is estafa. The law being more favorable to the petitioner, the same is given a retroactive effect. Below is the comparison of the penalty for estafa under the old provisions of the Revised Penal Code and RA 10951.

	Revised Penal Code	**RA 10951 (August 29, 2017)**
ESTAFA	Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: *1st.* **The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over ₱12,000 pesos but does not exceed ₱22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional ₱10,000 pesos;** but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be. *2nd.* The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over	ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (₱2,000,000); but the total penalty which may be imposed shall not exceed twenty years.In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other

Penal Code, Amending for the Purpose Act No. 3815, otherwise known as "The Revised Penal Code," as amended, August 29, 2017.

	₱6,000 pesos but does not exceed ₱12,000 pesos[.]	provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).**4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (₱40,000)**[.] (Emphases supplied.)

On the other hand, hereunder is the comparison of the penalties of falsification of commercial documents under the old provisions of the Revised Penal Code and RA 10951:

FALSIFICATION OF COMMERCIAL DOCUMENTS	Art. 172. Falsification by private individual and use of falsified documents. — **The penalty of prision correccional in its medium and maximum periods and a fine of not more than ₱5,000**	ART. 172. Falsification by private individual and use of falsified documents. - **The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than One million pesos (₱1,000,000)** shall be imposed upon:

	pesos shall be imposed upon: 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document[.]	1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange: or any other kind of commercial

From the given comparisons, both under the Revised Penal Code and RA 10951, the imposable penalty for estafa is based on the amount of damage. In this case, the amount defrauded is Forty Thousand Pesos (₱40,000.00), representing the total amount of money actually released and received by Desmoparan from CFI. As such, the prescribed penalty as provided under paragraph 4, Article 315 of the Revised Penal Code, as amended by RA 10951, is *arresto mayor* in its medium and maximum periods, since the amount does not exceed Forty Thousand Pesos (₱40,000.00). Meanwhile, under the old provisions of the Revised Penal Code, the imposable penalty is *prision correccional*, in its maximum period, to *prision mayor*, in its minimum period, if the amount of the fraud is over Twelve Thousand Pesos (₱12,000.00), but does not exceed Twenty-Two Thousand Pesos (P22,000.00); and, if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Ten Thousand Pesos (₱10,000.00). Thus, the penalty for estafa under the new law should be given retroactive effect, being more favorable to the petitioner.

In contrast, for falsification of a commercial document, the penalty of imprisonment is the same for both Article 172 (1), in relation to Article 171 (2), of the Revised Penal Code and

RA 10951 which is *prision correccional* in its medium and maximum periods, *albeit*, the imposable fine is different. Under the Revised Penal Code, the imposable fine is not more than Five Thousand Pesos (₱5,000.00); while under RA 10951, the imposable fine is not more than One Million Pesos (₱1,000,000.00).

Thus, the penalty of imprisonment in the crime of estafa under RA 10951 is now lighter than the penalty of imprisonment for falsification of commercial documents. Applying then the provisions of Article 48 of the Revised Penal Code for the complex crime of estafa through falsification of commercial documents, the penalty for the graver offense should be imposed in the maximum period. Thus, the penalty for falsification of commercial documents should be imposed in the maximum period, being the more serious crime than estafa. However, the penalty of fine of not more than Five Thousand Pesos (₱5,000.00) under the old law should be imposed because this is more favorable to the petitioner than the penalty of fine of not more than One Million Pesos (₱1,000,000.00) under the present law.

We, thus, modify the indeterminate sentence imposable on Desmoparan so that the minimum term should, come from the penalty next lower in degree which is *arresto mayor*, maximum, to *prision correccional*, minimum (4 months and 1 day to 2 years and 4 months), and the maximum term should come from *prision correccional*, medium, to *prision correccional*, maximum, in its maximum period (4 yeeirs, 9 months and 11 days to 6 years).

WHEREFORE, the Petition is **DENIED**. The Decision and Resolution of,the Court of Appeals in CA-G.R. CEB CR No. 02680 dated March 14, 2017 and July 20, 2017, respectively, are hereby **AFFIRMED** with the **MODIFICATION** that the indeterminate sentence to be imposed upon Juvy Desmoparan should be 4 months and 1 day of *arresto mayor*, as the minimum, to 5 years of *prision correccional*, as the maximum, and to pay a FINE in the amount of Five Thousand Pesos (₱5,000.00), with subsidiary imprisonment in case of insolvency.

The Court also **ORDERS** Juvy Desmoparan to pay to Cebu CFI Community Cooperative - Dumaguete Branch legal interest of six percent (6%) *per annum* on the aggregate amount of Forty Thousand Pesos (₱40,000.00), to be reckoned from the finality of this Decision until full payment thereof.

SO ORDERED.

Reyes, Jr., A., Hernando, and Carandang,* *JJ.*, concur.

Leonen, J., on wellness leave.

SECOND DIVISION

[G.R. No. 234648. March 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELIZALDE JAGDON *y* BANAAG A.K.A. "ZALDY,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In order to achieve conviction for the illegal sale of dangerous drugs, the following elements must concur: (1) identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment. On the other hand, the elements of the crime of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized

* Designated as additional member per Special Order No. 2624 dated November 28, 2018.

by law; and (3) the accused freely and consciously possesses the said drug. In both illegal sale and illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti.*

2. ID.; ID.; SECTION 21 OF R.A. NO. 9165; CHAIN OF CUSTODY; DEFINED; LINKS IN THE CHAIN OF CUSTODY; IT MUST BE ESTABLISHED THAT THE DRUGS PRESENTED IN COURT AS EVIDENCE ARE THE VERY SAME DRUGS RECOVERED FROM THE ACCUSED IN DRUG OFFENSES.— It is not difficult to envision why the preservation of the integrity and identity of the drugs seized is crucial in the prosecution of drug offenses. The unique characteristics of illegal drugs render it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, it is imperative that it is established that the drugs presented in court as evidence are the very same drugs recovered from the accused in drug offenses. To ensure that unnecessary doubts on the identity of the evidence are removed, the chain of custody is observed. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. In *People v. Kamad,* the Court recognized the following links that must be established in the chain of custody: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. In turn, the requirements under Section 21 of R.A. No. 9165 reinforce the first two links of the chain to make them foolproof against adulteration or planting of evidence.

3. ID.; ID.; ID.; ID.; AN ACCUSED CAN CHALLENGE THE POLICE'S COMPLIANCE WITH THE CHAIN OF CUSTODY EVEN IF HE MERELY RAISED IT FOR THE FIRST TIME ON APPEAL, AS THE ISSUE WHETHER THE PROCEDURE UNDER THE LAW WAS OBSERVED IS RELEVANT AS IT TOUCHES UPON THE *CORPUS DELICTI* ITSELF OR THE DRUGS SEIZED FROM THE ACCUSED, WHICH WOULD INDEED AFFECT THE COURT'S JUDGMENT IN ULTIMATELY ASCERTAINING WHETHER OR NOT THE ACCUSED SHOULD BE CONVICTED.— When an accused appeals his conviction, he waives his constitutional guarantee against double jeopardy as the entire case is open for review. The Court then renders judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned. Thus, in *People v. Miranda,* the Court elucidated that an accused may challenge the noncompliance of the procedures under Section 21 of R.A. No. 9165 even for the first time on appeal x x x. In this case, the Court cannot simply turn a blind eye against the unjustified deviations in the chain of custody on the sole ground that the defense failed to raise such errors in detail before the trial court. Considering the nature of appeals in criminal cases as above-discussed, it is then only proper to review the said errors even if not specifically assigned. **Verily, these errors, which go to the sufficiency of the evidence of the *corpus delicti* itself, would indeed affect the court's judgment in ultimately ascertaining whether or not the accused should be convicted and hence, languish in prison for possibly a significant portion of his life.** x x x. Jagdon can challenge the police's compliance with Section 21 of R.A. No. 9165 even if he merely raised it for the first time on appeal. The issue whether the procedure under the law was observed is relevant as it touches upon the *corpus delicti* itself or the drugs seized from Jagdon as a result of the buy bust operation and his subsequent arrest. Matters which relate to the sufficiency of evidence to convict an accused may be raised at any time, even for the first time on appeal.

4. ID.; ID.; SECTION 21 (1) OF R.A. NO. 9165, AS AMENDED BY R.A. NO. 10640; PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED DANGEROUS DRUGS; THIRD-PARTY WITNESS

REQUIREMENT; THE PRESENCE OF THIRD-PARTY WITNESSES SAFEGUARD AGAINST PLANTING OF EVIDENCE OR FRAME-UP OF THE ACCUSED, AND NON-OBSERVANCE THEREOF NECESSARILY CASTS DOUBT ON THE INTEGRITY OF THE DRUGS SEIZED, AND CREATES REASONABLE DOUBT IN THE CONVICTION OF THE ACCUSED.— Section 21(1) of R.A. No. 9165 requires that "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." In short, the marking and inventory must be done not only in the presence of the accused, but also of three additional witnesses, namely: a media person, a representative from the DOJ, and an elected public official. On the other hand, R.A. No. 10640 amended Section 21 (1) of R.A. No. 9165 in that physical inventory and photograph of the seized items must be done in the presence of the accused, a representative of the media **or** the National Prosecution Service, and an elected public official. The legislative intent behind the amendment is to adjust or relax the requirements under R.A. No. 9165 in view of the substantial number of acquittals in drug cases because of the failure to comply with the prescribed procedure. Nevertheless, both R.A. No. 9165 and R.A. No. 10640 require the presence of insulating witnesses in the inventory of the seized drugs in a buy bust operation. While the amendatory law may have reduced the number of witnesses required, it did not do away with such requirement. The presence of third-party witnesses in a buy bust operation cannot be gainsaid as it bolsters its legitimacy and regularity in guaranteeing against planting of evidence or frame-up of the accused. Compliance with the third-party witness requirement in Section 21 (1) of R.A. No. 9165 is vital as its non-observance necessarily casts doubt on the integrity of the drugs seized, and, in turn, creates reasonable doubt in the conviction of the accused.

5. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE

MANDATORY PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, WHICH MUST BE PROVEN AS A FACT, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— [T]he Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that non-compliance with the requirements under Section 21 under justifiable grounds, as long as the integrity and evidentiary value of the seized items are preserved by the apprehending team, shall not render void and invalid such seizures of and custody over said items. In *People v. Ano,* however, the Court explained that the saving clause in the IRR of R.A. No. 9165 applies only when the prosecution had explained the reason for the deviation from the procedure and the same was justified, to wit: The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 - provide that non-compliance with the requirements of Section 21, Article II of RA 9165 - under justifiable grounds - will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. x x x Also, in *People v. De Guzman,* it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

6. ID.; ID.; ID.; ID.; JUSTIFIED REASONS FOR NON-OBSERVANCE WITH THE WITNESS REQUIREMENT.— [T]he prosecution must identify the requirements of Section

21 of R.A. No. 9165 which were not complied with and provide sufficient justification for its non-observance. In *People v. Reyes,* the Court enumerated examples for ·justified reasons for non-observance of the witness requirement, *viz.:* Clearly, from the very findings of the CA, the requirements stated in Section 21 of R.A. 1965 [sic] have not been followed. There was no representative from the media and the National Prosecution Service present during the inventory and no justifiable ground was provided as to their absence. It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

7. ID.; ID.; ID.; ID.; IT MUST BE PROVEN THAT THE POLICE HAD EXERTED REASONABLE EFFORTS TO COMPLY WITH THE WITNESS REQUIREMENT BUT DUE TO JUSTIFIABLE GROUNDS, COMPLIANCE IS RENDERED IMPOSSIBLE OR IMPRACTICAL.— [I]t must be proven that the police had exerted efforts to comply with the requirements under the law, and that under the given circumstances, their actions were reasonable. Buy busts are planned police operations where the police carefully lay out their strategy in order to arrest those suspected to be involved in illegal drugs. From how they would approach the target and how they would signal to arrest him or her, everything is carefully fleshed out. In addition, it is expected that the police had also considered in their preparation that the procedure or requirements under Section 21 of R.A. No. 9165 are followed, or that reasonable efforts had been exerted to comply but due to justifiable grounds, compliance is rendered impossible or impractical. Clearly, it is the State's burden to ensure that necessary steps had been taken to ensure that the legitimacy of

buy bust operations are not compromised or placed in a position where its integrity is doubted. In fact, the prosecution is bound to explain why the witness requirement was not complied with even if it was not raised by the accused. x x x. In the case at bench, it is undisputed that the marking and inventory of the items seized from Jagdon without any representative from the media or the DOJ. Also, the presence of the barangay secretary and the Purok President do not satisfy the requirements of Section 21 of R.A. No. 9165. The law did not only require that there must be a public official, but that the said official must likewise be an elected official. As such, none of the mandated witnesses were present at the time the drugs seized from Jagdon were inventoried and photographed.

8. **ID.; ID.; ID.; ID.; DOUBT AS TO WHETHER THE DRUGS PRESENTED IN COURT WERE IN FACT RECOVERED FROM THE ACCUSED WOULD NEGATIVELY AFFECT THE INTEGRITY AND IDENTITY OF THE *CORPUS DELICTI* ITSELF, AND WHEN SUCH DOUBT PERSISTS, THE COURTS ARE LEFT WITH NO OTHER RECOURSE BUT TO ACQUIT THE ACCUSED OF THE CHARGES AGAINST HIM. —** It is true that the prosecution sufficiently established that P02 Piano had marked the seized items in Jagdon's presence and had testified how he had handled the drugs recovered until he had forwarded it to the forensic chemist. Nevertheless, the lapse of the police in not securing the required witnesses is not an insignificant one. To reiterate, these witnesses are necessary in order to fortify the first two links in the chain of custody as it insulates the buy bust operation from fear that the evidence was merely planted. For failing to observe the witness requirement, the identity and integrity of the drugs allegedly recovered from Jagdon had been compromised at the initial stage of the operations. The presence of the third-party witnesses during the marking and inventory of the seized items ensure that the police operations were valid and legitimate in their inception. All the precaution and safeguards observed thereafter would be rendered inutile if in the first place there is doubt as to whether the drugs presented in court were in fact recovered from the accused. In turn, such uncertainty would negatively affect the integrity and identity of the *corpus delicti* itself. When such doubt persists, the courts are left with no other recourse but to acquit the accused of the charges against him.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This is an appeal from the March 30, 2017 Decision[1] of the Court of Appeals-Cebu City (CA) in CA-G.R. CR-HC No. 02249, which affirmed the February 24, 2016 Decision[2] of the Regional Trial Court, Branch 52, Bacolod City (RTC) in Criminal Case Nos. 10-33276/77, finding accused-appellant Elizalde Jagdon *y* Banaag a.k.a "Zaldy" (Jagdon) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In two separate Information[3] both dated March 23, 2010, Jagdon was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of the information read:

Crim. Case No. 10-33276

x x x x x x x x x

That on or about the 17th day of March, [sic] 2010, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control

[1] Penned by Associate Justice Edgardo L. delos Santos, with Associate Justices Edward B. Contreras and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 4-16.

[2] Penned by Presiding Judge Raymond Joseph G. Javier; CA *rollo*, pp. 65-81.

[3] *Id.* at 6-9.

one (1) staple-sealed transparent plastic bag containing forty five (45) knot tied marijuana cigarettes having a total weight of 13.06 grams, in violation of the aforementioned law.[4]

Crim. Case No. 10-33277

x x x x x x x x x

That on or about the 17th day of March, [sic] 2010, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver,, give away to a police poseur buyer, PO2 Ian S. Piano, in a [buy bust] operation twelve (12) knot tied marijuana cigarettes with a total weight of 3.53 grams, in exchange of marked money of two (2) one hundred (P100.00) Peso bills bearing Serial Nos. MA518579 and ST105425 and one (1) twenty (P20.00) Peso bill bearing Serial No. ZU158596, in violation of the aforementioned law.[5]

During his arraignment on April 22, 2010 for both offenses, Jagdon pleaded "Not Guilty."[6]

Evidence for the Prosecution

On March 17, 2010, the Office of the City Anti-Illegal Drugs Special Operations Task Force Group (CAID-SOTG) of the Bacolod City Police received a tip from one of their confidential informants (CIs) that Jagdon is selling marijuana in Barangay Handumanan. The Bacolod City Police organized a buy bust team led by Police Senior Inspector Joemarie Occeño (PSINSP Occeno) and Police Officer 2 Ian Piano (PO2 Piano) as the poseur-buyer. At around 12:45 p.m., the buy bust team proceeded to the location where PO2 Piano and the CI went inside a junk shop where Jagdon allegedly transacted with his customers.[7]

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[4] *Id.* at 6.

[5] *Id.* at 8.

[6] *Id.* at 66.

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

Once inside, the CI, who knew Jagdon, informed him that they wanted to buy 12 sticks of marijuana. PO2 Piano handed over the marked money totalling ₱220.00 to Jagdon, who, in turn, gave 12 sticks of suspected marijuana, which he took from a small blue bag. After the transaction, PO2 Piano identified himself as a police officer and signalled PSINSP Occeño to make the arrest.[8]

During the arrest, Jagdon surrendered the small blue bag he was carrying. PO2 Piano searched the same and found another 45 sticks of suspected marijuana. After marking the recovered drugs, they were inventoried and photographed in the presence of two barangay officials — the barangay secretary and a Purok President. Jagdon and the seized items were then brought to the police station where the incident was recorded in the blotter. Thereafter, the purported marijuana sticks were sent to the crime laboratory for analysis, where they yielded a positive result for marijuana.[9]

Evidence for the Defense

On March 17, 2010, Jagdon was inside his house where he was about to put his son to sleep. His younger brother asked permission to go out of the house, but before he could do so, two persons suddenly barged into their home looking to buy marijuana. Jagdon told them that no one was selling marijuana in their home and one of the men asked if he knew a Rocky, Bongrich, and a Nonoy Gopio. When he denied knowing them, he was handcuffed, while the men, with their five other companions, proceeded to search his house.[10]

The RTC Ruling

In its February 24, 2016 Decision,[11] the RTC convicted Jagdon for violation of Sections 5 and 11, Article II of R.A. No. 9165.

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[8] *Id*. at 6.

[9] *Id*. at 6-7.

[10] *Id*. at 7.

[11] *Supra* note 2.

The trial court opined that the testimony of PO2 Piano categorically established all the elements of the illegal sale of dangerous drugs. It pointed out that he positively identified Jagdon as the one who gave the sticks of marijuana and received the marked money as payment. The RTC upheld the validity of the buy bust operations highlighting that the CAID-SOTG conducted the operation with the coordination of the Philippine Drug Enforcement Agency. The trial court expounded that Jagdon was also guilty of illegal possession of dangerous drugs as 45 more sticks of suspected marijuana were recovered from him after he was searched as an incident of a lawful arrest.

The RTC upheld the integrity of the drugs seized on account of the observance of the procedure in Section 21 of R.A. No. 9165. The trial court noted that the seized drugs were marked in front of Jagdon and the two barangay officials. It added that the chain of custody was unbroken as all the links of the chain, from the time the drugs were seized until its presentation in court, were satisfactorily proven. The RTC disregarded Jagdon's unsubstantiated claim of frame-up especially since the legitimacy and regularity of the buy bust operation had been established. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

(a) In **Criminal Case No. 10-33277** (Sale of Dangerous Drug), finding Accused-Defendant ELIZALDE JAGDON y BANAAG "**GUILTY**", beyond reasonable doubt, of Section 5, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated March 23, 2010. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00);

(b) In **Criminal Case No. 10-33276**, finding Accused-Defendant ELIZALDE JAGDON y BANAAG "**GUILTY**", beyond reasonable doubt, of Section 11, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated March 23, 2010. He is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and eight (8) months, as minimum to seventeen (17) years and eight (8)

months, as maximum and to pay a fine of three hundred thousand pesos (₱300,000.00).

(c) The dangerous drugs subject matter of these cases are hereby confiscated in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency (PDEA), Regional Office Six (6) for destruction;

(d) The Jail Warden of the Bureau of Jail Management and Penology, Male Dormitory, Barangay Taculing, Bacolod City is hereby **ORDERED** to **IMMEDIATELY TRANSFER** Accused-Defendant ELIZALDE JAGDON y BANAAG to the National Bilibid Prison, Muntinlupa City, Metro Manila, for the service of his sentence pursuant to OCA Circular No. 40-2013; and, [sic]

(e) No pronouncement as to cost.

SO ORDERED.[12]

Aggrieved, Jagdon appealed before the CA.

The CA Ruling

In its assailed March 30, 2017 Decision, the CA upheld Jagdon's conviction for violation of Sections 5 and 11, Article II of R.A. No. 9165. The appellate court posited that Jagdon was lawfully arrested and subsequently searched by virtue of a legitimate buy bust operation. It noted that PO2 Piano consistently identified Jagdon as the one who sold him 12 sticks of marijuana and from whom 45 additional sticks were recovered. The CA explained that the evidence of the prosecution sufficiently established that the integrity and evidentiary value of the seized marijuana were preserved. The appellate court expounded that PO2 Piano detailed how he had marked the seized drugs in Jagdon's presence and how he handled the same before he turned it over to the crime laboratory for examination. It elaborated that the integrity of the evidence is presumed unless there is a showing of bad faith, ill will, or proof that the evidence had been tampered with.

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[12] CA *rollo*, pp. 80-81.

Further, the CA postulated that Jagdon never questioned the chain of custody before the trial court and was raised only for the first time on appeal. The appellate court pointed out that he never assailed the police's non-compliance with Section 21, Article II of R.A. No. 9165. Thus, the CA surmised that it was too late for Jagdon to question the integrity and evidentiary value of the seized items. It ruled:

> **WHEREFORE**, in view of the foregoing premises, the present appeal is hereby DENIED. Accordingly, the 24 February 2016 Decision of the Regional Trial Court, Branch 52, Bacolod City in Crim. Case Nos. 10-33276 and 10-33277 finding the accused-appellant guilty beyond reasonable doubt of violation of Section 5 and 11, Article II of R.A. 9165 is hereby AFFIRMED.
>
> **SO ORDERED.**[13]

Hence, this appeal, raising:

The Issue

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF R.A.NO. 9165.

The Court's Ruling

The appeal is meritorious.

In order to achieve conviction for the illegal sale of dangerous drugs, the following elements must concur: (1) identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment.[14] On the other hand, the elements of the crime of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[15] In both illegal

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[13] *Rollo*, p. 15.

[14] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[15] *People v. Arposeple*, G.R. No. 205787, November 22, 2017.

sale and illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.[16]

It is not difficult to envision why the preservation of the integrity and identity of the drugs seized is crucial in the prosecution of drug offenses. The unique characteristics of illegal drugs render it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.[17] Thus, it is imperative that it is established that the drugs presented in court as evidence are the very same drugs recovered from the accused in drug offenses.

To ensure that unnecessary doubts on the identity of the evidence are removed, the chain of custody is observed.[18] Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.[19] Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *People v. Kamad*,[20] the Court recognized the following links that must be established in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating

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[16] *People v. Climaco*, 687 Phil. 593, 603 (2012).

[17] *People v. Alcuisar*, 662 Phil. 794, 801 (2011).

[18] *People v. Gayoso*, G.R. No. 206590, March 27, 2017, 821 SCRA 516, 527.

[19] *Id*. at 527-528.

[20] 624 Phil. 289, 304 (2010).

officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. In turn, the requirements under Section 21 of R.A. No. 9165 reinforce the first two links of the chain to make them foolproof against adulteration or planting of evidence.[21]

In the present case, Jagdon laments that the police did not comply with the requirements or procedure set forth in Section 21 of R.A. No. 9165. Particularly, he notes that the witnesses required by law were not present during the marking and inventory of the drugs allegedly recovered from him. Thus, Jagdon believes that the identity and intergrity of the drugs in question had been tainted. Meanwhile, the CA points out that there was substantial compliance with the requirements under Section 21 of R.A. No. 9165. The CA likewise opined that Jagdon can no longer assail the police's alleged failure to comply with the procedure laid out in Section 21, Article II of R.A. No. 9165 because he did not challenge the same during trial. The appellate court explained that he is precluded from questioning it for the first time on appeal.

Appeal opens the entire case for review

When an accused appeals his conviction, he waives his constitutional guarantee against double jeopardy as the entire case is open for review.[22] The Court then renders judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned.[23] Thus, in *People v. Miranda*,[24] the Court elucidated that an accused may challenge the non-compliance of the procedures under Section 21 of R.A. No. 9165 even for the first time on appeal, to wit:

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[21] *People v. Que*, G.R. No. 212994, January 31, 2018.

[33] *Escalante v. People*, G.R. No. 218970, June 28, 2017, 828 SCRA 379, 389.

[23] *Id.* at 389-390.

[24] G.R. No. 229671, January 31, 2018.

At this juncture, it is important to clarify that the fact that Miranda raised his objections against the integrity and evidentiary value of the drugs purportedly seized from him only for the first time before the CA does not preclude it or even this Court from passing upon the same.

To recount, the CA held that "[any] [l]apses [sic] in the safekeeping of the seized illegal drugs[,] [which affect] their integrity and evidentiary value should be raised at the trial court level." As basis, the CA cited the case of *People v. Mendoza (Mendoza)*, which in turn, cited the case of *People v. Sta. Maria (Sta. Maria)* wherein it was opined that:

x x x x x x x x x

Notably, *Mendoza, Sta, Maria*, and *Uy*, are all criminal cases for violation of RA 9165, particularly involving objections to the chain of custody of seized drugs, which were then ultimately rejected by the Court since the same were raised only for the first time on appeal.

After a thorough study of these cases, however, this Court holds that the aforesaid declarations espouse misplaced rulings, as the same clearly run counter to the fundamental rule that "an appeal in criminal cases throws the whole case open for review."

It is axiomatic that an appeal in criminal cases confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from. Accordingly, "errors in an appealed judgment [of a criminal case], even if not specifically assigned, may be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case." The rationale behind this rule stems from the recognition that an accused waives the constitutional safeguard against double jeopardy once he appeals from the sentence of the trial court. As such, it is incumbent upon the appellate court to render such judgment as law and justice dictate, whether it be favorable or unfavorable to him.

Thus, in *People v. Gatlabayan*, this Court considered every glaring deficiency in each link of the custody, even if the same was not raised as an error on appeal, and reversed the judgment of conviction, given that what was at stake was no less than the liberty of the accused.

In *Villareal v. People*, this Court clarified that unlike in civil cases, the assignment of errors in criminal cases is not essential to invoke

the court's appellate review, considering that it will nevertheless review the record, and accordingly, reverse or modify the appealed judgment if it finds that errors which are prejudicial to the rights of the accused have been committed, including those errors "which go to the sufficiency of evidence to convict."

> The rule means that, notwithstanding the absence of an assignment of errors, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of accused which are plain, fundamental, vital, or serious, or on errors which go to the sufficiency of the evidence to convict.

In this case, the Court cannot simply turn a blind eye against the unjustified deviations in the chain of custody on the sole ground that the defense failed to raise such errors in detail before the trial court. Considering the nature of appeals in criminal cases as above-discussed, it is then only proper to review the said errors even if not specifically assigned. **Verily, these errors, which go to the sufficiency of the evidence of the *corpus delicti* itself, would indeed affect the court's judgment in ultimately ascertaining whether or not the accused should be convicted and hence, languish in prison for possibly a significant portion of his life.** In the final analysis, a conviction must prudently rest on the moral certainty that guilt has been proven beyond reasonable doubt. Therefore, if doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law. (Citations omitted; emphases supplied)

Jagdon can challenge the police's compliance with Section 21 of R.A. No. 9165 even if he merely raised it for the first time on appeal. The issue whether the procedure under the law was observed is relevant as it touches upon the *corpus delicti* itself or the drugs seized from Jagdon as a result of the buy bust operation and his subsequent arrest. Matters which relate to the sufficiency of evidence to convict an accused may be raised at any time, even for the first time on appeal.

Having settled that Jagdon can raise the issue of compliance with Section 21 of R.A. No. 9165 for the first time on appeal, the Court finds that the police had unduly deviated from the prescribed procedure warranting the acquittal of the accused.

Presence of prescribed witnesses safeguard against planting of evidence

Section 21(1) of R.A. No. 9165 requires that "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." In short, the marking and inventory must be done not only in the presence of the accused, but also of three additional witnesses, namely: a media person, a representative from the DOJ, and an elected public official.

On the other hand, R.A. No. 10640 amended Section 21(1) of R.A. No. 9165 in that physical inventory and photograph of the seized items must be done in the presence of the accused, a representative of the media **or** the National Prosecution Service, and an elected public official. The legislative intent behind the amendment is to adjust or relax the requirements under R.A. No. 9165 in view of the substantial number of acquittals in drug cases because of the failure to comply with the prescribed procedure.[25]

Nevertheless, both R.A. No. 9165 and R.A. No. ,10640 require the presence of insulating witnesses in the inventory of the seized drugs in a buy bust operation. While the amendatory law may have reduced the number of witnesses required, it did not do away with such requirement. The presence of third-party

[25] *People v. Oliva*, G.R. No. 234156, January 7, 2019.

witnesses in a buy bust operation cannot be gainsaid as it bolsters its legitimacy and regularity in guaranteeing against planting of evidence or frame-up of the accused.[26] Compliance with the third-party witness requirement in Section 21(1) of R.A. No. 9165 is vital as its non-observance necessarily casts doubt on the integrity of the drugs seized, and, in turn, creates reasonable doubt in the conviction of the accused.[27]

Admittedly, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that non-compliance with the requirements under Section 21 under justifiable grounds, as long as the integrity and evidentiary value of the seized items are preserved by the apprehending team, shall not render void and invalid such seizures of and custody over said items. In *People v. Año*,[28] however, the Court explained that the saving clause in the IRR of R.A. No. 9165 applies only when the prosecution had explained the reason for the deviation from the procedure and the same was justified, to wit:

> The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 - provide that non-compliance with the requirements of Section 21, Article II of RA 9165- under justifiable grounds - will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*,

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[26] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 246-247.

[27] *People v. Cabuhay*, G.R. No. 225590, July 23, 2018.

[28] G.R. No. 230070, March 14, 2018.

the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. (Citations omitted)

In *People v. Señeres, Jr.*,[29] the Court ruled that the prosecution must initiate acknowledging and justifying deviations from the prescribed procedure, to wit:

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. **It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the 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.** 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 item. (Emphasis and underscoring supplied)

Thus, the prosecution must identify the requirements of Section of R.A. No. 9165 which were not complied with and provide sufficient justification for its non-observance. In *People v. Reyes*,[30] the Court enumerated examples for justified reasons for non-observance of the witness requirement, *viz.*:

Clearly, from the very findings of the CA, the requirements stated in Section 21 of R.A. 1965 [sic] have not been followed. There was no representative from the media and the National Prosecution Service present during the inventory and no justifiable ground was provided as to their absence. It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1)

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[29] G.R. No. 231008, November 5, 2018.

[30] G.R. No. 219953, April 23, 2018.

media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

Further, it must be proven that the police had exerted efforts to comply with the requirements under the law, and that under the given circumstances, their actions were reasonable.[31] Buy busts are planned police operations where the police carefully lay out their strategy in order to arrest those suspected to be involved in illegal drugs. From how they would approach the target and how they would signal to arrest him or her, everything is carefully fleshed out. In addition, it is expected that the police had also considered in their preparation that the procedure or requirements under Section 21 of R.A. No. 9165 are followed, or that reasonable efforts had been exerted to comply but due to justifiable grounds, compliance is rendered impossible or impractical.

Clearly, it is the State's burden to ensure that necessary steps had been taken to ensure that the legitimacy of buy bust operations are not compromised or placed in a position where its integrity is doubted. In fact, the prosecution is bound to explain why the witness requirement was not complied with even if it was not raised by the accused. The Court in *People v. Cariño*,[32] explained, to wit:

> Notably, the Court, in *People v. Miranda*, 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**

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[31] *People v. Angeles*, G.R. No. 218947, June 20, 2018.

[32] G.R. No. 233336, January 14, 2019.

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." (Citation omitted; emphasis supplied)

In the case at bench, it is undisputed that the marking and inventory of the items seized from Jagdon without any representative from the media or the DOJ. Also, the presence of the barangay secretary and the Purok President do not satisfy the requirements of Section 21 of R.A. No. 9165. The law did not only require that there must be a public official, but that the said official must likewise be an elected official. As such, none of the mandated witnesses were present at the time the drugs seized from Jagdon were inventoried and photographed.

It is true that the prosecution sufficiently established that PO2 Piano had marked the seized items in Jagdon's presence and had testified how he had handled the drugs recovered until he had forwarded it to the forensic chemist. Nevertheless, the lapse of the police in not securing the required witnesses is not an insignificant one. To reiterate, these witnesses are necessary in order to fortify the first two links in the chain of custody as it insulates the buy bust operation from fear that the evidence was merely planted. For failing to observe the witness requirement, the identity and integrity of the drugs allegedly recovered from Jagdon had been compromised at the initial stage of the operations.

The presence of the third-party witnesses during the marking and inventory of the seized items ensure that the police operations were valid and legitimate in their inception. All the precaution and safeguards observed thereafter would be rendered inutile if in the first place there is doubt as to whether the drugs presented in court were in fact recovered from the accused. In turn, such uncertainty would negatively affect the integrity and identity of the *corpus delicti* itself. When such doubt persists, the courts are left with no other recourse but to acquit the accused of the charges against him.

WHEREFORE, the March 30, 2017 Decision of the Court of Appeals-Cebu City in CA-G.R. CR-HC No. 02249 is **REVERSED** and **SET ASIDE**. Accused-appellant Elizalde Jagdon y Banaag a.k.a "Zaldy" is **ACQUITTED**. 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, Caguioa,* and *Lazaro-Javier, JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 204187 and 206606, April 01, 2019]

JAKA INVESTMENTS CORPORATION, *petitioner, vs.* **URDANETA VILLAGE ASSOCIATION, INC. AND AYALA LAND, INC. (AS SUCCESSOR-IN-INTEREST OF MAKATI DEVELOPMENT CORPORATION),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HAS JURISDICTION OVER CONTROVERSY THAT AROSE FROM INTRA-CORPORATE RELATIONS BETWEEN AND AMONG MEMBERS OF THE ASSOCIATION, BETWEEN ANY AND/OR ALL OF THEM AND THE ASSOCIATION OF WHICH THEY ARE MEMBERS AND

BETWEEN THE ASSOCIATION AND THE STATE INSOFAR AS THE CONTROVERSY CONCERNS ITS RIGHT TO EXIST AS A CORPORATE ENTITY; CASE AT BAR.— To determine if this case falls under the agency's jurisdiction, it is necessary to examine whether the controversy arose "from any of the following intra-corporate relations: (1) between and among members of the association; (2) between any and/or all of them and the association of which they are members; and (3) between the association and the state insofar as the controversy concerns its right to exist as a corporate entity." x x x [T]his Court resolves whether the controversy arose from the parties' intra-corporate relation. In its Petition before the trial court, petitioner sought for the cancellation of the Deed Restrictions annotated in its lot titles. Petitioner claimed that with the Deed Restrictions' term expiration, its legal or contractual basis no longer existed. However, petitioner failed to disclose that the same Deed Restrictions had already been extended by a vote of more than two-thirds (2/3) of respondent Association's members on September 6, 2007, or 10 months before it filed its Petition. Petitioner, then, cannot have the restrictions canceled without first invalidating the act of respondent Association in extending the Deed Restrictions' term. Here, respondent Association maintains that the extension is valid, while petitioner insists on its invalidity. Clearly, the controversy arose from an intra-corporate relation between an association and its member.

2. **ID.; APPEALS; PETITION FOR REVIEW ON CERTIORARI; QUESTIONS OF FACT CANNOT BE RAISED THEREIN.—** As for the second and third issues, their resolution would necessarily involve an examination of evidence presented by the parties. These are questions of facts, which cannot be raised in a petition for review under Rule 45 of the Rules of Court. In *Heirs of Pedro Mendoza v. Valte*: Resolving questions of fact is a function of the lower courts. This court is a collegiate body. It does not receive evidence nor conduct trial procedures that involve the marking of documentary evidence by the parties and hearing the direct and cross-examination of each and every witness presented for testimonial evidence. This court does not deal with matters such as whether evidence presented deserve probative weight or must be rejected as spurious; whether the two sides presented evidence adequate to establish their

proposition; whether evidence presented by one party can be considered as strong, clear, and convincing when weighed and analyzed against the other party's evidence; whether the documents presented by one party can be accorded full faith and credit considering the other party's protests; or whether certain inconsistencies in the party's body of proofs can justify not giving these evidence weight. The doctrine on hierarchy of courts ensures that the different levels of the judiciary can perform its designated roles in an effective and efficient manner. As the court of last resort, this court should not be burdened with functions falling within the causes in the first instance so that it can focus on its fundamental tasks under the Constitution.

3. ID.; JURISDICTION; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; COURTS CANNOT OR WILL NOT DETERMINE A CONTROVERSY WHERE THE ISSUES FOR RESOLUTION DEMAND THE EXERCISE OF SOUND ADMINISTRATIVE DISCRETION REQUIRING THE SPECIAL KNOWLEDGE, EXPERIENCE AND SERVICES OF THE ADMINISTRATIVE TRIBUNAL TO DETERMINE TECHNICAL AND INTRICATE MATTERS OF FACT; CASE AT BAR.— The Housing and Land Use Regulatory Board is the appropriate government agency to resolve whether the extension of the Deed Restrictions is valid, and whether petitioner is estopped to question it. It has the technical expertise to analyze contracts between petitioner and respondent Association. In *Spouses Chua v. Ang*, this Court declared that the agency, "[i]n the exercise of its powers, . . . is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts." This Court reminds litigants, counsels, and judges alike on the doctrine of primary administrative jurisdiction. *Maria Luisa Park Association, Inc*. instructs: [U]nder the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.

APPEARANCES OF COUNSEL

Cathleen Elizabeth L. Cotay for petitioner.
Abes Mariano & Malong Law Offices for respondent *Urdaneta Village Association.*
Padilla Law Office for respondent *Ayala Land.*

D E C I S I O N

LEONEN, *J.*:

Cases involving intra-association controversies fall under the jurisdiction of the Housing and Land Use Regulatory Board, the government agency with the technical expertise on the matter.

This resolves a Petition for Review on Certiorari[1] assailing the June 13, 2012 Decision[2] and October 15, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP Nos. 121443 and 121676. The Court of Appeals reversed and set aside the July 19, 2010[4] and July 13, 2011[5] orders of the Regional Trial Court, which ruled that it had jurisdiction over the case filed by Jaka Investments Corporation (Jaka Investments) despite allegations that the case involved an intra-association dispute.[6]

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[1] *Rollo*, pp. 17-48.

[2] *Id*. at 49-57. The Decision was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser of the Special Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 58-59. The Resolution was penned by Associate Justice Marlene Gonzales-Sison, and concurred in by Associate Justices Danton Q. Bueser and Nina G. Antonio-Valenzuela of the Former Special Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 60-64. The Order, in LRC Case No. M-5124, was issued by Presiding Judge Dina Pestaño Teves of Branch 142, Regional Trial Court, Makati City.

[5] *Id*. at 65-66. The Order, in LRC Case No. M-5124, was issued by Presiding Judge Dina Pestaño Teves of Branch 142, Regional Trial Court, Makati City.

[6] *Id*. at 61-64.

Ayala Land, Inc. (Ayala Land), the successor-in-interest of Makati Development Corporation, is the developer and seller of lots in Urdaneta Village, Makati City.[7] The Urdaneta Village Association, Inc. (the Association) is its duly organized homeowners' association.[8]

All parcels of land sold by Ayala Land in Urdaneta Village are subject to uniform restrictions, which are annotated on the transfer certificates of title covering the lots.[9] The uniform restrictions read:

> The property described in this certificate of title is subject to the restrictions enumerated in Annex A of the sale executed by Makati Development Corporation in favor of the registered owner which shall remain in force for fifty years from June 1, 1958. Among the restrictions are as follows:
>
> > The owners of this lot or his successor in interest is required to be and is automatically a member of the [Urdaneta] Village Association]. This lot may not be subdivided/ This lot shall only be used for residential purposes. Only on[e] single family house may be constructed on a single lot, althought (sic) separate servant's quarters or garage may be built. The property is subject to an easement of two meters within the lot and adjacent to the rear and sides thereof not fronting a street for the purpose of drainage, sewage, water and other public facilities as may be necessary and desirable.
> >
> > All building[s] on this lot must be of strong materials. Buildings shall not be higher than 9 meters above the ground directly beneath the point in question. All building plans must be approved by the Association] before construction begins. All buildings, including garage, servant's quarters or parts thereof, (covered terraces, porte cocheres) must be constructed at a distance of not less than 3 meters from the boundary fronting a street, not less tha[n] 4 meters fronting the drainage creek or underground culvert, and not less than 2 meters from the other boundaries of this lot. Sewage disposal must be into a sewage system.

[7] *Id.* at 51.

[8] *Id.* at 50 and 115.

[9] *Id.* at 51 and 707-708.

> Walls on the perimeter of this property shall not exceed 2 meters in height, except that no restriction as to height applies to walls made . .. of live vegetation[.][10]

Jaka Investments bought three (3) lots in Urdaneta Village, which were covered by Transfer Certificate of Title Nos. S-10603, S-10604, and S-74957.[11]

On March 15, 2007, the Association's Board of Governors held a meeting, where it approved the extension of the Association's corporate life and the term of the Deed Restrictions, both for another 25 years:[12]

A. Amendment of the Articles of Incorporation (extension of corporate life):

Fourth - The term for which this Corporation is to exist is extended for another twenty-five (25) years after its expiration on August 13, 2008".

B. Extension and revision of Deed Restrictions:

. . . . . .

VII - TERMS OF RESTRICTIONS

The foregoing restrictions shall remain in force for ***twenty-five years from June 1, 2008***. However, the Association may, by majority rule, from time to time, add new ones, amend or abolish building and architectural restrictions specified in Part III. ***These restrictions may be reviewed every ten years or more often, if necessary.***[13] (Emphasis in the original)

On September 6, 2007, the Association held a general membership meeting to vote on the changes. Of its 331 members, 267 approved the corporate life extension while 257 approved the Deed Restrictions' term extension. Jaka Investments,

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[10] *Id.* at 73, Transfer Certificate of Title No. S-10603.

[11] *Id*. at 72-85.

[12] *Id*. at 51 and 106-108.

[13] *Id*. at 106-108, Urdaneta Village Association, Inc.'s Board Resolution.

represented through proxy Estela Malabanan (Malabanan), voted in favor of both extensions.[14]

On April 8, 2008, the Housing and Land Use Regulatory Board issued a certificate of the Association's amended Articles of Incorporation.[15]

On July 30, 2008, Jaka Investments filed before the Regional Trial Court a Petition[16] for the cancellation of restrictions annotated in Transfer Certificate of Title Nos. S-10603, S-10604, and S-74957. The case was docketed as LRC Case No. M-5124.[17]

Jaka Investments claimed that upon the expiration of the term of restrictions on June 1, 2008, the legal or contractual basis for the restrictions ceased. Since the annotations became unlawful limitations on petitioner's rights as the lots' owner, they should be canceled under Section 108[18] of Presidential Decree No. 1529, or the Property Registration Decree.[19]

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[14] *Id*. at 51 and 776.

[15] *Id*. at 51.

[16] *Id*. at 67-71.

[17] *Id*. at 67.

[18] Pres. Decree No. 1529 (1978), Ch. X, Sec. 108 provides:

SECTION 108. *Amendment and Alteration of Certificates*. — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution;

On December 16, 2008, the Association filed its Opposition to the Petition with Motion to Dismiss.[20] Maintaining that this was an intra- corporate dispute on the validity of the uniform restrictions' term extension, the Association argued that the Housing and Land Use Regulatory Board, not the trial court, had exclusive and original jurisdiction over the case.[21] Moreover, even if the trial court had jurisdiction, Jaka Investments was still estopped from questioning the term extension since it had already voted in favor of it via proxy in the general membership meeting.[22]

On January 8, 2009, Ayala Land filed its Opposition to the Petition.[23] It argued that the uniform restrictions had already been validly extended by a majority vote of the Association's members.[24]

In its July 19, 2010 Order,[25] the Regional Trial Court ruled against the Association's and Ayala Land's oppositions.[26] Despite

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or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered. (Emphasis in the original)

[19] *Rollo*, pp. 68-69.

[20] *Id*. at 88-105.

[21] *Id*. at 93-97.

[22] *Id*. at 97-98.

[23] *Id*. at 124-127.

[24] *Id*. at 126.

agreeing that the issue was intra-corporate, the trial court still held that it had jurisdiction over the case. It took judicial notice of the Office of the President's Decision in *Cezar Yatco Real Estate Services, Inc. v. Bel-Air Village Association, Inc.*[27] and applied it in Jaka Investments' Petition.[28]

In *Cezar Yatco*, the Deed Restrictions' term read:

IV - Term of Restrictions

The foregoing restrictions shall remain in force for fifty years from January 15, 1957, unless sooner cancelled in its entirety by two-thirds vote of members in good standing of the Bel-Air Association. However, the Association may, from time to time, add new ones, amend or abolish particular restrictions or parts thereof by majority rule.[29]

The trial court noted that in *Cezar Yatco*, the Office of the President held that the word "however" in the second sentence of the term only meant that the restrictions may be amended, increased, or abolished within the 50-year period. It, however, did not imply that the term of restrictions may be extended.[30]

As such, the trial court ruled that the term of restrictions in Jaka Investments' case had already expired. Thus, the matter would already fall under the jurisdiction of the regional trial courts, which may act as land registration courts.[31]

The dispositive portion of the trial court Order read:

WHEREFORE, the foregoing considered, the oppositions filed by Oppositor Urdaneta Village Association, Inc., and Ayala Land, Inc., are both acted with disfavor.

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[25] *Id*. at 60-64.

[26] *Id*. at 64.

[27] The case was docketed as O.P. Case No. 09-B-088.

[28] *Rollo*, pp. 61-63.

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

[30] *Id*. at 62.

[31] *Id*. at 63.

This Petition is therefore set for hearing on September 27, 2010 at 8:30 o'clock in the morning (sic).

Let copies of this Order be furnished [to] all the parties concerned.

SO ORDERED.[32]

The Association[33] and Ayala Land[34] separately moved for reconsideration, but both their motions were denied by the trial court in its July 13, 2011 Order.[35]

Thus, the Association[36] and Ayala Land[37] separately filed before the Court of Appeals petitions for certiorari assailing the trial court's July 19, 2010 and July 13, 2011 orders.[38]

In its June 13, 2012 Decision,[39] the Court of Appeals reversed and set aside the trial court's rulings and dismissed Jaka Investments' Petition for lack of jurisdiction.[40] It held that the trial court should have dismissed Jaka Investments' Petition since it had already found that the issue raised in it was an intra-corporate controversy. Since the case's controversy is between the homeowners' association and its member, Jaka Investments, its jurisdiction lies with the Housing and Land Use Regulatory Board.[41] The Court of Appeals elaborated:

Respondent Jaka admits that the case is intra-corporate in nature but asserts that it is the RTC who has jurisdiction over the petition since what is being questioned is the cancellation of the annotation on the titles, not the validity of the restrictions. However, respondent Jaka's

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[32] *Id*. at 64.

[33] *Id*. at 174-180.

[34] *Id*. at 181-185.

[35] *Id*. at 65-66.

[36] *Id.* at 197-226.

[37] *Id*. at 365-392.

[38] *Id*. at 222 and 385.

[39] *Id*. at 49-57.

[40] *Id*. at 57.

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

(sic) reveals that it is disregarding the valid extension of the term of the restrictions by filing the petition for cancellation of the annotation. Thus, an intra-corporate issue.[42]

Moreover, the Court of Appeals held that even if the trial court had jurisdiction, it still erred in ruling that the Deed Restrictions could no longer be extended. It found that in the Office of the President's May 19, 2011 Resolution, it reversed and set aside its December 29, 2009 Decision, the basis of the trial court's Decision. In its latter ruling, the Office of the President also reinstated the Decision of the Housing and Land Use Regulatory Board. Thus, the trial court's decision became ineffective and its orders should be disregarded.[43]

The Court of Appeals held that Jaka Investments is estopped from questioning the extension's validity. It pointed out that the Deed Restrictions' extension was valid as more than two-thirds (2/3) of the homeowners, including Jaka Investments through its proxy, voted for it in their general membership meeting. Jaka Investments could not put in issue its proxy's lack of special power of attorney since it is not required for proxy voting.[44]

Jaka Investments filed a Motion for Reconsideration,[45] which the Court of Appeals denied in its October 15, 2012 Resolution.[46]

On December 12, 2012, Jaka Investments filed before this Court a Petition for Review on Certiorari[47] against the Association and Ayala Land. It prays that the Court of Appeals June 13, 2012 Decision and October 15, 2012 Resolution be reversed and set aside, and that the trial court's July 19, 2010 and July 13, 2011 Orders be reinstated.[48] Respondents filed their comments

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[42] *Id*. at 56.

[43] *Id*.

[44] *Id*.

[45] *Id*. at 615-636.

[46] *Id*. at 58-59.

[47] *Id*. at 17-48.

[48] *Id*. at 43.

on June 17, 2013[49] and July 19, 2013,[50] respectively. In turn, petitioner filed its Consolidated Reply[51] on November 19, 2013.

In its January 13, 2014 Resolution,[52] this Court gave due course to the Petition and required the parties to submit their respective memoranda. Respondents filed their memoranda on March 18, 2014[53] and March 31, 2014,[54] respectively, while petitioner filed its Memorandum[55] on April 2, 2014.

Petitioner denies admitting that the case is intra-corporate. It insists that the Regional Trial Court, acting as a land registration court, correctly assumed jurisdiction over the case since what it prayed for in its Petition was the cancellation of the title's annotation. Moreover, it filed the Petition in the exercise of its proprietary right as the property owner, not as member of respondent Association.[56] Petitioner argues:

> Thus, the Petition for Cancellation, as filed, sufficiently establishes a cause of action for cancellation of the restrictions annotated in the Certificates of Title, to wit: (1) that petitioner is the registered owner of three (3) parcels of land with improvements situated inside Urdaneta Village, Makati City as evidenced by Transfer Certificate of Titles (sic) Nos. S-10603, S-10604 and S-74957, (2) that there appears in all three (3) titles a uniform entry for restrictions which has already expired on 1 June 2008, and (3) that said annotations now appear to be unlawful limitations on the rights of petitioner and must therefore be cancelled in accordance with Section 108 of P.D. 1529.

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[49] *Id*. at 641-656, the Ayala Land's Comment.

[50] *Id*. at 663-684, the Association's Comment.

[51] *Id*. at 692-704.

[52] *Id*. at 706.

[53] *Id*. at 707-729, the Ayala Land's Memorandum.

[54] *Id*. at 730-760, the Association's Memorandum.

[55] *Id.* at 764-786.

[56] *Id*. at 769-774.

Consequently, on the basis of the facts alleged, the RTC, in the exercise of its original and exclusive jurisdiction, could validly render judgment over the petition for cancellation[.][57]

Petitioner maintains that it is not estopped from assailing both the validity of the Deed Restrictions' extension and the authority of its proxy who voted in its favor.[58] It claims that since its proxy is "an agent for a special purpose,"[59] the general rules on agency should apply. Under Article 1878 of the Civil Code, a special power of attorney is required "to create or convey real rights over immovable and for any other act of strict dominion."[60] Since the extension of the Deed Restrictions is an act of strict dominion or ownership, the proxy should have been issued a special power of attorney to bind petitioner. Malabanan's vote, then, cannot be enforced against petitioner.[61]

Additionally, petitioner did not ratify Malabanan's act. Neither was there any indication that its Board of Directors authorized its vice president and general manager, Persiverando M. Lukban, to appoint Malabanan as its proxy.[62]

Petitioner contends that respondent Association's extension of its corporate life and the Deed Restrictions violated the Deed of Absolute Sale between the original lot buyers and the seller.[63] It alleges that the original buyers "could not have envisioned nor intended to be bound by the restrictions indefinitely, nor the same be extended, especially when the terms of the restrictions clearly [show] otherwise."[64] The contract allows for the "addition,

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[57] *Id*. at 772.

[58] *Id*. at 775-779.

[59] *Id*. at 775.

[60] *Id.*

[61] *Id*. at 776.

[62] *Id*.

[63] *Id*. at 779.

[64] *Id*.

amendment[,] or abolition of particular or specific parts of the restrictions . . . and not to the period of effectivity."[65]

Finally, petitioner claims that the Deed Restrictions' extension violated the doctrine of mutuality of contracts:[66]

> While it is not expressly found in the contract, it would be safe to assume that when they entered in the deed of sale over the Urdaneta lots, the original buyers and their assignees, including herein petitioner, individually and voluntarily, accepted the Deed of Restrictions as a pre-requisite to the purchase of the properties. Hence, when the restriction automatically expired fifty (50) years from 1 June 1958, the same restriction may no longer be extended, without the express and valid consent of the individual owners of the properties even if more than 2/3 of the members of the association voted in its favor. To do so otherwise is a violation of the principle of mutuality of contracts under Article 1308 of the Civil Code, which provides that "the contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."[67]

Respondent Ayala Land counters that the Housing and Land Use Regulatory Board, not the trial court, should take cognizance of the case. It notes that the trial court itself admitted that the controversy is intra-corporate, and that petitioner did not deny being a member of respondent Association. Moreover, it points out that the Office of the President later reversed its ruling in *Cezar Yatco*, the trial court's basis for holding that it had jurisdiction. It then reiterates that petitioner is estopped from assailing the extension's validity.[68]

In addition, respondent Ayala Land argues that the restrictions were "reasonable liens and encumbrances intended for the general welfare of the community."[69]

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[65] *Id*. at 780.

[66] *Id*. at 781.

[67] *Id*.

[68] *Id*. at 715-725.

[69] *Id*. at 725.

For its part, respondent Association asserts that the Petition should be dismissed because: (1) petitioner failed to pay the docket and other lawful fees, rendering the Court of Appeals Decision final and executory;[70] and (2) it mainly assails the validity of both the Deed Restrictions' extension and proxy votes, which are questions of fact improper in a Rule 45 petition.[71]

Respondent Association further argues that the Housing and Land Use Regulatory Board has jurisdiction over the case as it involves an intra-association dispute.[72] Moreover, it asserts that petitioner is estopped from assailing the validity of the term extension and proxy votes. This is because its proxy had already voted in its favor, and its Petition for Cancellation was only filed 10 months after the September 6, 2007 general membership meeting. Further, even if the proxy vote was not valid, it will not affect the decision to extend the Deed Restrictions since two-thirds (2/3) of all respondent's members voted in its favor.[73]

Lastly, respondent Association ascribes bad faith to petitioner for not disclosing that the Deed Restrictions had already been extended by the time it filed its Petition before the trial court.[74]

The three (3) issues for this Court's resolution are:

First, whether or not the Regional Trial Court has jurisdiction over the case;

Second, whether or not the extension of the Deed Restrictions is valid; and

Finally, whether or not petitioner Jaka Investments Corporation is estopped from assailing the validity of the Deed Restrictions' extension.

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[70] *Id*. at 738-742.

[71] *Id*. at 743-744.

[72] *Id*. at 744.

[73] *Id*. at 751-755.

[74] *Id*. at 757-758.

I

In *Maria Luisa Park Association, Inc. v. Almendras*,[75] this Court discussed the scope of the Housing and Land Use Regulatory Board's jurisdiction at length:

> We agree with the trial court that the instant controversy falls squarely within the exclusive and original jurisdiction of the Home Insurance and Guaranty Corporation (HIGC), now HLURB.
>
> Originally, administrative supervision over homeowners' associations was vested by law with the Securities and Exchange Commission (SEC). However, pursuant to Executive Order No. 535, the HIGC assumed the regulatory and adjudicative functions of the SEC over homeowners' associations. Section 2 of E.O. No. 535 provides:
>
> > 2. In addition to the powers and functions vested under the Home Financing Act, the Corporation, shall have among others, the following additional powers:
> >
> > (a) . . . and exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission with respect to homeowners associations, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding;
> >
> > (b) To regulate and supervise the activities and operations of all houseowners associations registered in accordance therewith;
> >
> > . . . . . .
>
> Moreover, by virtue of this amendatory law, the HIGC also assumed the SEC's original and exclusive jurisdiction under Section 5 of Presidential Decree No. 902-A to hear and decide cases involving:
>
> > b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; **between any and/or all of them and the corporation, partnership or association of which they are stockholders, members or associates**, respectively; and between such corporation, partnership or association and the state insofar

[75] 606 Phil. 670 (2009) [Per *J.* Quisumbing, Second Division].

as it concerns their individual franchise or right to exist as such entity;

. . . .

Consequently, in *Sta. Clara Homeowners' Association v. Gaston and Metro Properties, Inc. v. Magallanes Village Association, Inc.*, the Court recognized HIGC's "Revised Rules of Procedure in the Hearing of Home Owner's Disputes," pertinent portions of which are reproduced below:

RULE II

Disputes Triable by HIGC/Nature of Proceedings

Section 1. *Types of Disputes* — The HIGC or any person, officer, body, board or committee duly designated or created by it shall have jurisdiction to hear and decide cases involving the following:

. . . . . .

(b) Controversies arising out of intra-corporate relations between and among members of the association, **between any or all of them and the association of which they are members**, and between such association and the state/general public or other entity in so far as it concerns its right to exist as a corporate entity.

. . . . . .

Later on, the above-mentioned powers and responsibilities, which had been vested in the HIGC with respect to homeowners' associations, were transferred to the HLURB pursuant to Republic Act No. 8763, entitled "Home Guaranty Corporation Act of 2000."

. . . .

Indeed, in *Sta. Clara Homeowners' Association v. Gaston*, we held:

. . . the **HIGC exercises limited jurisdiction over homeowners' disputes. The law confines its authority to controversies that arise from any of the following intra-corporate relations**: (1) between and among members of the association; (2) **between any and/or all of them and the association of which they are members**; and (3) between the

> association and the *state* insofar as the controversy concerns its right to exist as a corporate entity.[76] (Emphasis in the original, citations omitted)

To determine if this case falls under the agency's jurisdiction, it is necessary to examine whether the controversy arose "from any of the following intra-corporate relations: (1) between and among members of the association; (2) between any and/or all of them and the association of which they are members; and (3) between the association and the state insofar as the controversy concerns its right to exist as a corporate entity."[77]

This Court first resolves whether petitioner is a member of respondent Association.

Petitioner did not deny its membership in the Association. Despite its non-disclosure of its membership status in its Petition for Cancellation before the Regional Trial Court, it impliedly admitted the same when it mentioned in its later pleadings that it was filing its Petition for Cancellation as an owner, and *not as a member of respondent Association*. Hence, this Court finds that petitioner is its member.

Second, this Court resolves whether the controversy arose from the parties' intra-corporate relation.

In its Petition before the trial court, petitioner sought for the cancellation of the Deed Restrictions annotated in its lot titles. Petitioner claimed that with the Deed Restrictions' term expiration, its legal or contractual basis no longer existed.

However, petitioner failed to disclose that the same Deed Restrictions had already been extended by a vote of more than two-thirds (2/3) of respondent Association's members on September 6, 2007, or 10 months before it filed its Petition. Petitioner, then, cannot have the restrictions canceled without

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[76] *Id*. at 678-681.

[77] *Sta. Clara Homeowners 'Association v. Spouses Gaston*, 425 Phil. 221, 239 (2002) [Per *J*. Panganiban, Third Division].

first invalidating the act of respondent Association in extending the Deed Restrictions' term.

Here, respondent Association maintains that the extension is valid, while petitioner insists on its invalidity. Clearly, the controversy arose from an intra-corporate relation between an association and its member.

Even the Regional Trial Court, despite proceeding with the case, acknowledged in its July 19, 2010 Order that the Housing and Land Use Regulatory Board had jurisdiction over the controversy:

> *Although this Court agrees on the contention of the oppositor [respondent UVAI] that the issue is intra corporate, thus, the jurisdiction is lodged in the HLURB*, such issue is now deemed mooted by the fact that the Office of the President rendered a Decision dated December 29, 2009 in the case of Cesar (*sic*) Yatco Real Estate Services, Inc., et al., Vs. Bel-Air Village Asso. Inc. . . . which settled the issue and resolved that the Deed of Restrictions had already lapsed on January 15, 2007.[78] (Emphasis supplied)

Moreover, the Office of the President later reversed its Decision in *Cezar Yatco*. As the Court of Appeals found:

> Assuming *arguendo* that the RTC has jurisdiction over the case, it still erred when it ruled that the Deed Restrictions cannot be extended by virtue of the Bel-Air case. The Office of the President on December 29, 2009 reversed and set aside the decision of the HLURB and ruled that Bel-Air's Deed Restrictions cannot be extended by amendment under Article VI of the Deed Restrictions. *However, on May 19, 2011, the said office issued a Resolution reversing and setting aside its December 29, 2009 decision and reinstated the decision of the HLURB*. Hence, the basis of the decision by the RTC has now become ineffective and the Orders of the RTC should be disregarded.[79] (Emphasis supplied)

Accordingly, it is the Housing and Land Use Regulatory Board, not the Regional Trial Court, which has jurisdiction over the case.

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[78] *Rollo*, p. 61.

[79] *Id.* at 56.

II

As for the second and third issues, their resolution would necessarily involve an examination of evidence presented by the parties. These are questions of facts, which cannot be raised in a petition for review under Rule 45 of the Rules of Court. In *Heirs of Pedro Mendoza v. Valte*:[80]

> Resolving questions of fact is a function of the lower courts. This court is a collegiate body. It does not receive evidence nor conduct trial procedures that involve the marking of documentary evidence by the parties and hearing the direct and cross-examination of each and every witness presented for testimonial evidence. This court does not deal with matters such as whether evidence presented deserve probative weight or must be rejected as spurious; whether the two sides presented evidence adequate to establish their proposition; whether evidence presented by one party can be considered as strong, clear, and convincing when weighed and analyzed against the other party's evidence; whether the documents presented by one party can be accorded full faith and credit considering the other party's protests; or whether certain inconsistencies in the party's body of proofs can justify not giving these evidence weight.
>
> The doctrine on hierarchy of courts ensures that the different levels of the judiciary can perform its designated roles in an effective and efficient manner. As the court of last resort, this court should not be burdened with functions falling within the causes in the first instance so that it can focus on its fundamental tasks under the Constitution. This court leads the judiciary by breaking new ground or further reiterating precedents in light of new circumstances or confusion in the bench and bar. Thus, "[r]ather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role."[81] (Citations omitted)

The Housing and Land Use Regulatory Board is the appropriate government agency to resolve whether the extension of the Deed Restrictions is valid, and whether petitioner is estopped to question it. It has the technical expertise to analyze contracts

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[80] 768 Phil. 539 (2015) [Per *J*. Leonen, Second Division].

[81] *Id*. at 562-563.

between petitioner and respondent Association. In *Spouses Chua v. Ang*,[82] this Court declared that the agency, "[i]n the exercise of its powers, . . . is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts."[83]

This Court reminds litigants, counsels, and judges alike on the doctrine of primary administrative jurisdiction. *Maria Luisa Park Association, Inc.* instructs:

> [U]nder the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.[84] (Citation omitted)

WHEREFORE, the Petition is **DENIED**. The June 13, 2012 Decision and October 15, 2012 Resolution of the Court of Appeals in CA-G.R. SP Nos. 121443 and 121676 are **AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, Jr.*, *A.,* and *Carandang,*[*] *JJ.*, concur.

Hernando, J., on leave.

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[82] 614 Phil. 416 (2009) [Per *J.* Brion, Second Division]

[83] *Id.* at 429.

[84] *Maria Luisa Park Association, Inc. v. Almendras*, 606 Phil. 670, 683 (2009) [Per *J.* Quisumbing, Second Division].

[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

FIRST DIVISION

[G.R. No. 208027. April 01, 2019]

PHILIPPINE JOURNALISTS INC., ROLAND DE JESUS, FE SISCAR, EUGENIA ABANIA, SARAH BUAN, FRANCIS RIVADELO, AND MICHAEL MOSQUEDA, *petitioners, vs.* **ERIKA MARIE R. DE GUZMAN AND EDNA QUIRANTE,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR CODE; CONDITIONS OF EMPLOYMENT; PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS; AN EMPLOYER'S GRANT OF OPTIONAL RETIREMENT BENEFITS TO ITS MANAGERIAL EMPLOYEES AND EXECUTIVE STAFF THAT HAD RIPENED INTO A COMPANY PRACTICE CANNOT BE DENIED TO OTHER EMPLOYEES IN CONTRAVENTION OF THE PROHIBITION; CASE AT BAR.— The CA ruled in respondents' favor on the ground that PJI's grant of optional retirement benefits to its managerial employees and executive staff had ripened into a company practice that it could not deny to respondents but grant to others in contravention of the non-diminution provision in the Labor Code, to wit: ART. 100. *Prohibition against elimination or diminution of benefits*. - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code. The Court finds the CA pronouncement tenable, not only because its factual findings must be upheld as this Court is not a trier of facts, but that, given the factual milieu, it appears that petitioners' denial of respondents' application for optional retirement was unfair as it granted the same privilege to others previously. Indeed, PJI appears to discriminate against its core employees, while it favors those in the upper tier; it had been found guilty of illegal dismissal based on an illegal retrenchment scheme, while upper management continued to enjoy its perks and privileges and refused to tighten its belt in this respect. While respondents are not considered as belonging to the rank-and-file, they do not belong to the upper

> echelon of PJI management either: De Guzman was Executive Security to the Chairman, while Quirante was HR Supervisor - not exactly juicy positions that find immediate favor with management. x x x The grant of optional retirement benefits to two management employees in the past was voluntary, deliberate, and done with sufficient regularity as would indicate that this had become a company practice within PJI, which petitioners now refuse to apply in the case of respondents, on the pretext that the company was losing money at that time. But PJI was not incurring losses, and was in fact exhibiting conduct inconsistent with the claim. What is clear is that it engaged in unfair labor activities and took an anti-labor stance at the expense of its employees, including respondents. PJI has shown that its employees' interests take a backseat to the perks and prerogatives of management. This cannot be countenanced.

APPEARANCES OF COUNSEL

Cruz Law Firm for petitioners.

Herminio T. Banico, Jr. and Associates for private respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to reverse the November 7, 2012 Decision[2] and July 4, 2013 Resolution[3] of the Court of Appeals (CA) dismissing the Petition for *Certiorari*[4] in CA-G.R. SP-No. 123901 and denying herein petitioners' Motion for Reconsideration,[5] respectively.

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[1] *Rollo*, pp. 33-58.

[2] *Id.* at 64-77; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon.

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

[4] *Id.* at 336-371.

[5] *Id.* at 378-402.

Factual Antecedents

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

Erika R. [sic] Marie de Guzman and Edna Quirante[6] are both employees of Philippine Journalists, Inc.[7] ('PJI'). De Guzman started with the company on 11 May 1994 and left the company on 15 November 2008. She was an Ad Taker/Account Executive with a salary of Php23,000.00 plus commission. On the other hand, Quirante was employed since 05 September 1989 and was the HRD Supervisor at the time of the cessation of her employment on 15 March 2009 with a salary of Php25,522.20.

On 28 October 2008 and 23 January 2009 respectively, [respondents], in separate letters, informed the company of their desire to avail of the company's optional retirement plan as embodied in the Collective Bargaining Agreement.

Because of PJI's failure and refusal to process the payment of the optional retirement benefits due them, [respondents] filed a complaint for unfair labor practice and money claims, nonpayment of optional retirement benefits and service incentive leave against PJ1 and its corporate officers,[8] x x x

On 29 April 2010, the Labor Arbiter dismissed the complaint for lack of merit.[9] According to the Labor Arbiter, the Collective Bargaining Agreement categorized certain positions as managerial and are therefore excluded from the bargaining unit. [Respondents] are not rank and file employees and therefore not entitled to optional retirement benefits.

[Respondents] appealed the Labor Arbiter's ruling to the NLRC-Fifth Division. x x x[10]

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[6] Herein respondents.

[7] Herein petitioner.

[8] Additional petitioners herein.

[9] See Decision dated April 29, 2010 penned by Labor Arbiter Geobel A. Bartolabac *rollo*, pp. 730-235

[10] *Rollo*, pp. 65-66.

Ruling of the National Labor Relations Commission (NLRC)

In finding for the respondents, the NLRC in its December 29, 2011 Decision[11] ruled:

As to the existence of an approved optional Retirement Plan, We sustain [respondents'] contention.

Section 3, Article XIV of the CBA provides:

> *'Section 3. Optional Retirement. A regular employee who [h]as continuously rendered five (5) years of service, may optionally retire from employment with the COMPANY. A qualified employee who avails himself an optional retirement shall receive optional retirement pay computed on the basis of the approved Retirement Plan.'*

The language of this provision is clear and leaves no room for interpretation. Clearly an 'approved optional retirement plan' is no longer required as the optional retirement pay shall be 'computed on the basis of the Approved Retirement Plan' which is provided for in Section 2 of the same Article of the CBA. xxx

x x x x x x x x x

The CBA however specifically provides that the word 'employee' 'when used in this Agreement without any classification shall be deemed to refer only to person within the appropriate bargaining unit as herein defined.'

The preceding paragraph of the same Section 1 defined appropriate bargaining unit as 'covered by this AGREEMENT consists of regular rank-and-file employees except those occupying the position/job classifications enumerated in Annex A hereof assigned to its various operations in Metro Manila and other branches of operations which the COMPANY may establish in the Philippines during the term of this AGREEMENT.'

[Respondent] De Guzman maintains that she was 'occupying the position of Ad Taker/Account Executive which is covered by the CBA.' However as found by the Labor Arbiter 'complainant De Guzman did not also deny the fact that aside from being Ad Taker, she is

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[11] *Id*. at 325-333; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley.

actually the Executive Security of the Chairman of respondent PJI.' On the other hand, Quirante was the HR Supervisor and in fact the Officer-in-Charge of the said department at the time of her application for retirement. Admittedly, they belong to the listed employees in Annex A of the CBA who are excluded from its coverage.

[Respondents] argued that even if there are categories of employees who are excluded from the coverage of the CBA, the company, as a matter of practice, has extended benefits under the CBA to those who have been excluded. They cite in particular the cases of former employees, Nepthalie Hernandez, Ferdinand Trinidad, and Atty. Liza Madera, who availed of, and were granted optional retirement benefits despite being managerial employees.

On this point, We sustain the [respondents] x x x. While [petitioners] argue that Ferdinand Trinidad was a rank and file employee they were silent with respect to Nepthalie E. Hernandez and Atty. Julie Interior-Madeja who both executed an affidavit in support of [respondents'] contention.

We also took note of the fact that [respondents] have served or have been with the [PJI] for fourteen (14) and almost twenty (20) years respectively. Had it not been true that it has been a practice for [PJI] to grant [its] employees including managerial/confidential employees optional retirement benefits in accordance with the CBA, they would not have filed an application for optional retirement. There is nothing on record that would suggest why [respondents] would sever their relationships with [petitioners] except for their intention to avail of the benefits under the optional retirement plan.

Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice. Thus, it can be six (6) years, three (3) years, or even as short as two (2) years. Petitioner cannot shirk away from its responsibility by merely claiming that it was a mistake or an error.

IN VIEW OF THE FOREGOING, the appealed decision is hereby SET ASIDE and another one entered finding [respondents] entitled to Optional Retirement Benefits under Section 3 in relation to Section 2 Article XIV of the CBA. Consequently, [petitioners] are therefore ordered to pay [respondents] the aforecited benefits.

SO ORDERED.[12]

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[12] *Id*. at 329-333.

Ruling of the Court of Appeals

Petitioners filed before the CA a Petition for *Certiorari*. On November 7, 2012, the CA rendered the assailed Decision, decreeing thus:

> The petition lacks merit.
>
> x x x x x x x x x
>
> x x x The provision of the CBA granting x x x optional retirement is clear.
>
> Article XIV
> Separation, Resignation and Retirement
>
> Section 3. *Optional Retirement*. A regular employee who has continuously rendered five (5) years of service, may optionally retire from employment with the company. A qualified employee who avails himself of optional retirement shall receive optional retirement pay computed on the basis of the approved Retirement Plan.
>
> Hence, the option to retire is on the employee, not on the employer. The only requirement is that he/she has rendered five (5) continuous years of service.
>
> x x x x x x x x x
>
> Petitioners insist that x x x respondents are not covered by the CBA pursuant to the provisions thereof, *viz.*:
>
> *Article 1*
>
> *Section 1: <u>Appropriate Bargaining Unit.</u>*
>
> x x x x x x x x x
>
> *Consequently, positions/job classifications as of the effectivity of this AGREEMENT enumerated in Annex A hereof are considered as managerial, probationary and contractual and are therefore, excluded from the bargaining unit.*
>
> x x x x x x x x x
>
> As found out by both the Labor Arbiter and the NLRC, Quirante and De Guzman belong to the listed employees who are excluded from the coverage of the CBA. Quirante was the Supervisor of the

HR Department, hence a managerial employee. De Guzman, aside from being an Ad Taker, was the Executive Security of the Chairman of PJI, thus receiving a salary commensurate to the position of an executive staff.

Therefore, De Guzman and Quirante are not entitled to the optional retirement benefits pursuant to the provisions of the CBA.

Nonetheless, they can still avail of the optional retirement benefits because it has been a *company practice* to grant retirement benefits to PJI employees.

As to what constitutes company practice, the pronouncement in *Philippine Appliance Corporation v. Court of Appeals*, as accentuated in *Metropolitan Bank and Trust Company v. NLRC* and in *Eastern Telecommunications Philippines, Inc. v. Eastern Telecoms Employees Union* is instructive:

> To be considered a 'regular practice', however, the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate. **The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.**

As can be gleaned from the affidavits appended in this petition, two (2) PJI employees who *do not belong to the* rank-and-file were previously granted an optional retirement privilege. These were Nepthalie E. Hernandez[13] and Atty. Julie Interior Madeja.[14]

Essentially, PJI does not refute that Fernandez and Madera are not rank and file employees. PJI granted the optional retirement benefits knowing fully well that they are not entitled under the CBA.

In *Pag-asa Steel Works v. CA*, it was enunciated that:

> x x x to ripen into a company practice that is demandable as a matter of right, the giving of the increase should not be by reason of a strict legal or contractual obligation, **but by reason of an act of liberality on the part of the employer**.
>
> x x x x x x x x x

[13] Fernandez in some parts of the records.

[14] Madera in some parts of the records.

Thus, the grant of optional retirement benefits has ripened into a '*company practice*' or company usage that may be considered an enforceable obligation.

Significantly, Fernandez availed of the optional retirement benefits in 2003. On one hand, Atty. Madera retired optionally in 2001. Clearly, PJI consistently granted optional retirement benefits in a considerable length of two years.

As elucidated in *Metropolitan Bank and Trust Company v. NLRC*:

> With regard to the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, jurisprudence has not laid down any hard and fast rule. In the case of *Davao Fruits Corporation v. Associated Labor Unions*, the company practice of including in the computation of the 13th-month pay the maternity leave pay and cash equivalent of unused vacation and sick leave lasted **for six (6) years**. In another case, *Tiangco v. Leogardo, Jr.*, the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or **three (3) years and four (4) months**. While in *Sevilla Trading v. Semana*, the employer kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for **at least two (2) years**. In all these cases, this Court held that the grant of these benefits has ripened into company practice or policy which cannot be peremptorily withdrawn. The common denominator in these cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time.

Thus, the grant of optional retirement benefits by PJI, even if it is not obliged under the CBA, already constitutes voluntary employer practice which cannot be unilaterally withdrawn or diminished by the employer without violating the spirit and intendment of Article 100 of the Labor Code, to wit:

> Art. 100. *Prohibition against elimination or diminution of benefits*. - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

From the foregoing, it is therefore clear that the assailed ruling is in accord with established jurisprudence, thus NLRC did not abuse its discretion, least of all gravely.

x x x x x x x x x

WHEREFORE, in view of the foregoing, the petition is DENIED for utter lack of merit. The assailed NLRC Decision dated 29 December 2011 is hereby AFFIRMED.

SO ORDERED.[15] (Citations omitted)

Petitioners filed a motion for reconsideration, but the CA denied the same through its July 4, 2013 Resolution. Hence, the instant Petition.

Issues

Petitioners submit that the issues to be resolved are, as follows:

WHAT IS THE DISTINCTION BETWEEN COMPULSORY RETIREMENT BENEFIT AND OPTIONAL RETIREMENT BENEFIT.

WHETHER OR NOT THE OPTIONAL RETIREMENT BENEFIT CAN BE DEMANDED AS A MANDATORY BENEFIT BY A REGULAR EMPLOYEE WHO VOLUNTARILY RESIGNS EVEN WITHOUT AN OPTIONAL RETIREMENT PROGRAM APPROVED BY THE MANAGEMENT.[16]

Petitioners' Arguments

In their Petition seeking a reversal of the assailed CA dispositions and the reinstatement instead of the April 29, 2010 Decision of the Labor Arbiter, petitioners argue that a distinction must be made between compulsory retirement benefit and that optional retirement benefit, in that while the former may be demanded as a matter of right pursuant to Article 287 of the Labor Code,[17] the latter may not. Petitioners contend that what

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[15] *Id.* at 69-76.

[16] *Id*. at 39.

[17] Art. 287 (now Art. 302 as re-numbered). *Retirement*. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

respondents availed of was optional retirement, which was not demandable as a matter of right, but needed the approval of management. They also stress that under the CBA, an employee who had continuously rendered five years of service may optionally retire only if there is an approved retirement plan, and that the optional retirement is subject to management approval; that management consent and approval of the optional retirement is the most important condition for the grant of optional retirement benefits, as the employer must be financially ready to assume the obligation of paying out the retiring employee's benefits. Petitioners allege that PJI was suffering losses at the

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In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for the underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

Nothing in this Article shall deprive any employee of benefits to which he may be entitled under existing laws or company policies and practices.

time respondents applied for optional retirement, and in fact the company implemented a retrenchment program owing to these losses. They also aver that there was no express company policy on optional retirement at the time that respondents applied for the same, but with respect to those employees who were granted optional retirement benefits in the past, these were covered by an existing approved optional retirement program as attested to by one of those who availed of the program, Atty. Madera, and two other longtime PJI employees, Carolina Mendoza and Ernesto San Agustin.

Respondents' Arguments

Respondents failed to file their Comment despite repeated directives to do so such that, on January 8, 2018, the Court resolved to consider the filing of such comment as waived, and to require petitioners to manifest if they are willing to submit the case for decision on the basis of the pleadings filed.[18] This was reiterated in another Resolution[19] dated July 23, 2018; however, nothing was forthcoming from petitioners. Hence, the Court resolved to proceed to judgment.

Our Ruling

The Court denies the Petition.

Petitioners claim that respondents are not entitled to optional retirement benefits since PJI was in fact suffering business losses, such that it implemented a retrenchment program in 2005. However, this fact is not evident from the record. Quite the contrary, in *Philippine Journalists, Inc. v. National Labor Relations Commission*,[20] it became evident that PJI was not suffering from claimed business reverses such that it was compelled to reinstate several employees it originally fired as a result of a retrenchment program it undertook but which the NLRC officially found to be without basis. There was also the

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[18] *Id.* at 463.

[19] *Id.*, unpaginated.

[20] 532 Phil. 531 (2006).

undisputed findings of fact that during that time, PJI office renovations were being made as evidenced by numerous purchase orders; that certain employees were granted merit increases; that a Christmas party for employees was held at a plush hotel; and that PJI executives refused to forego their quarterly bonuses.

Petitioners' claim of business reverses is supported solely by a statement contained in a supposed 2005 agreement between PJI and its employees, a "Memorandum of Understanding x x x,"[21] to the effect that PJI "suffered financial reverses x x x since 1997, as declared by the Supreme Court" - which is otherwise self-serving, at the very least, and untrue, within the context of the findings of facts in the above-mentioned decided case. Other than this claim, petitioners have not shown any other proof of business losses. PJI's act of reinstating its employees only proves that it could not have been suffering business losses at the time; petitioners were unable to rebut or disprove the finding in the above-cited case that PJI was not incurring financial reverses, but in fact accepted such finding with finality when it reinstated its illegally retrenched employees.

The CA ruled in respondents' favor on the ground that PJI's grant of optional retirement benefits to its managerial employees and executive staff had ripened into a company practice that it could not deny to respondents but grant to others in contravention of the non-diminution provision in the Labor Code, to wit:

> ART. 100. *Prohibition against elimination or diminution of benefits*. - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

The Court finds the CA pronouncement tenable, not only because its factual findings must be upheld as this Court is not a trier of facts, but that, given the factual milieu, it appears that petitioners' denial of respondents' application for optional retirement was unfair as it granted the same privilege to others previously. Indeed, PJI appears to discriminate against its core employees, while it favors those in the upper tier; it had been

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[21] *Rollo*, pp. 126-127.

found guilty of illegal dismissal based on an illegal retrenchment scheme, while upper management continued to enjoy its perks and privileges and refused to tighten its belt in this respect. While respondents are not considered as belonging to the rank-and-file, they do not belong to the upper echelon of PJI management either: De Guzman was Executive Security to the Chairman, while Quirante was HR Supervisor - not exactly juicy positions that find immediate favor with management.

Furthermore, the CA's ruling is correct in light of PJI's conduct of pursuing a scheme to reduce its personnel by any means necessary, which is both unfair and prejudicial to the interests of labor. Take for example respondents' case. Operating under the honest belief that they could avail of an optional retirement scheme that PJI allowed with respect to other employees in the past, respondents tendered their respective resignation letters on the sole ground that they were availing of the company's optional retirement package. Instead of clarifying the matter with respondents, petitioners treated the latters' actions with a lack of understanding and sympathy. If petitioners believed that respondents were not entitled to avail of the optional retirement scheme which respondents in good faith thought was available to them, and which was obviously the sole reason for tendering their resignations, then petitioners should have at least put their respective resignations on hold pending clarification of the issues. Instead, petitioners immediately took a hostile stance, and quickly grabbed the opportunity to declare respondents separated from PJI by voluntary resignation with its concomitant effects such as non-payment of benefits, separation pay, etc. They did not take time to explain, if so, that the optional retirement program was no longer in effect and give respondents the opportunity to reconsider their actions. This is tantamount to bad faith, considering the factual milieu and petitioners' conduct, where they have consistently shown an interest in dismissing their employees, yet keeping for themselves their corporate bonuses, perks, and privileges.

Finally, PJI's bad faith is evident from its 2005 "Memorandum of Understanding x x x" with its employees, where it falsely

declared that PJI "suffered financial reverses x x x since 1997, as declared by the Supreme Court." As earlier shown, this statement is untrue, yet petitioners deliberately included this false claim in its agreement with its employees in order to secure concessions favorable to them. In other words, petitioners deceived their employees and used this false claim to deprive the latter of a fair appraisal of the facts and circumstances during negotiations leading to such agreement.

To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof. In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[22]

The grant of optional retirement benefits to two management employees in the past was voluntary, deliberate, and done with sufficient regularity as would indicate that this had become a company practice within PJI, which petitioners now refuse to apply in the case of respondents, on the pretext that the company was losing money at that time. But PJI was not incurring losses, and was in fact exhibiting conduct inconsistent with the claim. What is clear is that it engaged in unfair labor activities and took an anti-labor stance at the expense of its employees, including respondents. PJI has shown that its employees' interests take a backseat to the perks and prerogatives of management. This cannot be countenanced.

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[22] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, 707 Phil. 255, 262-263 (2013).

WHEREFORE, the Petition is **DENIED**. The November 7, 2012 Decision and July 4, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 123901 are **AFFIRMED *in toto***.

In addition, the judgment award in favor of respondents or their retirement and other benefits shall earn interest of 12% *per annum*, computed from the filing of the Complaint up to June 30, 2013, and thereafter, 6% *per annum* from July 1, 2013 until their full satisfaction.

SO ORDERED.

Bersamin, C.J., Gesmundo, and *Carandang, JJ*., concur.

Jardeleza, J., on official leave.

FIRST DIVISION

[G.R. No. 208836, April 01, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NASROLLAH MACAUMBANG *y* ALI AND JOSE SAGARBARIA *y* MISA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS UNDER SECTION 5, ARTICLE II THEREOF; ELEMENTS.— Sec. 5, Article II of R.A. No. 9165 punishes the sale of dangerous drugs, which includes methamphetamine hydrochloride, x x x To secure the conviction of an accused alleged to have violated the above provision, the prosecution must prove the presence of the following elements: the identities of the buyer and seller, the transaction or sale of the illegal drug, and the existence of

the *corpus delicti.* The intrinsic worth of the pieces of evidence, especially the identity and integrity of the *corpus delicti,* must be shown to have been preserved. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession or for sale under R.A. No. 9165 fails.

2. **ID.; ID.; PROCEDURE UNDER SECTION 212 THEREOF; A MATTER OF SUBSTANTIVE LAW THAT MUST BE FOLLOWED TO ENSURE THE IDENTITY AND INTEGRITY OF THE SEIZED DRUG; NON-COMPLIANCE THEREWITH MAY BE EXCUSED ON JUSTIFIABLE GROUNDS.—** Sec. 21 of R.A. No. 9165 *(Sec. 21),* supplemented by the implementing rules and regulations of the law, *(Implementing Rules),* outlines the steps that should be followed to ensure the identity and integrity of the seized drug. x x x This step-by-step procedure outlined under R.A. No. 9165 is a matter of substantive law, which cannot be simply brushed aside as a procedural technicality. Owing to the gross disregard of these mandatory procedural safeguards, and failure to give justifiable reasons for it, the Court may conclude that the integrity and identity of the *corpus delicti* have been compromised.

3. **ID.; ID.; CHAIN OF CUSTODY; DEFINED AS THE DULY RECORDED AUTHORIZED MOVEMENTS AND CUSTODY OF SEIZED DRUGS OR CONTROLLED CHEMICALS OR PLANT SOURCES OF DANGEROUS DRUGS OR LABORATORY EQUIPMENT OF EACH STAGE, FROM THE TIME OF SEIZURE/ CONFISCATION TO RECEIPT IN THE FORENSIC LABORATORY TO SAFEKEEPING, TO PRESENTATION IN COURT FOR DESTRUCTION; LINKS THAT MUST BE ESTABLISHED TO DEMONSTRATE COMPLIANCE THEREWITH.—** Chain of custody is defined as "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction." The chain of custody rule ensures that unnecessary doubts concerning the identity of the evidence

are removed. x x x To demonstrate that the rule on the chain of custody was complied with, the following links should be present: *First,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth,* the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

4. ID.; ID.; PROCEDURE UNDER SECTION 21 THEREOF; REASONS TO BE ALLEGED AND PROVED FOR FAILURE TO OBTAIN THE PRESENCE OF WITNESSES TO THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPHS; CASE AT BAR.— This is not the first time that the Court was faced with the absence of law-mandated witnesses during the taking of an inventory in drug-related cases. In *People of the Philippines* v. *Alvarado (People v. Alvarado),* only a barangay kagawad was present during the inventory and photographing of the seized items. It bears repeating that in the recent case of *People of the Philippines v. Romy Lim (People v. Lim),* echoed in the Office of the Court Administrator Circular No. 210-18, the Court reiterated that it must be alleged and proved that the presence of witnesses to the physical inventory and taking photographs 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 taking photographs of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and on his/her behalf; (3) the elected officials 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. There was simply no justification for the absence of the other witnesses, nor was there an attempt to explain the same. The reason that

accused-appellants had "police coddlers" surely cannot justify the absence of DOJ and media representatives.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant Sagarbaria.
Gomos Dayao & Associates for accused-appellant Macaumbang.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal from the April 30, 2013 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05125 affirming the June 2, 2011 Decision[2] of the Regional Trial Court, Muntinlupa City, Branch 205 *(RTC)* in Criminal Case No. 03-979 finding accused-appellants Nasrollah Macaumbang *y* Ali and Jose Sagarbaria *y* Misa *(accused-appellants)* guilty beyond reasonable doubt of violating Section 5, Republic Act *(R.A.)* No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. Accused-appellants were each sentenced to suffer the penalty of life imprisonment and payment of a fine of Five Hundred Thousand Pesos (₱500,000.00).

Antecedents

The information against accused-appellants partly reads:

That on or about the 26th day of November 2003, in the City of Muntinlupa, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, conspiring and confederating together and both of them mutually helping and aiding one another did[,] then and there wilfully, unlawfully

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[1] *Rollo,* pp. 2-32; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Pedro B. Corales, concurring.

[2] CA *rollo,* pp. 14-37; penned by Judge Amelia A. Fabros.

and feloniously sell, trade, deliver and gave (sic) away to another, Methylamphetamine Hydrochloride, a dangerous drug weighing 98.05 grams, contained in one (1) knot tied transparent plastic bag, in violation of the above-cited law.

CONTRARY TO LAW.[3]

Both accused-appellants pleaded not guilty upon arraignment.[4] Trial ensued.

The prosecution presented PO3 Jonathan Cruz *(Cruz),* SPO1 Tomas Calicdan *(Calicdan),* and P/Insp. Sandra Decena-Go *(Decena-Go).*

Cruz testified that he was assigned to the Metro Manila Regional Office of the Philippine Drug Enforcement Agency *(PDEA)* at Camp Crame, Quezon City.[5] On November 25, 2003, a confidential informant appeared before team leader Police Senior Inspector Manan Muarip *(Muarip).* Muarip told members of the team composed of Cruz, Calicdan, PO3 Rolando Tizon *(Tizon),* PO3 Rodolfo Laxamana, and PO3 Virgilio Lakduhan of the informant's tip about a certain "Boy" who allegedly sold Methylamphetamine Hydrochloride *(shabu)* at Montillano Street, Barangay Alabang, Muntinlupa City. At about noon of the same day, the team, along with the informant, boarded two (2) vehicles and proceeded to Montillano Street. The informant pointed out the house of "Boy." After assessing the location, the team returned to Camp Crame.[6]

The following day, November 26, 2003, at around 8:00 a.m., the commanding officer, assisted by Muarip, conducted a briefing on the buy-bust operation against "Boy." Cruz was designated as the poseur-buyer while Calicdan and Tizon were assigned as immediate back-up officers. The plan was for Cruz to buy

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[3] Records, p. 1

[4] *Id.* at 31-32 and 34-35.

[5] TSN, September 8, 2004, p. 4.

[6] *Id.* at 5-11.

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

one hundred (100) grams of shabu for ₱1,000.00 per gram. Cruz was given two (2) one hundred peso bills, to be used as buy-bust money, and placed on top of the boodle money to make it appear that there was ₱100,000.00 in cash in the envelope. Cruz placed his initials "JAC on the buy-bust money[7] which was then forwarded to the PNP Crime Laboratory for ultraviolet *(UV)* treatment.[8] During the same briefing, the team also agreed on a pre-arranged signal, that Cruz would give a "thumbs-up" sign once the sale was consummated. After the preparations, the team proceeded to Montillano Street. Cruz and the informant arrived at the house of "Boy" at around 10:30 a.m.[9] "Boy" went downstairs to meet them. Cruz later identified "Boy" as the same Sagarbaria.[10]

Sagarbaria told Cruz and the informant to come upstairs through the side of the house. Once they got to the second floor, Sagarbaria asked Cruz and the informant how much they wanted to buy. When Cruz said he would buy one hundred (100) grams, Sagarbaria replied that he would sell that amount for ₱1,000.00 per gram. Cruz negotiated to buy the said amount for ₱900.00 but Sagarbaria refused. Cruz and Sagarbaria eventually came to an agreement. Sagarbaria told Cruz and the informant to wait. Sagarbaria returned half an hour later and said that the order would arrive by noon. After thirty minutes, Macaumbang arrived and went directly to Sagarbaria. Accused-appellants then turned their backs on Cruz and the informant and conversed in secret for about two minutes. Sagarbaria then told Cruz that the order has arrived. At that point, Macaumbang took out from his pocket something wrapped in a white handkerchief which he handed to Cruz. Cruz then untied the handkerchief, which held a plastic bag containing a white crystalline substance. Sagarbaria then asked Cruz for the payment and the latter handed

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[8] *Id.* at 16

[9] *Id*. at 22-23.

[10] *Id.* at 25.

[11] *Id*. at 26-33.

Sagarbaria a white window envelope containing the buy-bust money. Sagarbaria proceeded to count the money which enabled Cruz to execute the pre-arranged signal. Cruz then announced accused-appellants' arrest and introduced himself as a police officer.[11]

Back-up arrived. Calicdan retrieved the buy-bust money from Sagarbaria, while Cruz handcuffed Macaumbang. Cruz also gave Muarip the seized plastic bag containing white crystalline substance. The latter placed the seized item in a plastic bag on which was printed PDEA. Muarip had possession of the seized item from the place of arrest until its transfer to the Camp Crame office.[12] The team and accused-appellants arrived at the Camp Crame office at 2:30 p.m. Muarip placed the seized item on the table for photo-taking. Prior to the taking of photographs, Cruz wrote his initials "JAC" on the item. A barangay official who was present when the item was photographed likewise signed the inventory receipt.[13] He also testified that the photographs were not developed as the film was exposed.[14]

After making the necessary markings, they prepared the request for laboratory examination, as well as requests for drug test, medical examination, and fluorescent powder testing for accused-appellants. Cruz delivered the item to the Crime Laboratory.[15] The examination yielded positive for the presence of methylamphetamine hydrochloride. Accused-appellants were also found positive for use of drugs. The dorsal side of Sagarbaria's hands were also found positive for the presence of ultraviolet powder.[16]

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[12] *Id.* at 33-34.

[13] *Id.* at 42-43.

[14] *Id.* at 35-36 and 66-67.

[15] *Id.* at 39.

[16] *Id.* at 45-46 and 49.

[17] TSN, September 13, 2005, p. 5.

[18] *Id.* at 6-11.

Calicdan testified that he was assigned to the Special Enforcement Group of PDEA in Camp Crame, Quezon City.[17] His statements substantially corroborated those of Cruz's insofar as the surveillance and buy-bust operation are concerned.[18] On the matter of the operation, he related that a man between 40 to 50 years old approached Cruz and the informant when they reached the barber shop on the ground floor of the house of "Boy."[19] The man talked to Cruz and the informant for about fifteen (15) minutes before they entered a house in an alley and went upstairs. Calicdan was at an eatery from where he could see Cruz through a window on the second floor of the house.[20] The man, who turned out to be "Boy," went out of the house and returned at around 11:45 a.m.[21] Sometime later, a young man between 18 to 25 years old and appeared to be carrying something in his hands, went upstairs. After thirty (30) minutes, Cruz gave the thumbs-up signal.[22] Calicdan then entered the house where he saw "Boy" holding the white window envelope containing the buy-bust money. He also saw that Cruz was holding a plastic sachet wrapped in a white handkerchief which Cruz said was the item he was able to buy.[23] Calicdan also saw two (2) persons peeping at the door of the other room, about four (4) meters away.[24] The team introduced themselves as PDEA members and informed accused-appellants of their violation and of their constitutional rights. Calicdan took the white window envelope from Sagarbaria, who asked the arresting team whether they could just fix or negotiate his violation

[19] *Id.* at 21-22.

[20] *Id.* at 22-23

[21] *Id.* at 25.

[22] *Id.* at 26.

[23] *Id*. at 27, 29.

[24] *Id.* at 31.

[25] *Id*. at 32.

[26] *Id*. at 33.

[27] *Id*. at 34.

("areglohin").[25] Muarip went upstairs and the seized item was placed in an evidence bag. Cruz held on to the evidence bag and the buy-bust money was with Calicdan until they got back to their office in Camp Crame.[26]

Upon arriving at the office, the evidence was placed on a table and an inventory was conducted.[27] The markings of the items were likewise done in the office.[28] The Certificate of Inventory was signed by Muarip and Kagawad Rodel Frayna in front of both accused-appellants.[29] The team also prepared the following requests: laboratory examination of the seized item, fluorescent powder testing on accused-appellants and the buy-bust money, physical and medical examination, and drug test. Calicdan accompanied Cruz when the latter delivered the item to the crime laboratory. After the examination, the item was found to be positive for methylamphetamine hydrochloride.[30]

Meanwhile, the defense presented both accused-appellants and Elizabeth Sagarbaria as witnesses.

Macaumbang testified that he came from Marawi City and worked as a mobile phone technician.[31] At around noon on November 26, 2003, he was inside a barber shop for a haircut when he saw a commotion happening outside. As people scampered, he tripped and bumped into two (2) armed men near the door. The men, who introduced themselves as police officers, held his right shoulder and asked him where he was going. Macaumbang resisted and asked what his fault was and why he was being arrested. The men then dragged him towards a stairway, hurting and suffocating him.[32] They brought him upstairs, where one of the men kicked the door open and pushed

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[28] *Id.* at 38.

[29] *Id* at 35.

[30] *Id.* at 39, 49.

[31] TSN, February 27, 2007, p. 3.

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

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

him inside. Also, another man was inside the room. Macaumbang only knew of the identity of the man, who turned out to be "Boy," when they were already in jail. Both he and "Boy" were told to lie face down and then were handcuffed.[33] They then boarded two vehicles and proceeded to Camp Crame. Once at Camp Crame, the two police officers talked to him and brought him to a rest room, where they asked him whether he had *"pang-areglo. "* The policemen told him that if he had the money, he would be set free. He said he had only ₱1,600.00 in his pocket, but the police officers asked whether he had anymore. Calicdan took his wallet, while he explained that it was all he had earned as a technician for four days. His money was not returned.[34]

The policemen also asked him whether he knew "Boy," to which he said no. They all returned to the room where Macaumbang cried and begged to be let go; but he was told "diyan ka na, tumigil ka na."[35] He was handcuffed and they made their way to the laboratory. On their way, a police officer rubbed a P100 bill on his hand.[36] He denied bringing shabu wrapped in a handkerchief and delivering it to Sagarbaria.[37]

On his part, Sagarbaria testified that on November 26, 2003, he was on the second floor of his house getting a manicure.[38] At that time, police officers arrived, which caused a commotion on the ground floor.[39] He saw a policeman pulling a man upstairs from the barber shop. The police officers kicked the door of the room open, and looked for a certain person. Sagarbaria said he did not know the person they were looking for. They then told the person they dragged upstairs to lie on the floor while they searched the room. Sagarbaria then heard someone say "Wala dito, wala naman tayong makukuha, ibaba na yan." He

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[34] *Id.* at 13 and 16-18.

[35] *Id.* at 19.

[36] *Id*. at 26.

[37] *Id*. at 21.

[38] TSN, July 10, 2007, p. 4.

[39] *Id.* at 4.

and the other man were brought down. They boarded a white car because they could not be accommodated in the two other vehicles that were already full of other handcuffed persons.[40] When they reached Camp Crame, the police officers asked him the name of the other man arrested with him; he said he did not know.[41] The police officers told him to tell his wife to come to Camp Crame. His wife and their son came the same night. His wife told him that the police officers were demanding ₱200,000.00 for his release; but she said she had only ₱50,000.00. The police officers asked her to come back the following day with the full amount.[42]

On the same day, at around 4:00 p.m. to 5:00 p.m., accused-appellants were brought to a barangay hall near Camp Crame. The police officers were not able to find the barangay chairman so they called the person sweeping the floor.[43] Sagarbaria was forced to hold the white window envelope, which he refused to do, but the police officers brushed his closed fist against the envelope.[44] They were then brought back to Camp Crame to a place which looked like a hospital, and where their urine and his hand were examined. The chemist did not find ultraviolet powder. They found cuticle remover substance instead, because his hand was having a manicure when he was arrested. They were also asked whether they were mauled or why they had a contusion. He said no, although Macaumbang had a cut on his lip. They stayed overnight at Camp Crame.[45]

The following day, at around 1:00 p.m., they were brought to the office of the City Prosecutor of Muntinlupa, before whom Sagarbaria signed his counter-affidavit.[46] He was unable to read

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[40] *Id.* at 6-10.

[41] *Id.* at 14.

[42] *Id*. at 15-16 and 19.

[43] *Id.* at 20.

[44] TSN, November 13, 2007, p. 15.

[45] TSN, July 10, 2007, pp. 22 and 24-26.

[46] *Id.* at 26 and 31.

the document because he was asked to sign it just as they were about to enter the prosecutor's office. When he read his counter-affidavit, he noticed that there were inaccuracies on the document. He asked his lawyer why the things he wrote were not included. His lawyer said he would take care of the matter.[47] His wife, daughter, and barber Jimuel Ole, submitted affidavits during the preliminary investigation.[48]

The final defense witness was Elizabeth Sagarbaria, wife of accused-appellant. She stated that she was tending to the barber shop at 11:00 a.m. then she brought a manicurist to her husband on the second floor for a manicure.[49] As she was putting her grandchild to sleep, a man with a gun and some civilian-clad companions, entered their house. She asked them what they were looking for but they did not answer. She then saw her husband go downstairs. She was going to follow but a man prevented her from doing so. Nothing was found in the room.[50]

On presentation of rebuttal evidence, Calicdan denied pulling Macaumbang up to the second floor, and that it was Cruz, the informant, and Sagarbaria who first went up to the second floor. He saw Macaumbang get to the second floor sometime after Sagarbaria came back. At the time of arrest, Macaumbang was already at the second floor.[51] He also denied demanding money from Sagarbaria's wife. On the contrary, Sagarbaria asked them if they could just settle the case with an *"areglo"* offered to Calicdan, Cruz, and Tizon[52] while still at the place of the incident.[53] He likewise denied that accused-appellants were brought out of Camp Crame to a nearby barangay hall for picture-

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[47] TSN, November 13, 2007, p. 10.

[48] TSN, July 10, 2007, p. 44.

[49] TSN, December 9, 2009, pp. 3-4.

[50] *Id.* at 4-9.

[51] TSN, May 19, 2010, pp. 5-7 and 10.

[52] Referred to as "Quizon" in the TSN, see *Id*. at 13.

[53] *Id*. at 12-14.

taking.[54] Finally, he explained that they were not able to do an inventory at the place of arrest because the informant told them that Sagarbaria had a police coddler.[55]

Further, P/Insp. Decena-Go stated that she examined accused-appellants for the presence of UV powder on their hands.[56] She rebuffed Sagarbaria's statement that she had told him that the test for fluorescent powder on him yielded a negative result. She only gave results through a written report.[57] She clarified that she saw UV powder which can only be seen under UV light, while a cuticle remover does not emit light under a UV tester. She said Sagarbaria was positive for UV powder found on the dorsal portion of his hands.[58] There was no UV powder on Sagarbaria's palm, which could be caused by him not touching any object with ultraviolet powder or that the powder was washed away.[59]

The RTC Ruling

The trial court ruled that all the elements for the sale of dangerous drugs were present and that the prosecution proved the guilt of both accused-appellants beyond reasonable doubt. The testimony of the prosecution witness, Cruz, clearly established the purchase and sale of 100 grams of methylamphetamine hydrochloride for ₱100,000.00 on the date, time, and place in question. Moreover, the prosecution witnesses positively identified the seized item upon its presentation in open court. The trial court also said that the arresting officers had established the chain of custody. The inconsistency as to who took actual custody of the seized item was clarified, and that Cruz's testimony should be believed as he had personal knowledge of it. The trial court further ruled that, despite the

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

[55] *Id*. at 34.

[56] TSN, August 11, 2010, p. 4.

[57] *Id.* at 6.

[58] *Id.* at 7-8.

[59] *Id.* at 14.

item not being marked, inventoried, and photographed at the place of arrest, there was still substantial compliance with the requirements of Sec. 21 of R.A. No. 9165 because of the explanation that Sagarbaria was "coddled" by a policeman. They also noticed persons peeping through the other rooms who may possibly and violently intervene.[60]

Finally, the RTC found the defense of denial offered by accused-appellants to be mere afterthought. The presumption of regularity in the performance of duty of the arresting officers was also highlighted considering that there was no grudge or quarrel between accused-appellants and the police officers.[61]

As such, the RTC disposed of the case *viz.*:

> WHEREFORE, premises considered, both accused **Nasrollah Macaumbang *y* Ali and Jose Sagarbaria *y* Misa** are found GUILTY beyond reasonable doubt of the crime of ILLEGAL SALE of METHYLAMPHETAMINE HYDROCHLORIDE, a dangerous drug, weighing 98.05 grams, contained in one (1) knot tied transparent plastic bag, as defined and penalized under Section 5 of Republic Act No. 9165, and are hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (PhP500,000.00), respectively.
>
> SO ORDERED.[62]

The CA Ruling

The appellate court adopted the factual findings of the trial court and affirmed accused-appellants' conviction for violation of Sec. 5 of R.A. No. 9165. The CA noted that there was a buy-bust operation which gave rise to the arrest of accused-appellants *in flagrante delicto;* thus, the case did not require a warrant of arrest. Macaumbang also pointed out several inconsistencies, which the CA adjudged as referring to minor and trivial matters having no substantial bearing on the

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[60] CA *rollo,* p. 161.

[61] *Id.* at 162.

[62] *Id*. at 37 and 162.

commission of the offense. As to the contention that the informant should have been presented in this case, the CA mentioned that informants are almost always never presented in court because of the need to preserve their service to the police. As to the buy-bust money, the fact that there were no traces of UV powder on Sagarbaria's palms did not contradict the claim that a sale had taken place. The presentation of the marked money is not even necessary for the prosecution of a violation of Sec. 5, R.A. No. 9165. Given all these, the CA found that all the elements for the sale and delivery of 98.05 grams of shabu were established. The CA agreed with the lower court's belief on the version of the prosecution, noting that the trial court judge is in a better position to determine issues on the credibility of witnesses.

The CA likewise highlighted Sagarbaria's statements in his counter-affidavit, admitting that he was a shabu user and that he ordered the same from Macaumbang.[63] This fact was taken into consideration by the appellate court, especially as Sagarbaria's cousin prepared his counter-affidavit and is not expected to jeopardize the interests of his own relative.

The CA also believed that the integrity of the drug seized was preserved and the chain of custody unbroken. While there was no inventory at the place of arrest and the seized item was only marked at the police station, the same did not automatically impair the integrity of the chain of custody. The CA followed the chain of custody of the seized item, starting from when he gave the same to Muarip, until the same was placed on the table and identified by Cruz, on which he placed his initials. They had a barangay official inspect the evidence before signing the inventory. The barangay official was also present during the taking of photographs.[64] Cruz then prepared the request for laboratory examination and delivered the seized item to the crime laboratory, accompanied by Calicdan. Meanwhile, the CA mentioned the stipulation on the testimony of the forensic

[63] *Rollo,* p. 25.

[64] *Id.* at 28.

chemist who conducted the laboratory examination. From all this, it was established that the police officers substantially complied with the procedural requirements under Sec. 21, R.A. No. 9165. Accused-appellants failed to adduce any evidence to show that the integrity of the evidence had been compromised.

Finally, as to Sagarbaria's defense of denial, the appellate court observed that bare denials cannot prevail over their positive identification as the sellers of the shabu. Defenses of denial and frame-up for purposes of extortion have been viewed with disfavor. Further, there was no showing that the prosecution witnesses held a grudge or motive to falsely testify against accused-appellants. All in all, the CA sustained the RTC decision, thus:

WHEREFORE, premises considered, the Decision dated June 02, 2011 of the RTC, Branch 205, Muntinlupa City in Criminal Case No. 03-979 is hereby **AFFIRMED.** No costs.

SO ORDERED.[65]

Hence, this appeal.

Complying with the Court's November 27, 2013 Resolution[66] Macaumbang, through counsel, filed a Manifestation,[67] dated January 28, 2014, stating that he was no longer filing a supplemental brief and submitting the case for consideration based on the earlier briefs, pleadings, and other records of the case. Sagarbaria likewise filed, through counsel, a Manifestation in Lieu of a Supplemental Brief,[68] dated June 27, 2014, stating that he adopts his appellant's brief filed before the CA as his supplemental brief. The Office of the Solicitor General *(OSG)* representing the People of the Philippines, filed a Manifestation and Motion,[69] dated January 23, 2014, stating that it will no

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[65] *Id.* at 31.

[66] *Id.* at 39.

[67] *Id.* at 49.

[68] *Id.* at 56-57.

[69] *Id*. at 45-46.

longer file a supplemental brief to avoid redundancy as the appellants' guilt had already been exhaustively discussed in the Consolidated Appellee's Brief.

ISSUE

WHETHER ACCUSED-APPELLANTS' GUILT WAS PROVEN BEYOND REASONABLE DOUBT FOR VIOLATION OF SEC. 5, OF R.A. NO. 9165, CONSIDERING THE REQUIREMENTS SET FORTH BY SEC. 21 OF THE SAME.

Arguments for accused-appellants

Macaumbang argues that the prosecution has the burden of proving his guilt beyond reasonable doubt and he should be presumed innocent. He cites glaring inconsistencies in the testimonies of the prosecution witnesses: Cruz testified that Muarip carried the seized item from the place of arrest to Camp Crame, while Calicdan offered a conflicting story saying he saw Cruz carry it, thus, making the chain of custody not only broken but disputed; there were differences in Calicdan's testimony as to the members of the buy-bust team; there was also conflict as to the time Cruz waited for Sagarbaria to come back to them; and, Calicdan and Cruz testified differently as to who conducted the initial briefing. There was also a difference as to the address of the buy-bust venue. Cruz said they went to 249 Montillano Street while Calicdan said it was at 294 Montillano Street.[70] These discrepancies cast doubt on the accusation against Macaumbang. Finally, no physical inventory and taking of photographs were done; and there was no representative of the media and the Department of Justice, a violation of Sec. 21, R.A. No. 9165.

Sagarbaria, on the other hand, defended himself by maintaining that: he was not involved in the sale of illegal drugs; the informant was not presented by the prosecution; the warrantless arrest was illegal; the case showed seizure of the "fruit of the poisonous tree"; no person would sell shabu at noontime in a barbershop and in plain view of numerous bystanders; there was

[70] *Id*. at 4 and 7.

noncompliance with Sec. 21(1) of R.A. No. 9165; and the arresting officers failed to immediately mark the shabu allegedly confiscated from Sagarbaria. There were also deviations from the standard procedure of taking photographs and having representatives from the media and the Department of Justice present; and that the presumption of regularity in the performance of official function cannot prevail over the presumption of innocence unless the latter is overthrown by proof beyond reasonable doubt.

Arguments for the People

The prosecution, through the OSG, claims that accused-appellants were arrested during a legitimate buy-bust operation, which made search and arrest warrants dispensable; a buy-bust operation, when carried out with due regard for constitutional and legal safeguards, is a judicially sanctioned method of apprehending persons involved in illegal drug activities; the prosecution evidence positively showed that accused-appellants agreed to sell shabu to the poseur-buyer; the inconsistencies pointed out by Macaumbang do not detract from the fact that they were found in possession of a prohibited drugs; the prosecution was able to explain why the marking, inventory, and photographing were done at the police station and finally, accused-appellants failed to overcome the presumption of regularity in the police officers' performance of their duty.

THE COURT'S RULING

It should be noted that the appeal opens the entire record for review, thus, enabling the Court to determine whether the findings against accused-appellants should be upheld or struck down in their favor.[71] After a careful examination of the records, We rule that accused-appellants' pleas for their acquittal is meritorious.

Sec. 5, Article II of R.A. No. 9165 punishes the sale of dangerous drugs, which includes methamphetamine hydrochloride, *viz.*:

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[71] *People v. Reyes,* 797 Phil. 671, 680 (2016).

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

To secure the conviction of an accused alleged to have violated the above provision, the prosecution must prove the presence of the following elements: the identities of the buyer and seller, the transaction or sale of the illegal drug, and the existence of the *corpus delicti.* The intrinsic worth of the pieces of evidence, especially the identity and integrity of the *corpus delicti,* must be shown to have been preserved. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession or for sale under R.A. No. 9165 fails.[72]

Sec. 21 of R.A. No. 9165 *(Sec. 21),* supplemented by the implementing rules and regulations of the law, *(Implementing Rules),* outlines the steps that should be followed to ensure the identity and integrity of the seized drug. The relevant portions of the Implementing Rules pertaining to Sec. 21 are as follow:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs,Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled, precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[72] *People v. Denoman,* 612 Phil. 1165, 1175 (2009).

(1) 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, 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.

This step-by-step procedure outlined under R.A. No. 9165 is a matter of substantive law, which cannot be simply brushed aside as a procedural technicality. Owing to the gross disregard of these mandatory procedural safeguards, and failure to give justifiable reasons for it, the Court may conclude that the integrity and identity of the *corpus delicti* have been compromised.[73]

The above provision was later amended in R.A. No. 10640,[74] which was approved on July 15, 2014. One of the changes was as to the witnesses required to be present at the inventory. From requiring a representative of the media, a representative of the Department of Justice, and an elected public official, the amended law now require an elected public official and a representative of the National Prosecution Service or the media to be present at and to sign the inventory.[75] However, R.A. No. 10640 cannot be applied here as the incident occurred in 2003; thus, the three witness rule prevails.[76]

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[73] See *People of the Philippines v. Bautista,* 723 Phil. 646, 654 (2013).

[74] 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."

[75] See Sec. 2, R.A. No. 10640.

[76] See *People v. Sipin,* G.R. No. 224290, June 11, 2018.

In this case, the factual findings of the CA and the RTC both point to the existence of the sale of 98.05 grams of shabu, as well as the exchange of cash, ₱200.00 of which was marked money, between Cruz, the poseur-buyer, and accused-appellants. There is no need to disturb these findings. The Court finds no reason to question the credibility of the witnesses presented by the prosecution insofar as the truth of the transaction is concerned. However, as to whether the procedure laid down by Sec. 21 and the Rules is concerned, the case presented by the prosecution leaves much to be desired. The deficiencies in the prosecution's evidence will be discussed *in seriatim.*

Significant gaps in the chain of custody

Chain of custody is defined as "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."[77] The chain of custody rule ensures that unnecessary doubts concerning the identity of the evidence are removed.[78] The oft-cited case of *Mallillin* v. *People of the Philippines*[79] clarified what qualifies as evidence of an unbroken chain of custody:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the**

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[77] *People v. Gayoso,* 808 Phil. 19, 30 (2017).

[78] *People v. Gutierrez,* 614 Phil. 285, 293 (2009).

[79] 576 Phil. 576, 587 (2008).

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)

To demonstrate that the rule on the chain of custody was complied with, the following links should be present:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[80]

As to the first and second links, the following testimony of Cruz during direct examination illuminates the steps taken by the apprehending team:

Q: How about the white crystalline substance inside the transparent plastic and placed on a white handkerchief, what did you do with it?
A: I gave it to our team leader, Sir, who came

Q: What is the name of your team leader?
A: Police Senior Ispector Manan Muarip, sir.

x x x x x x x x x

Q: Who carried the shabu or crystalline substance which you bought from house [N]o. 249 in Montillano Street, Alabang, Muntinlupa City to your office in Camp Crame, Quezon City
A: It was our team leader who carried the shabu from the place of arrest to our office, Sir, because he was in our vehicle.

Q: If that crystalline substance or suspected shabu you brought from alias boy is shown to you again now, will you be able to identify it?
A: Yes, Sir.

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[80] *People v. Guillergan,* 797 Phil. 775, 785 (2016).

Q: How will you be able to identify it?
A: Because I placed a marking on it, Sir.

Q: What identifying markings did you placed on it?
A: I placed my initial, Sir, which is JAC and the date 26 November 2003, Exhibit "A".

Q: At what place did you put those identifying markings?
A: In the office, Sir.

Q: **How were you able to mark them with those markings when according to you, you delivered it to Mr. Muarip?**
A: When both accused was arrested, Sir, our team leader came and I gave to him the shabu and upon arriving in our office, he placed the shabu on the table for photograph but before it was phogtographed, I placed first the markings on it.

x x x x x x x x x

Q: I [am] showing you a document already marked as Exhibit "A" in this case, which is a request for laboratory examination dated 26 November 2003 addressed to the director of PNP crime laboratory, [C]amp [C]rame, Quezon City, what relation has this Exhibit "A" to that request for laboratory examination you mentioned?
A: This is the request for laboratory examination we prepared, Sir, on the shabu we bought from both accused in this case.

Q: And, what evidence do you have to show in Court that this was received by the crime laboratory?
A: Because I'm the one who caused the receipt of this request for laboratory examinaiton, Sir, and this is the stamp mark received by PNP.

x x x x x x x x x

Q: Who carried these items from your office to the crime laboratory at Camp Crame, Quezon City?
A: I was the one who carried those items, Sir.

Q: What evidence do you have to show that it was you who delivered these items to the crime laboratory?
A: This one, Sir.

Pros. Taplac:
Witness, Your Honor, pointing to the entry in Exhibit "A-1," which reads delivered by PO3 J. Cruz.

Q: Do you know if the laboratory examination requested was in fact conducted?
A: Yes, Sir.

Q: Why do you say there was?
A: Because I got the result, Sir, the following day.

x x x x x x x x x

Q: Aside from taking a photograph of the shabu or white crystalline substance at your office, what else did you do with it[,] if any?
A: We let a barangay official signed the inventory receipt, Sir.

Q: If that inventory is shown to you again, will you be able to identify it?
A: Yes, Sir.[81] (emphasis supplied)

Meanwhile, Calicdan stated on direct examination

Q: And then what next happened?
A: Our team leader Capt. Muarip went upstairs, Sir, and the evidence that we recovered were placed into the evidence bag.

Q: Can you describe this evidence bag?
A: It was a plastic bag with a name PDEA and evidence bag, Sir.

Q: And who was in possession of that evidence from then on, which contained the shabu bought by Jonathan Cruz from the accused?
A: Capt. Muarip, Sir, with PO3 Jonathan Cruz.

Q: **Who between the two was actually holding or in actual custody of that evidence bag?**
A: The one I saw holding the evidence bag as we go downstairs was PO3 Jonathan Cruz, Sir.

Q: How about the buy-bust money, where was it when you were leaving the house?
A: It was in my possession, Sir.

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[81] TSN, September 8, 2004, pp. 33-35 and 39-43.

Q: And what next happened?
A: We brought them to our office for proper disposition, Sir.

Q: **And who carried the evidence bag containing the suspected shabu from there up to your office?**
A: PO3 Jonathan Cruz, Sir, they both boarded on a car.[82] **(emphases supplied)**

Obvious from the above, contrary to the mandate of Sec. 21, the seized item was not marked immediately upon seizure and confiscation. It is also immediately noticeable that the prosecution witnesses differ in their accounts as to who had possession of the seized item from Muntinlupa to Quezon City. Even if the testimonies were consistent as to the possessor of the seized item, the above testimonies are sorely wanting as to the precautions taken by Cruz and Muarip. The seized item was also transported a considerable distance – from Muntinlupa to Quezon City – before it was marked and inventoried, exposing the same to a multitude of factors that would endanger its integrity. The Court also observes that Muarip, who held the specimen for a significant period of time, was not presented; nor was there any stipulation as to what he could have testified to regarding his handling of the seized drug.

The third link, however, was adequately established by the brief testimonies of Cruz and Calicdan, who both attested to the fact that Cruz carried those items to the crime laboratory.[83] This was also reflected in the Request for Laboratory Examination of one (1) knot-tied transparent plastic bag containing white crystalline granules marked as Exhibit "A"[84] presented to the RTC. The document bears the stamp showing the same was delivered by "PO3 Jonathan A. Cruz" and received by "PI SD Go."

Once more, the prosecution hits a stumbling block as the fourth link is likewise conspicuously absent. The Court is

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[82] TSN, September 13, 2005, pp. 32-34.

[83] TSN, September 8, 2004, p. 40. See also TSN, September 13, 2005, p. 48.

[84] Records, p. 197.

cognizant of the common practice that the forensic chemist's testimony is often dispensed with during trial; with the parties merely stipulating on the facts the forensic chemist would testify on instead of the forensic chemist's actual appearance during trial. The same practice was done in this case. The parties stipulated during pre-trial the following:

1. That if government forensic chemist Engr. Sandra Decena-Go, an expert (on dangerous drugs) witness, here to testify, she would tell the court that she received a request for laboratory examination from P/Chief Insp. Romualdo P. Iglesia dated 26 November 2003;

2. That attached to the said request is a one-half stapled brown mailing envelope inside which was one (1) plastic packet with the marking "PDEA" marking inside which is a white handkerchief marked as "Exhibit B, November 26, 2003" where a transparent plastic bag with white crystalline substance marked with red pentel pen as "Exhibit A-JAC, November 26, 2003" and weighing 98.05 grams is wrapped;

3. Said chemist conducted a chemical analysis thereof and reduced the result into writing, denominated as Chemistry Report No. D-1196-038.[85]

During the trial proper, the presentation of forensic chemist Decena-Go was dispensed with, the trial court having issued an Order, dated August 8, 2006, reflecting the stipulations of the prosecution as to her testimony, to wit:

Although last prosecution witness Engr. Sandra Decena-Go was present and ready to testify at today's continuation of the presentation of prosecution evidence, she was no longer presented as defense counsel Atty. Jose Alfonso Gomos admitted her expertise. The prosecution and the defense likewise stipulated on the following facts: 1) That as government forensic chemist assigned to the PNP Crime Laboratory in Camp Crame, she received a request for both accused persons' fluorescent powder testing dated November 26, 2003 (Exhibit "E-3"); 2) That such request was received at the crime laboratory on November 26, 2003, at 5:18 o'clock in the afternoon by Engr. Sandra Decena-Go for which a report was issued in the form of an Initial

[85] *Id*. at 40.

Laboratory Report (Exhibit "F-1") and Chemistry Report No. C-536-03 (Exhibit "F-2"/"1"); 3) A request for money dusting dated November 25, 2003 (Exhibit "E") was submitted together with the original two pieces of one hundred peso bills (Exhibits "E-1" and "E-2") and received at Camp Crame at 10:00 o'clock in the morning by PO3 Resco; 4) That the result of such money dusting was the Initial Laboratory Report of Chemistry Report No. C-537-03 (Exhibit "E-4"); 5) That Chemistry Report No. C-536-03, completed on November 26, 2003 at 5:48 o'clock in the afternoon (Exhibit "1-A"), indicates that the dorsal portion of the hands of Jose Sagarbaria y Misa tested positive for the presence of ultra violet fluorescent powder found only at the crevices of the base of the nails where they survived despite friction as illustrated in the sketch prepared by the witness (Exh. "F-2-c"); 6) That the said report also indicates that the palmar portion of accused Sagarbaria's hand tested negative for the presence of ultra violet fluorescent powder as illustrated in another sketch (Exhibit "F"-2'd"/ "4"); 7) That as shown in the sketches of accused Nasrollah Macaumbang's hands (Exhibit "F-2-A"/ "3," "F-2-B"/ "2"), the dorsal and palmar portion of both hands tested negative for the presence of ultra violet fluorescent powder (Exhibit "2-A" and "2-B" for the palmar side and Exhibit "3-A" and "3-B" for the dorsal side).[86]

These stipulations hardly meet the standard required by law and jurisprudence. There was no statement as to who had custody of the seized item after the examination and how it was handled. In instances like this, where the evidence presented by the prosecution failed to reveal the identity of the person who had custody and safekeeping of the drugs after its examination and pending presentation in court, the prosecution was found to have failed to establish the chain of custody.[87] Where there was no record as to what happened after the turnover by the poseur-buyer of the pack of shabu to their team leader, the Court ruled the same as a "significant gap in the chain of custody of the illegal stuff." These gaps include the inexplicable failure of the police officers to testify as to what they did with the alleged drug while in their respective possession that resulted

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[86] *Id.* at 193-194.

[87] *People v. Morales,* 630 Phil. 215, 236 (2010).

in a breach or break in the chain of custody of the drug[88] It should be noted, too, that Decena-Go could have testified on the matter when she was presented during the presentation of rebuttal evidence, but the prosecution did not ask any question pertinent to the issue of the fourth link on the chain of custody.

Concededly, Sec. 21 and the Rules provide a saving clause, *i.e.* that noncompliance with the 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 the seizures of and custody over the item. To be sure, there is an explanation for the non-marking of the specimen at the place of arrest, with the witnesses claiming that accused-appellants here apparently had a "police coddler." The same explanation, however, does not suffice due to the lack of detail as to how the specimen was handled from the place of arrest up to its presentation in Court, thereby not giving any assurance as to the integrity of the seized item.

To reiterate, the manner as to how Muarip ensured the integrity and identity of the seized drug was never given much emphasis by the prosecution witnesses. Moreover, the stipulations as to Decena-Go's testimony did not delve into the safeguards taken by her or by her office when the specimen was with them, as also between the moment it was turned over to her up to the time the specimen was presented in court. Neither was there any statement found in testimony or the documents showing who handled the specimen after the laboratory examination was conducted, and the precautions made ensuring that what was presented in court was the specimen seized from accused-appellants. With these details proving the preservation of the identity and integrity of the drugs shrouded in mystery, the evidentiary value of drugs presented in court is put into question. It cannot be said with certainty that the drugs were never compromised or tampered with.[89]

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[88] *People v. Havana,* 776 Phil. 462, 474 (2016).

[89] See *People v. Angeles,* G.R. No. 218947, June 20, 2018.

Only a barangay kagawad witnessed the inventory. Other witnesses as required by Sec. 21 were not present during the seizure and confiscation of the drug;

The gaps in the chain of custody not only justify the acquittal of accused-appellants but also the deviation in the conduct of the inventory, which procedure is specifically laid down in Sec. 21 and the Rules. This part of Cruz's cross-examination is telling

Q: Who is this Kagawad Rodel Frayna, was he a kagawad of Muntinlupa or Quezon City?
A: Quezon City, Sir.

Q: Camp Crame?
A: Yes, Sir.

Q: So, this kagawad did not witness how the alleged shabu was confiscated, am I correct?
A: No, Sir.

Q: I am showing to you Exhibit "I", was there a representative from the DOJ who signed that inventory?
A: None, Sir.

Q: How about from the media?
A: None, Sir.

Q: How about from the accused?
A: None, Sir.

Q: You furnish[ed] Kagawad Frayna a copy of this inventory?
A: I'm not so sure, Sir.

Q: And, when the items were photographe[d] but unfortunately, you said the film was allegedly exposed, tell me, was there a representative from the DOJ likewise?
A: None, Sir.

Q: From the media?
A: None, Sir.

Q: From the accused?
A: Also none, Sir.

Q: How about the elected official, was he still present when the confiscated items were being photographed?[90]

There is no doubt that the only person other than the police officers and accused-appellants who witnessed the inventory and supposed taking of photographs was Barangay Kagawad Freyna. There were no Department of Justice and media representatives, directly flouting Sec. 21 and the Rules. While Sec. 21 provides some respite for police officers against the strict requirements of the law, the same cannot apply to the case at bench.

The Court observes that the prosecution offered no explanation as to the noncompliance with procedure, or whether there was justifiable ground for the law enforcers' failure to do so. The prosecution was given the opportunity to present rebuttal witnesses on this matter yet there was no evidence presented of efforts to assure the presence of DOJ or media representatives. It is noteworthy that the buy-bust operation was conducted a day after the informant went to Camp Crame and the buy-bust team made an ocular inspection. The team also had a considerable length of time to inform the necessary witnesses to enable them to sign the certificate of inventory. There was thus no excuse, and none was given, for the noncompliance with the witness requirements of Sec. 21. In previous cases, the Court was not hamstrung by the presumption of regularity in the performance of duty, but instead acquitted the accused.[91]

It is worthy to note that the Court has even recognized the three-witness requirement to mean the presence of witnesses at the time of apprehension, to wit:

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, does the IRR allow that the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **By the same token, this also means that the three 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 buy-bust team has enough time and opportunity to bring with them said witnesses.[92] (emphasis and underscoring in the original)

This ruling of the Court is relevant to this case as, indeed, there was ample time for the police operatives to procure witnesses at the place of apprehension and inventory. Similarly, this ruling should lead to the acquittal of the accused-appellants.

This is not the first time that the Court was faced with the absence of law-mandated witnesses during the taking of an inventory in drug-related cases. In *People of the Philippines* v. *Alvarado*[93] *(People v. Alvarado),* only a barangay kagawad was present during the inventory and photographing of the seized items. It bears repeating that in the recent case of *People of the Philippines v. Romy Lim*[94] *(People v. Lim),* echoed in the Office of the Court Administrator Circular No. 210-18, the Court reiterated that it must be alleged and proved that the presence of witnesses to the physical inventory and taking photographs 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 taking photographs of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and on his/her behalf; (3) the elected officials 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

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[90] TSN, September 8, 2004, pp. 66-67.

[91] See cases such as *People v. Havana, supra* note at 88; *People v. Gayoso,* supra note 77. See also *People v. Delos Reyes,* 656 Phil. 100, 114-115 (2011).

[92] *People v. Callejo,* G.R. No. 227427, June 6, 2018.

[93] G.R. No. 234048, April 23, 2018.

[94] *People v. Lim,* G.R No. 231989, September 4, 2018.

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. There was simply no justification for the absence of the other witnesses, nor was there an attempt to explain the same. The reason that accused-appellants had "police coddlers" surely cannot justify the absence of DOJ and media representatives.

Additionally, it should be mentioned that there were no photographs on the record and submitted for the Court's consideration. Cruz stated that they took photographs while they made the inventory, but the film "was not developed."[95] This explanation is unacceptable considering the other procedural lapses committed by the arresting team.

Stated plainly, this instance is a bungled buy-bust operation. The law enforcers were seriously remiss in their duty to ensure the trustworthiness of the specimen subject of accused-appellants' prosecution. In an inefficient, if not bungled, implementation of a poorly prepared buy-bust plan, coupled with the failure of the prosecution to present vital witnesses who could have cured the fatal flaw in its evidence, the acquittal of the accused is ensured.[96]

Time and again, the Court has recognized the "pernicious effect of dangerous drugs in our society" and the malevolent and incessant threat posed by drugs to human dignity and integrity of society.[97] We echo, once more, the Court's consistent plea to law enforcers and prosecution agents to be more mindful of the requirements of the law in their zealous efforts to bring to justice those who violate R.A. No. 9165. The Court is one with them in the collective intention to eradicate drug proliferation and addiction in this country, in conjunction with the Court's bounden duty to safeguard the rights of the accused in compliance

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[95] TSN, September 8, 2004, p. 36.

[96] *People v. Tantiado,* 288 Phil. 241, 257 (1992).

[97] *People v. Villarama, Jr., et al.* 285 Phil. 723, 732 (1992).

with law and jurisprudence. Where constitutional rights are put in jeopardy, the Court must step in and enforce the most paramount of our laws.

WHEREFORE, all premises considered, the appeal is **GRANTED.** The April 30, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05125 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Nasrollah Macaumbang *y* Ali and Jose Sagarbaria *y* Misa are **ACQUITTED** of the crime charged. The Director of Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

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. Copies shall also be furnished the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Bersamin, C.J., del Castillo, Caguioa,[*] and *Carandang, JJ.,* concur.

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[*] Designated as Special Member in lieu of Associate Justice Francis H. Jardeleza per Raffle dated March 4, 2019.

FIRST DIVISION

[G.R. No. 216795, April 01, 2019]

MAERSK-FILIPINAS CREWING INC.; AND A.P. MOLLER A/S, *petitioners, vs.* **EDGAR S. ALFEROS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION - STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY COMPENSATION; WHEN THE SEAFARER SUSTAINS A WORK-RELATED ILLNESS OR INJURY WHILE ON BOARD THE VESSEL, HIS FITNESS OR UNFITNESS FOR WORK SHOULD BE DETERMINED BY THE COMPANY-DESIGNATED PHYSICIAN; IN CASE OF A CONTRARY FINDING BY THE PHYSICIAN APPOINTED BY THE SEAFARER, REFERRAL TO A THIRD PHYSICIAN, JOINTLY AGREED UPON BY THE EMPLOYER AND THE SEAFARER, IS MANDATORY; CASE AT BAR.— Under the POEA-SEC, when the seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work should be determined by the company-designated physician. However, if the physician appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third physician might be agreed upon jointly by the employer and the seafarer, and the third physician's decision would be final and binding on both parties. The Court has held in *TSM Shipping Phils., Inc. v. Patiño* that the non-observance of the requirement to have the conflicting assessments determined by a third physician would mean that the assessment of the company-designated physician prevails. x x x The records do not indicate that the parties jointly sought the opinion of a third physician for the determination and assessment of the respondent's disability or the absence thereof. The failure of the respondent to give notice to the petitioners of his intent to submit himself to a third physician for evaluation negated the need for the determination by a third physician. For this reason, the filing of the respondent's claim for disability was premature.

2. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; CIRCUMSTANCES UNDER WHICH A CLAIM THEREFOR MAY BE PURSUED; ABSENT IN CASE AT BAR.— According to *C.F Sharp Crew Management, Inc. v. Taok*, a seafarer may have a basis to pursue his claim for total and permanent disability benefits under any of the following conditions, namely: (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification issued by the company designated physician; (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods. There was no basis for holding that the respondent's condition came under the aforementioned circumstances.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO WARRANT THE ISSUANCE OF THE WRIT, THE ABUSE OF DISCRETION MUST BE GRAVE, WHICH MEANS EITHER THAT THE JUDICIAL OR QUASI-JUDICIAL POWER WAS EXERCISED IN AN ARBITRARY OR DESPOTIC MANNER

BY REASON OF PASSION OR PERSONAL HOSTILITY, OR THAT THE RESPONDENT JUDGE, TRIBUNAL OR BOARD EVADED A POSITIVE DUTY, OR VIRTUALLY REFUSED TO PERFORM THE DUTY ENJOINED OR TRIBUNAL OR BOARD EXERCISING JUDICIAL OR QUASI-JUDICIAL POWERS ACTED IN A CAPRICIOUS OR WHIMSICAL MANNER AS TO BE EQUIVALENT TO LACK OF JURISDICTION; ESTABLISHED IN CASE AT BAR.— To warrant the issuance of the writ of *certiorari*, the abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*, "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." That standard was fully met by the petitioners in the CA, for the circumstances truly showed that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the findings of the Labor Arbiter because it thereby whimsically and capriciously disregarded the express language of the law requiring the respondent to first give to the petitioners his notice of intent to resolve the conflicting assessments through the third physician.

APPEARANCES OF COUNSEL

Retoriano & Olalia-retoriano for petitioners.
Carrera & Associates Law Office for respondent.

D E C I S I O N

BERSAMIN, *C.J.*:

The assessment made by the company-designated physician of the condition of the seafarer is controlling on the determination of the claim for disability benefits for the seafarer. The filing of a claim based on the assessment of his condition by the seafarer's chosen physician without his having given to the

employer notice of his intent to submit his condition for assessment by a third physician is premature and in violation of the provisions of the POEA-Standard Employment Contract (POEA-SEC).

The Case

This appeal stems from the claim for disability benefits, sick wages, damages, and attorney's fees filed by the respondent against the petitioners. The latter hereby appeal the decision promulgated on November 10, 2014,[1] whereby the Court of Appeals (CA) dismissed their petition for certiorari docketed as C.A.-G.R. SP No. 136293 and upheld the decision dated April 30, 2014[2] rendered by the National Labor Relations Commission (NLRC) affirming the award of US$60,000.00 representing the respondent's permanent total disability benefits plus attorney's fees.

Antecedents

The petitioners had employed the respondent as an Able Seaman without interruption since 1995. They had redeployed him each time under a new contract upon being subjected to the Physical Employment Medical Examination (PEME) that always found him fit for work. For his last employment contract, he was again hired by the petitioners as an Able Seaman on board the vessel M/S Laura Maersk with a basic salary of US$585.00/month for a period of six months commencing on May 10, 2012. Upon completion of his contract, the parties mutually extended his services because there was no person available to take over his position on board the vessel.[3]

On December 20, 2012, he suddenly felt pain in his lower back and abdomen while in the performance of his duty. He also experienced difficulty and pain when urinating. He reported his condition to his superior officer, who brought him to the

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[1] *Rollo*, pp. 58-73; penned by Associate Justice Celia C. Librea-Leagogo with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Melchor Q. C. Sadang.

[2] *Id*. at 313-331.

[3] *Id*. at 59.

Dulsco Medical Clinic in Dubai, which, upon medical examination, diagnosed his condition as "Dysuria, with loin pain and back pain." He was treated thereat, and was later on discharged and allowed to return to the vessel. However, despite treatment in Dubai, his condition did not improve but became worse. He was medically repatriated and was disembarked on January 12, 2013.

The company-designated physicians, Dr. Karen Frances Hao-Quan (Dr. Quan) and Dr. Robert D. Lim (Dr. Lim), referred him to an urologist. According to the medical report, the respondent complained of "pain in urination accompanied with urinary frequency and back discomfort since December 2012 on board the sea vessel and was diagnosed to have dysuria with loin pain and back pain; urinalysis showed red blood cells; kidney, urinary bladder and prostate gland ultrasound showed focal cortical calcification, right kidney and Grade 1 prostate hypertrophy; he was recommended to undergo CT Stonogram and was given medications.[4] He was to return on January 31, 2013 for re-evaluation, and the impression was "Prostatitis rule out Urolithiasis."[5]

In the medical report dated January 31, 2013 prepared by Dr. Quan and Dr. Lim, the earlier impression was restated, and the respondent was asked to return on February 4, 2013 for re-evaluation.

In the follow-up medical reports dated February 4, 2013 and February 18, 2013, the respondent was advised to continue his medications. In the medical report dated March 5, 2013, the company-designated physician pronounced the respondent as already fit to resume sea duties as of said date inasmuch as his prostatitis had already been resolved. The petitioners then made him sign a document entitled "Certificate of Fitness to Work" dated March 5, 2013, with his company-designated physician as witness.[6]

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[4] *Id*. at 68.

[5] *Id*. at 69.

[6] *Id*.

Not feeling fit to resume sea duties despite the final diagnosis by the company-designated physician, and despite having been made to sign the "Certificate of Fitness for Work," the respondent submitted himself for examination by another physician. The records show that on March 19, 2013 he sought further medical evaluation and management at the Supercare Medical Services (Supercare), as shown by the "Agreement to Proceed with Further Evaluation and Management" signed by him.[7]

On further evaluation of his health condition, the respondent was diagnosed to be suffering from kidney stones and vertigo. Due to such diagnosis, he was referred to St. Luke's Medical Center on April 29, 2013, where he was diagnosed to be suffering from nephrolithiasis by Dr. Jaime C. Balingit (Dr. Balingit). He was then further referred to Dr. Manuel C. Jacinto (Dr. Jacinto) for further examination, and the latter diagnosed him to be suffering with nephrolithiasis, diabetic nephropathy, osteoarthritis, lumbosacral spine radiculopathy, and benign positional vertigo. Dr. Jacinto issued a medical assessment in writing declaring the respondent's condition as rendering him physically unfit to return to work as a seafarer.[8]

Subsequently, the respondent filed a complaint with the Arbitration Office of the National Labor Relations Commission (NLRC) to recover permanent disability compensation pursuant to the collective bargaining agreement (CBA), payment of sick wages for 120 days, moral and exemplary damages, attorney's fees and other benefits under the law.

Decision of the Labor Arbiter

On September 16, 2013, Labor Arbiter Enrique Flores Jr. (LA) rendered his decision granting the claim and ordering the petitioners to pay to the respondent: (1) the amount of US$60,000.00, representing permanent total disability benefit; and (2) attorney's fees equivalent to 10% of the total award.[9]

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[7] *Id*.

[8] *Id*.

[9] *Id*. at 227-239.

Ruling of the NLRC

On appeal, the NLRC rendered its ruling on April 30, 2014 affirming the decision of the Labor Arbiter, to wit:

> A closer look at the medical assessment of the company-designated physician reveals that the said physician confined his treatment solely to his diagnosis of *PROSTATITIS* and simultaneously *RULE OUT UROLITHIASIS*. There was no further mention at all about the cause of *Dysurea with Loin Pain and Back Pain* being suffered by complainant as earlier diagnosed by the physician who initially examined him in Dubai and for which complainant was medically repatriated. Neither was there any pronouncement at all whether other ailments such as *Dysurea* was completely resolved as well. We further took note of respondent- appellants contention that complainant was repatriated due only to *Dysuria With Loin Pain and Back Pain*, and did not include other ailment such as *Nephrolithiasis, Diabetic Nephropathy; Osteoarthritis; Degenerative Changes of Lumbar Spine with Minimal L3-L4 caudad to L5-S1 Disc Protrusion; and Benign Positional Vertigo*. To our mind, respondent-appellants were evading these medical issues in their haste to declare complainant as fit to work to free themselves from the obligation of paying the complainant's claim for permanent total disability compensation.[10]

After their motion for reconsideration was denied, the petitioners assailed the ruling of the NLRC on *certiorari* in the CA.

Decision of the CA

The petitioners contended in C.A.-G.R. SP No. 136293 that the NLRC had gravely abused its discretion amounting to lack or excess of its jurisdiction in affirming the findings of the Labor Arbiter and awarding the respondent with permanent total disability compensation notwithstanding the findings of the company-designated physician to the effect that he had already been declared fit to resume his seafaring duties; and in relying on the assessment of the second physician contrary to the "third doctor appointment" procedure stipulated in the POEA-Standard Employment Contract (POEA-SEC).

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[10] *Id*. at 325.

On November 10, 2014, however, the CA promulgated the assailed decision dismissing the petition for *certiorari* and upholding the NLRC, *viz.*:

WHEREFORE, premises considered, the Petition is **DENIED**. Costs against petitioners.

SO ORDERED.[11]

Issue

In this appeal, the petitioners submit that the CA erred in upholding the ruling of the NLRC based on the findings of the respondent's second physician, thereby disregarding Section 20-A(3) of the POEA-SEC that required the parties to jointly appoint a third physician in the event of the conflicting assessments between their respective nominated physicians.

Ruling of the Court

The appeal is meritorious.

In upholding the decision of the NLRC,[12] the CA observed that the findings of Labor Arbiter and NLRC about the respondent being entitled to permanent total disability benefits were anchored on substantial evidence; that after the company-designated physician had given him the fit-to-work assessment, he had again undergone the PEME at Supercare, which provided medical services to the seafarers to be employed by the petitioners; that Supercare found him to be suffering from kidney stones and benign positional vertigo, thereby rendering him unfit to work as a seafarer; and that the fit-to-work declaration by the company-designated physician was not reflective of the true state of health of the respondent.

Given the provisions of the POEA-SEC, the Court disagrees with the observations of the CA.

Under the POEA-SEC, when the seafarer sustains a work-related illness or injury while on board the vessel, his fitness

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[11] *Id*. at 72.

[12] *Id.* at 313-331.

or unfitness for work should be determined by the company-designated physician. However, if the physician appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, a third physician might be agreed upon jointly by the employer and the seafarer, and the third physician's decision would be final and binding on both parties. The Court has held in *TSM Shipping Phils., Inc. v. Patiño*[13] that the non-observance of the requirement to have the conflicting assessments determined by a third physician would mean that the assessment of the company-designated physician prevails.[14]

According to *C.F Sharp Crew Management, Inc. v. Taok*,[15] a seafarer may have a basis to pursue his claim for total and permanent disability benefits under any of the following conditions, namely:

(a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

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[13] G.R. No. 210289, March 20, 2017, 821 SCRA 70.

[14] *Id*. at 86.

[15] G.R. No. 193679, July 18, 2012, 677 SCRA 296.

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.[16]

There was no basis for holding that the respondent's condition came under the aforementioned circumstances.

Furthermore, although the respondent was not precluded from seeking a second medical opinion of his condition, the third paragraph of Section 20(B)3 of the POEA-SEC laid down the procedure to be followed when there is a disagreement between the assessments of the respective physicians of the parties, stating: "If a doctor appointed by the seafarer disagrees with the assessment (of the company-designated physician), a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties."

The records do not indicate that the parties jointly sought the opinion of a third physician for the determination and assessment of the respondent's disability or the absence thereof. The failure of the respondent to give notice to the petitioners of his intent to submit himself to a third physician for evaluation negated the need for the determination by a third physician. For this reason, the filing of the respondent's claim for disability was premature.

[16] *Id.* at 314-315.

The need for the evaluation of the respondent's condition by the third physician arose after his physician declared him unfit for seafaring duties. He could not initiate his claim for disability solely on that basis. He should have instead set in motion the process of submitting himself to the assessment by the third physician by first serving the notice of his intent to do so on the petitioners. There was no other way to validate his claim but this. Without the notice of intent to refer his case to the third physician, the petitioners could not themselves initiate the referral. Moreover, such third physician, because he would resolve the conflict between the assessments, must be jointly chosen by the parties thereafter. Unless the respondent served the notice of his intent, he could not then validly insist on an assessment different from that made by the company-designated physician.[17] This outcome, which accorded with the procedure expressly set in the POEA-SEC, was unavoidable for him, for, as well explained in *Hernandez v. Magsaysay Maritime Corporation*:[18]

> Under Section 20 (A) (3) of the 2010 POEA-SEC, "[if] a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties." The provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or

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[17] *Bahia Shipping Services, Inc. v. Constantino*, G.R. No. 180343, July 9, 2014, 729 SCRA 361, 373, where the Court states:

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

[18] G.R. No. 226103, January 24, 2018.

240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, **unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it.**(Underscoring and emphasis supplied)

Moreover, the failure of the respondent to signify the intent to submit himself to the third physician was a direct contravention of the terms and conditions of his contract with the petitioners.[19] Such contravention disauthorized the making of the claim for the benefits.

On the basis of the foregoing, the respondent's claim for disability benefits predicated on his physician's assessment would be bereft of basis considering that his non-compliance with the procedure expressly provided by law led to the fit-to-work assessment by the company-designated physician becoming the controlling and only reliable medical assessment.[20]

Anent the result of the PEME that found and declared the respondent unfit for duty as a seafarer, we accord it weight. The physical examination undertaken by him at Supercare was only for the purpose of his re-employment and the approval of another contract for him. We have observed before that -

.... while a PEME may reveal enough for the petitioner to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.[21]

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[19] *INC Navigation Co. Philippines, Inc. v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 451.

[20] *Hernandez v. Magsaysay Maritime Corp*., G.R. No. 226103, January 24, 2018; citing *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, G.R. No. 194362, June 26, 2013, 700 SCRA 53. 65; see also *Abosta Shipmanagement Corporation v. Delos Reyes*, G.R. No. 215111, June 20, 2018; and *Formerly INC Shipmanagement, Incorporated (now INC Navigation Co., Philippines, Inc. v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438, 450.

[21] *C.F. Sharp Crew Management, Inc. v. Castillo*, G.R. No. 208215, April 19, 2017, 824 SCRA 14, 42 citing *NYK-FIL Ship Management, Inc.*

Indeed, the tentativeness of the findings of fitness following the PEME was precisely the reason why Supercare still referred the respondent to Dr. Balingit. Neither could the findings by Supercare be equated to the required notification to the petitioners on his health condition. As earlier clarified, he must himself actively or expressly request the referral to the third physician.

To warrant the issuance of the writ of *certiorari*, the abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*,[22] "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." That standard was fully met by the petitioners in the CA, for the circumstances truly showed that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the findings of the Labor Arbiter because it thereby whimsically and capriciously disregarded the express language of the law requiring the respondent to first give to the petitioners his notice of intent to resolve the conflicting assessments through the third physician.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on November 10, 2014 in C.A.-G.R. SP No. 136293; and **DISMISSES** the respondent's claim for disability benefits, sick wages, damages, and attorney's fees for lack of factual and legal basis, without costs of suit.

SO ORDERED.

Del Castillo, Gesmundo, and *Carandang, JJ.*, concur.

Jardeleza, J., on official business.

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v. National Labor Relations Commission, G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.

[22] G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

THIRD DIVISION

[G.R. No. 222078. April 01, 2019]

ROGACIANO L. OROPEZA AND AMELDA S. OROPEZA, *petitioners, vs.* **ALLIED BANKING CORPORATION (NOW PHILIPPINE NATIONAL BANK) AND REGISTER OF DEEDS FOR CITY OF DAVAO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LACHES; DEFINED AS THE FAILURE OR NEGLECT, FOR AN UNREASONABLE AND UNEXPLAINED LENGTH OF TIME, TO DO THAT WHICH, BY EXERCISING DUE DILIGENCE COULD OR SHOULD HAVE BEEN DONE EARLIER; ELEMENTS; PRESENT IN CASE AT BAR.— Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. It should be stressed that laches is not concerned only with the mere lapse of time. The Court ruled in *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan* that: [L]aches is not concerned only with the mere lapse of time. The following elements must be present in order to constitute laches: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. This Court agrees with the CA and the RTC that the elements of laches are present in this case. Certificates of title on the subject properties have already been issued in the name of respondent bank after a valid extrajudicial foreclosure on August 22, 1984 and after the period to redeem the same properties had already elapsed. It was only

after the lapse of twenty-two years from the date of the extrajudicial foreclosure that petitioners sought to annul the sale. The respondent bank, apparently, did not anticipate that petitioners would assail the former's possession of the subject properties as it continued to pay taxes due thereon. And clearly, respondent bank would be prejudiced if the present action is not barred by laches as it will incur a loss in its assets.

2. ID.; LAND TITLES AND DEEDS; PROPERTY REGISTRATION DECREE; TORRENS SYSTEM; GENERALLY, AN ACTION TO RECOVER REGISTERED LAND MAY NOT BE BARRED BY LACHES, IN EXCEPTIONAL CASES, LACHES MAY BE A BAR TO RECOVER A TITLED PROPERTY; CASE AT BAR.— As a general rule, an action to recover registered land may not be barred by laches; however, this Court, in certain cases, allowed laches as a bar to recover a registered property under the Torrens system. Thus, this Court ruled in *Akang v. Municipality of Isulan, Sultan Kudarat Province*: As a general rule, an action to recover registered land covered by the Torrens System may not be barred by laches. Neither can laches be set up to resist the enforcement of an imprescriptible legal right. In exceptional cases, however, the Court allowed laches as a bar to recover a titled property. Thus, in *Romero v. Natividad*, the Court ruled that laches will bar recovery of the property even if the mode of transfer was invalid. Likewise, in *Vda. de Cabrera v. CA*, the Court ruled: In our jurisdiction, it is an enshrined rule that even x x x registered owners of property may be barred from recovering possession of property by virtue of laches. Under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to laches. To reiterate, the RTC has ruled that the extrajudicial foreclosure on the subject properties was valid as it was brought about by petitioners' inability to pay their obligations with the respondent bank. x x x As such, due to the above disquisitions, this Court finds it just to rule that the rule on laches applies in this case. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, and after due consideration, this Court finds it just to rule that petitioners' present action is already

barred by laches. The essence of laches or "stale demands" is the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. It is not concerned with mere lapse of time; the fact of delay, standing alone, being insufficient to constitute laches.

APPEARANCES OF COUNSEL

Batacan Montejo & Vicencio Law Firm for petitioners.
Frank Evan L. Dandoy II for respondent PNB.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, dated December 21, 2015, of petitioners Rogaciano L. Oropeza and Amelda S. Oropeza that seeks to reverse and set aside the Decision[2] dated August 27, 2014 and the Resolution[3] dated November 25, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 02451-MIN denying petitioners' "Petition for Cancellation of Derivative Titles and Their Reversion/Reinstatement to the Original Registered Owner/s and the Cancellation of Annotations on the Title of their Original Owners and/or Issuance of New Title In Lieu of Cancelled Ones, Clean and Clear of Subject Annotations" on the basis of laches.

The facts follow.

Petitioners, on November 30, 2006, filed a "Petition for Cancellation of Derivative Titles and Their Reversion/ Reinstatement to the Original Registered Owner/s and the

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[1] *Rollo*, pp. 7-32.

[2] *Id.* at 35-44; penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Romulo V. Borja and Edward B. Contreras.

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

Cancellation of Annotations on the Title of their Original Owners and/or Issuance of New Title In Lieu of Cancelled Ones, Clean and Clear of Subject Annotations" against respondents Allied Banking Corporation (now Philippine National Bank) and Register of Deeds for City of Davao, with the following allegations:

2.0 That PETITIONERS were two of the defendants in Civil Case No. 19,634-89 entitled ALLIED BANKING CORPORATION vs. ROGACIANO OROPEZA, et al[.], which pended and was tried before the Regional Trial Court, Branch 9, Davao City;

3.0 That on October 26, 1992[,] the Honorable Regional Trial Court, Branch 09, Davao City rendered a Decision, in the above-mentioned case in favor of herein PETITIONERS and against the RESPONDENT x x x;

3.01 That RESPONDENT BANK appealed the abovementioned Decision to the Court of Appeals which rendered its Decision on May 2, 2000, dismissing the appeal and affirming the said judgment *in toto* x x x;

3.02 The RESPONDENT BANK moved for the reconsideration of the above-mentioned Decision of the Court of Appeals, which DENIED said motion for reconsideration in its Resolution dated February 16, 2001 x x x;

3.03 That per ENTRY OF JUDGMENT issued by the Division Clerk of Court of the Court of Appeals, the said Decision on May 2, 2000, "has on March 18, 2001 become final and executory and is hereby recorded in the Book of Entries of Judgments."

4.0 But, a twin or companion Complaint/case for Sum of Money was also filed by RESPONDENT BANK (which under the present rules would have been a violation of the Non-forum Shopping Rule), which was docketed as Civil Case No. 19,325-88 before the Regional Trial Court, Branch 15, Davao City.

4.01 This second case was based on the same Promissory Note, dated October 12, 1982, which was declared VOID and of NO FORCE AND EFFECT by the Regional Trial Court, Branch 9, Davao City, in Civil Case No. 19,634-89. It is worthy to note that this second case was not denominated as a case for deficiency judgment. It was simply a complaint for a "Sum of Money."

> 4.02 This second case was ultimately rightly and judiciously DISMISSED by the said Regional Trial Court, Branch 15, on February 21, 1994 x x x;
>
> 4.03 On appeal by RESPONDENT BANK to the Court of Appeals, however, said decision was reversed by the First Division, Court of Appeals in CA-G.R. CV No. 4775, on March 13, 1997. PETITIONERS moved for the reconsideration of the said decision of the Court of Appeals. Said PETITIONERS' motion for reconsideration, however, was DENIED.
>
> 4.04 But on a petition for review on appeal by certiorari to the Supreme Court, PETITIONERS' petition was granted on December 3, 2002 by the Second Division, Supreme Court in G.R. No. 129788, setting aside the said Decision and Order of the Court of Appeals x x x;
>
> 4.05 That per ENTRY OF JUDGMENT in G.R. No. 129788 issued by the Clerk of Court, Second Division, Supreme Court, that the above decision has on January 24, 2003 become final and executory as is hereby recorded in the Book of Entries of Judgments.

5.0 That by virtue of the Judgment of the Regional Trial Court of Davao City, Branch 9, in Civil Case No. 19634-89 (which was AFFIRMED AND REITERATED by the Court of Appeals and cited/ adjudged as "conclusive upon the parties" by the Supreme Court in G.R. No. 129788) that -

> (2) Individual defendants' accounts have been satisfied, paid and set-off by their deposit and receivables from General Banking Corporation evidenced by Exhibits "46", "46-A" and "46-B";
>
> (3) The promissory note dated October 12, 1982 executed by the defendants spouses is declared void and of no force and effect;

the annotations of the necessary contract of mortgage securing then the accounts with General Bank and Trust Corporation and, as importantly, the alleged principal obligation under the Promissory Note of October 12, 2982, on the back of or on the Memorandum of Encumbrances on the thirty-seven (37) Transfer Certificates of Title, hereinafter enumerated, registered in the name of [PETITIONERS], should be NULLIFIED and CANCELLED.

6.0 But, apparently, the RESPONDENT BANK had surreptitiously caused the foreclosure of the said mortgages and, eventually, succeeded in transferring and registering the foreclosed properties in its name, in the meantime. Because of this fact, PETITIONERS cannot simply and directly request of the RESPONDENT REGISTER OF DEEDS to cancel the entries in relation to the accounts with General Banking Corporation and, as importantly, the alleged principal obligation under the Promissory Note of October 12, 1982 and the alleged mortgage/s that secured it, on the back of or on the Memorandum of Encumbrances on the thirty-seven (37) Transfer Certificates of Title, hereinafter enumerated, registered in the name of PETITIONERS;

7.0 That because of the adjudged nullity of the Promissory Note, dated October 12, 1982, and necessarily the nullity, too, of the accessory contract/s of mortgage, there was no existing obligation to pay, neither mortgage to breach, nor mortgaged property to foreclose. Any foreclosure of the said void and inexistent mortgages as well as the proceedings conducted thereon were, and still are, completely without legal basis, unauthorized, illegal and also void. The extrajudicial foreclosure, therefore, of the properties subject hereof, as hereinunder enumerated, as well as all the proceedings taken thereon, should be DECLARED illegal and void *ab initio*. As a necessary consequence, the transfer certificates of title over said real properties now in the name of RESPONDENT BANK should be CANCELLED and REVERTED to their respective original registered owner/s or that PETITIONERS should be REINSTATED therein, as the original owner/s.

[8.0] To accomplish the above-stated REVERSION and REINSTATEMENT, it is most respectfully moved and prayed of this Honorable Court to ORDER the RESPONDENT BANK to immediately SURRENDER and DELIVER all the above-mentioned thirty-seven (37) derivative Transfer Certificates of Title to this Honorable Court or to the REGISTER OF DEEDS FOR THE CITY OF DAVAO;

[8.01] And thereafter for this Honorable Court to further issue an ORDER to the RESPONDENT REGISTER OF DEEDS to CANCEL, VOID, and NULLIFY said derivative transfer certificates of title in the name of RESPONDENT BANK and/or such other derivative title/s and to RESTORE and REINSTATE "[ROGACIANO] L. OROPEZA, of legal age, single, and a resident of Davao City" and "[ROGACIANO] L.

OROPEZA, of legal age, married to AMELDA S. OROPEZA, and residing at Davao City, Philippines", as the case may be, as registered owners thereof, and/or to ISSUE the corresponding new Transfer Certificate of Title in their names, as above-specified;

[8.02] To, furthermore, ORDER the RESPONDENT REGISTER OF DEEDS to CANCEL the x x x the entries annotated at the back of or on the Memorandum of Encumbrances portion of the aforementioned thirty-seven (37) Transfer Certificates of Title x x x;

[9.0] That very clearly, the foregoing circumstances had been brought about due to the fault, improvidence, gross negligence, evident bad faith, and fraudulent acts of the RESPONDENT BANK;

[10.0] That in view of the foregoing precipitate, malicious, fraudulent and iniquitous acts of RESPONDENT BANK, the PETITIONERS have been compelled to engage the services of counsel at an agreed fee of Two Hundred Thousand (₱200,000.00) Pesos on top of the Two Thousand Five Hundred (₱2,500.00) Pesos appearance fee per scheduled incident in court, and have otherwise been placed into unnecessary expenses of litigation, which stand at One Hundred Thousand (₱100,000.00) Pesos, as of the filing hereof.[4]

In its Answer, respondent bank claimed that petitioners have no cause of action as they are precluded from asserting the claims subject of the complaint on the ground of forum shopping. It also argued that the circumstances obtaining in the case show that petitioners have already sought the judicial remedies of declaration of illegality of foreclosure and recovery of ten foreclosed properties. It further asserted that the Decision[5] dated October 26, 1992 of the Regional Trial Court (RTC), 11th Judicial Region, Branch 9, Davao City, did not provide any declaration of illegality of foreclosure, neither did it provide for the return of the ten parcels of land; and that petitioners did not appeal nor seek reconsideration of the said decision. Lastly, respondent bank alleged that the extrajudicial foreclosure sale of the subject

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[4] *Id.* at 36-39.

[5] *Id.* at 63-86; penned by Judge Leonor T. Sumcad.

properties transpired twenty years ago; thus, petitioners are already barred by laches for their failure to promptly assail the said sale. Respondent bank, by way of counterclaim, prayed for the award of moral damages, exemplary damages and attorney's fees.

On June 4, 2010, the RTC, 11th Judicial Region, Branch 16, Davao City, dismissed petitioners' complaint and compulsory counterclaim, thus:

> PREMISES TAKEN, judgment is hereby rendered DISMISSING:
>
> 1. The COMPLAINT; an
> 2. The COMPULSORY COUNTERCLAIM.
>
> SO ORDERED.[6]

In dismissing the complaint and counterclaim, the RTC cited the following reasons:

> THE EXTRAJUDICIAL FORECLOSURE IS VALID AND CAN NO LONGER BE ANNULLED FOR THE FOLLOWING REASONS:
>
> 1. Plaintiff already admitted that he had several obligations with the Bank, and that some of these obligations were not paid by him. As a result, foreclosure proceedings [were] initiated. The declaration of nullity of one of the promissory notes dated October 12, 1982 does not necessarily render the other obligations as null and void in the light of the Continuing Guaranty/Comprehensive Surety and the Subsequent Real Estate Mortgage executed by plaintiff in favor of the defendant.
>
> 2. The Court notes that plaintiff has already raised in his counterclaim before [the] RTC[,] Branch 9 the issue of declaration of nullity of foreclosure proceedings. However, said court neither granted nor denied categorically the counterclaim leading this Court to believe that it has the effect of dismissing the same. Let it be noted further that plaintiff never raised nor called the attention of [the] RTC[,] Branch 9 regarding his counterclaim neither did he elevate the matter to the higher Court. This constitutes a waiver on his part with respect [to] the issue of illegality of the foreclosure proceedings.

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[6] *Id.* at 344; penned by Presiding Judge Emmanuel C. Carpio.

To stress, at the time the 1989 case was filed, the properties involved in the instant case were already foreclosed and sold at public auction.

3. From:

a. August 22, 1984 date of the extrajudicial foreclosure sale to the filing of the instant suit on November 30, 2006, TWENTY-TWO (22) LONG YEARS had already elapsed;

b. September 12, 1986 date of issuance of new certificate of titles in defendant's name to the filing of the instant suit on November 30, 2006, TWENTY (20) LONG YEARS had also already elapsed; and finally;

c. October 26, 1992 date of the Decision of RTC[,] Branch 9 to the filing of [the] instant suit on November 30, 2006, FOURTEEN YEARS or a considerable length of time had already elapsed.

THUS, plaintiff in the Court's mind is guilty of laches defined as -

> "Laches - the failure or neglect for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it." (Republic of the Philippines v. CA, 301 SCRA 366).

Turning now on defendant's compulsory counterclaim, in the absence of malice or bad faith in the filing of complaint, said counterclaim cannot be given due course.[7]

Petitioners elevated the case to the CA and, on August 27, 2014, it denied petitioners' appeal, thus:

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated June 4, 2010 of the Regional Trial Court, 11th Judicial Region, Branch 16, Davao City, in Civil Case No. 31,700-07, is AFFIRMED.

SO ORDERED.[8]

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[7] *Id.* at 343-344.

[8] *Id.* at 44.

According to the CA, the right of the petitioners is already a stale demand and, thus, is barred by laches. Petitioners' motion for reconsideration was eventually denied on November 25, 2015.[9]

Hence, the present petition.

Petitioners raise the following issues:

I. WHETHER OR NOT [THE] COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF LACHES DESPITE THAT THE DECISION IN CIVIL CASE NO. 19634-89 WHICH DECLARED THE NULLITY OF THE PROMISSORY NOTE (THE FOUNDATION OF THE REAL ESTATE MORTGAGE OF THE SUBJECT PROPERTIES) BECAME FINAL AND EXECUTORY ONLY ON 18 MARCH 2001 AS ACKNOWLEDGED BY THE SUPREME COURT IN THE OROPEZA CASE AND THE ACTION FOR THE NULLITY OF THE FORECLOSURE WAS FILED [IN] 2006.

II. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FAILED TO HOLD THE NULLITY OF THE EXTRAJUDICIAL FORECLOSURE AND ORDER THE RECONVEYANCE OF SUCH PROPERTIES IN PETITIONERS' FAVOR CONSIDERING THE FINALITY OF THE DECISION IN CIVIL CASE NO. 19634-89 ADJUDGING THAT THE PROMISSORY NOTE (THE FOUNDATION OF THE REAL ESTATE MORTGAGE OF THE SUBJECT PROPERTIES) AS NULL AND VOID WHICH WAS ACKNOWLEDGED BY THE SUPREME COURT IN THE OROPEZA CASE[.][10]

According to petitioners, the principle of laches does not apply in this case because there was no delay for an unreasonable length of time and that it cannot be said that respondent bank did not anticipate that its possession of the subject properties will be assailed. Petitioners also point out that respondent bank unjustly enriched itself and the same bank did not acquire any prejudice or injury. Thus, with no laches having been attached,

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

[10] *Id.* at 13-14.

petitioners argue that the extrajudicial foreclosure of the subject properties must be nullified and, consequently, the same properties must be reconveyed in their favor because the real estate mortgage purportedly executed by them is void for lack of principal obligation.

The petition lacks merit.

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier.[11] It should be stressed that laches is not concerned only with the mere lapse of time.[12]

The Court ruled in *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*[13] that:

[L]aches is not concerned only with the mere lapse of time. The following elements must be present in order to constitute laches:

(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy;

(2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;

(3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[14] (Citations omitted.)

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[11] *Akang v. Municipality of Isulan, Sultan Kudarat Province*, 712 Phil. 420, 439 (2013), citing *Jandoc-Gatdula v. Dimalanta*, 528 Phil. 854 (2006); and *Isabela Colleges, Inc. v. The Heirs of Tolentino-Rivera*, 397 Phil. 955, 969 (2000).

[12] *Pineda v. Heirs of Eliseo Guevara*, 544 Phil. 554, 562 (2007).

[13] 564 Phil. 674 (2007).

[14] *Id.* at 681.

This Court agrees with the CA and the RTC that the elements of laches are present in this case. Certificates of title on the subject properties have already been issued in the name of respondent bank after a valid extrajudicial foreclosure on August 22, 1984 and after the period to redeem the same properties had already elapsed. It was only after the lapse of twenty-two years from the date of the extrajudicial foreclosure that petitioners sought to annul the sale. The respondent bank, apparently, did not anticipate that petitioners would assail the former's possession of the subject properties as it continued to pay taxes due thereon. And clearly, respondent bank would be prejudiced if the present action is not barred by laches as it will incur a loss in its assets.

As aptly held by the CA:

First, the subject properties had been extra-judicially foreclosed on August 22, 1984. After the expiration of the period to redeem, respondent bank consolidated the ownership of the subject properties in its name; and, consequently, certificates of title were issued in its name. From then on up to the present, respondent bank is in possession of the subject properties as registered owners thereof.

Second, it was only after twenty-two years from the date of the extrajudicial foreclosure sale that appellants filed the instant action to annul the said sale. Owing to their long inaction, the instant action is already barred by laches. Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to it has either abandoned or declined to assert it.

Third, the records bear out that respondent bank did not anticipate that its possession of the subject properties will be later on assailed by the appellants. In fact, it dutifully paid the taxes due thereon and included the same as part of its acquired assets.

Fourth, the facts clearly show that respondent bank would be gravely prejudiced if the present action is not barred by laches considering that it would result in loss of profit opportunity for respondent bank.

Verily, the application of laches is addressed to the sound discretion of the court as its application is controlled by equitable considerations. In fine, the Court finds that the right of the appellants is already a stale demand and, thus, is barred by laches. Accordingly, the Court

finds no reason to reverse the findings of the court *a quo*.[15] (Citations omitted.)

As a general rule, an action to recover registered land may not be barred by laches; however, this Court, in certain cases, allowed laches as a bar to recover a registered property under the Torrens system. Thus, this Court ruled in *Akang v. Municipality of Isulan, Sultan Kudarat Province*:[16]

> As a general rule, an action to recover registered land covered by the Torrens System may not be barred by laches. Neither can laches be set up to resist the enforcement of an imprescriptible legal right. In exceptional cases, however, the Court allowed laches as a bar to recover a titled property. Thus, in *Romero v. Natividad*, the Court ruled that laches will bar recovery of the property even if the mode of transfer was invalid. Likewise, in *Vda. de Cabrera v. CA*, the Court ruled:
>
> In our jurisdiction, it is an enshrined rule that even x x x registered owners of property may be barred from recovering possession of property by virtue of laches. Under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to laches.[17] (Citations omitted.)

To reiterate, the RTC has ruled that the extrajudicial foreclosure on the subject properties was valid as it was brought about by petitioners' inability to pay their obligations with the respondent bank. The RTC rightly held that:

> Plaintiff [Rogaciano] Oropeza x x x [has] several obligations with the defendant Allied Bank (Exhibit 117, TSN in Civil Case No. 19,634-89, p. 227); [t]o secure the obligation, plaintiffs executed in favor of the defendant:
>
> (a) Continuing Guaranty/Comprehensive Surety acknowledged before a Notary Public on October 3, 1980; an

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[15] *Rollo*, p. 43.

[16] *Supra* note 11.

[17] *Id.* at 439.

(b) a Real Estate Mortgage dated October 8, 1982 covering the following [TCTs]

x x x x x x x x x

Plaintiff admitted in Civil Case No. 19,634-89[,] p. 227 of the TSN dated June 28, 1991 (Exh. 117) that he was not able to pay his obligations with the bank, as a result foreclosure proceedings were initiated against him; on August 22, 1984 the extrajudicial foreclosure sale was conducted by the Sheriff and for failure to redeem the properties sold at public auction, the sheriff issued the Final Certificate of Sale on February 20, 1986 (Exhs. "37" to "73"); [b]y virtue of the final certificate of sale, new certificate of titles were issued on September 12, 1986 in the bank's name (Exhs. "78" to "114").

The bid price for the properties foreclosed was insufficient to cover plaintiffs total obligation, hence[,] defendant filed sometime in 1989 a Civil Case No. 19,634-89 before RTC Branch 9; in the Answer of plaintiff for said case, he by way of Counterclaim prayed "to declare the foreclosure illegal" (Exh[.] "115-A") and for the "return x x x of TCT Nos. 34061, 34059, 34058, 34055, 34054, 34053, 27933, 25612, 25661 and 23977" (Exh. 115-B); [o]n October 26, 1992, the RTC Branch 9 rendered its decision, the dispositive portion of which was earlier quoted (Exh. "A", "A-1"); because of the declaration of nullity of the promissory note, plaintiff on November 30, 2006 filed the instant suit.

THE EXTRAJUDICIAL FORECLOSURE IS VALID AND CAN NO LONGER BE ANNULLED FOR THE FOLLOWING REASONS:

1. Plaintiff already admitted that he had several obligations with the Bank and that some of these obligations were not paid by him. As a result, foreclosure proceedings [were] initiated. The declaration of nullity of one of the promissory notes dated October 12, 1982 does not necessarily render the other obligations as null and void in the light of the Continuing Guaranty/Comprehensive Surety and the Subsequent Real Estate Mortgage executed by plaintiff in favor of the defendant;

2. The Court notes that plaintiff has already raised in his counterclaim before [the] RTC[,] Branch 9 the issue of declaration of nullity of foreclosure proceedings. However, said court neither granted nor denied categorically the counterclaim leading this Court to believe that it has the effect of dismissing the same. Let it be noted further that plaintiff never raised nor called the attention of

[the] RTC[,] Branch 9 regarding his counterclaim neither did he elevate the matter to the higher Court. This constitutes a waiver on his part with respect [to] the issue of illegality of the foreclosure proceedings. To stress, at the time the 1989 case was filed, the properties involved in the instant case were already foreclosed and sold at public auction.[18]

As such, due to the above disquisitions, this Court finds it just to rule that the rule on laches applies in this case. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances,[19] and after due consideration, this Court finds it just to rule that petitioners' present action is already barred by laches. The essence of laches or "stale demands" is the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.[20] It is not concerned with mere lapse of time; the fact of delay, standing alone, being insufficient to constitute laches.[21]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated December 21, 2015, of petitioners Rogaciano L. Oropeza and Amelda S. Oropeza is **DENIED**. Consequently, the Decision dated August 27, 2014 and the Resolution dated November 25, 2015 of the Court of Appeals in CA-G.R. CV No. 02451-MIN are **AFFIRMED**.

SO ORDERED.

Leonen, Reyes, Jr., A., Hernando, and *Carandang*,[*] *JJ.*, concur.

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[18] *Rollo*, pp. 342-343.

[19] *Sps. Santiago v. CA*, 343 Phil. 612, 627 (1997).

[20] *Insurance of the Philippine Island Corp. v. Sps. Gregorio*, 658 Phil. 36, 41 (2011), citing *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 545-546 (2006).

[21] *Id.*, citing *GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 166 (2005).

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

FIRST DIVISION

[G.R. No. 225705. April 01, 2019]

MAUNLAD TRANS, INC.; UNITED PHILIPPINE LINES, INC., SEACHEST ASSOCIATES; CARNIVAL CORPORATION; AND/OR RONALD MANALIGOD, *petitioners, vs.* **ROMEO RODELAS, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); WHEN TERMS THEREOF ARE BREACHED BY FAILING TO CONTINUE WITH THE TREATMENT PRESCRIBED BY THE COMPANY-DESIGNATED PHYSICIAN AND INSTEAD FILED A LABOR CASE BEFORE THE EXPIRATION OF THE 120-DAY PERIOD, FILING OF A LABOR CASE AGAINST THE EMPLOYER IS PREMATURE; CASE AT BAR.— By failing to continue with the treatment prescribed by the company-designated physician and instead filing the labor case before the expiration of the 120-day period, respondent violated the law and his contract with petitioners; he was guilty of abandoning his treatment. He filed the labor case on May 14, 2010 - or just 110 days from his repatriation on January 23, 2010 - before the 120/240-day periods allowed under the Labor Code could elapse, and before the company-designated physician could render a definite assessment of his medical condition. For this reason, the filing of the labor case was premature. x x x To repeat, the Labor Code provides a procedure for conflict resolution covering disputes of the nature involved in the present case; a failure to observe said procedure is fatal. Under Section 20(D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." Respondent was duty-bound to comply with his medical treatment, PT sessions, including the

recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment after November 12, 2009 until January 9, 2010, without any valid explanation proves that he neglected his corresponding duty to continue his medical treatment. x x x Indeed, respondent did not comply with the terms of the POEA-SEC. The failure of the company-designated doctor to issue an assessment was not of his doing but resulted from respondent's refusal to cooperate and undergo further treatment. Such failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits.

2. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; RECOVERABLE ONLY IF THE DEFENDANT'S ACT OR OMISSION HAS COMPELLED THE PLAINTIFF TO LITIGATE WITH THIRD PERSONS OR TO INCUR EXPENSES TO PROTECT HIS INTEREST; CASE AT BAR.— On the issue of attorney's fees, the Court finds that, since there was no ground for the institution of the instant labor case to begin with, respondent has no right to demand the payment of such fees. As was held in *Pacific Ocean Manning, Inc. v. Penales*, Under Article 2208 of the Civil Code, attorney's fees can be recovered 'when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.' Considering the above pronouncements, this Court sees no reason why damages or attorney's fees should be awarded to Penales. It is obvious that he did not give the petitioners' company-designated physician ample time to assess and evaluate his condition, or to treat him properly for that matter. The petitioners had a valid reason for refusing to pay his claims, especially when they were complying with the terms of the POEA SEC with regard to his allowances and treatment.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.

Linsangan Linsangan & Linsangan Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the April 29, 2015 Decision[2] of the Court of Appeals (CA) dismissing the Petition for *Certiorari* in CA-G.R. SP No. 130412, and its July 8, 2016 Resolution[3] denying reconsideration of the assailed Decision.

Factual Antecedents

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

> [Respondent] was hired by petitioner Seachest, through its manning agent, Maunlad,[4] as Galley Steward on-board MV Carnival x x x. After several months, x x x respondent started experiencing seasickness and extreme low back pains. Despite medications administered by the ship's clinic, the pain persisted and extended down to x x x respondent's left thigh. x x x
>
> Subsequently, x x x respondent was repatriated and arrived in the Philippines on 23 January 2010. He reported to petitioner Maunlad, was referred to the Metropolitan Hospital where he underwent physical therapy sessions, among others, and was diagnosed with 'lumbar spondylosis with disc extrusion, L3-L4.' [Respondent] was advised to undergo surgery, spine laminectomy, but did not approve of the same and instead underwent physical therapy sessions. According to x x x respondent, as per petitioners' medical doctors, surgery was not a guarantee on the return of his normal condition, thus, he refused.
>
> On 6 May 2010, x x x respondent returned for a follow-up, and the report on his condition stated:
>
> 'x x x
> Follow-up case of 28 year old male with Herniated Nucleus Pulposus, L3-L4, Left

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[1] *Rollo*, pp. 3-33.

[2] *Id.* at 34-47; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.

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

[4] Herein petitioners Seachest Associates and Maunlad Trans, Inc.

EMG-NCV Study - chronic left L5 – S1 radiculopath
Not keen on surgery.
Continue rehabilitation
His suggested disability grading is Grade 8 - 2/3 loss of motion or lifting power of the trunk.
To come back after 3 weeks.

x x x'

As x x x respondent's condition did not improve for purposes of resuming his regular duties as a seafarer, he filed a Complaint on 14 May 2010 for total and permanent disability, reimbursement of medical and transportation expenses, damages, attorney's fees and legal interest against petitioners.

Petitioners, in their Position Paper, insisted that x x x respondent is only entitled to a Grade 8 disability assessment as found by the company physician, with the equivalent monetary benefits of x x x (US$16,795.00), which they offered but was refused.

The Labor Arbiter rendered a Decision on 22 June 2012 ruling that: 1) the assessment of the company-designated physician giving a Grade 8 disability rating was premature, made only to comply with the 120-day period as mandated in the POEA Contract; and 2) the work-related disability incurred by x x x respondent prevented him from seeking employment and thus, he was entitled to the payment of permanent disability benefits. The dispositive portion of the said Decision states:

'x x x

WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioners] Maunlad Trans[,] Inc./Seachest Associates/Carnival Corporation to pay [respondent] Romeo Rodelas, Jr., jointly and severally the amount of SIXTY SIX THOUSAND US DOLLARS (US$66,000.00) xxx representing his total permanent disability and attorney's fees.

x x x x

All other claims are DISMISSED for lack of merit.

SO ORDERED.

x x x x'

Petitioners appealed the said Decision to the NLRC. However, the NLRC affirmed the findings of the Labor Arbiter in its first assailed Resolution dated 21 February 2013:

x x x x x x x x x

Petitioners filed a Motion for Reconsideration but the same was likewise denied by the NLRC in its second assailed Resolution dated 27 March 2013 x x x[5]

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari* before the CA, which rendered the herein assailed Decision containing the following pronouncement:

While it is true that the mandated x x x (120) and x x x (240) days have not yet elapsed when x x x respondent filed his Complaint, We agree with both the Labor Arbiter and the NLRC that inasmuch as x x x respondent was advised to 'come back' three (3) weeks from 06 May 2010, this left his alleged continued medical rehabilitation open-ended. Likewise, We cannot agree with petitioners' argument that the Grade 8 disability rating is deemed final just because x x x respondent was not keen to undergo surgery. After all, the medical report itself belies this claim as it is stated therein that the Grade 8 assessment is merely a 'suggested' grading. Regardless of whether or not x x x respondent returned to be re-assessed by the company-designated physician three (3) weeks from 06 May 2010, the x x x (120)-day period would have lapsed without x x x respondent being issued either a final and definitive disability assessment or a fit-to-work certification. As held in *Kestrel vs. Munar*, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the periods provided. And that failure to do so and should the seafarer's medical condition remains unresolved, the employee shall be deemed totally or permanently disabled.

Even if We construe the suggested disability assessment on x x x respondent as final and definite, it has remained undisputed that x xx respondent, up to this day, is still unable to perform, and has not resumed, his regular sea duties. x x x **Thus, if an employee is still unable to resume his regular sea duties after the lapse of x**

[5] *Rollo*, pp. 35-38.

x x (120) days or x x x (240) days, as the case may be, the injury is deemed to be total and permanent.

x x x x x x x x x

[Respondent, while at the prime age of 29, was not rehired by the petitioners precisely because the loss of 2/3 of the lifting power of x x x respondent's trunk incapacitated him to resume his occupation as a seaman. Even a surgery, as suggested by petitioners' medical doctors, was not a guarantee for him to be able to return to his work. As observed by the NLRC, x x x respondent, as a galley steward, is responsible for preparing, cooking and serving meals to passengers as well as setting tables and buffet lines requiring him to constantly stand, walk, bend and lift objects. And poor trunk disability would seriously affect the performance of his duties. x x x

x x x x x x x x x

It may also be noted that xxx respondent did not consult a doctor of his choice to assail the disability grading issued by the company-designated physician pursuant to Section 20(B), paragraph 3 of the POEA-SEC x x x

x x x x x x x x x

This requirement, however, is unnecessary if the seafarer remained unable to perform his customary work beyond the two hundred forty (240)-day period, as in the present case before Us. The same is in accordance with the pronouncement of the Supreme Court in Sealanes Marine Services, Inc. vs. Dela Torre, a recent case promulgated in February 2015.

Finally, as to petitioners' arguments that only a Grade 1 disability under Section 32, Philippine Overseas Employment Administration Standard Employment Contract merits a total and permanent disability benefits and that there is no unfitness-to-work clause therein, the same must likewise fail. While there is no question that only a Grade 8 rating was suggested by the company-designated physician, and not a Grade 1 rating which would merit the payment of the full sixty thousand US dollars xxx total and permanent disability benefits, the POEA SEC provides merely for the basic or minimal acceptable terms of a seafarer's employment contract. Thus:

'x x x

x x x **in the assessment of whether his injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities in Section 32 of the POEA SEC, but also under the relevant provisions of the Labor Code and the AREC implementing Title II, Book IV of the Labor Code.** According to Kestrel, while the seafarer is partially injured or disabled, he must not be precluded from earning doing [sic] the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, **if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as may be the case, then he shall be deemed totally and permanently disabled.**

x x x'

x x x x x x x x x

We take note, too, that petitioners already paid the judgment award rendered by the labor tribunals in the total amount of sixty-six thousand US dollars (US$66,000.00) on 17 September 2013, based on the Conditional Satisfaction of Judgment with Urgent Motion to Cancel Bond All Without Prejudice to the Pending Petition for *Certiorari* in the Court of Appeals and that x x x respondent duly received the same.

All told, both the NLRC and the Labor Arbiter ruled on the issues based on the relevant laws and jurisprudence, and supported by substantial evidence. A perusal of the challenged Decision and Resolution of the NLRC fail to illustrate that they were rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

x x x x x x x x x

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby DISMISSED. Accordingly, the assailed Decision dated 21 February 2013 and Resolution dated 27 March 2013 stand.

SO ORDERED.[6]

The CA essentially held that the company-designated physician failed to arrive at a definite assessment of respondent's fitness or disability within the 120/240-day periods provided

[6] *Id.* at 41-46.

under the law; that the company-designated physician's last report on respondent's condition which "suggested" a disability grading of "Grade 8 - 2/3 loss of motion or lifting power of the trunk" is not a final or definite assessment of his fitness or disability because respondent was still required to return after three weeks for further examination; that regardless of the fact that respondent was required to return for further examination, the statutory 120/240-day periods would have elapsed without respondent being issued either a final and definitive disability assessment or a fit-to-work certification; that respondent's condition would not have improved even with the prescribed surgery, which he refused to undergo, because as admitted by the company-designated physician it did not guarantee improvement of respondent's condition; that to this day, respondent is still unable to resume his regular sea duties, his inability to find work continues, and he was not re-employed by petitioners; and that with the lapse of the statutory 120/240-day periods without respondent having gone back to work, he is deemed totally and permanently disabled.

Petitioners moved to reconsider but the CA stood its ground. Hence, the present Petition.

Issues

Petitioners submit that -

I. The Honorable Court of Appeals erred in holding [petitioners liable for US$60,000.00 representing total and permanent disability benefits.

II. The Honorable Court of Appeals committed serious and reversible error of law and fact in holding that [petitioners are liable for attorney's fees considering that the [petitioners never acted with bad faith in dealing with [r]espondent.[7]

Petitioners' Arguments

Petitioners maintain in their Petition and Reply[8] that the CA committed serious and palpable error and grave abuse of

[7] *Id.* at 11.

[8] *Id.* at 82-94.

discretion in arriving at a finding of total and permanent disability in favor of respondent, since compensability does not depend on loss of earning capacity or the number of days that respondent is unable to work; that the CA erred in disregarding the Grade 8 assessment of the company-designated physician, which should prevail as against its finding of total and permanent disability; that the CA erred in concluding that a definite medical assessment as to respondent's condition was not issued within the statutory 120/240-day periods; that the CA erred in declaring that petitioners are guilty of bad faith in dealing with respondent; and that respondent is not entitled to attorney's fees.

Respondent's Arguments

In his Comment,[9] respondent counters that his injury was total and permanent as his condition has not healed to this day, and he has to continue his medication and therapy; that the company-designated physician failed to issue a definite assessment of his condition and has not issued a fit-to-work certificate to this day; that the company-designated physician's assessment was self-serving and biased; and that overall, the CA did not err in arriving at its pronouncements.

Our Ruling

The Court grants the Petition.

Upon respondent's repatriation on January 23, 2010, he underwent treatment under the auspices of the company-designated physician. He was diagnosed with "lumbar spondylosis with disc extrusion, L3-L4" and advised to undergo surgery - spine laminectomy - but respondent refused to undergo the procedure; instead, he underwent physical therapy sessions. On May 6, 2010, or well within the 120-day period prescribed by the labor law, the company-designated physician assessed respondent's condition as a "Grade 8 - 2/3 loss of motion or lifting power of the trunk" and advised him to return for rehabilitation after three weeks. However, on May 14, 2010, respondent filed the instant labor case for total and permanent

[9] *Id.* at 71-78.

disability benefits, reimbursement of medical and transportation expenses, damages, attorney's fees and legal interest against petitioners. He did not return to the company-designated physician to continue with the latter's prescribed treatment.

By failing to continue with the treatment prescribed by the company-designated physician and instead filing the labor case before the expiration of the 120-day period, respondent violated the law and his contract with petitioners; he was guilty of abandoning his treatment. He filed the labor case on May 14, 2010 - or just 110 days from his repatriation on January 23, 2010 - before the 120/240-day periods allowed under the Labor Code could elapse, and before the company-designated physician could render a definite assessment of his medical condition. For this reason, the filing of the labor case was premature.

The situation in the instant case is no different from that in *C.F. Sharp Crew Management, Inc. v. Orbeta*,[10] which was decided by this ponencia. In said case, the complainant seaman also suffered a back injury, and while undergoing treatment for 126 days, he filed a labor case against his employer and thus abandoned his ongoing treatment. The Court thus held:

> For a little over 120 days, or from February 10, 2010 to June 16, 2010, 126 days to be exact, respondent underwent treatment by the company-designated physician. On June 16, 2010, he was partially diagnosed with 'lumbosacral muscular spasm with mild spondylosis L3-L4;' x x x and respondent was told to return for a scheduled bone scan. However, instead of returning for further diagnosis and treatment, respondent opted to secure the opinion of an independent physician of his own choosing who, although arriving at a finding of permanent total disability, nonetheless required respondent to subject himself to further Bone Scan and Electromyography and Nerve Conduction Velocity tests 'to determine the exact problem on his lumbar spine.'
>
> Instead of heeding the recommendations of his own doctor, respondent went on to file the subject labor complaint. In point of law, respondent's filing of the case was premature.

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[10] G.R. No. 211111, September 25, 2017, 840 SCRA 483, 500-503.

The company-designated physician and Dr. Escutin are one in recommending that respondent undergo at least a bone scan to determine his current condition while undergoing treatment, thus indicating that respondent's condition needed further attention. In this regard, petitioners are correct in arguing that respondent abandoned treatment, as under the law and the POEA contract of the parties, the company physician is given up to 240 days to treat him. On the other hand, the fact that Dr. Escutin required the conduct of further tests on respondent is an admission that his diagnosis of permanent total disability is incomplete and inconclusive, and thus unreliable. It can only corroborate the company-designated physician's finding that further tests and treatment are required.

In *New Filipino Maritime Agencies, Inc. v. Despabeladeras*, this Court held that **a seafarer is guilty of medical abandonment for his failure to complete his treatment before the lapse of the 240-day period, which prevents the company physician from declaring him fit to work or assessing his disability.** x x x

x x x x x x x x x

Identical rulings were arrived at in *Magsaysay Maritime Corporation v. National Labor Relations Commission* and, more recently, in *Wallem Maritime Services, Inc. v. Quillao* where this ponente made the following pronouncement:

> We agree with petitioners' contention that at the time of filing of the Complaint, respondent has no cause of action because the company-designated physician has not yet issued an assessment on respondent's medical condition; moreover, the 240-day maximum period for treatment has not yet lapsed. x x x
>
> The records clearly show that respondent was still undergoing treatment when he filed the complaint. On November 12, 2009, the physiatrist even advised respondent to seek the opinion of an orthopedic specialist. Respondent, however, did not heed the advice [;] instead, he proceeded to file a Complaint on November 23, 2009 for disability benefits. And, it was only a day after its filing xxx that respondent requested from the company-designated doctor the latter's assessment on his medical condition.

> Stated differently, **respondent filed the Complaint within the 240-day period while he was still under the care of the company-designated doctor**. x x x
>
> **Clearly, the Complaint was premature. Respondent has no cause of action yet at the time of its filing as the company-designated doctor has no opportunity to definitely assess his condition because he was still undergoing treatment; and the 240-day period had not lapsed**. x x x (Emphasis supplied; citations omitted)

To repeat, the Labor Code provides a procedure for conflict resolution covering disputes of the nature involved in the present case; a failure to observe said procedure is fatal.

> Under Section 20(D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." Respondent was duty-bound to comply with his medical treatment, PT sessions, including the recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment after November 12, 2009 until January 9, 2010, without any valid explanation proves that he neglected his corresponding duty to continue his medical treatment. x x x
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> x x x x
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> Indeed, respondent did not comply with the terms of the POEA-SEC. The failure of the company-designated doctor to issue an assessment was not of his doing but resulted from respondent's refusal to cooperate and undergo further treatment. Such failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits.[11] (Emphasis in the original; citations omitted)

The fact that respondent was not re-hired by petitioners has no bearing, considering that the former violated his contract

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[11] *Wallem Maritime Services, Inc. v. Quillao*, 778 Phil. 808, 822-823 (2016).

and the law. Simply put, respondent may not be rewarded - for violating the law and his contract - with a grant of permanent and total disability benefits. This would set a wrong precedent for others to follow. While the Court looks at the cause of labor with a compassionate eye, it must not necessarily turn blind and completely ignore the rights of the employer; the law and justice should always prevail.

As for the argument that even surgery is not a guarantee that respondent's condition will return to normal, this does not entitle him to the indemnity he seeks; the fact remains that he violated his contract and the law. His infraction erased any benefit he may have derived from such argument; besides, while this is a medical opinion shared by the company-designated physician, the Court is free to rely on it or discard it altogether.

Without the seafarer undergoing the prescribed 120/240-day periods for treatment, his employer is deprived of the opportunity to assist him in finding a cure for his condition and thus minimize any legal and pecuniary liability it may be held answerable for. At the same time, there is no way of assessing the seafarer's medical condition with finality; without this assessment, no corresponding indemnity is forthcoming - understandably. That is why the seafarer must subject himself to treatment as prescribed by the law and the standard POEA contract; this requirement is patently for his benefit in all respects.

Thus, consistent with the ruling in the *C.F. Sharp Crew Management, Inc. v. Orbeta* case cited above, it must be held that respondent is entitled only to compensation equivalent to or commensurate with his injury. In the absence of an opinion from a physician of his own choice, or a third one as the case may be, respondent must abide by the findings of the company-designated physician, which in this case remains unrefuted precisely since respondent plainly abandoned his treatment. The Grade 8 assessment of the company-designated physician therefore stands, and for this, respondent is entitled only to the equivalent monetary benefit of US$16,795.00 pursuant to the schedule of disability benefits under the POEA Standard Employment Contract.

On the issue of attorney's fees, the Court finds that, since there was no ground for the institution of the instant labor case to begin with, respondent has no right to demand the payment of such fees. As was held in *Pacific Ocean Manning, Inc. v. Penales*,[12]

> Under Article 2208 of the Civil Code, attorney's fees can be recovered 'when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.' Considering the above pronouncements, this Court sees no reason why damages or attorney's fees should be awarded to Penales. It is obvious that he did not give the petitioners' company-designated physician ample time to assess and evaluate his condition, or to treat him properly for that matter. The petitioners had a valid reason for refusing to pay his claims, especially when they were complying with the terms of the POEA SEC with regard to his allowances and treatment.

Having decided the case in the foregoing manner, the decisions of the labor tribunals and the CA deserve to be set aside.

WHEREFORE, the Petition is **GRANTED**. The April 29, 2015 Decision and July 8, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 130412 are **REVERSED and SET ASIDE**. Judgment is hereby rendered **DECLARING** respondent Romeo Rodelas, Jr. entitled to disability benefits in the amount of US$16,795.00 only, equivalent to Grade 8 disability under the POEA Contract. The original award of attorney's fees in respondent's favor is **DELETED**.

SO ORDERED.

Bersamin, C.J., Gesmundo, and *Carandang, JJ.*, concur.

Jardeleza, J., on official leave.

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[12] 694 Phil. 239, 252 (2012).

SECOND DIVISION

[G.R. No. 235837, April 01, 2019]

BELINA AGBAYANI CONCEPCION, *petitioner, vs.* **THE FIELD INVESTIGATION OFFICE - OFFICE OF THE OMBUDSMAN,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 43; COMPELLING REASONS JUSTIFY A LIBERAL APPLICATION OF THE RULES TO MAKE WAY FOR A RESOLUTION OF THE CASE ON THE MERITS; CASE AT BAR. –– [P]etitioner filed a petition for review under Rule 43 of the Rules of Court before the CA, challenging the Ombudsman's decision finding her administratively liable and meting upon her the penalty of dismissal. x x x In its assailed July 17, 2017 Resolution, the CA dismissed the petition for review based purely on procedural grounds, namely, failure to append material documents to her petition; lack of representation by counsel; and failure to show proof of service to *both* the Ombudsman and the FIO. x x x In her motion for reconsideration, petitioner appended the Complaint with (some of the material documents) x x x and likewise, averred that the rest of the documents that the CA found lacking were already incorporated as annexes in the Complaint. Jurisprudence pertaining to this matter has established that submission of a document together with the motion for reconsideration constitutes *substantial compliance* with the requirement that relevant or pertinent documents be submitted along with the petition, and therefore calls for the relaxation of procedural rules. Neither should petitioner's lack of representation by counsel be deemed fatal to her cause and lead to the dismissal of her appeal. x x x Nor should her failure to show that she furnished a copy of the petition to the Ombudsman, as the agency *a quo*, in accordance with Section 5, Rule 43 of the Rules of Court, be sufficient justification to dismiss her petition. In her motion for reconsideration, she clarified that the registry receipt in her Affidavit of Service indicated service of her petition to the FIO, which the Court finds to be substantial compliance with the

> rules. In any case, the presence of compelling reasons in this case impels the Court to relax the pertinent rules of procedure to make way for a resolution of the case on the merits. x x x Indeed, the penalty of dismissal bears injurious effects to petitioner's career and means of livelihood, and possibly even her personal life. On this score, it bears reiterating that **a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on procedural minutiae**.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition[1] for review on *certiorari* are the Resolutions dated July 17, 2017[2] and November 10, 2017[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 151485 which dismissed outright the petition for review filed by petitioner Belina Agbayani Concepcion (petitioner) based on purely procedural grounds, *i.e.*, failure to attach material portions of the record, non-representation by a lawyer, and failure to comply with the rule on proof of service, all of which are required under the Rules of Court.

The Facts

On February 3, 2015, respondent Field Investigation Office (FIO), Office of the Ombudsman (Ombudsman), filed an

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[1] *Rollo* (Vol. I), pp. 13-42.

[2] *Id*. at 46-51. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Pedro B. Corales, concurring.

[3] *Id*. at 53-60.

administrative complaint[4] for Conduct Prejudicial to the Best Interest of the Service, Dishonesty, and Grave Misconduct against petitioner, who was then the Sales and Promotion Supervisor V of the Technology and Livelihood Information Dissemination Services (TLIDS) Group-Marketing Division and Legislative Liaison Officer (LLO) of the Technology Resource Center (TRC) and two (2) others[5] in connection with the alleged anomalous utilization of Congressman Douglas RA. Cagas' (Congressman Cagas) Priority Development Assistance Fund[6] (PDAF) for the year 2007.[7] At the time material to this case, Congressman Cagas was the Representative of the 1st District of Davao del Sur.[8]

Records show that in 2007, Congressman Cagas was allocated two (2) Special Allotment Release Orders[9] (SAROs) in relation to his PDAF in the total amount of ₱16,000,000.00 with the corresponding Notice of Cash Allocations[10] (NCAs). The PDAF-drawn funds were channeled through TRC as the implementing agency (IA), with two (2) non-government organizations (NGOs) as "project partners" for implementation, namely: Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED) and Philippine Social Development Foundation, Inc. (PSDFI).[11]

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[4] Dated December 11, 2014; *id.* at 201-220. See also *id*. at 81.

[5] Also charged as defendants were Zenaida Garcia Cruz-Ducut, Chairperson and Chief Executive Officer of the Energy Regulatory Commission and Marivic Villaluz Jover, Chief Accountant of the TRC.

[6] The PDAF is an annual appropriation allocated to each member of the Congress of the Philippines, granted under the General Appropriations Act (GAA) to fund priority development programs and projects identified by the legislator; see *rollo*, p. 82.

[7] *Rollo* (Vol. I), pp. 81-82.

[8] *Id*. at 82.

[9] SARO No. ROCS-07-00046 issued on January 10, 2007 and SARO No. ROCS-07-03351 issued on February 15, 2007; see *id*. at 83.

[10] NCA No. 314303-3 issued on February 13, 2007 and NCA No. 336352-2 issued on February 26, 2007, both for the amount of ₱8,000,000.00; see *id*.

[11] *Id*. at 82.

Based on its fact-finding inquiry, as well as the findings in the Commission on Audit's (COA) Special Audits Office Report No. 2012-03 (COA Report),[12] the FIO alleged in its complaint that the projects funded by Congressman Cagas' PDAF were merely a scheme used by him, other TRC officials, and Janet Lim Napoles (Napoles), *in conspiracy with petitioner* and her co-respondents, to siphon and embezzle the aforesaid PDAF funds. The FIO alleged that CARED and PSDFI, which were endorsed by Congressman Cagas, were dummies of Napoles and created for the purpose of funneling the PDAF through the TRC.[13] As such, the PDAF-funded projects of Congressman Cagas were non-existent or "ghost projects."The FIO further alleged that the amount of ₱15,360,000.00 allotted for farm implements, livelihood materials, and training for the projects sponsored by Congressman Cagas were misappropriated and converted to his and Napoles' personal use and benefit *in conspiracy* with petitioner, her co-respondents and other TRC officials.[14] Particularly with respect to petitioner, her participation in this case consisted of overseeing the processing of and recommending the PDAF release to CARED.[15]

In defense,[16] while petitioner admitted that she drafted the internal letter/memorandum recommending the release of Congressman Cagas' PDAF for the implementation of his livelihood projects, she merely did so after finding that all the required documents were complete upon transfer to her by the Office of the Director General of TRC.[17] Thereafter, she endorsed the recommendation letter together with the required documents to the Legal Department for review and approval, after which the said department forwarded the documents to the Office of the Director General. She averred that without

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[12] See *id.*

[13] See *id*. at 214-216.

[14] *Id*. at 90.

[15] *Id*. at 91.

[16] See Counter-Affidavit dated February 10, 2016, *id* at 153-180.

[17] *Id*. at 155-156.

the evaluation and approval of the Legal Department, her recommendation letter had no value.[18] Further, she claimed that she did not recommend the release of Congressman Cagas' PDAF to any specific NGO as implementing agency and that she never transacted with any of them during her designation as LLO.[19] Neither was she privy to the selection of CARED as an NGO in this case.[20] Instead, she maintained that she was merely performing her ministerial function as the TRC's LLO when she recommended the release of Cagas's PDAF, her recommendation being still subject to the approval of her superiors.[21] Finally, she asserted that she was not a member of the Bids and Awards Committee (BAC).[22]

The Ombudsman Ruling

In a Decision[23] dated November 21, 2016, petitioner was found administratively liable for Grave Misconduct and Serious Dishonesty, and accordingly, dismissed from the service along with the accessory penalties of: (*a*) cancellation of civil service eligibility; (*b*) forfeiture of retirement benefits; and (*c*) perpetual disqualification from holding public office.[24]

The Ombudsman held that petitioner played a vital role in the release of Congressman Cagas' PDAF when she recommended its release to CARED, stressing that the funds would not have been transferred to the latter if not for petitioner's certifications, approvals, and signatures in the relevant documents. It added that despite the apparent irregularities in the documents submitted, petitioner helped expedite the release of PDAF

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[18] *Id.* at 155.

[19] *Id.* at 155-156.

[20] *Id.* at 159.

[21] *Id.* at 156.

[22] *Id*. at 94. See also *id*. at 165

[23] *Id*. at 81-106. Issued by Graft Investigation and Prosecution Officer III Anjuli Larla A. Tan-Eneran, reviewed by Acting Director, PIAB-F Ruth Laura A. Mella and approved by Ombudsman Conchita Carpio Morales.

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

disbursements to the dummy NGOs of Napoles.[25] The Ombudsman noted that the TRC did not even bother to conduct a due diligence audit on the said NGOs, which possessed neither the accreditation to transact with the government nor any track record in project implementation.[26]

In conclusion, the Ombudsman held that the acts of petitioner in directly allowing the NGOs to be project implementors without complying with the pertinent laws and regulations amounted to Grave Misconduct.[27] Moreover, the Ombudsman ruled that TRC's repeated illegal transfers of public funds to the said NGOs for non-existent projects amounted to distortion of the truth and thus, was tantamount to Serious Dishonesty.[28] Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[29] Grave Misconduct and Serious Dishonesty are offenses punishable by dismissal from the service, even on the first offense.[30]

Petitioner filed a motion for reconsideration,[31] which was denied in an Order[32] dated May 4, 2017. Aggrieved, petitioner elevated the case to the CA via a petition for review.[33]

The CA Ruling

In a Resolution[34] dated July 17, 2017, the CA dismissed the petition outright on the ground that petitioner: (*a*) failed to append

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[25] The disbursement vouchers (DVs) were accomplished, signed, and approved on the same day; see *id*. at 101.

[26] *Id.*

[27] *Id*. at 101-102.

[28] *Id*. at 102.

[29] See Rule 10, Section 46 (A) (1) and (3) of the RRACCS.

[30] The Ombudsman held that the lesser offense of Conduct Prejudicial to the Best Interest of the Service is subsumed in the other offenses; *rollo* (Vol. I), pp. 102-103.

[31] Dated March 15, 2017; *id*. at 113-118.

[32] *Id*. at 107-112.

[33] *Id*. at 62-78.

[34] *Id*. at 46-51.

material portions of the record;[35] (*b*) attached only one (1) registry receipt as proof of service of the petition, without any indication as to whether the same pertained to the FIO or the Ombudsman, despite claiming in her Affidavit of Service[36] that a copy of the petition had been sent to the FIO *and* the Ombudsman, in accordance with Section 5,[37] Rule 43 of the Rules of Court; and (*c*) was not represented by counsel.

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[35] The documents that petitioner failed to attach were: the COA Report; the SAROs; letter dated January 18, 2007 - Memorandum of Agreement (MOA) notarized on January 25, 2007; Memorandum dated March 12, 2007 - undated Disbursement Voucher (DV) No. 012007040604; Land Bank of the Philippines (LBP) Check No. 850421; CARED Official Receipt (OR) No. 015; letter dated March 7, 2007- MOA dated March 30, 2007; Memorandum dated March 20, 2007; undated DV No. 012007040596; LBP Check No. 850438; PSDFI OR No. 1229; Joint Order dated March 16, 2015; Ducut's Counter-Affidavit dated May 11, 2015; Jover's Counter-affidavit dated April 20, 2015; Order dated January 22 2016- Jover's Position Paper dated February 5, 2016; Ducut's Position Paper dated February 5 2016; Salaysay dated August 29, 2013 of Simonette R. Briones; *Karagdagang Simmpaang Salaysay* dated November 26, 2013 of Benhur K. Luy; Joint Sworn Statement dated August 5, 2013 of Benhur K. Luy, Merlina P. Sunas, Gertrudes K. Luy, and Anabelle Luy-Rearío; Sworn Statement dated August 29, 2013 of Marina C. Sula; Project Activities Reports; annexes of the Complaint; and respondent's Consolidated Reply dated May 25, 2015. Likewise not attached were the Certifications issued by Former Mayor Arsenio A. Latasa and Mayor Joseph R. Perms of Digos City, Davao del Sur; City Agriculturist Roger M. Masculino of Digos City, Davao del Sur; Mayor Joel Ray L. Lopez of the Municipality of Sta. Cruz, Davao del Sur; Municipal Agriculturist Jose A. Martorillas of the Municipality of Sta. Cruz, Davao del Sur; Mayor Franco Magno Calida of the Municipality of Hagonoy, Davao del Sur; Municipal Planning and Development Coordinator Veronica M. Rodriguez and Municipal Agricultural Officer Felix N. Bariquit of the Municipality of Hagonoy, Davao del Sur; Mayor Edwin G. Reyes of the Municipality of Bansalan, Davao del Sur; Municipal Agriculturist Julian L. Albores of the Municipality of Bansalan, Davao del Sur; and Mayor Vicente A. Fernandez of the Municipality of Matanao, Davao del Sur; see *id*. at 48.

[36] *Id*. at 79.

[37] Section 5. *How appeal taken*. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Petitioner moved for reconsideration,[38] attaching to her motion copies of most[39] of the lacking documents. She likewise implored substantial compliance with the rule on proof of service, explaining that the registry return receipt in her Affidavit of Service pertained to the FIO. At the least, she pleaded that the CA could have directed her to furnish a copy of her petition to the Ombudsman before it dismissed her appeal outright. Finally, she maintained that considering the gravity of the penalty of dismissal imposed upon her, the CA should have traversed the merits of the case instead of dismissing it on mere technicalities. However, her motion was denied in a Resolution[40] dated November 10, 2017; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in dismissing outright petitioner's appeal on purely procedural grounds.

The Court's Ruling

The petition is impressed with merit.

At the outset, it must be stressed that procedural rules are tools designed to facilitate the adjudication of cases so courts

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Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of P500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial. (Underlining supplied)

[38] Dated August 9, 2017; *id*. at 188-200.

[39] In her motion for reconsideration, petitioner attached the "Complaint with Annexes, Joint Order dated 16 March 2015, Order dated 22 January 2016, Counter-Affidavit of the Petitioner, Rejoinder, Verified Position Paper of the Petitioner, Position Paper of the Respondent, Decision dated 21 November 2016, Motion for Reconsideration of the Petitioner, and Order dated 4 May 2017." The rest of the documents are incorporated as Annexes of the Complaint; see *id*. at 191.

[40] *Id*. at 53-60.

and litigants alike are enjoined to abide strictly by the rules. They provide a system for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party.[41] However, procedural rules may be relaxed for the most persuasive of reasons so as **to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure** prescribed.[42]

In this case, petitioner filed a petition for review under Rule 43 of the Rules of Court before the CA, challenging the Ombudsman's decision finding her administratively liable and meting upon her the penalty of dismissal. Section 6, Rule 43 thereof provides:

> Section 6. *Contents of the petition*. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Underscoring supplied)

In its assailed July 17, 2017 Resolution, the CA dismissed the petition for review based purely on procedural grounds, namely, failure to append material documents[43] to her petition; lack of representation by counsel; and failure to show proof of

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[41] See *Cortal v. Inaki A. Larrazabal Enterprises*, G.R. No. 199107, August 30, 2017, 838 SCRA 255, 265, citing *Garbo v. CA*, 327 Phil. 780, 784 (1996) and *Sebastian v. Morales*, 445 Phil. 595, 605 (2003).

[42] *Id*. at 266, citing *Asian Spirit Airlines v. Spouses Bautista*, 491 Phil. 476, 483 (2005) and Asia United Bank v. Good/and Company, Inc., 650 Phil. 174, 185 (2010).

[43] See note 36.

service to *both* the Ombudsman and the FIO. With regard to petitioner's failure to append material portions of the record in her petition, the Court has already declared in *Air Philippines Corporation v. Zamora*[44] that:

> First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a prima facie case of grave abuse of discretion as to convince the court to give due course to the petition.
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> Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.
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> Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.[45] (Underscoring supplied)

In her motion for reconsideration, petitioner appended the "Complaint with Annexes, Joint Order dated 16 March 2015, Order dated 22 January 2016, Counter-Affidavit of the Petitioner, Rejoinder, Verified Position Paper of the Petitioner, Position Paper of the Respondent, Decision dated 21 November 2016, Motion for Reconsideration of the Petitioner, and Order dated 4 May 2017"[46] and likewise, averred that the rest of the documents that the CA found lacking were already incorporated as annexes in the Complaint. Jurisprudence pertaining to this matter has established that submission of a document together with the motion for reconsideration constitutes *substantial compliance* with the requirement that relevant or pertinent

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[44] 529 Phil. 718 (2006).

[45] *Id.* at 728.

[46] *Rollo* (Vol. I), p. 191.

documents be submitted along with the petition, and therefore calls for the relaxation of procedural rules. This ruling is in consonance with the fact that the Rules do not specify the precise documents, pleadings or parts of the records which must be annexed to the petition, apart from the assailed judgment, final order, or resolution.[47]

Neither should petitioner's lack of representation by counsel be deemed fatal to her cause and lead to the dismissal of her appeal. In *Polsotin, Jr. v. De Guia Enterprises, Inc.*,[48] the Court held:

Aware that petitioners are not represented by counsel, the CA could have been more prudent by giving petitioners time to engage the services of a lawyer or at least by reminding them of the importance of retaining one. It is worthy to mention at this point that the right to counsel, being intertwined with the right to due process, is guaranteed by the Constitution to any person whether the proceeding is administrative, civil or criminal. The CA should have extended some degree of liberality so as to give the party a chance to prove their cause with a lawyer to represent or to assist them.[49]

Nor should her failure to show that she furnished a copy of the petition to the Ombudsman, as the agency *a quo*, in accordance with Section 5,[50] Rule 43 of the Rules of Court, be sufficient justification[51] to dismiss her petition. In her motion

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[47] *Spouses Henry Lanaria and the Late Belen Lanaria v. Francisco Planta*, 563 Phil. 400, 411 (2007); citation omitted.

[48] 677 Phil. 561 (2011).

[49] *Id.* at 567-568.

[50] Sec. 5. *How appeal taken.* — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, *with proof of service of a copy thereof on the adverse party and on the court or agency a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner. x x x

[51] Sec. 7. *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit of costs,

for reconsideration, she clarified[52] that the registry receipt in her Affidavit of Service indicated service of her petition to the FIO, which the Court finds to be substantial compliance with the rules. In any case, the. presence of compelling reasons[53] in this case impels the Court to relax the pertinent rules of procedure to make way for a resolution of the case on the merits.

In the case of *Dalton-Reyes v. Court of Appeals*[54] (*Dalton-Reyes*), the Court exercised liberality and allowed the remand of the case to the CA for adjudication on the merits despite petitioner's failure to show proof of service of a copy of the petition on both the adverse party ***and*** the Ombudsman, among other procedural lapses committed by petitioner. The Court took into consideration the fact that *one*, petitioner was not assisted by a lawyer at that time, *as in this case*, and *two*, under the policy of social justice, the law bends over backward to accommodate the interests of the working class oh the humane justification that those with less privilege in life should have more in law;[55] more so in the case of one who pursues her case even without the assistance of counsel. Thus, the Court stressed that "[s]ocial justice would be a meaningless term if

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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.

[52] See *rollo*, p. 192.

[53] In *Barnes v. Quijano Padilla*, 500 Phil. 303, 311 (2005), the Court restated the range of reasons which may provide justification for a court to resist a strict adherence to procedure, enumerating the elements for an appeal to be given due course by a suspension of procedural rules, such as: (a) matters of life, liberty, honor or property, **(b) the existence of special or compelling circumstances**, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.

[54] 493 Phil. 631 (2005).

[55] *Id.* at 645-642, citing *Uy v. Commission on Audit,* 385 Phil. 324, 339-340 (2000).

an element of rigidity would be affixed to the procedural precepts."[56] Moreover, the petitioner therein was also a public servant[57] who was meted the penalty of dismissal from the service, an extreme penalty which prompted the Court to allow a review of the decision finding her administratively liable in order to obviate any doubts on the propriety of the penalty and insure that no injustice would be done to petitioner.

As in *Dalton-Reyes*, and due to the same compelling circumstances attendant in this case, the Court opts for a liberal application of procedural rules. Indeed, the penalty of dismissal bears injurious effects to petitioner's career and means of livelihood, and possibly even her personal life. On this score, it bears reiterating that **a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on procedural minutiae**. It bears to stress that resolving the merits of the case would give more efficacy to the constitutional mandate on the accountability of public officers and employees[58] and every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[59] Finally, courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process.[60]

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[56] *Id.* at 642.

[57] Petitioner Rosario Dalton-Reyes,was a Stenographic Reporter III of the Evaluation and Preliminary Investigation Bureau-(EPIB), Preliminary Investigation, Administrative Adjudication and Monitoring Office (PAMO), Office of the Ombudsman.

[58] See *Joseph Malixi v. Glory V. Baltazar*, G.R. No. 208224, November 22, 2017.

[59] *Dalton-Reyes v. CA*, *supra* note 54, citing *Development Bank of the Philippines v. CA*, 415 Phil. 538 (2001).

[60] *Negros Slashers, Inc. v. Alvin Teng*, 682 Phil. 593, 603-604 (2012), citing *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*, 551 Phil. 768, 780 (2007), citing *Barnes v. Padilla*, *supra* note, 53.

WHEREFORE, the Resolutions dated July 17, 2017 and November 10, 2017 of the Court of Appeals in CA-G.R. SP No. 151485 are **REVERSED** and **SET ASIDE**. The case is hereby **REMANDED** to the Court of Appeals for adjudication on the merits.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo*,* and *Caguioa, JJ.*, concur.

Reyes, Jr., J., on official leave.

SECOND DIVISION

[G.R. No. 242407. April 01, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM PIÑERO ALIAS JUN JUN GENERALAO @ "TALEP,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT 2002); ILLEGAL SALE OF DANGEROUS DRUGS AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; PRESENT IN CASE AT BAR.— 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

* Designated Additional Member per Raffle dated March 25, 2019.

authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Here, the courts *a quo* correctly found that all the elements of the crimes charged are present, as the records clearly show that Piñero was caught in *flagrante delicto* selling *shabu* to the poseur-buyer, PO2 Avila, during a legitimate buy-bust operation by the SOG-NOPPO; and that fourteen (14) more plastic sachets containing *shabu* were recovered from him during the search made incidental to his arrest. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.

2. ID.; ID.; ID.; IDENTITY OF THE DANGEROUS DRUG, WHICH FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME, MUST BE ESTABLISHED WITH MORAL CERTAINTY; LINKS IN THE CHAIN OF CUSTODY TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY; CASE AT BAR.— In cases for Illegal Sale and/or 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. 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 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." In this case, it is glaring from the records that after Piñero was arrested during the buy-bust operation and was subsequently searched, the poseur-buyer, PO2 Avila, immediately took custody of the seized plastic sachets and conducted the marking, inventory, and photography thereof in the presence of a public elected official, a DOJ representative, and a media representative right at the place where Piñero was arrested. Thereafter, PO2 Avila secured the seized plastic sachets and delivered the same to the forensic chemist at the crime laboratory, who in turn, kept the items in the evidence vault of which only she has access to, and thereafter, personally brought the items to the RTC for identification. In view of the foregoing, the Court holds that there was compliance with the chain of custody rule and, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Perforce, Piñero's conviction must 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

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated May 25, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02444, which affirmed the Joint Judgment[3] dated October

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[1] See Notice of Appeal dated June 8, 2018; *rollo*, pp. 19-21.

[2] *Id*. at 4-18. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring.

[3] CA *rollo*, pp. 8-22. Penned by Judge Rafael Crescencio C. Tan, Jr.

18, 2016 of the Regional Trial Court of Negros Oriental, Branch 30 (RTC) in Crim. Case Nos. 2015-22797 and 2015-22796 finding accused-appellant William Piñero alias Jun Jun Generalao @ "Talep" (Piñero) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC accusing Piñero of 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 in the morning of February 9, 2015, a confidential informant tipped off the members of the Special Operations Group (SOG) of the Negros Oriental Provincial Police Office (NOPPO) regarding the illegal drug activities of Piñero alias "Talep" at Barangay Cadawinonan, Dumaguete City. After hatching a buy-bust plan and coordinating with the Philippine Drug Enforcement Agency (PDEA), the police officers proceeded to Barangay Cadawinonan in the afternoon of the same day. There, they successfully implemented the buy-bust operation against Piñero, during which a transparent plastic sachet of suspected *shabu* weighing 0.1 gram was recovered from him. When Piñero was searched after his arrest, the police officers were able to seize from his possession fourteen (14) more transparent plastic sachets containing a combined weight of 2.97 grams of white crystalline substance. Immediately after Piñero's arrest, the apprehending officers conducted the marking,

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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] Crim. Case No. 2015-22796 is for violation of Section 11, Article II of RA 9165 (see records, pp. 3-4 and 43-44), while Crim. Case No. 2015-22797 is for violation of Section 5, Article II of RA 9165 (see id. at 58-59 and 45-46).

inventory, and photography in the presence of Barangay *Kagawad* Eusebia Albina, Department of Justice (DOJ) representative Anthony Chilius Benlot, and media representative Juancho Gallarde at the place of apprehension. Piñero was then brought to the SOG office and thereafter, Police Officer 2 Al Lester Avila (PO2 Avila), the poseur-buyer and the one who took custody of the suspected drugs, brought the seized sachets to the crime laboratory where, after examination,[6] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

In defense, Piñero denied the charges against him, claiming instead, that in the afternoon of February 9, 2015, he was at Barangay Looc waiting for his two siblings at the side of the store near a basketball court when suddenly two (2) men approached him asking if he had drugs. When he said he did not have any, he was forced to go with them. He was made to board their vehicle and while inside, he was asked if he knew anyone selling drugs to which he replied in the negative. He was then brought to Barangay Cadawinonan where, upon disembarking, the two (2) men and the driver brought out a black bag containing documents and plastic sachets which had salt-like contents. It was the first time he saw these items which are being used as evidence against him. Piñero claims he never sold nor possessed any drugs.[8]

In a Joint Judgment[9] dated October 18, 2016, the RTC found Piñero guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Crim. Case No. 2015-22797 for Illegal Sale of Dangerous Drugs, to suffer the penalty of life imprisonment, and to pay a fine in the amount

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[6] See Chemistry Report No. D-051-15 dated February 9, 2015 examined by Forensic Chemist, Police Chief Inspector Josephine Suico Llena; id. at 25, including dorsal portion.

[7] See *rollo*, pp. 7-8. See also CA *rollo*, pp. 9-12. PO2 Avila was also referred as "PO3 Avila" in some parts of the records.

[8] See *rollo*, p. 8. See also CA *rollo*, p. 13.

[9] CA *rollo*, pp. 8-22.

of ₱500,000.00; and (*b*) in Crim. Case No. 2015-22796 for Illegal Possession of Dangerous Drugs, to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of ₱400,000.00.[10] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Piñero indeed sold one (1) transparent plastic sachet containing 0.1 gram of *shabu*, a dangerous drug, to the poseur-buyer, resulting in his arrest, and that during the search incidental thereto, he was discovered to be in possession of fourteen (14) more plastic sachets containing a combined weight of 2.97 grams of *shabu*. It also held that Piñero's arrest was legal, having been caught *in flagrante* selling drugs to the poseur-buyer in the buy-bust operation. Furthermore, the RTC found Piñero's claims of denial and frame-up untenable, these being weak defenses which cannot stand against his positive identification by the prosecution's witnesses. Piñero's claims are likewise belied by the fact that he did not file any administrative or criminal case against the supposed erring officers.[11] Aggrieved, Piñero appealed[12] to the CA.

In a Decision[13] dated May 25, 2018, the CA affirmed the RTC ruling.[14] It held that the prosecution had sufficiently established the validity of the buy-bust operation, and the resulting arrest and search of Piñero. The prosecution likewise established beyond reasonable doubt all the elements of the crimes charged against Piñero, and that the integrity and evidentiary value of the seized items have been preserved due to the arresting officers' compliance with the chain of custody rule.[15]

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

[11] See *id*. at 14-20.

[12] See Notice of Appeal dated November 7, 2016; records, pp. 193-194.

[13] *Rollo*, pp. 4-18.

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

[15] See *id*. at 10-17.

Hence, this appeal seeking that Piñero's conviction be overturned.

The Court's Ruling

The appeal is without merit.

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.[16] Here, the courts *a quo* correctly found that all the elements of the crimes charged are present, as the records clearly show that Piñero was caught in *flagrante delicto* selling *shabu* to the poseur-buyer, PO2 Avila, during a legitimate buy-bust operation by the SOG-NOPPO; and that fourteen (14) more plastic sachets containing *shabu* were recovered from him during the search made incidental to his arrest. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[17]

Further, the Court notes that the buy-bust team had complied with the chain of custody rule under Section 21, Article II of RA 9165.

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[16] 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, 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 *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, 838 SCRA 350, 360, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

In cases for Illegal Sale and/or 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.[18] 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.[19]

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.[20] 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.[21] The law further requires that the

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[18] See *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; *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[19] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[20] 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 18.

[21] In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 161 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,[22] a representative from the media ***AND*** the DOJ, and any elected public official;[23] 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.[24] 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."[25]

In this case, it is glaring from the records that after Piñero was arrested during the buy-bust operation and was subsequently searched, the poseur-buyer, PO2 Avila, immediately took custody of the seized plastic sachets and conducted the marking, inventory, and photography thereof in the presence of a public elected official, a DOJ representative, and a media representative right at the place where Piñero was arrested.[26] Thereafter, PO2 Avila secured the seized plastic sachets and delivered the same to the forensic chemist at the crime laboratory, who in turn, kept the items in the evidence vault of which only she has access to, and thereafter, personally brought the items to the RTC for identification.[27] In view of the foregoing, the Court holds that there was compliance with the chain of custody rule and, thus,

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[22] 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.

[23] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

[24] Section 21 (1), Article II of RA 9165, as amended by RA 10640

[25] See *People v. Miranda*, supra note 16. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[26] In conformity with the witness requirement under Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[27] See CA *rollo*, pp. 12-13.

the integrity and evidentiary value of the *corpus delicti* have been preserved. Perforce, Piñero's conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated May 25, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02444 is hereby **AFFIRMED**. Accused-appellant William Piñero *alias* Jun Jun Generalao @ "Talep" is found **GUILTY** beyond reasonable doubt of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640. Accordingly, he is sentenced as follows: (*a*) in Crim. Case No. 2015-22797 for Illegal Sale of Dangerous Drugs, to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (*b*) in Crim. Case No. 2015-22796 for Illegal Possession of Dangerous Drugs, to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of ₱400,000.00.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa*, and *Lazaro-Javier, JJ.*, concur.

Reyes, J. Jr., on official leave.

EN BANC

[A.C. No. 12289. April 2, 2019]

ATTY. ANASTACIO T. MUNTUERTO, JR., ATTY. RAMON JOSE G. DUYONGCO, ATTY. MARIO Y. CAVADA, and ATTY. CHAD RODOLFO M. MIEL, *complainants, vs.* **ATTY. GERARDO WILFREDO L. ALBERTO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; 2004 RULES ON NOTARIAL PRACTICE; VIOLATED WHEN A LAWYER NOTARIZED DOCUMENTS WITHOUT AUTHORIZATION OR COMMISSION TO DO SO; CASE AT BAR. — The respondent should be subjected to strong disciplinary action for notarizing the documents without authorization or commission to do so. To start with, the act of the respondent constituted a blatant violation of the injunction of the Lawyer's Oath to obey the laws. The law thereby violated is the 2004 *Rules on Notarial Practice*, which expressly defines a notary public as "any person commissioned to perform official acts under the [2004 *Rules on Notarial Practice*]." The commission, which is the grant of authority to perform notarial acts, is issued upon due application by the Executive Judge of the province or city where the applicant is to have a regular place of work or business after a summary hearing conducted by the Executive Judge following the publication of the notice of summary hearing in a newspaper of general circulation in said province or city, and after posting of the notice of summary hearing in a conspicuous place in the offices of the Executive Judge and of the Clerk of Court. Clearly, the exercise of the authority to notarize cannot simply be done by anyone. The significance of the office of the notary public cannot be taken for granted. The notarial act is invested with public interest, such that only those who are qualified or authorized may act and serve as notaries public. x x x And, secondly, the respondent, by making it appear that he had been duly commissioned to act as notary public, thereby vested the documents with evidentiary value. Yet, because of the absence of a notarial commission in his favor, he foisted a deliberate falsehood on the trial court. He became guilty of dishonesty. He also trivialized the solemnity of notarizing the documents. Such effrontery transgressed the prohibition against unlawful, dishonest, immoral or deceitful conduct on his part as an attorney made explicit in Rule 1.01 of Canon 1 of the *Code of Professional Responsibility*, to wit: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

2. ID.; ID.; MANDATORY CONTINUING LEGAL EDUCATION (MCLE); BAR MATTER NO. 1922, AS AMENDED;

REQUIRES LAWYERS TO DISCLOSE INFORMATION ON HIS COMPLIANCE WITH THE MCLE PROGRAM IN ALL PLEADINGS, MOTIONS AND OTHER PAPERS THEY FILE IN COURT; VIOLATED IN CASE AT BAR. — The resolution issued in Bar Matter No. 1922, as amended, required the respondent to disclose in all the pleadings, motions and other papers he filed in court of information on his compliance with the MCLE program of the Supreme Court. x x x However, the respondent did not disclose his MCLE certificate of compliance number and the date of issue of the certificate in the complaint he filed in Civil Case No. 6835 of the RTC in Masbate City. Such non-disclosure was a flagrant disobedience to the aforequoted terms of the resolution issued in Bar Matter No. 1922. It is good to mention that the respondent seemed to be a repeat violator of the requirement for disclosure under the resolution issued in Bar Matter No. 1922. He had been observed to have been guilty of the same omission in A.C. No. 12131, where the Court noted his having defied the order for him to submit his MCLE compliance.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 9.01, CANON 9 THEREOF; PATENTLY BREACHED BY A LAWYER WHO ASSISTED AND ABETTED THE UNATHORIZED PRACTICE OF LAW BY A NON-LAWYER WHEN HE HAD THE LATTER SIGN AND FILE A PLEADING; CASE AT BAR. — The respondent was also liable for the charge of assisting and abetting the unauthorized practice of law by a non-lawyer because he had a non-lawyer sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* despite him being the counsel of record of the plaintiff in Civil Case No. 6835. He thereby patently breached both the letter and spirit of Rule 9.01, Canon 9 of the *Code*, which states: Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing. The preparation and signing of any pleading, motion or other paper to be submitted in court in connection with any pending matter constitute legal work within the context of the practice of law. Verily, pursuant to Section 3, Rule 7 of the *Rules of Court,* the signature on the pleading, motion or other paper serves as a certification that the signing attorney "has read the pleading;

that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Such formal assurance cannot be undertaken and given except by a regular member of the Philippine Bar in good standing. It is also necessary to stress that the high responsibility for conducting the litigation pertains only to the enrolled attorney of the party in whose behalf the pleading, motion or other paper is submitted in court. He may delegate the signing of the pleading, motion or other paper to another lawyer, but not to a non-lawyer.

D E C I S I O N

BERSAMIN, *C.J.*:

A lawyer who notarizes documents without a notarial commission, and assists and abets the unauthorized practice of law by a non-lawyer, deliberately violates the Lawyer's Oath and transgresses the canons of the *Code of Professional Responsibility*. He thereby manifests a lack of respect for the law and dishonesty, and deserves to be severely punished.

Antecedents

We hereby consider and resolve the disbarment complaint filed by the complainants charging the respondent with falsification of public documents, and wilful and deliberate violations of his oath as a lawyer, and of the mandatory rules of the *Code of Professional Responsibility*.[1]

The complainants aver that the respondent was the counsel of record of Cristeto E. Dinopol, Jr., who had instituted an action for reconveyance and recovery of possession and damages against Singfil Hydro Builders in the Regional Trial Court (RTC), Branch 47, in Masbate City docketed as Civil Case No. 6835; that the respondent had attached to the complaint a supplemental agreement and an amended joint venture agreement separately acknowledged before him as a notary public for and in Cavite City; that he had antedated his notarizations; that, however,

[1] *Rollo*, p. 435.

the Notarial Division of the RTC in Cavite City certified that it had "*no record of any Commission/Order appointing a certain Atty. Gerardo Wilfredo L. Alberto as Notary Public for the City of Cavite nor of any documents notarized by him, more specifically a document denominated as Supplemental & Amended Joint Venture Agreement*;"[2] that he had not indicated his MCLE[3] certificate of compliance number and the date of issue of such certificate;[4] that realizing that the complaint he had filed was fatally defective, he had his client sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint*, with the amended complaint attached; and that the respondent had further falsified the supposed secretary's certificate to make it appear that he had been duly appointed as the acting corporate secretary of Singtrader JV Corporation, and that a resolution had been adopted by said corporation authorizing Cristeto E. Dinopol, Jr. as its representative relative to the filing of the necessary and proper actions.[5]

Upon receipt of the administrative complaint against the respondent, the Integrated Bar of the Philippines (IBP) directed him to file his answer. However, he did not comply, and for that reason he was declared in default.[6]

The IBP then conducted a mandatory conference on June 18, 2016, but the respondent did not attend the same despite notice. Furthermore, he did not file his position paper.[7]

Findings and Recommendation of the IBP

In her Report and Recommendation dated January 31, 2017, IBP Investigating Commissioner Rebecca Villanueva-Maala

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[2] *Id*. at 435-436.

[3] Mandatory Continuing Legal Education.

[4] *Rollo*, p. 436.

[5] *Id*. at 436-437.

[6] *Id*. at 437.

[7] *Id.* at 181.

found the charges against the respondent established, and recommended his suspension from the practice of law for five years, to wit:

PREMISES CONSIDERED, we respectfully recommend that respondent, **ATTY. GERARDO WILFREDO L. ALBERTO**, be **SUSPENDED** for a period of **FIVE (5) YEARS** from receipt hereof as a lawyer and as a member of the Bar.

RESPECTFULLY SUBMITTED.[8]

On November 27, 2017, the IBP Board of Governors adopted the findings and recommendation of IBP Investigation Commissioner Villanueva-Maala, *viz.*:

RESOLVED** to **ADOPT** the findings of fact and recommendation of the Investigating Commissioner, but modifying the recommended penalty to **SUSPENSION FROM THE PRACTICE OF LAW for five (5) years.

***RESOLVED FURTHER** to recommend the imposition upon respondent of a **FINE** of Five Thousand Pesos (₱5,000.00) for disregarding the Orders of the Commission.*[9]

The respondent did not appeal or move for reconsideration.

Issue

Did the respondent violate the Lawyer's Oath and the *Code of Professional Responsibility*: (a) by notarizing documents without having been issued a notarial commission; (b) by allowing a non-lawyer to sign a motion filed in court; and (c) by failing to indicate his MCLE compliance number in the complaint filed in connection with a pending case?

Ruling of the Court

We **ADOPT** with **MODIFICATION** the findings and recommendation of the IBP Board of Governors.

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[8] *Id.* at 437.

[9] *Id.* at 433.

I

The respondent notarized the supplemental agreement and the amended joint venture agreement attached to the complaint he filed in Civil Case No. 6835.[10] According to the findings by IBP Investigating Commissioner Villanueva-Maala, he held no notarial commission when he notarized the documents. Such lack of the notarial commission was confirmed by the certification issued by the Office of the Clerk of Court of the RTC in Cavite City to the effect that said office had no record of any commission appointing the respondent a notary public for and in the City of Cavite.[11]

The respondent should be subjected to strong disciplinary action for notarizing the documents without authorization or commission to do so.

To start with, the act of the respondent constituted a blatant violation of the injunction of the Lawyer's Oath to obey the laws. The law thereby violated is the 2004 *Rules on Notarial Practice*, which expressly defines a notary public as "any person commissioned to perform official acts under the [2004 *Rules on Notarial Practice*]."[12] The commission, which is the grant of authority to perform notarial acts,[13] is issued upon due application by the Executive Judge of the province or city where the applicant is to have a regular place of work or business after a summary hearing conducted by the Executive Judge following the publication of the notice of summary hearing in a newspaper of general circulation in said province or city, and after posting of the notice of summary hearing in a conspicuous place in the offices of the Executive Judge and of

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[10] *Id*. at 353.

[11] *Id*. at 404.

[12] Rule II of the 2004 *Rules on Notarial Practice* provides:

Sec. 9. *Notary Public and Notary*. — "Notary Public" and "Notary" refer to any person commissioned to perform official acts under these Rules.

[13] Section 3, Rule II, of the 2004 *Rules on Notarial Practice*.

the Clerk of Court.[14] Clearly, the exercise of the authority to notarize cannot simply be done by anyone.

The significance of the office of the notary public cannot be taken for granted. The notarial act is invested with public interest, such that only those who are qualified or authorized may act and serve as notaries public.[15] The Court has expounded on the character of the office of the notary public in *Bernardo Vda. de Rosales v. Ramos*,[16] stating thusly:

> The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of the document under his hand and seal he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. Where the notary public is a lawyer, a graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. Failing in this, he must accept the consequences of his unwarranted actions.

And, secondly, the respondent, by making it appear that he had been duly commissioned to act as notary public, thereby vested the documents with evidentiary value. Yet, because of the absence of a notarial commission in his favor, he foisted a deliberate falsehood on the trial court. He became guilty of dishonesty. He also trivialized the solemnity of notarizing the documents. Such effrontery transgressed the prohibition against unlawful, dishonest, immoral or deceitful conduct on his part as an attorney made explicit in Rule 1.01 of Canon 1 of the *Code of Professional Responsibility*, to wit: "A lawyer shall

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[14] See Section 18, Rule II; Sections 1, 2, 3, 4, 5, 6, and 7, Rule III, all of the 2004 *Rules on Notarial Practice*.

[15] *Maligsa v. Cabanting*, A.M. No. 4539, May 14, 1997, 272 SCRA 408.

[16] A.C. No. 5645, July 2, 2002, 383 SCRA 498.

not engage in unlawful, dishonest, immoral or deceitful conduct."[17]

II

The resolution issued in Bar Matter No. 1922,[18] as amended, required the respondent to disclose in all the pleadings, motions and other papers he filed in court of information on his compliance with the MCLE program of the Supreme Court. The resolution reads as follows:

> In the Resolution of the Court *En Banc* dated January 14, 2014 in the above-cited administrative matter, the Court RESOLVED, upon the recommendation of the MCLE Governing Board, to:
>
> (a) AMEND the June 3, 2008 resolution by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with *"Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action*"; and
>
> (b) PRESCRIBE the following rules for non-disclosure of current MCLE compliance/exemption number in the pleadings:
>
> (i) The lawyer shall be imposed a fine of ₱2,000.00 for the first offense, ₱3,000.00 for the second offense and ₱4,000.00 for the third offense;
>
> (ii) In addition to the fine, counsel may be listed as a delinquent member of the Bar pursuant to Section 2, Rule 13 of Bar Matter No. 850 and its implementing rules and regulations; and
>
> (iii) The non-compliant lawyer shall be discharged from the case and the client/s shall be allowed to secure the services of a new counsel with the concomitant right to demand the return of fees already paid to the non-compliant lawyer.

However, the respondent did not disclose his MCLE certificate of compliance number and the date of issue of the certificate

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[17] *Nunga v. Viray*, A.C. No. 4758, April 30, 1999, 306 SCRA 487, 491-492.

[18] *Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption.*

in the complaint he filed in Civil Case No. 6835 of the RTC in Masbate City. Such non-disclosure was a flagrant disobedience to the aforequoted terms of the resolution issued in Bar Matter No. 1922.

It is good to mention that the respondent seemed to be a repeat violator of the requirement for disclosure under the resolution issued in Bar Matter No. 1922. He had been observed to have been guilty of the same omission in A.C. No. 12131,[19] where the Court noted his having defied the order for him to submit his MCLE compliance, to wit:

> With regard to the case docketed as SEC-MC13-138 pending before RTC Mandaluyong City, Branch 211, complainant also appeared as counsel for and signed the pleadings without a certificate of compliance for MCLE IV. Also, in its order dated August 19, 2014, the RTC directed complainant to show cause for his failure to comply with the directives of the court for him to submit his MCLE compliance. Up to the present, complainant has yet to comply with the order of the court.

III

The respondent was also liable for the charge of assisting and abetting the unauthorized practice of law by a non-lawyer because he had a non-lawyer sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* despite him being the counsel of record of the plaintiff in Civil Case No. 6835. He thereby patently breached both the letter and spirit of Rule 9.01, Canon 9 of the *Code*, which states:

> Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

The preparation and signing of any pleading, motion or other paper to be submitted in court in connection with any pending matter constitute legal work within the context of the practice of law. Verily, pursuant to Section 3, Rule 7 of the *Rules of*

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[19] *Atty. Gerardo Wilfredo L. Alberto v. Atty. Mario Y. Cavada*, A.C. No. 12131, June 13, 2018.

Court, the signature on the pleading, motion or other paper serves as a certification that the signing attorney "has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." Such formal assurance cannot be undertaken and given except by a regular member of the Philippine Bar in good standing. It is also necessary to stress that the high responsibility for conducting the litigation pertains only to the enrolled attorney of the party in whose behalf the pleading, motion or other paper is submitted in court. He may delegate the signing of the pleading, motion or other paper to another lawyer, but not to a non-lawyer.[20]

In *Cambaliza v. Cristal-Tenorio*,[21] the Court, holding that the lawyer's duty to prevent, or, at the very least, not to assist in the unauthorized practice of law is founded on public interest and policy, pointed out that:

> x x x Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained. Thus, the canons and ethics of the profession enjoin him not to permit the professional services or his name to be used in aid of, or to make possible the unauthorized practice of law by, any agency, personal or corporate. And, the law makes it a misbehavior on his part, subject to disciplinary action, to aid a layman in the unauthorized practice of law.[22]

In fine, the responsibility of signing the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* was personal to the respondent as the attorney of

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[20] *Tapay v. Bancolo*, A.C. No. 9604, March 20, 2013, 694 SCRA 1, 9-10.

[21] 478 Phil. 378.

[22] *Id.* at 389.

record. That he delegated it to a non-lawyer was an abdication of the responsibility that subjected him to sanction.

IV

We next consider the penalty with which to sanction the respondent.

The Court has held lawyers administratively liable for notarizing documents without having been issued their notarial commissions. In *Nunga v. Viray*,[23] the Court suspended a lawyer for three years for notarizing an instrument without a commission. In *Zoreta v. Simpliciano*,[24] the lawyer was suspended from the practice of law for two years, and permanently barred from being commissioned as a notary public for notarizing several documents after the expiration of his commission. In *Mariano v. Echanez*,[25] the Court suspended the erring lawyer from the practice of law for two years and permanently barred him from being commissioned as a notary public for performing notarial acts without a valid notarial commission.

The respondent's act of having the representative of his corporate client sign the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* submitted to the RTC could be equated to the censurable act in *Tapay v. Bancolo*,[26] where the lawyer had allowed a non-lawyer to sign a pleading filed in court. The offending lawyer was suspended from the practice of law for one year.

In addition, the respondent's failure to comply with the directives of the IBP to do certain acts in relation to the investigation of the administrative charge brought against him — specifically, that he did not file his answer, and his verified position paper despite being required to do so — exhibited defiance towards the IBP's directives. Such defiance should

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[23] *Supra*, note 17.

[24] A.C. No. 6492, November 18, 2004, 443 SCRA 1.

[25] A.C. No. 10373, May 31, 2016, 791 SCRA 509.

[26] *Supra*, note 20.

not be overlooked, but ought to be treated as an aggravating circumstance of his liability in this case. This treatment would constantly remind him that the IBP, as the investigator designated by the Court itself to investigate the charge brought against him, was discharging a public duty in the Court's name and stead, and should be respected in its discharge of the duty.

In view of all the foregoing, the Court deems it to be just and proper to adopt the IBP Board of Governors' recommendation to suspend the respondent from the practice of law for a period of five years effective upon receipt of this decision, and to bar him permanently from being commissioned as notary public in the Philippines.

WHEREFORE, the Court **SUSPENDS** respondent **ATTY. GERARDO WILFREDO L. ALBERTO** from the practice of law for five (5) years effective upon receipt of this decision; **PERMANENTLY BARS** him from being commissioned as Notary Public in the Philippines effective upon his receipt of this decision; and **STERNLY WARNS** him that a stiffer penalty will be imposed should he commit a similar offense hereafter.

Let this decision be attached to the records of **ATTY. GERARDO WILFREDO L. ALBERTO** in the Office of the Bar Confidant and the Integrated Bar of the Philippines; and be furnished to the Office of the Court Administrator for proper dissemination to all courts throughout the country.

SO ORDERED.

Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Carandang, and *Lazaro-Javier, JJ*., concur.

Jardeleza, J., on official business.

Reyes, J. Jr., J., on official leave.

Hernando, J., on leave.

EN BANC

[A.C. No. 12457. April 2, 2019]
(Formerly CBD Case No. 16-5128)

REV. FR. JOSE P. ZAFRA III, *complainant, vs.* **ATTY. RENATO B. PAGATPATAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AS MEMBERS OF THE BAR, THEY ARE OATHBOUND SERVANTS OF THE LAW, WHOSE FIRST DUTY IS NOT TO THEIR CLIENTS BUT TO THE ADMINISTRATION OF JUSTICE AND WHOSE CONDUCT OUGHT TO BE AND MUST BE SCRUPULOUSLY OBSERVANT OF LAW AND ETHICS; CASE AT BAR. — This Court cannot subscribe to Atty. Pagatpatan's claims that he is merely espousing his clients' cause in writing the letter-request for investigation of Fr. Zafra. On record, We find that Atty. Pagatpatan admits to writing the letter to the Bishop of the Diocese of Tandag, Surigao Del Sur in order to resolve the *estafa* case since settlement proceedings with the regular courts proved to be futile. To Our mind, Atty. Pagatpatan's letter-request was not based on a sincere purpose to discipline Fr. Zafra for his actions, but mainly to bring threat to Fr. Zafra and force him to settle the *estafa* case filed against his clients. Atty. Pagatpatan did not want the *estafa* case to proceed to a full-blown trial. On many occasions, this Court has reminded that lawyers are duty-bound "to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." This is in keeping with the dignity of the legal profession. It is of no consequence that the letter of Atty. Pagatpatan is filed with the Bishop of Diocese of Tandag, Surigao Del Sur. Pagatpatan, as a member of the bar, is an "oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and **whose conduct ought to be and must be scrupulously observant of law and ethics.**" This Court finds that Atty. Pagatpatan was motivated by malice in writing said letter. However, disbarment, as prayed for by Fr. Zafra, is a penalty too severe for said action considering the facts show that Atty. Pagatpatan is only guilty of simple misconduct.

2. REMEDIAL LAW; RULES OF COURT; DISBARMENT OR SUSPENSION OF ATTORNEYS BY SUPREME COURT; GROUNDS THEREFOR; WILLFUL DISOBEDIENCE OF ANY LAWFUL ORDER OF A SUPERIOR COURT AND WILLFULLY APPEARING AS AN ATTORNEY FOR A PARTY TO A CASE WITHOUT AUTHORITY SO TO DO; PENALTY OF DISBARMENT, PROPER IN CASE AT BAR. — Section 27, Rule 138 of the Rules of Court provides that: Sec. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefore. — **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court** for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or **for a willful disobedience of any lawful order of a superior court** or for corruptly or **willfully appearing as an attorney for a party to a case without authority so to do.** The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. On record, Atty. Pagatpatan had been representing party litigants in court from 2005 until the instant case was filed before the IBP in 2016. Atty. Pagatpatan has made a mockery of this Court's authority by defying this Court's suspension order for over eleven (11) years. If Fr. Zafra had not filed the instant case, Atty. Pagatpatan would have continued disregarding the suspension order of this Court. His actions clearly constitute gross misconduct as defined under Section 27, Rule 138 of the Rules of Court, which is a sufficient cause for suspension or disbarment. This Court emphasizes that the practice of law is not a right but a mere privilege and, as such, must bow to the inherent regulatory power of the Supreme Court to exact compliance with the lawyer's public responsibilities. Whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of his clients and of the public, it becomes not only the right but also the duty of the Supreme Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw that privilege. The penalty of suspension or disbarment is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. Atty. Pagatpatan's acts in wantonly disobeying his duties

as an officer of the court show utter disrespect for the Court and the legal profession. Therefore, his disbarment is warranted.

RESOLUTION

***PER CURIAM*:**

This administrative complaint arose from a criminal suit for *estafa* filed by complainant Reverend Father Jose P. Zafra III (Fr. Zafra) against Jojo R. Buniel (Buniel) and Anna Liza M. Guirnalda (Guirnalda) docketed as Criminal Case No. 6538 with the Regional Trial Court (RTC) of Tandag City, Surigao Del Sur, Branch 40. Attorney Renato B. Pagatpatan (Atty. Pagatpatan) is the counsel on record of Buniel and Guirnalda.

While the criminal case was pending against Atty. Pagatpatan's clients, said lawyer wrote a letter to the Bishop of the Diocese of Tandag, Surigao Del Sur[1] requesting an investigation of Fr. Zafra for his activities, particularly, concocting stories against his clients, Buniel and Guirnalda, who were charged by Fr. Zafra of *estafa*; that such action "was not only a sin but a MORTAL SIN."

Fr. Zafra was embarrassed because of the "malicious" letter sent by Atty. Pagatpatan. He was eventually investigated by the Board of Consultors with the Bishop, where he was able to clear his name.

Thereafter, Fr. Zafra filed a complaint against Atty. Pagatpatan with the Integrated Bar of the Philippines (IBP). He posits that Atty. Pagatpatan's action is a clear violation of Rule 1.02 of the Code of Professional Responsibility, which provides that "(a) lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system." Fr. Zafra claims that instead of Atty. Pagatpatan defending his clients' case in court, the latter instigated them to stir controversies by making libelous and untruthful accusations. Fr. Zafra asserts that Atty. Pagatpatan's act of writing and sending out the letter to the Bishop of the Diocese of Tandag, Surigao

[1] *Rollo*, p. 22.

Del Sur "was not from a sense of duty x x x but to certainly gratify the personal vendetta and animosity of his clients, who were arrested for the crime *Estafa* x x x" that Fr. Zafra filed with the RTC. Atty. Pagatpatan "failed to live up to the standard of his profession as a lawyer who should be a mediator for concord and a conciliator for compromise rather than an instigator of controversy x x x."

Fr. Zafra also argues that Atty. Pagatpatan is engaged in the unauthorized practice of law. He learned that, in 2005, Atty. Pagatpatan had been suspended by this Court from the practice of law for two (2) years in a decided case entitled *Daniel Mortera, et al. v. Atty. Renato B. Pagatpatan* with docket number A.C. No. 4562.[2] Upon further inquiry on said case from the Supreme Court-Public Information Office, he also learned that the order of suspension of Pagatpatan in the foregoing case had not yet been lifted by the Court.[3] Notwithstanding the failure to lift the order of suspension, Pagatpatan continued to practice law by representing party litigants in other cases before four (4) branches of RTC Davao.[4]

Atty. Pagatpatan, for his part, asserts that there was nothing unethical in writing a letter for the investigation of Fr. Zafra. As the lawyer of Buniel and Guirnalda, he merely aided his clients in bringing to the attention of the Bishop the actuations of Fr. Zafra in filing the complaint for *estafa*. The letter was for purposes of convincing Fr. Zafra to settle "silently" and "not go to the extent of having the *estafa* charges ventilated in a full-blown trial x x x."[5] He reiterates that the letter was not intended to malign the reputation of Fr. Zafra.

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[2] A.C. No. 4562, June 15, 2005.

[3] *Rollo*, p. 48, Letter dated July 6, 2015, signed by the Deputy Clerk of Court & Bar Confidant, Atty. Ma. Cristina B. Layusa.

[4] *Id*. at 49-52, Certification of the OIC Branch Clerk of Court, RTC Branch 14 dated July 20, 2016, Certification of the Officer-in-charge, RTC Branch 15, Davao City dated July 20, 2016, Certification of the Branch Clerk of Court, Branch 16, Davao City dated July 20, 2016 and Certification of the Clerk of Court, Branch 33, Davao City dated July 20, 2016.

[5] *Id*. at 77, Verified Answer/Counter Affidavit of Atty. Renato B. Pagatpatan dated January 9, 2017.

Atty. Pagatpatan does not deny in engaging in the practice of law despite this Court's order of suspension in 2005. He reasoned out that he needed to continue working in order to maintain and sustain the needs of his family, especially since his wife was ill and eventually passed away in December 12, 2010. Pagatpatan claims that he has no intention to defy the order of suspension, and manifests withdrawing his appearances in the cases that he is handling, including the *estafa* case against Buniel and Guirnalda.

Proceedings before the IBP ensued. In the Report and Recommendation dated June 13, 2018,[6] the IBP, through the investigating commissioner, did not find Pagatpatan administratively liable in writing the letter-complaint against Fr. Zafra. The investigating commissioner held that there was no prohibition for lawyers to write a letter to the Bishop of the Diocese of Tandag, Surigao Del Sur concerning priests in its jurisdiction; and that lawyers are not precluded from writing a letter to the bishop on matters pending before the Office of the Provincial Prosecutors or the courts. The letter was merely requesting for an investigation on the conduct of Fr. Zafra. No malice or bad faith on the part of Atty. Pagatpatan could be attributed from writing the letter-complaint.

Anent Atty. Pagatpatan's continuous practice of law despite his suspension, the IBP held that Atty. Pagatpatan "has no discretion, no option and can neither run or hide from the harsh effects of being suspended from the practice of law." Section 27, Rule 138 of the Rules of Court provides that a member of the bar may be removed or suspended from his office as attorney for willful disobedience of any lawful order of a superior court. In this case, Atty. Pagatpatan was ordered suspended from the practice of law on June 15, 2005, and there is no order to lift the suspension of Atty. Pagatpatan. Yet despite this he has continued practicing law for over thirteen (13) years, which tantamounts to willful disobedience. Thus, the IBP recommended Atty. Pagatpatan's suspension for three (3) years with a warning that a repetition of the same will warrant a more severe penalty.

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[6] *Id.* at 363-381.

In a resolution dated July 12, 2018,[7] the Board of Governors of the IBP modified the recommended penalty to suspension from the practice of law for a period of three (3) years, after serving his previous suspension from the practice of law for two (2) years.

Ruling of the Court

This Court cannot subscribe to Atty. Pagatpatan's claims that he is merely espousing his clients' cause in writing the letter-request for investigation of Fr. Zafra. On record, We find that Atty. Pagatpatan admits to writing the letter to the Bishop of the Diocese of Tandag, Surigao Del Sur in order to resolve the *estafa* case since settlement proceedings with the regular courts proved to be futile.[8] To Our mind, Atty. Pagatpatan's letter-request was not based on a sincere purpose to discipline Fr. Zafra for his actions, but mainly to bring threat to Fr. Zafra and force him to settle the *estafa* case filed against his clients. Atty. Pagatpatan did not want the *estafa* case to proceed to a full-blown trial. On many occasions, this Court has reminded that lawyers are duty-bound "to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged."[9] This is in keeping with the dignity of the legal profession. It is of no consequence that the letter of Atty. Pagatpatan is filed with the Bishop of Diocese of Tandag, Surigao Del Sur. Pagatpatan, as a member of the bar, is an "oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and **whose conduct ought to be and must be scrupulously observant of law and ethics.**" This Court finds that Atty. Pagatpatan was motivated by malice in writing said letter. However, disbarment, as prayed for by Fr. Zafra, is a penalty

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[7] *Id.* at 361-362.

[8] *Id.* at 85.

[9] Section 20(f), Rule 138 of the Rules of Court.

too severe for said action considering the facts show that Atty. Pagatpatan is only guilty of simple misconduct.

The more pressing issue to be tackled in this case is the fact that Atty. Pagatpatan has been practicing law despite the issuance of a suspension order by this Court on June 15, 2005. There were no records showing that he served said suspension or moved to lift said order because Atty. Pagatpatan, himself, admits that he continued practicing the legal profession notwithstanding said order.

Section 27, Rule 138 of the Rules of Court provides that:

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

On record,[10] Atty. Pagatpatan had been representing party litigants in court from 2005 until the instant case was filed before the IBP in 2016. Atty. Pagatpatan has made a mockery of this Court's authority by defying this Court's suspension order for over eleven (11) years. If Fr. Zafra had not filed the instant case, Atty. Pagatpatan would have continued disregarding the suspension order of this Court. His actions clearly constitute gross misconduct as defined under Section 27, Rule 138 of the Rules of Court, which is a sufficient cause for suspension or disbarment.

This Court emphasizes that the practice of law is not a right but a mere privilege and, as such, must bow to the inherent regulatory power of the Supreme Court to exact compliance

[10] *Supra* note 4.

with the lawyer's public responsibilities.[11] Whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of his clients and of the public, it becomes not only the right but also the duty of the Supreme Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw that privilege.[12]

The penalty of suspension or disbarment is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. Atty. Pagatpatan's acts in wantonly disobeying his duties as an officer of the court show utter disrespect for the Court and the legal profession. Therefore, his disbarment is warranted.

WHEREFORE, premises considered, respondent Attorney Renato B. Pagatpatan is:

1) **GUILTY** of **SIMPLE MISCONDUCT** and **FINED** ₱5,000.00 for his unethical behavior in writing a letter to the Bishop of the Diocese of Tandag, Surigao Del Sur against complainant Reverend Father Jose P. Zafra III; and

2) **DISBARRED** from the practice of law effective immediately upon receipt of this Resolution.

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

SO ORDERED.

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[11] See *Maniago v. Atty. De Dios*, A.C. No. 7472, March 30, 2010, 617 SCRA 142, 148 citing *Letter of Atty. Cecilio Y. Arevalo, Jr., Requesting Exemption from Payment of IBP Dues*, B.M. No. 1370, May 9, 2005, 458 SCRA 209, 216.

[12] *Maniago v. De Dios*, A.C. No. 7472, March 30, 2010, 617 SCRA 142, 148 citing *Hernandez v. Go*, A.C. No. 1526, January 31, 2005, 450 SCRA 1, 9.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Carandang, and *Lazaro-Javier, JJ*., concur.

Jardeleza, *J.*, on official business.

Reyes, J. Jr., *J.,* on official leave.

Hernando, J., on leave.

EN BANC

[A.M. No. P-19-3919. April 2, 2019]
(formerly OCA IPI No. 11-3630-P)

IONE BETHELDA C. RAMOS, *complainant, vs.* **REBA A. BELIGOLO, Court Stenographer III of the Municipal Trial Court in Cities, Malaybalay City, Bukidnon,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; MANDATED TO PERFORM THEIR OFFICIAL DUTIES PROPERLY AND WITH DILIGENCE. — Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that "[c]ourt personnel shall at all times perform official duties properly and with diligence." The Court has repeatedly emphasized that the "[t]he conduct of every person connected with the administration of justice, from the presiding judge to the lowliest clerk, is circumscribed with a heavy burden of responsibility. All public officers are accountable to the people at all times and must perform their duties and responsibilities with utmost efficiency and competence." "Any task given to

an employee of the judiciary, however menial it may be, must be done in the most prompt and diligent way."

2. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; DEFINED AS THE FAILURE OF AN EMPLOYEE TO GIVE PROPER ATTENTION TO A REQUIRED TASK OR TO DISCHARGE A DUTY DUE TO CARELESSNESS OR INDIFFERENCE; PENALTY IN CASE AT BAR. — In the case at bar, Beligolo does not dispute that it was her task to prepare the Order of Referral and that she failed to perform the same. As such, she should be held administratively liable for Simple Neglect of Duty, which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. Notably, this conclusion holds true despite the fact that the parties eventually obtained the requisite Order of Referral to the PMC and underwent mediation albeit unsuccessfully. Under the Uniform Rules on Administrative Cases in the Civil Service, Simple Neglect of Duty is a less grave offense punishable by suspension or a period of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from service for the second offense. Since Beligolo had previously been found administrative liable for Simple Neglect of Duty in A.M. No. P-13-3154 for her failure to submit stenographic notes within the prescribed period, the penalty of dismissal from service appears to be warranted. Nevertheless, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy. Thus, in *Re: Illegal and Unauthorized Digging and Excavation Activities inside the Supreme Court Compound, Baguio City*, wherein a Court employee was found liable for Simple Neglect of Duty for the second time, the Court penalized him with suspension for a period of two (2) years without pay instead of dismissal from service, considering his long years of service in the Judiciary. Similarly, the Court, in this case, finds it proper to temper the penalty to be imposed on Beligolo in view of her service in the judiciary for almost fifteen (15) years, and thereby suspends her instead for a period of two (2) years without pay, with warning against the commission of the same or similar offense.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a Complaint[1] dated March 21, 2011 filed by complainant Ione Bethelda C. Ramos (Ramos) charging respondent Reba A. Beligolo (Beligolo), Court Stenographer III, Municipal Trial Court in Cities, Malaybalay City, Bukidnon (MTCC) with Grave Misconduct and Conduct Unbecoming of a Court Employee.

The Facts

Ramos was the attorney-in-fact of Rogelio Tamin, the plaintiff in the unlawful detainer case entitled "*Rogelio E. Tamin, represented by Attorney-in-Fact Ione Bethelda C. Ramos v. Bernadeth Lavina and Mildred Lavina*," docketed as Civil Case No. 2185, pending before the MTCC. On February 25, 2011, then Acting Presiding Judge Mariflo S. Agreda (Judge Agreda) issued an order in open court directing the parties in the said civil case to appear before the Philippine Mediation Center (PMC) on March 17, 2011, and to obtain an order of referral from the court prior to their appearance.[2] Pursuant to the said directive, Ramos made several follow-ups to the court for the issuance of the same, but to no avail.[3]

Two (2) days before the scheduled mediation, or on March 15, 2011, Ramos visited the court once more, to secure the said order. Upon her inquiry, the clerk of court looked for the records of the case then inquired about it from Beligolo, who "*sarcastically answered that she was not able to make the [o]rder of [r]eferral*."[4] The clerk of court then informed Ramos that the order could not be signed since Judge Agreda was not scheduled to report for work that day. Ramos alleged that while

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

[2] See *id*. at 2. See also *id*. at 36.

[3] *Id*.

[4] *Id*.

the clerk of court was talking, Beligolo "*suddenly interrupted in an unruly and highly combative tone*" and remarked, "*[w]ell, they'd better appear before the PMC because if they won't, that is their problem.*" Thereafter, Beligolo got into an argument with the clerk of court. Ramos averred that she kept her cool, but Beligolo kept making unsavory and offensive remarks. Ramos added that due to Beligolo's negligence, the parties were not able to appear before the PMC on the scheduled date.[5]

In her Answer,[6] Beligolo admitted that Judge Agreda instructed the parties to follow-up the order of referral from the court.[7] She contended, however, that there was an internal agreement in their office that "*the [c]lerk of [c]ourt may issue the order of referral*" or delegate the task to other court employees while the stenographers are still attending the hearings. Hence, Beligolo wondered why the clerk of court did not issue the order of referral to the parties while Judge Agreda was in session so as to solve the problem early on.[8] Beligolo also averred that Ramos neither asked nor approached her about the subject order. She claimed that she honestly believed that the order of referral had already been given to the parties based on her assumption that the task had been delegated to and accomplished by another court employee to avoid delay.[9] Nevertheless, she pointed out that an Order of Referral[10] dated March 24, 2011 was eventually issued to the parties. This notwithstanding, the mediation before the PMC was unsuccessful.[11]

Beligolo narrated that when she was summoned by the city mayor after Ramos had reported the incident to him, she had already asked for forgiveness, but the latter still filed several

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[5] *Id*. at 2-3. See also *id*. at 36-37.

[6] Dated August 3, 2011; *id*. at 5-14.

[7] See *id*. at 6.

[8] See *id*.

[9] *Id*. at 6-7.

[10] *Id.* at 29. Signed by Acting Presiding Judge Mariflo S. Agreda.

[11] See *id.* at 11.

complaints against her before the Office of Court Administrator (OCA), the City Prosecutor's Office, and the Civil Service Commission.[12]

The OCA's Report and Recommendation

In a Report[13] dated October 23, 2018, the OCA recommended that Beligolo be held administratively liable for Simple Neglect of Duty, and accordingly, be fined in the amount of ₱10,000.00, with a stern warning that a repetition of the same offense shall be dealt with more severely.[14]

The OCA found that Beligolo's failure to prepare the Order of Referral constituted Simple Neglect of Duty. It noted that Beligolo did not deny that the preparation of such document was her task, and thus, it was imprudent of her to assume that another court employee had already accomplished it. Due to her inattention, the mediation proceedings was rescheduled to the prejudice of the parties.[15]

The OCA clarified that Beligolo's act did not constitute Grave Misconduct because her transgression was neither unlawful nor in gross negligence of duty nor tainted with corruption or willful intent to violate the law or to disregard established rules. It likewise found that the imputation of conduct unbecoming of a court employee must fail because no evidence was presented to prove Ramos's assertion that Beligolo exhibited irate, sarcastic, and disrespectful behavior.[16]

In recommending the penalty to be imposed, the OCA pointed out that Beligolo had previously been found guilty of Simple Neglect of Duty in A.M. No. P-13-3154[17] and had been ordered

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[12] See *id*. at 8.

[13] *Id.* at 36-41. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[14] *Id*. at 40-41.

[15] *Id*. at 39.

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

[17] See *Gamolo, Jr. v. Beligolo*, A.M. No. P-13-3154 (Formerly OCA IPI No. 10-3470-P), March 7, 2018.

to pay a fine of ₱5,000.00. The penalty for a second offense of simple neglect of duty is dismissal from service. However, the OCA recommended that the penalty be mitigated and a fine be imposed instead, absent any showing that Beligolo committed the infraction in bad faith or with fraud.[18]

The Issue Before the Court

The issue before the Court is whether or not Beligolo should be held administratively liable for simple neglect of duty.

The Court's Ruling

The Court adopts the findings and the recommendation of the OCA except as to the recommended penalty.

Preliminarily, records show that no evidence was presented to support Ramos's allegation as regards Beligolo's irate, sarcastic, and disrespectful behavior to render her liable for Conduct Unbecoming of a Court Employee. Nevertheless, she is administratively liable for failing to prepare the Order of Referral in Civil Case No. 2185.

Section 1, Canon IV of the Code of Conduct for Court Personnel[19] mandates that "[c]ourt personnel shall at all times perform official duties properly and with diligence." The Court has repeatedly emphasized that the "[t]he conduct of every person connected with the administration of justice, from the presiding judge to the lowliest clerk, is circumscribed with a heavy burden of responsibility. All public officers are accountable to the people at all times and must perform their duties and responsibilities with utmost efficiency and competence."[20] "Any task given to an employee of the judiciary, however menial it may be, must be done in the most prompt and diligent way."[21]

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[18] *Rollo*, pp. 40-41.

[19] A.M. No. 03-06-13-SC (June 1, 2004).

[20] *Baguio v. Lacuna*, A.M. No. P-17-3709, June 19, 2017, 827 SCRA 195, 202-203, citing *Seangio v. Parce*, 553 Phil. 697, 709-710 (2007).

[21] *Re: Report of Atty. Pabello, Chief of Office, Office of Administrative Services-OCA*, 763 Phil. 196, 203 (2015), citing *Contreras v. Monge*, 617 Phil. 30, 35 (2009).

In the case at bar, Beligolo does not dispute that it was her task to prepare the Order of Referral and that she failed to perform the same. As such, she should be held administratively liable for Simple Neglect of Duty, which is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference.[22] Notably, this conclusion holds true despite the fact that the parties eventually obtained the requisite Order of Referral to the PMC and underwent mediation albeit unsuccessfully.

Under the Uniform Rules on Administrative Cases in the Civil Service,[23] Simple Neglect of Duty is a less grave offense punishable by suspension for a period of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from service for the second offense. Since Beligolo had previously been found administratively liable for Simple Neglect of Duty in A.M. No. P-13-3154[24] for her failure to submit stenographic notes within the prescribed period, the penalty of dismissal from service appears to be warranted.

Nevertheless, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy.[25] Thus, in *Re: Illegal and Unauthorized Digging and Excavation Activities inside the Supreme Court Compound, Baguio City*,[26] wherein a Court employee was found liable for Simple Neglect of Duty for the second time, the Court penalized him with suspension for a period of two (2) years without pay instead of dismissal from service, considering his long years of service in the Judiciary.[27] Similarly, the Court, in this case, finds it proper to temper the

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[22] See *OCA v. Viesca*, 758 Phil. 16, 26 (2015).

[23] CSC Resolution No. 99-1936 (August 31, 1999).

[24] *Supra* note 17.

[25] *Cabigao v. Nery*, 719 Phil. 475, 484 (2013); citation omitted.

[26] A.M. Nos. 2016-03-SC and 16-06-07-SC, February 21, 2017, 818 SCRA 185.

[27] See *id.* at 195-196.

penalty to be imposed on Beligolo in view of her service in the judiciary for almost fifteen (15) years,[28] and thereby suspends her instead for a period of two (2) years without pay, with warning against the commission of the same or similar offense.

As a final note, it bears stressing that "[p]ublic officers must be accountable to the people at all times and serve them with the utmost degree of responsibility and efficiency. Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. It is the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice."[29]

WHEREFORE, respondent Reba A. Beligolo (Beligolo), Court Stenographer III, Municipal Trial Court in Cities, Malaybalay City, Bukidnon, is found **GUILTY** of Simple Neglect of Duty, and is therefore, **SUSPENDED** for a period of two (2) years without pay. She is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be attached to the personal record of Beligolo.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Carandang, and *Lazaro-Javier, JJ*., concur.

Jardeleza, *J*., on official business.

Reyes, J. Jr., *J*., on official leave.

Hernando, J., on leave.

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[28] *Rollo*, p. 10.

[29] See *OCA v. Saguyod*, A.M. No. P-17-3705, February 6, 2018; citation omitted.

EN BANC

[G.R. No. 210500. April 2, 2019]

KILUSANG MAYO UNO, represented by its Secretary General ROGELIO SOLUTA; REP. FERNANDO HICAP for himself and as Representative of the ANAKPAWIS PARTY-LIST; CENTER FOR TRADE UNION AND HUMAN RIGHTS, represented by its Executive Director DAISY ARAGO; JOSELITO USTAREZ and SALVADOR CARRANZA, for themselves and in representation of the NATIONAL FEDERATION OF LABOR UNIONS-KMU; NENITA GONZAGA, PRESCILA A. MANIQUIZ, REDEN ALCANTARA, *petitioners, vs.* **HON. BENIGNO SIMEON C. AQUINO III, HON. PAQUITO N. OCHOA, JR., SOCIAL SECURITY COMMISSION, SOCIAL SECURITY SYSTEM, and EMILIO S. DE QUIROS, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW, REQUISITES FOR THE EXERCISE OF; EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY AS THE MOST IMPORTANT REQUISITE, EXPLAINED; PETITIONER MUST ESTABLISH THAT THERE IS A LEGALLY DEMANDABLE AND ENFORCEABLE RIGHT UNDER THE CONSTITUTION. — Petitioners must, x x x, comply with the requisites for the exercise of the power of judicial review: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case. x x x Most important in this list of requisites is the existence of an actual case or controversy. In every exercise of judicial power, whether in the traditional or expanded sense, this is an absolute necessity. There is an actual case or controversy

if there is a "conflict of legal right, an opposite legal claims susceptible of judicial resolution." A petitioner bringing a case before this Court must establish that there is a legally demandable and enforceable right under the Constitution. There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant. This requirement goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.

2. **ID.; ID.; ID.; ID.; ID.; PETITIONERS FAILED TO SPECIFY HOW THE ASSAILED SOCIAL SECURITY SYSTEM (SSS) ISSUANCES INCREASING MEMBERS' CONTRIBUTION VIOLATED THE WORKERS' CONSTITUTIONAL RIGHT. —** [P]etitioners' allegations present violations of rights provided for under the Constitution on the protection of workers, and promotion of social justice. They likewise assert that respondents Social Security Commission and Social Security System acted beyond the scope of their powers. This Court, however, notes that petitioners failed to prove how the assailed issuances violated workers' constitutional rights such that it would warrant a judicial review. Petitioners cannot merely cite and rely on the Constitution without specifying how these rights translate to being legally entitled to a fixed amount and proportion of Social Security System contributions.

3. **ID.; ID.; ID.; ID.; TEST TO DETERMINE WHEN A CASE IS RIPE FOR ADJUDICATION. —** A case is ripe for adjudication when the challenged governmental act is a *completed action* such that there is a direct, concrete, and adverse effect on the petitioner. It is, thus, required that something had been performed by the government branch or instrumentality before the court may step in, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. In connection with acts of administrative agencies, ripeness is ensured under the doctrine of exhaustion of administrative remedies. Courts may only take

cognizance of a case or controversy if the petitioner has exhausted all remedies available to it under the law. The doctrine ensures that the administrative agency exercised its power to its full extent, including its authority to correct or reconsider its actions. It would, thus, be premature for courts to take cognizance of the case prior to the exhaustion of remedies, not to mention it would violate the principle of separation of powers.

4. ID.; ADMINISTRATIVE LAW; SOCIAL SECURITY ACT (RA 8282); MANDATES THE AGGRIEVED PARTY TO FIRST EXHAUST ALL ADMINISTRATIVE REMEDIES AVAILABLE BEFORE GOING TO COURT; PETITIONERS FAILED IN THIS REGARD. — [I]t is clear that petitioners failed to exhaust their administrative remedies. Petitioners allege that they "have no appeal nor any plain, speedy[,] and adequate remedy under the ordinary course of law except through the instant Petition." However, Sections 4 and 5 of the Social Security Act are clear that the Social Security Commission has jurisdiction over any dispute arising from the law regarding coverage, benefits, contributions, and penalties. The law further provides that the aggrieved party must first exhaust all administrative remedies available before seeking review from the courts[.] x x x [N]othing in the records shows that petitioners filed a case before the Social Security Commission or asked for a reconsideration of the assailed issuances. Moreover, petitioners did not even try to show that their Petition falls under one (1) of the exceptions to the doctrine of exhaustion of administrative remedies[.] x x x The doctrine of exhaustion of administrative remedies is settled in jurisprudence. As early as 1967, this Court has recognized the requirement that parties must exhaust all administrative remedies available before the Social Security Commission. The Social Security Commission, then, must be given a chance to render a decision on the issue, or to correct any alleged mistake or error, before the courts can exercise their power of judicial review. x x x Thus, petitioners have prematurely invoked this Court's power of judicial review in violation of the doctrine of exhaustion of administrative remedies.

5. ID.; ID.; ID.; ID.; PURSUANT TO THE DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION, PETITIONERS SHOULD HAVE FIRST FILED THEIR CASE BEFORE RESPONDENT SOCIAL SECURITY

COMMISSION. — [P]etitioners failed to abide by the principle of primary administrative jurisdiction. x x x Here, respondent Social Security Commission qualifies as an administrative tribunal, given sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. This is evident from the qualifications of its members and its powers and duties under Sections 3 and 4 of the Social Security Act[.] x x x Thus, under the doctrine of primary administrative jurisdiction, petitioners should have first filed their case before respondent Social Security Commission.

6. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW, REQUISITES FOR THE EXERCISE OF; MOOT CASES PREVENT THE ACTUAL CASE OR CONTROVERSY FROM BECOMING JUSTICIABLE; WHILE THE ISSUE ON THE ASSAILED ISSUANCES' VALIDITY MAY BE RENDERED MOOT, THE COURT MAY RULE NONETHELESS SINCE ALL THE RECOGNIZED EXCEPTIONS ARE PRESENT IN THIS CASE. — As for mootness, as earlier mentioned, moot cases prevent the actual case or controversy from becoming justiciable. Courts cannot render judgment after the issue has already been resolved by or through external developments. This entails that they can no longer grant or deny the relief prayed for by the complaining party. This is consistent with this Court's deference to the powers of the other branches of government. This Court must be wary that it is ruling on *existing facts* before it invalidates any act or rule. x x x [S]ince respondent Social Security Commission is set to issue new resolutions for the Social Security System members' contributions, the issue on the assailed issuances' validity may be rendered moot. Nonetheless, all the discussed exceptions are present: (1) petitioners raise violations of constitutional rights; (2) the situation is of paramount public interest; (3) there is a need to guide the bench, the bar, and the public on the power of respondent Social Security Commission to increase the contributions; and (4) the matter is capable of repetition yet evading review, as it involves a question of law that can recur. Thus, this Court may rule on this case.

7. ID.; ID.; ID.; ID.; LEGAL STANDING, DEFINED; INSTRUCTIVE GUIDES TO DETERMINE WHETHER A

MATTER IS OF TRANSCENDENTAL IMPORTANCE; AS THE ISSUE OF THE VALIDITY OF INCREASE IN SSS CONTRIBUTION IS OF TRANSCENDENTAL IMPORTANCE, THE REQUIRED LEGAL STANDING FOR PETITIONERS MUST BE RELAXED. — Legal standing is the personal and substantial interest of a party in a case "such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance." x x x [J]urisprudence is replete with instances when a liberal approach to determining legal standing was adopted. This has allowed "ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations[,] and rulings." This Court has provided instructive guides to determine whether a matter 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 the questions being raised." Here, the assailed issuances set the new contribution rate and its date of effectivity. The increase in contributions has been in effect since January 2014. As such, the issue of the validity of increase in contributions is of transcendental importance. The required legal standing for petitioners must be relaxed. It is worth noting that this issue affects millions of Filipinos working here and abroad. A substantial portion of members' salaries goes to the Social Security System fund. To delay the resolution of such an important issue would be a great disservice to this Court's duty enshrined in the Constitution.

8. ID.; ADMINISTRATIVE LAW; SOCIAL SECURITY ACT (RA 8282); VALIDLY DELEGATED TO SOCIAL SECURITY COMMISSION THE POWER TO FIX CONTRIBUTION RATE AND THE AMOUNTS OF MONTHLY SALARY CREDITS. — [T]he Social Security Act has validly delegated the power to fix the contribution rate and the minimum and maximum amounts for the monthly salary credits. It is within the scope of the Social Security Commission's power to fix them, as clearly laid out in the law. x x x On the question of the validity of the exercise of respondents Social

Security Commission and Social Security System's powers, this Court disagrees with petitioners' argument that the increase in contribution rate is prohibited by Section 4(b)(2) of the Social Security Act. x x x The provisos in Section 4(b)(2) must not be read in isolation, but within the context of the provision, as well as the policy of the law. The two (2) provisos refer to the last part of Section 4(b)(2), or on the System's duty to "provide for feasible increases in benefits every four (4) years, including the addition of new ones[.]" Section 4(b)(2) states that the "actuarial soundness of the reserve fund shall be guaranteed" in providing any increase in benefits. As established earlier, Congress has expressly provided the Social Security System, through the Social Security Commission, power to fix the minimum and maximum monthly salary credits and the contribution rate.

9. ID.; CONSTITUTIONAL LAW; POLICE POWER; REQUISITES FOR A VALID EXERCISE; THE INCREASES IN THE ASSAILED SSS ISSUANCES ARE REASONABLY NECESSARY TO OBSERVE THE CONSTITUTIONAL MANDATE OF PROMOTING SOCIAL JUSTICE UNDER RA 8282. — To be a valid exercise of police power, there must be a lawful subject and the power is exercised through lawful means. The second requisite requires a reasonable relation between the purpose and the means. Using the parameters above, we hold that the increases reflected in the issuances of respondents are reasonably necessary to observe the constitutional mandate of promoting social justice under the Social Security Act. The public interest involved here refers to the State's goal of establishing, developing, promoting, and perfecting a sound and viable tax-exempt social security system. To achieve this, the Social Security System and the Social Security Commission are empowered to adjust from time to time the contribution rate and the monthly salary credits. Given the past increases since the inception of the law, the contribution rate increase of 0.6% applied to the corresponding monthly salary credit does not scream of unreasonableness or injustice.

10. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; GRAVE ABUSE OF DISCRETION, DEFINED; AS RESPONDENTS WERE ONLY COMPLYING WITH THEIR DUTIES UNDER RA 8282 WHEN THEY ISSUED THE ASSAILED ISSUANCES,

NO GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THEM. — Grave abuse of discretion denotes a "capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." Any act of a government branch, agency, or instrumentality that violates a statute or a treaty is grave abuse of discretion. However, grave abuse of discretion pertains to acts of discretion exercised in areas *outside* an agency's granted authority and, thus, abusing the power granted to it. Moreover, it is the agency's exercise of its power that is examined and adjudged, not whether its application of the law is correct. Here, respondents were only complying with their duties under the Social Security Act when they issued the assailed issuances. There is no showing that respondents went beyond the powers under the law that amounts to lack of or in excess of their jurisdiction. Petitioners' claims are unsubstantiated and, as such, merit no finding of grave abuse of discretion.

APPEARANCES OF COUNSEL

Pro-Labor Legal Assistance Office for petitioners.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

This Court is called to determine the validity of the Social Security System premium hike, which took effect in January 2014. The case also involves the application of doctrines on judicial review, valid delegation of powers, and the exercise of police power.

This resolves a Petition for *Certiorari* and Prohibition,[1] praying that a temporary restraining order and/or writ of preliminary

[1] *Rollo*, pp. 3-31.

injunction be issued to annul the Social Security System premium hike embodied in the following issuances: (1) Resolution No. 262-s. 2013 dated April 19, 2013;[2] (2) Resolution No. 711-s. 2013 dated September 20, 2013;[3] and (3) Circular No. 2013-010[4] dated October 2, 2013 (collectively, the assailed issuances). Kilusang Mayo Uno, together with representatives from recognized labor centers, labor federations, party-list groups, and Social Security System members (collectively, Kilusang Mayo Uno, et al.), filed the case against government officials and agencies involved in issuing the assailed issuances.

On April 19, 2013, the Social Security Commission issued Resolution No. 262-s. 2013,[5] which provided an increase in: (1) the Social Security System members' contribution rate from 10.4% to 11%; and (2) the maximum monthly salary credit from ₱15,000.00 to ₱16,000.00. The increase was made subject to the approval of the President of the Philippines.[6]

In a September 6, 2013 Memorandum, the President approved the increase.[7]

On September 20, 2013, the Social Security Commission issued Resolution No. 711-s. 2013,[8] which approved, among others, the increase in contribution rate and maximum monthly salary credit.

On October 2, 2013, the Social Security System, through President and Chief Executive Officer Emilio S. De Quiros, Jr., issued Circular No. 2013-010,[9] which provided the revised schedule of contributions that would be in effect in January

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[2] *Id.* at 72.

[3] *Id.* at 73.

[4] *Id.* at 74.

[5] *Id.* at 72.

[6] *Id.*

[7] *Id.* at 73.

[8] *Id.*

[9] *Id.* at 74.

2014. Per the circular, the employer and the employee shall *equally* shoulder the 0.6% increase in contributions. Thus, the employer would pay a contribution rate of 7.37% (from 7.07%); the employee, 3.63% (from 3.33%).

On January 10, 2014, Kilusang Mayo Uno, *et al*. filed this Petition for *Certiorari* and Prohibition,[10] questioning the validity of the assailed issuances.

Maintaining that a majority of them are Social Security System members directly affected by the premium hike, petitioners assert having the requisite *locus standi* to file the Petition.[11] Citing *David v. Macapagal-Arroyo*,[12] they further argue that the other petitioners' legal personality arises from the transcendental importance of the Petition's issues.[13]

Petitioners claim that the assailed issuances were issued per an unlawful delegation of power to respondent Social Security Commission based on Republic Act No. 8282, or the Social Security Act. In particular, Section 18[14] allegedly offers vague

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[10] *Rollo*, pp. 3-31.

[11] *Id.* at 9.

[12] 522 Phil. 705 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[13] *Rollo*, p. 10.

[14] Rep. Act No. 8282 (1997), Sec. 18 provides:

SECTION 18. *Employee's Contribution*. — (a) Beginning as of the last day of the calendar month when an employee's compulsory coverage takes effect and every month thereafter during his employment, the employer shall deduct and withhold from such employee's monthly salary, wage, compensation or earnings, the employee's contribution in an amount corresponding to his salary, wage, compensation or earnings during the month in accordance with the following schedule:

. . . . . .

The maximum monthly salary credit shall be Nine thousand pesos (₱9,000.00) effective January Nineteen hundred and ninety six (1996): *Provided*, That it shall be increased by One thousand pesos (₱1,000.00) every year thereafter until it shall have reached Twelve thousand pesos (₱12,000.00) by Nineteen hundred and ninety nine (1999): *Provided, further, That the minimum and maximum monthly salary credits as well as the rate of contributions may be fixed from time to time by the Commission through rules and regulations*

and unclear standards, and are incomplete in its terms and conditions. This provision, they claim, has allowed respondent Social Security Commission to fix contribution rates from time to time, subject to the President's approval. Petitioners claim that the delegation of the power had no adequate legal guidelines to map out the boundaries of the delegate's authority.[15]

In addition, petitioners claim that the increase in contribution rate violates Section 4(b)(2) of the Social Security Act,[16] which states that the "increases in benefits shall not require any increase in the rate of contribution[.]" They argue that this proviso prohibits the increase in contributions if there was no corresponding increase in benefits.[17]

Petitioners then argue that the increase in contributions is an invalid exercise of police power for not being reasonably necessary for the attainment of the purpose sought, as well as

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taking into consideration actuarial calculations and rate of benefits, subject to the approval of the President of the Philippines. (Emphasis supplied)

[15] *Rollo*, pp. 12-17.

[16] Rep. Act No. 8282 (1997), Sec. 4 provides:

SECTION 4. *Powers and Duties of the Commission and SSS*. — (a) The Commission. — For the attainment of its main objectives as set forth in Section 2 hereof, the Commission shall have the following powers and duties:

. . . . . .

(b) The Social Security System. — Subject to the provision of Section four (4), paragraph seven (7) hereof, the SSS shall have the following powers and duties

. . . . . .

(2) To require the actuary to submit a valuation report on the SSS benefit program every four (4) years, or more frequently as may be necessary, to undertake the necessary actuarial studies and calculations concerning increases in benefits taking into account inflation and the financial stability of the SSS, and to provide for feasible increases in benefits every four (4) years, including the addition of new ones, under such rules and regulations as the Commission may adopt, subject to the approval of the President of the Philippines: Provided, That the actuarial soundness of the reserve fund shall be guaranteed: *Provided, further, That such increases in benefits shall not require any increase in the rate of contribution*[.] (Emphasis supplied)

[17] *Rollo*, p. 17.

for being unduly oppressive on the labor sector.[18] According to them, the Social Security System can extend actuarial life and decrease its unfunded liability without increasing the premiums they pay.[19]

Petitioners further insist that the revised ratio of contributions between employers and employees, per the assailed issuances, is grossly unjust to the working class and is beyond respondents' powers. They claim that for the purposes of justice and consistency, respondents should have maintained the 70%-30% ratio in the premium increase. Changing it, they add, is grossly unfair and detrimental to employees.[20]

Petitioners further emphasize that the State is required to protect the rights of workers and promote their welfare under the Constitution.[21]

Lastly, petitioners pray that a temporary restraining order and/or writ of preliminary injunction be issued to stop the implementation of the increase in contributions. They aver that stopping it is necessary to protect their substantive rights and interests. They point out that their earnings for food and other basic needs would be reduced and allocated instead to defraying the amount needed for contributions.[22]

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[18] *Id.* at 21. Petitioners cite *U.S. v. Toribio* (15 Phil. 85, 98 (1910) [Per *J*. Carson, First Division]) and *Fabie v. City of Manila* (21 Phil. 486, 490 (1912) [Per *J*. Carson, Second Division]) in stating the test for determining the validity of police power: "[(1)] [t]he interests of the public, generally, as distinguished from those of a particular class, require the exercise of the police power; [and] [(2)] [t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."

[19] *Id*. at 22. According to petitioners, as of June 2013, Social Security System assets were estimated to be about ₱368.788 billion. Moreover, the Social Security System has uncollected remittances from erring employers in the amount of ₱8.5 billion as of December 2010. See *rollo*, p. 7.

[20] *Id*. at 22-23.

[21] *Id*. at 20. Petitioners cite CONST., Art. II, Secs. 8, 9, 10, and 11.

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

The issues for this Court's resolution are:

First, whether or not this Court can exercise its power of judicial review;

Second, whether or not there is an actual case or controversy;

Third, whether or not the doctrine of exhaustion of administrative remedies applies;

Fourth, whether or not petitioners have legal standing to file the Petition; and

Finally, whether or not the assailed issuances were issued in violation of laws and with grave abuse of discretion.

In connection with the fifth issue, this Court further resolves:

First, whether or not the assailed issuances are void for having been issued under vague and unclear standards contained in the Social Security Act;

Second, whether or not the increase in Social Security System contributions is reasonably necessary for the attainment of the purpose sought and is unduly oppressive upon the labor sector; and

Finally, whether or not the revised ratio of contributions between employers and employees is grossly unjust to the working class and beyond respondent Social Security Commission's power to enact.

This Court denies the Petition for lack of merit.

I

Procedural infirmities attend the filing of this Petition. To begin with, former President Benigno Simeon C. Aquino III, as President of the Philippines, is improperly impleaded here.

The president is the head of the executive branch,[23] a co-equal of the judiciary under the Constitution. His or her

[23] See CONST. Sec. 17, Art. VII and 1987 ADM. CODE, Book III, Title I, Ch. 1, Sec. 1.

prerogative is entitled to respect from other branches of government.[24] Inter-branch courtesy[25] is but a consequence of the doctrine of separation of powers.[26]

As such, the president cannot be charged with any suit, civil or criminal in nature, during his or her incumbency in office. This is in line with the doctrine of the president's immunity from suit.[27]

In *David*,[28] this Court explained why it is improper to implead the incumbent President of the Philippines. The doctrine has both policy and practical considerations:

The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

[24] The president's and the executive branch's prerogative has been recognized in several cases. In *Belgica v. Ochoa* (721 Phil. 416, 536 (2013) [Per *J*. Perlas-Bernabe, *En Banc*]), this Court partially granted the petitions and held that "unless the Constitution provides otherwise, the Executive department should exclusively exercise all roles and prerogatives which go into the implementation of the national budget as provided under the GAA as well as any other appropriation law." In *Apex Mining Company, Inc. v. Southeast Mindanao Gold Mining Corp*., (620 Phil. 100, 134-154 (2009) [Per *J*. Chico-Nazario, *En Banc* Resolution]), this Court held that the Department of Environment and Natural Resources is "the government agency concerned that has the prerogative to conduct prospecting, exploration and exploitation of such reserved lands. . . . Hence, the Court cannot dictate this co-equal branch to choose which of the two options to select. It is the sole prerogative of the executive department to undertake directly or to award the mining operations of the contested area." See also *J*. Tinga, Separate Opinion in *Senate of the Philippines v. Ermita*, 527 Phil. 500 (2006) [Per *J*. Carpio Morales, *En Banc*].

[25] See *Cawaling, Jr. v. Commission on Elections*, 420 Phil. 524 (2001) [Per *J*. Sandoval-Gutierrez, *En Banc*] citing *Garcia v. Executive Secretary*, 281 Phil. 572 (1991) [Per *J*. Cruz, *En Banc*].

[26] See *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per *J*. Laurel, *En Banc*]; See also *C.J*. Corona, Concurring Opinion in *Galicto v. Aquino III*, 683 Phil. 141 (2012) [Per *J*. Brion, *En Banc*].

[27] See *Rubrico v. Macapagal-Arroyo*, 627 Phil. 37 (2010) [Per *J*. Velasco, Jr., *En Banc*] citing *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

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

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in *any* civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[29] (Emphasis in the original, citations omitted)

As to the propriety of seeking redress from this Court, it is best to be guided by the power of judicial review as provided in Article VIII, Section 1 of the 1987 Constitution:

ARTICLE VIII
Judicial Department

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)

This Court has discussed in several cases how the 1987 Constitution has expanded the scope of judicial power from its traditional understanding. As such, courts are not only expected to "settle actual controversies involving rights which are legally demandable and enforceable[,]"[30] but are also empowered to

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[29] *Id*. at 763-764.

[30] *Araullo v. Aquino III*, 737 Phil. 457, 525 (2014) [Per J. Bersamin, *En Banc*].

determine if any government branch or instrumentality has acted beyond the scope of its powers, such that there is grave abuse of discretion.[31]

This development of the courts' judicial power arose from the use and abuse of the political question doctrine during the martial law era under former President Ferdinand Marcos. In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,[32] this Court held:

> In *Francisco v. The House of Representatives*, we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded *certiorari* jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion[:]
>
> . . . . . .
>
> The first section starts with a sentence copied from former Constitutions. It says:
>
> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> I suppose nobody can question it.
>
> The next provision is new in our constitutional law. I will read it first and explain.
>
> 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.

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[31] *Id*.

[32] 802 Phil. 116 (2016) [Per *J*. Brion, *En Banc*].

> Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime.
>
> . . . . . .
>
> Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.
>
> This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.[33] (Emphasis in the original, citations omitted)

Rule 65, Sections 1 and 2 of the Rules of Court provides remedies to address grave abuse of discretion by any government branch or instrumentality, particularly through petitions for *certiorari* and prohibition:

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[33] *Id*. at 137-138.

SECTION 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

SECTION 2. *Petition for Prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

While these provisions pertain to a tribunal's, board's, or an officer's exercise of discretion in judicial, quasi-judicial, or ministerial functions, Rule 65 still applies to invoke the expanded scope of judicial power. In *Araullo v. Aquino III*,[34] this Court differentiated *certiorari* from prohibition, and clarified that Rule 65 is the remedy to "set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess

[34] 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial[,] or ministerial functions*."[35]

This Court further explained:

The present *Rules of Court* uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for certiorari and prohibition, and both are governed by Rule 65. . . .

The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:

. . . . . .

> The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in *Holy Spirit Homeowners Association, Inc. v. Defensor*:

> A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal,

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[35] *Id.* at 532.

> corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.
>
> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1, ...
>
> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[36] (Emphasis in the original, citations omitted)

[36] *Id.* at 528-531.

Here, petitioners filed a Petition for both *certiorari* and prohibition to determine whether respondents Social Security System and Social Security Commission committed grave abuse of discretion in releasing the assailed issuances. According to them, these issuances violated the provisions of the Constitution on the protection of workers, promotion of social justice, and respect for human rights.[37] They further claim that the assailed issuances are void for having been issued based on vague and unclear standards. They also argue that the increase in contributions is an invalid exercise of police power as it is not reasonably necessary and, thus, unduly oppressive to the labor sector. Lastly, they insist that the revised ratio in contributions is grossly unjust to the working class.[38]

Petitioners must, thus, comply with the requisites for the exercise of the power of judicial review: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[39]

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[37] *Rollo*, p. 20. CONST., Art. VIII, Secs. 9, 10, 11, and 18 provide:

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

SECTION 10. The State shall promote social justice in all phases of national development.

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

. . . . . .

SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[38] *Id*. at 11.

[39] *Araullo v. Aquino III*, 731 Phil. 457 (2014) [Per *J*. Bersamin, *En Banc*]. See also *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per *J*. Carpio Morales, *En Banc*]; *Garcia v. Executive Secretary*, 281 Phil. 572 (1991) [Per *J*. Cruz, *En Banc*] citing *Dumlao v. Commission on Elections*,

I (A)

Most important in this list of requisites is the existence of an actual case or controversy.[40] In every exercise of judicial power, whether in the traditional or expanded sense, this is an absolute necessity.

There is an actual case or controversy if there is a "conflict of legal right, an opposite legal claims susceptible of judicial resolution."[41] A petitioner bringing a case before this Court must establish that there is a legally demandable and enforceable right under the Constitution. There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant.[42]

This requirement goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.

In *Lozano v. Nograles*,[43] the petitions assailing House Resolution No. 1109 were dismissed due to the absence of an actual case or controversy. This Court held that the "determination of the nature, scope[,] and extent of the powers of government is the exclusive province of the judiciary, such

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184 Phil. 369 (1980) [Per *J.* Melencio-Herrera, *En Banc*]; *Corales v. Republic*, 716 Phil. 432 (2013) [Per *J.* Perez, *En Banc*].

[40] See CONST., Art. VIII, Sec. 1. See also *Dumlao v. Commission on Elections*, 184 Phil. 369, 377 (1980) [Per *J.* Melencio-Herrera, *En Banc*]. In *Dumlao*, this Court held that "[i]t is basic that the power of judicial review is limited to the determination of actual cases and controversies."

[41] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[42] *Id.*

[43] 607 Phil. 334 (2009) [Per *C.J.* Puno, *En Banc*].

that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its 'solemn and sacred obligation' under the Constitution."[44] The judiciary's awesome power of review is limited in application.[45]

Jurisprudence lays down guidelines in determining an actual case or controversy. In *Information Technology Foundation of the Philippines v. Commission on Elections*,[46] this Court required that "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."[47] Further, there must 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]

Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent *imagined possibilities* of abuse.

Hence, in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[49] this Court ruled:

> 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*

[44] *Id*. at 340.

[45] *Id*.

[46] 499 Phil. 281 (2005) [Per *C.J.* Panganiban, *En Banc*].

[47] *Id*. at 305.

[48] *Id*.

[49] 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

and merely imagined, . . . 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.[50] (Emphasis supplied, citations omitted)

In *Republic v. Roque*,[51] this Court further qualified the meaning of a justiciable controversy. In dismissing the Petition for declaratory relief before the Regional Trial Court, which assailed several provisions of the Human Security Act, we explained that justiciable controversy or ripening seeds refer to:

> . . . an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. *Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead*. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.[52] (Emphasis supplied, citations omitted)

The existence of an actual case or controversy depends on the allegations pleaded.[53]

Here, petitioners allege that the premium hike, through the assailed issuances, violates their rights as workers whose welfare is mandated to be protected under the Constitution.[54] They further allege that the issuances are grossly unjust to the working class and were issued beyond the scope of constitutional powers.[55]

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[50] *Id*. at 482-483.

[51] 718 Phil. 294 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

[52] *Id*. at 305.

[53] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., 802 Phil. 116 (2016) [Per *J*. Brion, *En Banc*].

[54] *Rollo*, p. 20 citing CONST., Art. II, Secs., 8, 9, 10, and 11.

[55] *Id*. at 22.

Thus, petitioners' allegations present violations of rights provided for under the Constitution on the protection of workers, and promotion of social justice.[56] They likewise assert that respondents Social Security Commission and Social Security System acted beyond the scope of their powers.

This Court, however, notes that petitioners failed to prove how the assailed issuances violated workers' constitutional rights such that it would warrant a judicial review. Petitioners cannot merely cite and rely on the Constitution without specifying how these rights translate to being legally entitled to a fixed amount and proportion of Social Security System contributions.

Moreover, an actual case or controversy requires that the right must be enforceable and legally demandable. A complaining party's right is, thus, affected by the rest of the requirements for the exercise of judicial power: (1) the issue's ripeness and prematurity; (2) the moot and academic principle; and (3) the party's standing.[57]

I (B)

A case is ripe for adjudication when the challenged governmental act is a *completed action* such that there is a direct, concrete, and adverse effect on the petitioner.[58] It is, thus, required that something had been performed by the government branch or instrumentality before the court may step in, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.[59]

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[56] *Id*. at 20.

[57] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., 802 Phil. 116 (2016) [Per *J*. Brion, *En Banc*].

[58] *Abakada Guro Party List vs. Purisima*, 584 Phil. 246 (2008) [Per *J*. Corona, *En Banc*].

[59] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003) [Per *J*. Carpio Morales, *En Banc*] citing *Tan v. Macapagal*, 150 Phil. 778 (1972) [Per *J*. Fernando, First Division].

In connection with acts of administrative agencies, ripeness is ensured under the doctrine of exhaustion of administrative remedies. Courts may only take cognizance of a case or controversy if the petitioner has exhausted all remedies available to it under the law. The doctrine ensures that the administrative agency exercised its power to its full extent, including its authority to correct or reconsider its actions. It would, thus, be premature for courts to take cognizance of the case prior to the exhaustion of remedies, not to mention it would violate the principle of separation of powers. Thus, in Rule 65 petitions, it is required that no other plain, speedy, or adequate remedy is available to the party. In *Association of Medical Clinics for Overseas Workers, Inc.*:

> The doctrine of exhaustion of administrative remedies applies to a petition for *certiorari*, regardless of the act of the administrative agency concerned, *i.e.*, whether the act concerns a quasi-judicial, or quasi-legislative function, or is purely regulatory.
>
> Consider in this regard that once an administrative agency has been empowered by Congress to undertake a sovereign function, the agency should be allowed to perform its function to the full extent that the law grants. This full extent covers the authority of superior officers in the administrative agencies to correct the actions of subordinates, or for collegial bodies to reconsider their own decisions on a motion for reconsideration. Premature judicial intervention would interfere with this administrative mandate, leaving administrative action incomplete; if allowed, such premature judicial action through a writ of *certiorari*, would be a usurpation that violates the separation of powers principle that underlies our Constitution.
>
> In every case, remedies within the agency's administrative process must be exhausted before external remedies can be applied. Thus, even if a governmental entity may have committed a grave abuse of discretion, litigants should, as a rule, first ask reconsideration from the body itself, or a review thereof before the agency concerned. This step ensures that by the time the grave abuse of discretion issue reaches the court, the administrative agency concerned would have fully exercised its jurisdiction and the court can focus its attention on the questions of law presented before it.

Additionally, ***the failure to exhaust administrative remedies affects the ripeness to adjudicate the constitutionality of a governmental act, which in turn affects the existence of the need for an actual case or controversy for the courts to exercise their power of judicial review.*** The need for ripeness — an aspect of the timing of a case or controversy — does not change regardless of whether the issue of constitutionality reaches the Court through the traditional means, or through the Court's expanded jurisdiction. In fact, separately from ripeness, one other concept pertaining to judicial review is intrinsically connected to it: the concept of a case being moot and academic.

Both these concepts relate to the timing of the presentation of a controversy before the Court — ripeness relates to its prematurity, while mootness relates to a belated or unnecessary judgment on the issues. The Court cannot preempt the actions of the parties, and neither should it (as a rule) render judgment after the issue has already been resolved by or through external developments.

The importance of timing in the exercise of judicial review highlights and reinforces the need for an actual case or controversy — an act that may violate a party's right. Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication. It is merely a hypothetical problem. The challenged act must have been accomplished or performed by either branch or instrumentality of government before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.

In these lights, a constitutional challenge, whether presented through the traditional route or through the Court's expanded jurisdiction, requires compliance with the ripeness requirement. In the case of administrative acts, ripeness manifests itself through compliance with the doctrine of exhaustion of administrative remedies.[60] (Emphasis in the original, citations omitted)

Here, it is clear that petitioners failed to exhaust their administrative remedies.

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[60] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., 802 Phil. 116, 144-147 (2016) [Per *J*. Brion, *En Banc*].

Petitioners allege that they "have no appeal nor any plain, speedy[,] and adequate remedy under the ordinary course of law except through the instant Petition."[61]

However, Sections 4 and 5 of the Social Security Act are clear that the Social Security Commission has jurisdiction over any dispute arising from the law regarding coverage, benefits, contributions, and penalties. The law further provides that the aggrieved party must first exhaust all administrative remedies available before seeking review from the courts:

SECTION 4. *Powers and Duties of the Commission and SSS.* — (a) The Commission. — For the attainment of its main objectives as set forth in Section 2 hereof, the Commission shall have the following powers and duties:

(1) To adopt, amend and rescind, subject to the approval of the President of the Philippines, such rules and regulations as may be necessary to carry out the provisions and purposes of this Act;

. . . .

SECTION 5. Settlement of Disputes. — *(a) Any dispute arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto,* ***shall*** *be cognizable by the Commission*, and any case filed with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission and decided within the mandatory period of twenty (20) days after the submission of the evidence. The filing, determination and settlement of disputes shall be governed by the rules and regulations promulgated by the Commission.

(b) *Appeal to Courts*. — Any decision of the Commission, in the absence of an appeal therefrom as herein provided, shall become final and executory fifteen (15) days after the date of notification, and *judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission*. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented by an attorney employed by the Commission, or when requested by

[61] *Rollo*, p. 4.

the Commission, by the Solicitor General or any public prosecutor. (Emphasis supplied)

In *Luzon Stevedoring Corporation v. Social Security Commission*,[62] this Court upheld the jurisdiction and competence of the Social Security Commission with regard to the grant of authority under the unambiguous provisions of the Republic Act No. 8282.[63] This Court stated:

> Section 5 of the Social Security Act . . . *on its face, would show that any dispute arising therein "with respect to coverage entitlement to benefits, collection and settlement of premium contributions and penalties thereon, or any other matter related thereto, shall be cognizable by the Commission* . . . ." On its face, support for the competence of respondent Commission to decide . . . would thus seem to be evident.[64] (Emphasis supplied, citations omitted)

In *Enorme v. Social Security System*,[65] this Court categorically sustained the Social Security Commission's exclusive power and jurisdiction to take cognizance of all disputes covered under the Social Security Act.[66] Consequently, plaintiffs must first

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[62] 145 Phil. 199 (1970) [Per *J*. Fernando, *En Banc*].

[63] In this case, the provision in issue was Section 5 of the Republic Act No. 1161, as amended by Republic Act No. 4857 (1966), which provides:

> SECTION 5. *Settlement of Claims*. — (a) Any dispute arising under this Act with respect to coverage, entitlement to benefits, collection and settlement of premium contributions and penalties thereon, or any other matter related thereto, shall be cognizable by the Commission, and any case filed with the Commission with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission, and decided within twenty days after the submission of the evidence. The filing, determination and settlement of claims shall be governed by the rules and regulations promulgated by the Commission. (Emphasis in the original)

[64] *Luzon Stevedoring Corporation v. Social Security Commission*, 145 Phil. 199, 207-208 (1970) [Per *J*. Fernando, *En Banc*].

[65] 158 Phil. 394 (1974) [Per *J*. Fernando, Second Division].

[66] This Court upheld the jurisdiction of the Commission under Section 5 of the Social Security Act. It ruled that the plaintiff's claim for refund or for underpayment of refund was well within the Commission's jurisdiction.

exhaust all administrative remedies before judicial recourse is allowed.[67]

In *Social Security Commission v. Court of Appeals*,[68] this Court upheld the rules of procedure of the Social Security Commission with regard to the rule on exhaustion of administrative remedies before a resort to the courts may be permitted:

> It now becomes apparent that the permissive nature of a motion for reconsideration with the SSC must be read in conjunction with the requirements for judicial review, or the conditions *sine qua non* before a party can institute certain civil actions. A combined reading of Section 5 of Rule VI, quoted earlier, and Section 1 of Rule VII of the SSC's 1997 Revised Rules of Procedure reveals that the petitioners are correct in asserting that *a motion for reconsideration is mandatory in the sense that it is a precondition to the institution of an appeal or a petition for review before the Court of Appeals*. Stated differently, while Rago certainly had the option to file a motion for reconsideration before the SSC, it was nevertheless mandatory that he do so if he wanted to subsequently avail of judicial remedies.
>
> . . . . . .
>
> The policy of judicial bodies to give quasi-judicial agencies, such as the SSC, an opportunity to correct its mistakes by way of motions for reconsideration or other statutory remedies before accepting appeals therefrom finds extensive doctrinal support in the well-entrenched principle of exhaustion of administrative remedies.
>
> The reason for the principle rests upon the presumption that the administrative body, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. The principle insures orderly procedure and withholds judicial interference until the administrative process would have been allowed to duly run its course. This is but practical since availing of administrative remedies entails lesser expenses and provides for a speedier disposition of controversies. Even comity dictates that unless the available administrative remedies have been resorted to and

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[67] 158 Phil. 394 (1974) [Per *J.* Fernando, Second Division].

[68] *Social Security Commission v. Court of Appeals*, 482 Phil. 449 (2004) [Per *C.J.* Davide, Jr., First Division].

appropriate authorities given an opportunity to act and correct the errors committed in the administrative forum, judicial recourse must be held to be inappropriate, impermissible, premature, and even unnecessary.[69] (Emphasis supplied, citations omitted)

Furthermore, jurisdiction is determined by laws enacted by Congress. The doctrine of exhaustion of administrative remedies ensures that this legislative power is respected by courts. Courts cannot ignore Congress' determination that the Social Security Commission is the entity with jurisdiction over any dispute arising from the Social Security Act with respect to coverage, benefits, contributions, and penalties.

Here, nothing in the records shows that petitioners filed a case before the Social Security Commission or asked for a reconsideration of the assailed issuances. Moreover, petitioners did not even try to show that their Petition falls under one (1) of the exceptions to the doctrine of exhaustion of administrative remedies:

> However, we are not unmindful of the doctrine that the principle of exhaustion of administrative remedies is not an ironclad rule. It may be disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is *estoppel on* the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim, (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, (11) when there are circumstances indicating the urgency of judicial intervention, (12) when no administrative review is provided by law, (13) where the rule of qualified political agency applies, and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.[70] (Emphasis in the original, citations omitted)

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[69] *Id*. at 464-465.

[70] *Social Security Commission v. Court of Appeals*, 482 Phil. 449, 465-466 (2004) [Per *C.J.* Davide, Jr., First Division].

The doctrine of exhaustion of administrative remedies is settled in jurisprudence.[71] As early as 1967, this Court has recognized the requirement that parties must exhaust all administrative remedies available before the Social Security Commission.[72] The Social Security Commission, then, must be given a chance to render a decision on the issue, or to correct any alleged mistake or error, before the courts can exercise their power of judicial review. This Court ruled:

> In the case at bar, plaintiff has not exhausted its remedies before the Commission. *The Commission has not even been given a chance to render a decision* on the issue raised by plaintiff herein, *because the latter has not appealed to the Commission from the action taken by the System in insisting upon the enforcement of Circular No. 34*.[73] (Emphasis in the original)

Thus, petitioners have prematurely invoked this Court's power of judicial review in violation of the doctrine of exhaustion of administrative remedies.

Notably, petitioners failed to abide by the principle of primary administrative jurisdiction. This principle states that:

> . . . courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[74]

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[71] See *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.*, 686 Phil. 76 (2012) [Per *J.* Leonardo-De Castro, First Division].

[72] *The Philippine American Life Insurance Company v. Social Security Commission*, 126 Phil. 497 (1967) [Per *C.J.* Concepcion, *En Banc*].

[73] *Id*. at 503.

[74] *Guy v. Ignacio*, 636 Phil. 689, 703-704 (2010) [Per *J.* Peralta, Second Division] citing *Republic v. Lacap*, 546 Phil. 87 (2007) [Per *J.* Austria-Martinez, Third Division].

In *Republic v. Gallo*:[75]

[U]nder the doctrine of primary administrative jurisdiction, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. This is especially true when the question involves its sound discretion requiring special knowledge, experience, and services to determine technical and intricate matters of fact.

In *Republic v. Lacap*:

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. . . .

Thus, the doctrine of primary administrative jurisdiction refers to the competence of a court to take cognizance of a case at first instance. Unlike the doctrine of exhaustion of administrative remedies, it cannot be waived.[76] (Emphasis in the original, citations omitted)

Here, respondent Social Security Commission qualifies as an administrative tribunal, given sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. This is evident from the qualifications of its members and its powers and duties under Sections 3 and 4 of the Social Security Act:

SECTION 3. *Social Security System*. — (a) . . . The SSS shall be directed and controlled by a Social Security Commission, hereinafter referred to as 'Commission', composed of the Secretary of Labor and Employment or his duly designated undersecretary, the SSS

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[75] *Republic v. Gallo*, G.R. No. 207074, January 17, 2018, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63851 > [Per *J*. Leonen, Third Division].

[76] *Id*.

president and seven (7) appointive members, three (3) of whom shall represent the workers' group, at least one (1) of whom shall be a woman; three (3), the employers' group, at least one (1) of whom shall be a woman; and one (1), the general public whose representative shall have *adequate knowledge and experience regarding social security*, to be appointed by the President of the Philippines. The six (6) members representing workers and employers shall be chosen from among the nominees of workers' and employers' organizations, respectively. . . .

(b) The general conduct of the operations and management functions of the SSS shall be vested in the SSS President who shall serve as the chief executive officer immediately responsible for carrying out the program of the SSS and the policies of the Commission. The *SSS President shall be a person who has had previous experience in technical and administrative fields related to the purposes of this Act*. . . .

(c) The Commission, upon the recommendation of the SSS President, shall appoint an *actuary and such other personnel as may be deemed necessary; fix their reasonable compensation, allowances and other benefits*; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: . . . *Provided, further*, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations:. . .

SECTION 4. *Powers and Duties of the Commission and SSS. — (a) The Commission*. — For the attainment of its main objectives as set forth in Section 2 hereof, the Commission shall have the following powers and duties:

(1) To adopt, amend and rescind, subject to the approval of the President of the Philippines, such rules and regulations as may be necessary to carry out the provisions and purposes of this Act;

(2) To establish a provident fund for the members which will consist of voluntary contributions of employers and/or employees, self-employed and voluntary members and their earnings, for the payment of benefits to such members or their beneficiaries, subject to such rules and regulations as it may promulgate and approved by the President of the Philippines;

(3) To maintain a Provident Fund which consists of contributions made by both the SSS and its officials and employees and their earnings, for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;

(4) To approve restructuring proposals for the payment of due but unremitted contributions and unpaid loan amortizations under such terms and conditions as it may prescribe;

(5) To authorize cooperatives registered with the cooperative development authority or associations registered with the appropriate government agency to act as collecting agents of the SSS with respect to their members: *Provided*, That the SSS shall accredit the cooperative or association: *Provided, further*, That the persons authorized to collect are bonded;

(6) To compromise or release, in whole or in part any interest, penalty or any civil liability to SSS in connection with the investments authorized under Section 26 hereof, under such terms and conditions as it may prescribe and approved by the President of the Philippines; and

(7) To approve, confirm, pass upon or review any and all actions of the SSS in the proper and necessary exercise of its powers and duties hereinafter enumerated. (Emphasis supplied)

Thus, under the doctrine of primary administrative jurisdiction, petitioners should have first filed their case before respondent Social Security Commission.

I (C)

As for mootness, as earlier mentioned, moot cases prevent the actual case or controversy from becoming justiciable. Courts cannot render judgment after the issue has already been resolved by or through external developments. This entails that they can no longer grant or deny the relief prayed for by the complaining party.[77]

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[77] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016) [Per *J.* Brion, *En Banc*].

This is consistent with this Court's deference to the powers of the other branches of government. This Court must be wary that it is ruling on *existing facts* before it invalidates any act or rule.[78]

Nonetheless, this Court has enumerated circumstances when it may still rule on moot issues. In *David*:

> Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.[79] (Emphasis in the original, citations omitted)

The third exception is corollary to this Court's power under Article VIII, Section 5(5) of the 1987 Constitution.[80] This Court has the power to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts. It applies where there is a clear need to clarify principles and processes for the protection of rights.

As for the rest of the exceptions, however, all three (3) circumstances must be present before this Court may rule on

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[78] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 337 (2015) [Per *J*. Leonen, *En Banc*].

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

[80] CONST., Art. VIII, Sec. 5(5) provides:

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

a moot issue. There must be an issue raising a grave violation of the Constitution, involving an exceptional situation of paramount public interest that is capable of repetition yet evading review.

Here, since respondent Social Security Commission is set to issue new resolutions for the Social Security System members' contributions, the issue on the assailed issuances' validity may be rendered moot. Nonetheless, all the discussed exceptions are present: (1) petitioners raise violations of constitutional rights; (2) the situation is of paramount public interest; (3) there is a need to guide the bench, the bar, and the public on the power of respondent Social Security Commission to increase the contributions; and (4) the matter is capable of repetition yet evading review, as it involves a question of law that can recur. Thus, this Court may rule on this case.

I (D)

Petitioners argue that they have the legal standing to file the Petition since: (1) a majority of them are Social Security System members and are directly affected by the increase in contributions;[81] and (2) other petitioners argue that the standing requirement must be relaxed since the issues they raise are of transcendental importance.[82]

On the contrary, not all petitioners have shown the requisite legal standing to bring the case before this Court.

Legal standing is the personal and substantial interest of a party in a case "such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance."[83]

Petitioners Joselito Ustarez, Salvador T. Carranza, Nenita Gonzaga, Prescila A. Maniquiz, Reden R. Alcantara, and

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[81] *Rollo*, p. 9.

[82] *Id*. at 10.

[83] *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Power Sector Assets and Liabilities Management Corporation*, 696 Phil. 486, 518-519 (2012) [Per *J.* Villarama, Jr., *En Banc*].

Anakpawis Party-List Representative Fernando Hicap, for himself, are Social Security System members who stand to suffer direct and material injury from the assailed issuances' enforcement. They are, thus, clothed with legal personality to assail the imposed increase in contribution rates and maximum monthly salary credit.

On the other hand, petitioners Kilusang Mayo Uno, Anakpawis Party-List, Center for Trade Union and Human Rights, and National Federation of Labor Unions-Kilusang Mayo Uno all failed to show how they will suffer direct and material injury from the enforcement of the assailed issuances.

However, jurisprudence is replete with instances when a liberal approach to determining legal standing was adopted. This has allowed "ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations[,] and rulings."[84]

This Court has provided instructive guides to determine whether a matter 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 the questions being raised."[85]

Here, the assailed issuances set the new contribution rate and its date of effectivity. The increase in contributions has been in effect since January 2014. As such, the issue of the validity of increase in contributions is of transcendental importance. The required legal standing for petitioners must be relaxed.

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[84] *David v. Macapagal-Arroyo*, 522 Phil. 705, 758 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*] citing *Tañada v. Tuvera*, 220 Phil. 422 (1985) [Per *J.* Makasiar, *En Banc*].

[85] *Chamber of Real Estate and Builders' Associations, Inc. v. Energy Regulatory Commission*, 638 Phil. 542, 556-557 (2010) [Per *J.* Brion, *En Banc*].

It is worth noting that this issue affects millions of Filipinos working here and abroad. A substantial portion of members' salaries goes to the Social Security System fund. To delay the resolution of such an important issue would be a great disservice to this Court's duty enshrined in the Constitution.

For all these reasons, and despite the technical infirmities in this Petition, this Court reviews the assailed issuances.

II

Petitioners' attack on the increase in contribution rate and maximum monthly salary credit is two (2)-tiered: (1) they assail the validity of the exercise of respondents Social Security System and Social Security Commission's power under the law; and (2) they assail the validity of the delegation of power to respondent Social Security Commission.

Petitioners argue that the assailed issuances are void for being issued under vague and unclear standards under the Social Security Act. They admit that Section 18 allows the Social Security Commission to fix the contribution rate subject to several conditions. However, petitioners claim that the term "actuarial calculations" is too vague and general, and the relationship between the rate of benefits and actuarial calculations is not clearly defined. Thus, they conclude that the delegation of power to fix the contribution rate is incomplete in all its terms and conditions.

Petitioners' argument lacks merit.

Petitioners are putting in issue not only the validity of the exercise of the delegated power, but also the validity of the delegation itself. They are, thus, collaterally attacking the validity of the Social Security Act's provisions.

Collateral attacks on a presumably valid law are not allowed. Unless a law, rule, or act is annulled in a direct proceeding, it is presumed valid.[86]

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[86] *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 153 (2013) [Per *J.* Mendoza, Third Division] citing *Dasmariñas*

Furthermore, the "delegation of legislative power to various specialized administrative agencies is allowed in the face of increasing complexity of modern life."[87] In *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*:[88]

> Given the volume and variety of interactions involving the members of today's society, it is doubtful if the legislature can promulgate laws dealing with the minutiae aspects of everyday life. Hence, the need to delegate to administrative bodies, as the principal agencies tasked to execute laws with respect to their specialized fields, the authority to promulgate rules and regulations to implement a given statute and effectuate its policies.[89]

For a valid exercise of delegation, this Court enumerated the following requisites:

> All that is required for the valid exercise of this power of subordinate legislation is that the regulation must be germane to the objects and purposes of the law; and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. Under the first test or the so-called completeness 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 second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[90]

Water District v. Monterey Foods Corporation, 587 Phil. 403 (2008) [Per *J*. Corona, First Division].

[87] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, 533 Phil. 590, 607 (2006) [Per *J*. Chico-Nazario, First Division].

[88] 533 Phil. 590 [Per *J*. Chico-Nazario, First Division].

[89] *Id*. at 607 citing *Beltran v. Secretary of Health*, 512 Phil. 560 (2005) [Per *J*. Azcuna, *En Banc*].

[90] *Id*. at 607-608 citing *The Conference of Maritime Manning Agencies v. Philippine Overseas Employment Agency*, 313 Phil. 592 (1995) [Per *J*. Davide, Jr., First Division] and *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Agency*, 248 Phil. 762 (1988) [Per *J*. Cruz, First Division].

Simply put, what are needed for a valid delegation are: (1) the completeness of the statute making the delegation; and (2) the presence of a sufficient standard.[91]

To determine completeness, all of the terms and provisions of the law must leave nothing to the delegate except to implement it. "What only can be delegated is not the discretion to determine what the law shall be but the discretion to determine how the law shall be enforced."[92]

More relevant here, however, is the presence of a sufficient standard under the law. Enforcement of a delegated power may only be effected in conformity with a sufficient standard, which is used "to map out the boundaries of the delegate's authority and thus 'prevent the delegation from running riot.'"[93] The law must contain the limitations or guidelines to determine the scope of authority of the delegate.

Not only is the Social Security Act complete in its terms; it also contains a sufficient standard for the Social Security Commission to fix the monthly contribution rate and the minimum and maximum monthly salary credits.

Section 18 states:

SECTION 18. *Employee's Contribution*. — (a) Beginning as of the last day of the calendar month when an employee's compulsory coverage takes effect and every month thereafter during his employment, the employer shall deduct and withhold from such employee's monthly salary, wage, compensation or earnings, the employee's contribution in an amount corresponding to his salary, wage, compensation or earnings during the month in accordance with the following schedule:

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[91] *Solicitor General v. Metropolitan Manila Authority*, 281 Phil. 925 (1991) [Per *J*. Cruz, *En Banc*].

[92] *Id*. at 935.

[93] *Id*.

SALARY BRACKET	RANGE OF COMPENSATION	MONTHLY SALARY CREDIT	MONTHLY CONTRIBUTION		
			EMPLOYER	EMPLOYEE	TOTAL
I	1,000.00-1,249.99	1000	50.70	33.30	84.00
II	1,250.00-1,749.99	1500	76.00	50.00	126.00
III	1,750.00-2,249.99	2000	101.30	66.70	168.00
IV	2,250.00-2,749.99	2500	126.70	83.30	210.00
V	2,750.00-3,249.99	3000	152.00	100.00	252.00
VI	3,250.00-3,749.99	3500	177.30	116.70	294.00
VII	3,750.00-4,249.99	4000	202.70	133.30	336.00
VIII	4,250.00-4,749.99	4500	228.00	150.00	378.00
IX	4,750.00-5,249.99	5000	253.30	166.70	420.00
X	5,250.00-5,749.99	5500	278.70	183.70	462.40
XI	5,750.00-6,249.99	6000	304.00	200.00	504.00
XII	6,250.00-6,749.99	6500	329.30	216.70	546.00
XIII	6,750.00-7,249.99	7000	354.70	233.30	588.00
XIV	7,250.00-7,749.99	7500	380.00	250.00	630.00
XV	7,750.00-8,249.99	8000	405.30	266.70	672.00
XVI	8,250.00-8,749.99	8500	430.70	283.30	714.00
XVII	8,750.00-OVER	9000	456.00	300.00	756.00

The foregoing schedule of contribution shall also apply to self-employed and voluntary members.

The maximum monthly salary credit shall be Nine thousand pesos (₱9,000.00) effective January Nineteen hundred and ninety six (1996): Provided, That it shall be increased by One thousand pesos (₱1,000.00) every year thereafter until it shall have reached Twelve thousand pesos (₱12,000.00) by Nineteen hundred and ninety nine (1999): *Provided, further, That the minimum and maximum monthly salary credits as well as the rate of contributions may be fixed from time to time by the Commission through rules and regulations taking into consideration actuarial calculations and rate of benefits, subject to the approval of the President of the Philippines.* (Emphasis supplied)

In relation to Section 18, Section 4(a) prescribes the powers and duties of the Social Security Commission. It provides:

SECTION 4. *Powers and Duties of the Commission and SSS.* — (a) The Commission. — For the attainment of its main objectives as set forth in Section 2 hereof, the Commission shall have the following powers and duties:

> (1) To adopt, amend and rescind, subject to the approval of the President of the Philippines, such rules and regulations as may be necessary to carry out the provisions and purposes of this Act;
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> . . . . . .
>
> (7) To approve, confirm, pass upon or review any and all actions of the SSS in the proper and necessary exercise of its powers and duties hereinafter enumerated.

It is evident from these provisions that the legislature has vested the necessary powers in the Social Security Commission to fix the minimum and maximum amounts of monthly salary credits and the contribution rate. The agency does not have to do anything except implement the provisions based on the standards and limitations provided by law.

In fixing the contribution rate and the minimum and maximum amounts of monthly salary credits, the legislature specified the factors that should be considered: "actuarial calculations and rate of benefits"[94] as an additional limit to the Social Security Commission's rate fixing power under Section 18, the legislature required the approval of the President of the Philippines.

The Social Security Act clearly specifies the limitations and identifies when and how the Social Security Commission will fix the contribution rate and the monthly salary credits.

Actuarial science is derived from the concepts of utilitarianism and risk aversion. Thus:

> Just as economic systems are the realm of the economist, social systems are the realm of the sociologist, and electrical systems are the realm of the electrical engineer, financial security systems have become the realm of the actuary. The uniqueness of the actuarial profession lies in the actuary's *understanding of financial security systems in general*, and the inner workings of the many different types in particular. The role of the actuary is that of the designer, the adaptor, the problem solver, the risk estimator, the innovator, and the technician of the continually changing field of financial security systems.

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[94] Rep Act. No. 8282 (1997), Sec. 18.

. . . . . .

Utilitarianism as a philosophy, and risk aversion as a feature of human psychology, lead to the evolution of financial security systems as a means of reducing the financial consequences of unfavorable events. Actuaries are those professionals with a deep understanding of, and training in, financial security systems; their reason for being, their complexity, their mathematics, and the way they work.[95] (Emphasis supplied)

Actuarial science is "primarily concerned with the study of consequences of events that involve risk and uncertainty. Actuarial practice identifies, analyzes and assists in the management of the outcomes—including costs and benefits—associated with events that involve risk and uncertainty."[96]

Actuarial science is relevant to the operation of a social security system, in that "the actuary plays a crucial role in analysing [the system's] financial status and recommending appropriate action to ensure its viability. More specifically, the work of the actuary includes assessing the financial implications of establishing a new scheme, regularly following up its financial status and estimating the effect of various modifications that might have a bearing on the scheme during its existence."[97]

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[95] CHARLES L. TROWBRIDGE, *FUNDAMENTAL CONCEPTS OF ACTUARIAL SCIENCE* 12-13 (1989).

[96] Mark Allaben, Christopher Diamantoukos, Arnold Dicke, Sam Gutterman, Stuart Klugman, Richard Lord, Warren Luckner, Robert Miccolis, Joseph Tan, *Principles Underlying Actuarial Science* (2008), < https://www.soa.org/globalassets/assets/library/journals/actuarial-practice-forum/2008/august/apf-2008-08-allaben.pdf > 6 (last visited on April 2, 2019).

[97] Pierre Plamondon, Anne Drouin, Gylles Binet, Michael Cichon, Warren R. McGillivray, Michel Bedard, Hernando Perez-Montas, *Quantitative Methods in Social Protection Series: Actuarial Practice in Social Security*, International Labour Office and International Social Security Association, International Labour Organization, Switzerland, (2002), 14, < https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—soc_sec/documents/publication/wcms_secsoc_776.pdf > (last visited on April 2, 2019).

The application of actuarial calculations in the operation of a social system scheme requires the determination of benefits.[98] To question the use of "actual calculations" as factor for fixing rates is to question the policy or wisdom of the legislature, which is a co-equal branch of government.

As a component of the doctrine of separation of powers, courts must never go into the question of the wisdom of the policy of the law.[99] In *Magtajas v. Pryce Properties Corporation, Inc.*,[100] where this Court resolved the issue of the morality of gambling, this Court held:

> The morality of gambling is not a justiciable issue. Gambling is not illegal per se. While it is generally considered inimical to the interests of the people, there is nothing in the Constitution categorically proscribing or penalizing gambling or, for that matter, even mentioning it at all. *It is left to Congress to deal with the activity as it sees fit. In the exercise of its own discretion, the legislature may prohibit gambling altogether or allow it without limitation or it may prohibit some forms of gambling and allow others for whatever reasons it may consider sufficient.* Thus, it has prohibited *jueteng* and *monte* but permits lotteries, cockfighting and horse-racing. *In making such choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Well has it been said that courts do no[t] sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding the wisdom, morality, or practicibility of statutes are not addressed to the judiciary but may be resolved only by the legislative and executive departments, to which the function belongs in our scheme of government.* That function is exclusive. Whichever way these branches decide, they are answerable only to their own conscience and the constituents who will ultimately judge their acts, and not to the courts of justice.[101] (Emphasis supplied, citation omitted)

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

[99] See *Fariñas v. The Executive Secretary*, 463 Phil. 179 (2003) [Per *J.* Callejo, Sr., *En Banc*].

[100] 304 Phil. 428 (1994) [Per *J.* Cruz, *En Banc*] citing *Garcia v. Executive Secretary*, 281 Phil. 572 (1991) [Per *J.* Cruz, *En Banc*].

[101] *Id.* at 441.

Recently, in *Garcia v. Drilon*,[102] this Court has upheld the long-settled principle that courts do not go into the wisdom of the law:

> It is settled that courts are not concerned with the wisdom, justice, policy, or expediency of a statute. Hence, we dare not venture into the real motivations and wisdom of the members of Congress . . . *Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law.* We only step in when there is a violation of the Constitution.[103] (Emphasis supplied, citations omitted)

Hence, the Social Security Act has validly delegated the power to fix the contribution rate and the minimum and maximum amounts for the monthly salary credits. It is within the scope of the Social Security Commission's power to fix them, as clearly laid out in the law.

III

On the question of the validity of the exercise of respondents Social Security Commission and Social Security System's powers, this Court disagrees with petitioners' argument that the increase in contribution rate is prohibited by Section 4(b)(2) of the Social Security Act. The provision states:

> SECTION 4. Powers and Duties of the Commission and SSS. . . .
>
> (b) The Social Security System. — Subject to the provision of Section four (4), paragraph seven (7) hereof, the SSS shall have the following powers and duties:
>
> . . . .
>
> (2) To require the actuary to submit a valuation report on the

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[102] 712 Phil. 44 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

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

> SSS benefit program every four (4) years, or more frequently as may be necessary, to undertake the necessary actuarial studies and calculations concerning increases in benefits taking into account inflation and the financial stability of the SSS, and to provide for feasible increases in benefits every four (4) years, including the addition of new ones, under such rules and regulations as the Commission may adopt, subject to the approval of the President of the Philippines: *Provided,* That the actuarial soundness of the reserve fund shall be guaranteed: *Provided, further, That such increases in benefits shall not require any increase in the rate of contribution*[.] (Emphasis supplied)

However, an examination of the provision and the assailed issuances reveals that the questioned increase in contribution rate was not solely for the increase in members' benefits, but also to extend actuarial life.

Social Security Commission Resolution No. 262-s.2013 provides:

> RESOLVED, That the Commission approve and confirm, as it hereby approves and confirms, the SSS 2013 Reform Agenda, the effectivity of which shall be as approved by the President of the Philippines, which aims to address SSS' unfunded liability, extend SSS' fund life to a more secure level and provide improved benefits for current and future generations of SSS members, consisting of the following:
>
> 1. Increase in the contribution rate from 10.4% to 11%; and
> 2. Increase in the maximum monthly salary credit (MSC) from ₱15,000 to ₱16,000.
>
> The above is based on the recommendation of the President and CEO in his memorandum dated 19 November 2012.[104]

The provisos in Section 4(b)(2) must not be read in isolation, but within the context of the provision, as well as the policy of the law.

The two (2) provisos refer to the last part of Section 4(b)(2), or on the System's duty to "provide for feasible increases in benefits every four (4) years, including the addition of new

[104] *Rollo*, p. 72.

ones[.]" Section 4(b)(2) states that the "actuarial soundness of the reserve fund shall be guaranteed" in providing any increase in benefits. As established earlier, Congress has expressly provided the Social Security System, through the Social Security Commission, power to fix the minimum and maximum monthly salary credits and the contribution rate.

To disregard actuarial soundness of the reserves would be to go against the policy of the law on maintaining a sustainable social security system:

> SECTION 2. *Declaration of Policy*. — It is the policy of the State to establish, develop, promote and perfect *a sound and viable* tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and *provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden*. Towards this end, the State shall endeavor to extend social security protection to workers and their beneficiaries. (Emphasis supplied)

Petitioners' argument is, thus, bereft of merit.

In arguing that the increase in contributions is unduly oppressive upon the labor sector, petitioners are again asking this Court to inquire into the wisdom of the policy behind the issuances made by the executive branch. This, as earlier said, we cannot and will not do.[105]

Furthermore, this Court is not persuaded by petitioners' argument that the increase in contributions constitutes an unlawful exercise of police power.

Police power has been defined as:

> . . . state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. Persons and property could thus "be subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity

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[105] See *Magtajas vs. Pryce Properties Corporation, Inc*., 304 Phil. 428, 441 (1994) [Per *J*. Cruz, *En Banc*] citing *Garcia v. Executive Secretary*, 281 Phil. 572 (1991) [Per *J*. Cruz, *En Banc*].

of the state." . . . [It is] "the power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of the people."[106]

To be a valid exercise of police power, there must be a lawful subject and the power is exercised through lawful means.[107] The second requisite requires a reasonable relation between the purpose and the means.[108]

Using the parameters above, we hold that the increases reflected in the issuances of respondents are reasonably necessary to observe the constitutional mandate of promoting social justice under the Social Security Act. The public interest involved here refers to the State's goal of establishing, developing, promoting, and perfecting a sound and viable tax-exempt social security system. To achieve this, the Social Security System and the Social Security Commission are empowered to adjust from time to time the contribution rate and the monthly salary credits. Given the past increases since the inception of the law, the contribution rate increase of 0.6% applied to the corresponding monthly salary credit does not scream of unreasonableness or injustice.

Moreover, this Court will not delve into petitioners' argument that the revised ratio of contributions was supposedly inconsistent with previous schemes.[109] Nothing in the law requires that the ratio of contributions must be set at a 70%-30% sharing in favor of the employee. Supplanting the executive branch's determination of the proper ratio of contribution would result in judicial legislation, which is beyond this Court's power.

A parameter of judicial review is determining who can read the Constitution. Interpreting its text has never been within

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[106] *Edu v. Ericta*, 146 Phil. 469, 476 (1970) [Per *J.* Fernando, First Division].

[107] *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*, 492 Phil. 314 (2005) [Per *J.* Carpio Morales, *En Banc*].

[108] *Balacuit v. CFI of Agusan del Norte*, 246 Phil. 189 (1988) [Per *J.* Gancayco, *En Banc*].

[109] *Rollo*, p. 22.

the exclusive province of the courts. Other branches of government are equally able to provide their own interpretation of the provisions of our organic law, especially on the powers conferred by the Constitution and those delegated by Congress to administrative agencies.

However, other departments' reading or interpretation is limited only to a preliminary determination. Only this Court can read the text of the Constitution with finality.

In *People v. Vera*,[110] Associate Justice Jose Laurel elucidated on how laws must be accorded presumption of constitutionality due to the premise that the Constitution binds all three (3) branches of government. He explained:

> Under a doctrine peculiarly American, it is the office and duty of the judiciary to enforce the Constitution. This court, by clear implication from the provisions of Section 2, Subsection 1, and Section 10, of Article VIII of the Constitution, may declare an act of the national legislature invalid because in conflict with the fundamental law. It will not shirk from its sworn duty to enforce the Constitution. And, in clear cases, it will not hesitate to give effect to the supreme law by setting aside a statute in conflict therewith. This is of the essence of judicial duty.
>
> This court is not unmindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. An act of the legislature approved by the executive, is presumed to be within constitutional limitations. *The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. "The question of the validity of every statute is first determined by the legislative department of the government itself." . . . And a statute finally comes before the courts sustained by the sanction of the executive. The members of the Legislature and the Chief Executive have taken an oath to support the Constitution and it must be presumed that they have been true to this oath and that in enacting and sanctioning a particular law they did not intend to violate the Constitution.* The courts cannot but cautiously exercise its power to overturn the solemn declarations of two of the three grand departments of the government. . . . Then,

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[110] 65 Phil. 56 (1937) [Per *J.* Laurel, First Division].

there is that peculiar political philosophy which bids the judiciary to reflect the wisdom of the people as expressed through an elective Legislature and an elective Chief Executive. It follows, therefore, that the courts will not set aside a law as violative of the Constitution except in a clear case. This is a proposition too plain to require a citation of authorities.[111] (Emphasis supplied, citations omitted)

As such, courts, in exercising judicial review, should also account for the concept of "pragmatic adjudication."[112] As another parameter of judicial review, adjudicative pragmatism entails deciding a case with regard to the "present and the future, unchecked by any felt *duty* to secure consistency in principle with what other officials have done in the past[.]"[113] The pragmatist judge is:

> . . . not uninterested in past decisions, in statutes, and so forth. Far from it. For one thing, these are repositories of knowledge, even, sometimes, of wisdom, and so it would be folly to ignore them even if they had no authoritative significance. For another, a decision that destabilized the law by departing too abruptly from precedent might have, on balance, bad results. There is often a trade-off between rendering substantive justice in the case under consideration and maintaining the law's certainty and predictability. This trade-off, which is perhaps clearest in cases in which a defense of statute of limitations is raised, will sometimes justify sacrificing substantive justice in the individual case to consistency with previous cases or with statutes or, in short, with well-founded expectations necessary to the orderly management of society's business. Another reason not to ignore the past is that often it is difficult to determine the purpose and scope of a rule without tracing the rule to its origins.
>
> The pragmatist judge thus regards precedent, statutes, and constitutions both as sources of potentially valuable information about

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[111] *Id*. at 94-95. Nonetheless, this Court in *Vera* held that Act No. 4221 is unconstitutional for being an undue delegation of power of the legislature and for violating the equal protection clause. The writ of prohibition prayed for was granted.

[112] See Richard A. Posner, *Pragmatic Adjudication*, 18 Cardozo Law Review 1 (1996), < http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2818&context=journal_articles > (last accessed on April 2, 2019).

[113] *Id*. at 4.

the likely best result in the present case and as signposts that must not be obliterated or obscured gratuitously, because people may be relying upon them.[114]

Going into the validity of respondents' actions, petitioners must show that the assailed issuances were made without any reference to any law, or that respondents knowingly issued resolutions in excess of the authority granted to them under the Social Security Act to constitute grave abuse of discretion.

Grave abuse of discretion denotes a "capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[115]

Any act of a government branch, agency, or instrumentality that violates a statute or a treaty is grave abuse of discretion.[116] However, grave abuse of discretion pertains to acts of discretion exercised in areas *outside* an agency's granted authority and, thus, abusing the power granted to it.[117] Moreover, it is the agency's exercise of its power that is examined and adjudged, not whether its application of the law is correct.[118]

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[114] *Id*. at 5.

[115] *G & S Transport Corporation v. Court of Appeals*, 432 Phil. 7, 22 (2002) [Per *J*. Bellosillo, Second Division] citing *Filinvest Credit Corp. v. Intermediate Appellate Court*, 248 Phil. 394 (1988) [Per *J*. Sarmiento, Second Division]; and *Litton Mills, Inc. v. Galleon Trader, Inc*., 246 Phil. 503 (1988) [Per *J*. Padilla, Second Division].

[116] Concurring and Dissenting Opinion of *J*. Leonen in *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., G.R. Nos. 207132 & 207205, December 6, 2016 [Per *J*. Brion, *En Banc*].

[117] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc*., 802 Phil. 116 (2016) [Per *J*. Brion, *En Banc*].

[118] *Id*.

Here, respondents were only complying with their duties under the Social Security Act when they issued the assailed issuances. There is no showing that respondents went beyond the powers under the law that amounts to lack of or in excess of their jurisdiction. Petitioners' claims are unsubstantiated and, as such, merit no finding of grave abuse of discretion.

IV

Petitioners have failed to show that there was an invasion of a material and substantial right, or that they were entitled to such a right. Moreover, they failed to show that "there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage."[119] Accordingly, petitioners' prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is denied.

WHEREFORE, the Petition is **DENIED** for lack of merit. Resolution Nos. 262-s. 2013 and 711-s. 2013 issued by the Social Security Commission, as well as Circular No. 2013-010 issued by the Social Security System, are valid. The prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is also **DENIED**.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. Jr., Gesmundo, Carandang, and *Lazaro-Javier, JJ*., concur.

Jardeleza, J., no part and on official business.

Reyes, J. Jr., J., on official leave.

Hernando, J., on leave.

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[119] See *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, 684 Phil. 283, 292 (2012) [Per *J*. Sereno, Second Division].

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under the Rules of Court shall apply suppletorily with respect to cases heard before the NCIP; under the Rules of Court, with the advent of the *Neypes Rule*, otherwise known as the *Fresh Period Rule*, parties who availed themselves of the remedy of motion for reconsideration are now allowed to file an appeal within fifteen days from the denial of that motion; the Court is not unaware that jurisprudence has held that the *Neypes Rule* strictly applies only with respect to judicial decisions and that the said rule does not firmly apply to administrative decisions; however, in the cases wherein the Court did not apply the *Neypes Rule* to administrative decisions, the specific administrative rules of procedure applicable in such cases explicitly precluded the application of the *Fresh Period Rule*. (Puerto Del Sol Palawan, Inc. *vs.* Hon. Gabaen, G.R. No. 212607, Mar. 27, 2019) p. 683

Petition for review on certiorari to the Supreme Court under Rule 45 — Absent any showing that there was arbitrariness, the Court will refrain from opening up and reviewing once again the facts of the case; this is in line with the rule that the Court is not a trier of facts; in a petition for review on *certiorari*, the scope of the Court's judicial review is limited to reviewing only errors of law, not of fact. (Interphil Laboratories, Inc. *vs.* OEP Phils., Inc., G.R. No. 203697, Mar. 20, 2019) p. 43

— As a rule, in an appeal by *certiorari* under Rule 45, the Court does not pass upon questions of fact as the factual findings of the trial and appellate courts are binding on the Court; the Court is not a trier of facts. (Fajardo *vs.* Cua-Malate, G.R. No. 213666, Mar. 27, 2019) p. 709

— As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court; well-settled is the rule that the Court is not a trier of facts; its function in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts. (Calaoagan *vs.* People, G.R. No. 222974, Mar. 20, 2019) p. 183

— On record, Atty. Pagatpatan admits to writing the letter to the Bishop of the Diocese of Tandag, Surigao Del Sur in order to resolve the *estafa* case since settlement proceedings with the regular courts proved to be futile; his letter-request was not based on a sincere purpose to discipline Fr. Zafra for his actions, but mainly to bring threat to Fr. Zafra and force him to settle the *estafa* case filed against his clients; on many occasions, this Court has reminded that lawyers are duty-bound "to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged"; Pagatpatan, as a member of the bar, is an "oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and whose conduct ought to be and must be scrupulously observant of law and ethics"; he is only guilty of simple misconduct. (Rev. Fr. Zafra III *vs.* Atty. Pagatpatan, A.C. No. 12457 [Formerly CBD Case No. 16-5128], April 2, 2019) p. 1152

— Once a lawyer agrees to handle a case, he is required by the CPR to undertake the task with zeal, care, and utmost devotion; acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause; every case which a lawyer accepts deserves full attention, diligence, skill, and competence, regardless of its importance. (San Gabriel *vs.* Atty. Sempio, A.C. No. 12423, Mar. 26, 2019) p. 533

Liability of — A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR; lawyers should bear in mind that the practice of law is a profession, a form of public trust, the performance of which is entrusted only to those who are qualified and who possess good moral character. (Diwei "Bryan" Huang *vs.* Atty. Zambrano, A.C. No. 12460, Mar. 26, 2019) p. 544

defeated. (Cadavas *vs*. Court of Appeals, G.R. No. 228765, Mar. 20, 2019) p. 234

— The second paragraph of Sec. 1 of Rule 65 of the Rules of Court provides that the petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof *x x x* as provided in the third paragraph of Sec. 3, Rule 46; last paragraph of Sec. 3, Rule 46 states that failure of the petitioner to comply with any of the requirements shall be sufficient ground for the dismissal of the petition; x x x non-compliance with the requirement of the Rules is already a ground for the dismissal of the petition. (Turgo Jader *vs*. Heirs of Alfredo Turgo, G.R. No. 209014, Mar. 27, 2019) p. 654

— Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. (PCGG *vs*. Office of the Ombudsman, G.R. No. 194619, Mar. 20, 2019) pp. 23-24

Writ of — To warrant the issuance of the writ of *certiorari*, the abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*, "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction"; that standard was fully met by the petitioners in the CA, for the circumstances truly showed that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the findings of the Labor Arbiter because it thereby whimsically and capriciously

signature on the pleading, motion or other paper serves as a certification that the signing attorney "has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay"; he may delegate the signing of the pleading, motion or other paper to another lawyer, but not to a non-lawyer. (Atty. Muntuerto, Jr. *vs*. Atty. Alberto, A.C. No. 12289, April 2, 2019) p. 1139

COMMON CARRIERS

Defined — Art. 1732 of the Civil Code defines common carriers as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public. (Tan *vs*. Great Harvest Enterprises, Inc., G.R. No. 220400, Mar. 20, 2019) p. 123

Diligence required — The extraordinary diligence required by the law of common carriers is primarily due to the nature of their business, with the public policy behind it geared toward achieving allocative efficiency between the parties to the transaction. (Tan *vs*. Great Harvest Enterprises, Inc., G.R. No. 220400, Mar. 20, 2019) p. 123

Liability of — Art. 1734 of the Civil Code holds a common carrier fully responsible for the goods entrusted to him or her, unless there is enough evidence to show that the loss, destruction, or deterioration of the goods falls under any of the enumerated exceptions: ARTICLE 1734; common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only: (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) Act of the public enemy in war, whether international or civil; (3) Act or omission of the shipper or owner of the goods; (4) The character of the goods or defects in the packing or in the containers; (5) Order or act of competent public authority. (Tan *vs*. Great Harvest Enterprises, Inc., G.R. No. 220400, Mar. 20, 2019) p. 123

presentation in court for destruction"; the chain of custody rule ensures that unnecessary doubts concerning the identity of the evidence are removed; the following links should be present: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. (People *vs.* Macaumbang *y* Ali, G.R. No. 208836, April 1, 2019) p. 1042

— In cases for Illegal Sale and/or 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; 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 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; there was compliance with the chain of custody rule and, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved; Piñero's conviction must stand. (People *vs.* Piñero, G.R. No. 242407, April 1, 2019) p. 1130

— In order not to render void the seizure and custody over the evidence obtained from the latter, the prosecution is

— It is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the insulating presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence. (Dizon *vs*. People, G.R. No. 239399, Mar. 25, 2019) p. 518

— It is imperative that it is established that the drugs presented in court as evidence are the very same drugs recovered from the accused in drug offenses; to ensure that unnecessary doubts on the identity of the evidence are removed, the chain of custody is observed; chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction. (People *vs*. Jagdon *y* Banaag, G.R. No. 234648, Mar. 27, 2019) p. 985

— It must be proven that the police had exerted efforts to comply with the requirements under the law, and that under the given circumstances, their actions were reasonable. (*Id*.)

— Non-compliance with the requirements under Sec. 21 under justifiable grounds, as long as the integrity and evidentiary value of the seized items are preserved by the apprehending team, shall not render void and invalid such seizures of and custody over said items. (*Id*.)

— Requirements are mandatory, a deviation may be allowed only if the following requisites concur: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. (Dizon *vs*. People, G.R. No. 239399, Mar. 25, 2019) p. 518

— Sec. 21, Art. II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly

must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession or for sale under R.A. No. 9165 fails. (People *vs.* Macaumbang *y* Ali, G.R. No. 208836, April 1, 2019) p. 1042

Maintenance of a drug den — A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found; its existence may be proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers. (People *vs*. Cariño *y* Leyva, G.R. No. 234155, Mar. 25, 2019) p. 457

— For an accused to be convicted of maintenance of a drug den under Sec. 6 of R.A. No. 9165, the prosecution must establish with proof beyond reasonable doubt that the accused is "maintaining a den" where any dangerous drug is administered, used, or sold; two things must be established: (a) that the place is a den, a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; and (b) that the accused maintains the said place; it is not enough that the dangerous drug or drug paraphernalia were found in the place; more than a finding that dangerous drug is being used thereat, it must also be clearly shown that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold. (*Id*.)

Section 21 — In case any of the necessary witnesses are not available, the prosecution must allege and prove the reasons for their absence and convince the Court that earnest efforts were exerted to secure their attendance; 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

CONDITIONS OF EMPLOYMENT

Prohibition against elimination or diminution of benefits — The CA ruled in respondents' favor on the ground that PJI's grant of optional retirement benefits to its managerial employees and executive staff had ripened into a company practice that it could not deny to respondents but grant to others in contravention of the non-diminution provision in the Labor Code, to wit: ART. 100. *Prohibition against elimination or diminution of benefits*. – Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code. (Phil. Journalists Inc. *vs*. De Guzman, G.R. No. 208027, April 1, 2019) p. 1028

CONTEMPT

Classifications of contempt of court — Contempt of court can be classified as either direct or indirect contempt; direct contempt is committed "in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so." (Land Bank of the Phils. *vs*. Reyes, G.R. No. 217428, Mar. 25, 2019) p. 389

Contempt of court — Contempt of court is broadly defined as disregard of, or disobedience to the rules or orders of a judicial body; whereas, restrictively, it means despising the authority, justice, or dignity of the court; it signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. (Land Bank of the Phils. *vs*. Reyes, G.R. No. 217428, Mar. 25, 2019) p. 389

— The power to punish for contempt is inherent in all courts and is essential to the preservation of order in

judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice; however, such power should be exercised on the preservative, not on the vindictive, principle; only occasionally should the court invoke its inherent power in order to retain that respect, without which the administration of justice will falter or fail; only in cases of clear and contumacious refusal to obey should the power be exercised. (*Id.*)

Indirect contempt — There is indirect contempt when any of the following acts enumerated in Sec. 3, Rule 71 of the Rules of Court has been committed: (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions; (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (c) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming to be an attorney or an officer of a court, and acting as such without authority; (f) Failure to obey a subpoena duly served; and (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held

— To convict him of an offense not properly alleged in the Information would violate his constitutional right to be informed of the nature and cause of the accusation against him; an Information that does not contain all the elements constituting the crime charged cannot serve as a means by which said constitutional requirement is satisfied. (*Id*.)

DAMAGES

Actual or compensatory damages — No uncertain terms that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty; a court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the *actual amount* thereof; it must point out specific facts that could provide the gauge for measuring whatever compensatory or actual damages were borne. (Heirs of Dominador S. Asis, Jr. *vs*. G.G. Sportswear Mfg. Corp, G.R. No. 225052, Mar. 27, 2019) p. 897

Attorney's fees — Proper if the petitioners were constrained to litigate to protect their interests due to respondent's breach. (Heirs of Dominador S. Asis, Jr. *vs*. G.G. Sportswear Mfg. Corp, G.R. No. 225052, Mar. 27, 2019) p. 897

— The award of attorney's fees is the exception rather than the general rule based on the policy that no premium should be placed on the right to litigate; that a party was compelled to initiate an action does not automatically entitle them to attorney's fees. (Pardillo *vs*. Dr. Bandojo, G.R. No. 224854, Mar. 27, 2019) p. 875

— The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate; they are not to be awarded every time a party wins a suit; the power of the court to award attorney's fees under Art. 2208 demands

— There are two (2) classes of positions of trust; the first class consists of managerial employees; they are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, *etc*; they are defined as those who in the normal and routine exercise of their functions, regularly handle significant amounts of money or property; managerial employees refer to those whose primary duty consists of the management of the establishment in which they are employed, or of a department or a subdivision thereof, and to other officers or members of the managerial staff. (*Id*.)

— Under Art. 282 of the Labor Code, an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; the requisites for dismissal on the ground of loss of trust and confidence are: 1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence; in addition to these, such loss of trust relates to the employee's performance of duties. (*Id*.)

Separation pay — Separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. (Cadavas *vs*. Court of Appeals, G.R. No. 228765, Mar. 20, 2019) p. 234

Two-notice rule — Anent the procedural aspect, the employer must comply with the two-notice rule, as mandated under the Implementing Rules of Book VI of the Labor Code; the employer must serve the erring employee a first notice which details the ground/s for termination, giving the employee a reasonable opportunity to explain his side; in practice, this is commonly referred to as the notice to

complex crime; a complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another; falsification of a commercial document may be a means of committing *estafa* because, before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated; damage or intent to cause damage not an an element of the crime of falsification of a public, official or commercial document; the crime of falsification had already existed. (*Id*.)

EVIDENCE

Affidavit of desistance — An affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal; there must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge. (Tadena *vs.* People, G.R. No. 228610, Mar. 20, 2019) p. 214

Authentication and proof of documents — A document evidencing a sale transaction, such as a deed of sale, which is duly notarized is considered a public document and therefore enjoys the presumption of validity as to its authenticity and due execution; Sec. 23, Rule 132 of the Rules of Court likewise state that public documents are *prima facie* evidence of the fact which gave rise to their execution. (Logrosa *vs*. Sps. Azares, G.R. No. 217611, March 27, 2019) p. 760

— According to Rule 132, Sec. 23 of the Rules of Court, documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. (Dizon *vs*. Matti, Jr., G.R. No. 215614, Mar. 27, 2019) p. 719

— If there is no copy of the instrument in the notarial records, there arises a presumption that the document was not notarized and is not a public document. (*Id*.)

special knowledge, skill, experience or training which he is shown to possess**,** may be received in evidence; in turn, the determination of the credibility of the expert witnesses and the evaluation of their testimony is left to the discretion of the trial court whose ruling is not reviewable in the absence of abuse of discretion. (Sps. Batalla *vs.* Prudential Bank, G.R. No. 200676, Mar. 25, 2019) p. 337

Hearsay evidence — Hearsay evidence is evidence, not of what the witness knows himself but of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits; the general rule is that hearsay evidence is not admissible; however, the lack of objection to hearsay testimony may result in its being admitted as evidence. (People *vs.* Cariño *y* Leyva, G.R. No. 234155, Mar. 25, 2019) p. 457

— In criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them; a conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition; such a judgment cannot be given any effect whatsoever especially on the liberty of an individual. (*Id*.)

— It is a basic rule in evidence that a witness can testify only on the facts that are of his own personal knowledge, *i.e.*, those which are derived from his own perception; a witness may not testify on what he has merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. (*Id*.)

Judicial admissions — Judicial admissions made by parties in the course of the trial in the same case are conclusive and do not require further evidence to prove them; they are legally binding on the party making them except

meaning. (Tadena *vs*. People, G.R. No. 228610, Mar. 20, 2019) p. 214

FALSIFICATION OF COMMERCIAL DOCUMENTS

Commission of — If the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and therefore, had complicity in the forgery; in the absence of a satisfactory explanation, as in this case, one who is found in possession of a forged document and who used or uttered it is presumed to be the forger. (Desmoparan *vs*. People, G.R. No. 233598, Mar. 27, 2019) p. 966

— The elements of the crime of falsification of commercial documents under Art. 172 (1), in relation to Art. 171, of the Revised Penal Code, as amended by R.A. No. 10951, are: "(1) that the offender is a private individual; (2) that the offender committed any of the acts of falsification enumerated in Art. 171 of the Revised Penal Code; and, (3) that the act of falsification is committed in a commercial document." (*Id*.)

FORUM SHOPPING

Certification against forum-shopping — According to Sec. 5, Rule 7 of the Rules of Court, and as held by a *catena* of cases decided by the Court, it is the plaintiff or principal party who should execute the certification of non-forum shopping under oath; however, this rule is not entirely inflexible; the Court has held that if, for reasonable or justifiable reasons, the party-pleader is unable to sign the certification, another person may be authorized to execute the certification on his or her behalf through a Special Power of Attorney. (Dizon *vs*. Matti, Jr., G.R. No. 215614, Mar. 27, 2019) p. 719

— The belated submission of an authorization for the execution of a certificate of non-forum shopping constitutes substantial compliance with Secs. 4 and 5, Rule 7 of the Rules of Court. (*Id*.)

INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (R.A. NO. 8371)

Application of — Sec. 15 limits indigenous peoples' "right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices; it explicitly states that this right is applicable only "within their respective communities" and only for as long as it is "*compatible with the national legal system* and with internationally recognized human rights. (Ha Datu Tawahig *vs*. Hon. Lapinid, G.R. No. 221139, Mar. 20, 2019) p. 137

— With the 1987 Constitution in effect, the Indigenous Peoples' Rights Act was adopted precisely recognizing that indigenous peoples have been resistant to political, social, and cultural inroads of colonization, non-indigenous religions and cultures, and became historically differentiated from the majority of Filipinos. (*Id*.)

INTERESTS

Compensatory interest — Inasmuch as the parties did not execute a written loan agreement, and consequently, did not stipulate on the imposition of interest, Art. 1956 of the Civil Code, which states that "no interest shall be due unless it has been expressly stipulated in writing," operates to preclude the imposition and running of monetary interest on the principal; in other words, no monetary interest having been agreed upon between the parties, none accrues in favor of Park; nevertheless, the moment a debtor incurs in delay in the payment of a sum of money, the creditor is entitled to the payment of interest as indemnity for damages arising out of that delay; Art. 2209 of the Civil Code provides that: "if the obligation consists in the payment of sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) *per annum*. (Hun Hyung Park *vs*. Eung Won Choi, G.R. No. 220826, Mar. 27, 2019) p. 807

such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. (*Id*.)

JUDGMENTS

Annulment of — An action to annul and enjoin the enforcement of the judgment presupposes that the challenged judgment exists to begin with. (Filipinas Eslon Mfg. Corp. *vs*. Heirs of Basilio Llanes, G.R. No. 194114, Mar. 27, 2019) p. 591

Deficiency judgment — Since petitioner had extrajudicially foreclosed the chattel mortgage over the vessel even before the pre-trial of the case, it should have therein raised as issue during the pre-trial the award of a deficiency judgment; the basis of its above-stated alternative prayer was the same as that of its prayer for replevin, the default of respondents in the payment of the monthly installments of their loan. (Central Visayas Finance Corp. *vs*. Sps. Adlawan, G.R. No. 212674, Mar. 25, 2019) p. 370

Finality of — The rule on the immutability and finality of judgments admits of certain exceptions, such as when the questioned final and executory judgment is void, a *catena* of cases has held that a mere erroneous judgment, though rendered according to the course and practice of the court is contrary to law, is not a void judgment; a wrong judgment is not a void judgment, provided the court which renders it had jurisdiction to try the case. (Davao ACF Bus Lines, Inc. *vs*. Ang, G.R. No. 218516, Mar. 27, 2019) p. 778

Immutability of — It is established that once a judgment attains finality, it thereby becomes immutable and

rights; (2) the situation is of paramount public interest; (3) there is a need to guide the bench, the bar, and the public on the power of respondent Social Security Commission to increase the contributions; and (4) the matter is capable of repetition yet evading review, as it involves a question of law that can recur; thus, this Court may rule on this case. (*Id*.)

— Legal standing is the personal and substantial interest of a party in a case "such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance"; jurisprudence is replete with instances when a liberal approach to determining legal standing was adopted; this has allowed "ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations, and rulings"; instructive guides to determine whether a matter 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 the questions being raised"; here, the issue of the validity of increase in contributions is of transcendental importance. (*Id*.)

— Petitioners' allegations present violations of rights provided for under the Constitution on the protection of workers, and promotion of social justice; this Court, however, notes that petitioners failed to prove how the assailed issuances violated workers' constitutional rights such that it would warrant a judicial review; petitioners cannot merely cite and rely on the Constitution without specifying how these rights translate to being legally entitled to a fixed amount and proportion of Social Security System contributions. (*Id*.)

— Petitioners must comply with the requisites for the exercise of the power of judicial review: (1) there must be an

salary of the concerned employee shall be taken home to his family, is sympathetic, we cannot subscribe to the same for being in contravention with the prohibition on interfering with the disposal of wages under Art. 112 of the Labor Code. (Coca-Cola Bottlers Phils., Inc. *vs*. CCBPI Sta. Rosa Plant Employees Union, G.R. No. 197494, Mar. 25, 2019) p. 326

LABOR RELATIONS

Collective bargaining agreement — Where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law; the force and effect of the CBA is that of a law, requiring that parties thereto yield to its provisions; otherwise, the purpose for which the same was executed would be rendered futile. (Coca-Cola Bottlers Phils., Inc. *vs*. CCBPI Sta. Rosa Plant Employees Union, G.R. No. 197494, Mar. 25, 2019) p. 326

LACHES

Action to recover registered land — As a general rule, an action to recover registered land may not be barred by laches; however, this Court, in certain cases, allowed laches as a bar to recover a registered property under the Torrens system; *Akang v. Municipality of Isulan, Sultan Kudarat Province,* cited; in *Romero v. Natividad*, the Court ruled that laches will bar recovery of the property even if the mode of transfer was invalid; likewise, in *Vda. de Cabrera v. CA*, the Court ruled: In our jurisdiction, it is an enshrined rule that even registered owners of property may be barred from recovering possession of property by virtue of laches; under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession; the same is not true with regard to laches; the RTC has ruled that the extrajudicial foreclosure on the subject properties was valid. (Oropeza *vs*. Allied Banking Corp., G.R. No. 222078, April 1, 2019) p. 1088

the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance. (People *vs*. Lumahang *y* Talisay, G.R. No. 218581, Mar. 27, 2019) p. 788

(Tadena *vs*. People, G.R. No. 228610, Mar. 20, 2019) p. 214

MOTIONS

Motion for postponement — In considering motions for postponements, two things must be borne in mind: (1) the reason for the postponement, and (2) the merits of the case of the movant; unless grave abuse of discretion is shown, such discretion will not be interfered with either by *mandamus* or appeal; because it is a matter of privilege, not a right, a movant for postponement should not assume beforehand that his motion will be granted. (Hun Hyung Park *vs*. Eung Won Choi, G.R. No. 220826, Mar. 27, 2019) p. 807

— In granting or denying motions for postponements, courts must exercise their discretion constantly mindful of the Constitutional guarantee against unreasonable delay in the disposition of cases; while it is true that cases must be adjudicated in a manner that is in accordance with the established rules of procedure, so is it crucial that cases be promptly disposed to better serve the ends of justice. (*Id*.)

— Pursuant to Secs. 2 and 3 of the Rule 30 of the Rules of Court, although a court may adjourn a trial from day to day, a motion to postpone trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality or relevancy of such evidence, and that due diligence has been used to procure it; rules governing postponements serve a clear purpose to avert the erosion of people's confidence in the judiciary. (*Id*.)

— The grant or denial of a motion or, in this case, motions for postponement is addressed to the sound discretion of the court, which should always be predicated on the

promote respect for law and legal processes. (Roa--Buenafe *vs*. Atty. Lirazan, A.C. No. 9361, Mar. 20, 2019) p. 1

— Notarization is not an empty, meaningless or routinary act, but rather an act invested with substantive public interest; notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity; a notarized document is, by law, entitled to full faith and credit upon its face. (*Id*.)

Liability of — A notary public who fails to discharge his duties as such is meted out the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law – the terms of which vary based on the circumstances of each case. (Roa--Buenafe *vs*. Atty. Lirazan, A.C. No. 9361, Mar. 20, 2019) p. 1

— Respondent's delegation of his notarial function of recording entries in his notarial register to his secretary is a clear contravention of the explicit provision of the notarial rules that such duty should be fulfilled by him and not by anyone else; this is a direct violation of Canon 9, Rule 9.01 of the Code. (*Id*.).

OBLIGATIONS

Extinguishment of — A party claiming that an obligation has been discharged by payment has the burden of proving the same. (Hun Hyung Park *vs*. Eung Won Choi, G.R. No. 220826, Mar. 27, 2019) p. 807

Reciprocal obligations — Defined as that where each of the parties is a promisee of a prestation and promises another in return as a counterpart or equivalent of the other; Art. 1191 refers to this kind of obligation; the most salient feature of this obligation is reciprocity; in order that there be reciprocity, it is not sufficient that two persons be mutually debtor and creditor of each other; the reciprocity must be so perfect as to cause both relations to arise from the same source; each obligation being

another cause of extinguishment of obligations; despite its extinguishment, since the vendor has lost ownership of the land, the contract must itself be resolved and set aside; it is noted, however, that the resolution of the sale is the tacit resolutory condition under Art. 1191, which is implied in reciprocal obligations. (*Id*.)

—— When the remedy of resolution of reciprocal obligations, as in rescission, is sought, "the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests" is created pursuant to Art. 1385 of the Civil Code. (*Id*.)

OMBUDSMAN

Powers — The determination of the existence of probable cause lies within the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party; probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof; a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. (PCGG *vs*. Office of the Ombudsman, G.R. No. 194619, Mar. 20, 2019) pp. 23-24

—— The Ombudsman's powers to investigate and prosecute crimes allegedly committed by public officers or employees are plenary and unqualified; the full discretion to investigate and prosecute necessarily comes with the discretion not to file a case as when the Ombudsman finds the complaint insufficient in form or in substance; the filing or non-filing of the information is primarily lodged within the full discretion of the Ombudsman. (*Id*.)

PARTIES

Necessary parties — Petitioners Yu may only be considered necessary parties as they are not indispensable, but who ought to be joined as a party if complete relief is to be

seafarer, and the third physician's decision would be final and binding on both parties; the Court has held in *TSM Shipping Phils., Inc. v. Patiño* that the non-observance of the requirement to have the conflicting assessments determined by a third physician would mean that the assessment of the company-designated physician prevails; the filing of the respondent's claim for disability was premature. (Maersk-Filipinas Crewing Inc. *vs.* Alferos, G.R. No. 216795, April 1, 2019) p. 1075

Failure to continue with treatment — By failing to continue with the treatment prescribed by the company-designated physician and instead filing the labor case before the expiration of the 120-day period, respondent violated the law and his contract with petitioners; the filing of the labor case was premature; under Sec. 20(D) of the POEA-SEC "no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer"; respondent's failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits. (Maunlad Trans, Inc. *vs.* Rodelas, Jr., G.R. No. 225705, April 1, 2019) p. 1103

Total and permanent disability — According to *C.F. Sharp Crew Management, Inc. v. Taok*, a seafarer may have a basis to pursue his claim for total and permanent disability benefits under any of the following conditions: (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification issued by the company designated physician; (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice

Presumption of regularity in the performance of duty — The presumption that the regular duty was performed by the arresting officer cannot prevail over the constitutional presumption of innocence of the accused. (People *vs*. Gonzales *y* Vital, G.R. No. 233544, Mar. 25, 2019) p. 444

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application of — If the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands; it is discretionary on the part of the land registration court to require the parties to submit a subdivision plan duly approved by the appropriate government agency. (Fil-Estate Mgm't., Inc. *vs*. Rep. of the Phils., G.R. No. 192393, Mar. 27, 2019) p. 574

PUBLIC OFFICERS AND EMPLOYEES

Liability of — While it is true that the act of affixing a public officer's signature on a document in the ordinary course of business does not automatically mean that he/she becomes a participant in an illegal or anomalous transaction, however, when the very face of the document reflects a possible irregularity, then there arises an additional reason for the public officer to examine the document in more detail and exercise a greater degree of diligence before signing the document. (Domingo *vs*. Exec. Sec. Ochoa, Jr., G.R. Nos. 226648-49, Mar. 27, 2019) p. 924

Negligence — Negligence is the omission of the diligence required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place; in the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation; an act done in good faith, when the same constitutes only an error of judgment with no ulterior motives and/or purposes, constitutes simple

adopted means to insure the facilitation of the crime, he could have chosen another place or time. (*Id*.)

QUASI-CONTRACT

Solutio indebiti — Art. 2154 of the Civil Code explains the concept of the quasi-contract of *solutio indebiti*: Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises; the quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. (Domestic Petroleum Retailer Corp. *vs*. Mla. Int'l. Airport Authority, G.R. No. 210641, Mar. 27, 2019) p. 661

— In order to establish the application of *solutio indebiti* in a given situation, two conditions must concur: (1) a payment is made when there exists no binding relation between the payor who has no duty to pay, and the person who received the payment, and (2) the payment is made through mistake, and not through liberality or some other cause. (*Id*.)

QUIETING OF TITLE

Action for — An action to quiet title or to remove the clouds over a title is a special civil action governed by the second paragraph of Sec. 1, Rule 63 of the Rules of Court; an action for quieting of title is essentially a common law remedy grounded on equity; the competent court is tasked to determine the respective rights of the complainant and other claimants, not only to put things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. (Filipinas Eslon Mfg. Corp. *vs*. Heirs of Basilio Llanes, G.R. No. 194114, Mar. 27, 2019) p. 591

— A contract of sale may be absolute or conditional; a contract of sale is absolute when title to the property passes to the vendee upon delivery of the thing sold; a deed of sale is absolute when there is no stipulation in the contract that title to the property remains with the seller until full payment of the purchase price; the sale is also absolute if there is no stipulation giving the vendor the right to cancel unilaterally the contract the moment the vendee fails to pay within a fixed period; in a conditional sale, as in a contract to sell, ownership remains with the vendor and does not pass to the vendee until full payment of the purchase price; the full payment of the purchase price partakes of a suspensive condition, and non-fulfillment of the condition prevents the obligation to sell from arising. (Nuñez Vito *vs*. Moises-Palma, G.R. No. 224466 (Formerly UDK-15574], Mar. 27, 2019) p. 838

— Pursuant to Art. 1458 of the Civil Code, a contract of sale is a reciprocal obligation to give; and the prestation or obligation of the seller or vendor is "to transfer the ownership of and to deliver a determinate thing" while the prestation or obligation of the buyer or vendee is "to pay therefor a price certain in money or its equivalent." (*Id*.)

— The full payment of the purchase price is the buyer's prestation; the non-payment of the purchase price by the buyer after the seller has delivered the object of the sale to the buyer constitutes a breach of the buyer's prestation in a contract of sale; the buyer has contravened the very tenor of the contract. (*Id*.)

Remedies of an unpaid seller — One remedy is provided in Art. 1595, to wit: ART. 1595; where, under a contract of sale, the ownership of the goods has passed to the buyer, and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale, the seller may maintain an action against him for the price of the goods; in addition, the buyer may be held liable for damages under Art. 1596; also, an unpaid

damages from the debtor in case of breach of the obligation through delay, fraud, negligence or contravention of the tenor thereof. (*Id*.)

Warranty against hidden defects — Art. 1561 of the Civil Code provides for an implied warranty against hidden defects in that the vendor shall be responsible for any hidden defects which render the thing sold unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price. (Sps. Batalla *vs.* Prudential Bank, G.R. No. 200676, Mar. 25, 2019) p. 337

— In an implied warranty against hidden defects, vendors cannot raise the defense of ignorance as they are responsible to the vendee for any hidden defects even if they were not aware of its existence; in order for the implied warranty against hidden defects to be applicable, the following conditions must be met: a. Defect is Important or Serious I; the thing sold is unfit for the use which it is intended ii. Diminishes its fitness for such use or to such an extent that the buyer would not have acquired it had he been aware thereof b. Defect is Hidden c. Defect Exists at the time of the sale d. Buyer gives Notice of the defect to the seller within reasonable time. (*Id*.)

— In case of a breach of an implied warranty against hidden defects, the buyer may either elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case. (*Id*.)

SEARCHES AND SEIZURES

Fruit of a poisonous tree — According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible; illegally seized evidence is obtained as a direct result of the illegal act; whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act; the "fruit of the poisonous

personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (*Id*.)

— Our constitution guarantees the inviolable right of every person to be secure in his or her persons, houses, papers, and effects, against unreasonable searches and seizures for whatever nature and for any purpose; there should be a warrant duly issued on the basis of probable cause, in order to consider these searches and seizures as valid. (Porteria *y* Manebali *vs*. People, G.R. No. 233777, Mar. 20, 2019) p. 259

Stop and frisk search — To sustain the validity of a stop and frisk search, the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further. (Manibog *vs*. People, G.R. No. 211214, Mar. 20, 2019) p. 103

Warrantless searches and seizures — The constitutional proscription only covers *unreasonable* searches and seizures; jurisprudence has recognized instances of reasonable warrantless searches and seizures, which are: 1. *Warrantless search incidental to a lawful arrest* recognized under Sec. 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; 2. Seizure of evidence in "plain view," the elements of which are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent, and (d) "plain view" justified mere seizure of evidence without further search; 3. Search of a moving vehicle; highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that

well as the policy of the law; the two (2) provisos refer to the last part of Sec. 4(b)(2), or on the System's duty to "provide for feasible increases in benefits every four (4) years, including the addition of new ones." (Kilusang Mayo Uno *vs*. Hon. Aquino III, G.R. No. 210500, April 2, 2019) p. 1168

Social Security Commission — Secs. 4 and 5 of the Social Security Act are clear that the Social Security Commission has jurisdiction over any dispute arising from the law regarding coverage, benefits, contributions, and penalties; as early as 1967, this Court has recognized the requirement that parties must exhaust all administrative remedies available before the Social Security Commission; the Social Security Commission, then, must be given a chance to render a decision on the issue, or to correct any alleged mistake or error, before the courts can exercise their power of judicial review. (Kilusang Mayo Uno *vs*. Hon. Aquino III, G.R. No. 210500, April 2, 2019) p. 1168

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATORY ACT (R. A. NO. 7610)

Application of — Sec. 10(a) of R.A. No. 7610 penalizes an act when it constitutes as child abuse; in relation thereto, Sec. 3(b) of the same law highlights that in child abuse, the act by deeds or words must debase, degrade, or demean the intrinsic worth and dignity of a child as a human being; debasement is defined as the act of reducing the value, quality, or purity of something; degradation, on the other hand, is a lessening of a person's or thing's character or quality; while demean means to lower in status, condition, reputation, or character; when this element of intent to debase, degrade or demean is present, the accused must be convicted of violating Sec. 10(a) of R.A. No. 7610, which carries a heavier penalty compared to that of slight physical injuries under the RPC. (Calaoagan *vs*. People, G.R. No. 222974, Mar. 20, 2019) p. 183

understood the significance of the receipt of the summons and the correlative duty to immediately deliver the same to the therein defendants or, at the very least, to notify the said persons immediately; jurisprudence is clear and unequivocal in making it an ironclad rule that such matters must be clearly and specifically described in the Return of Summons. (*Id.*)

— The summons shall be served by handling a copy thereof to the defendant in person; only in instances wherein, for justifiable causes, the defendant cannot be served within a reasonable time, may summons be effected through substituted service, *i.e.*, (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof; with respect to parties that are domestic private juridical entities, service may be made only upon the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. (*Id.*)

TAX REFORM ACT OF 1997, AS AMENDED (R.A. NO. 8424)

Protesting of assessment — The said provisions of the law that a protesting taxpayer has only three options to dispute an assessment: 1. If the protest is wholly or partially denied by the CIR or his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest; 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest; 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. (Commissioner of Internal Revenue *vs.* V.Y. Domingo Jewellers, Inc., G.R. No. 221780, Mar. 25, 2019) p. 403

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