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FOR THE PERIOD

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 14-02-01-SC-PHILJA. June 2, 2020]

RE: [BOT RESOLUTION NO. 14-1] APPROVAL OF THE MEMBERSHIP OF THE PHILJA CORPS OF PROFESSORS FOR A TERM OF TWO (2) YEARS BEGINNING APRIL 12, 2014, WITHOUT PREJUDICE TO SUBSEQUENT REAPPOINTMENT

[A.M. No. 14-02-02-SC-PHILJA. June 2, 2020]

RE: [BOT RESOLUTION NO. 14-2] APPROVAL OF THE RENEWAL OF THE APPOINTMENTS OF JUSTICE MARINA L. BUZON AS PHILJA'S EXECUTIVE SECRETARY AND JUSTICE DELILAH VIDALLON-MAGTOLIS AS HEAD OF PHILJA'S ACADEMIC AFFAIRS OFFICE, FOR ANOTHER TWO (2) YEARS BEGINNING JUNE 1, 2014, WITHOUT PREJUDICE TO SUBSEQUENT REAPPOINTMENT

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; PHILIPPINE JUDICIAL ACADEMY (PHILJA); PHILJA'S MANDATE AS A COMPONENT UNIT OF THE SUPREME COURT CREATED UNDER R.A. 8557, EXPLAINED. — Created under Republic Act No. 8557, PHILJA is "a separate

component unit of the Supreme Court" that provides "continuing good education and training" to members of the Judiciary and its prospective applicants. It is tasked to "serve as a training school for justices, judges, court personnel, lawyers[,] and aspirants to judicial posts." It is mandated to "provide and implement a curriculum for judicial education, and . . . conduct seminars, workshops[,] and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability."

2. ID.; ID.; ID.; ID.; THE COURT SETS LIMITATIONS ON THE REAPPOINTMENTS OF PHILJA OFFICIALS AND PERSONNEL. — This Court will now discontinue its policy of reappointments without limitations. While the Court does not intend to circumvent the provisions under Republic Act No. 8557, it will take a harder look and more restrictive attitude towards a second reappointment of any person as Chancellor, Vice Chancellor or member of the Executive Committee. This resolution adjusts the composition of the committees and offices in the PHILJA with a view of infusing younger members into the organization to revitalize its operations. PHILJA plays an important role in ensuring "an efficient and credible Judiciary." Introducing younger officials and professors to PHILJA will amplify its academic expertise and leadership. Nonetheless, aware of the wisdom carried by our seniors, this Court will also maintain a needed proportion between the young and old. x x x [T]his Court resolves as follows: x x x 2. Except for the Executive Committee composed of the Chancellor, Vice-Chancellor, and Executive Secretary, no retired justice or judge above 75 years old shall be appointed in managerial or supervisory positions. No term of a retired judge may be renewed more than once; 3. Retired justices or judges shall comprise not more than 50% of PHILJA's Corps of Professors and not more than 25% of the Academic Council and Management Offices; 4. The PHILJA Board of Trustees is directed to review and revise the membership of the Corps of Professors, Academic Council, and Management Offices to ensure compliance with the composition limit within next year, no later than December 31, 2021; and 5. Retired personnel may continue to be appointed as advisers or consultants but without any administrative, managerial, or supervisory functions. No consultant or adviser may sit to vote in any regulatory committee.

Re: [BOT Resolution No. 14-1] Approval of the Membership of the Philja Corps of Professors for a term of two (2) years

R E S O L U T I O N

LEONEN, *J.*:

On February 14, 2012, this Court *En Banc* approved Resolution No. 12-17 of the Philippine Judicial Academy (PHILJA) Board of Trustees, which had recommended a two-year membership term for the PHILJA Corps of Professors. The term began on April 12, 2012, without prejudice to subsequent reappointment.[1]

Likewise, upon the PHILJA Board of Trustees' recommendation, this Court *En Banc* approved the appointment renewals of Justice Marina L. Buzon (Justice Buzon) as PHILJA's Executive Secretary and Justice Delilah Vidallon-Magtolis (Justice Vidallon-Magtolis) as head of PHILJA's Academic Affairs Office, both for two (2) years beginning June 1, 2012.[2]

Before the Corps of Professors' membership term expired on April 11, 2014, the PHILJA Board of Trustees recommended that it be renewed for another two (2) years beginning April 12, 2014. It was approved by this Court *En Banc* in A.M. No. 14-02-0l-SC-PHILJA.[3]

Similarly, when Justices Buzon's and Vidallon-Magtolis' terms of appointment were about to expire, the PHILJA Board of Trustees recommended that these be renewed for another two (2) years beginning June 1, 2014. This Court *En Banc* approved their term renewals in A.M. No. 14-02-02-SC-PHILJA.[4] Their terms would further be renewed in 2014, 2016, and 2018.[5]

The current appointments of Justices Buzon and Vidallon-Magtolis would have expired on May 31, 2020.[6] However, in

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[1] *Rollo* (A.M. No. 14-02-01-SC-PHILJA), p. 4.

[2] *Rollo* (A.M. No. 14-02-02-SC-PHILJA), p. 4.

[3] *Rollo* (A.M. No. 14-02-01-SC-PHILJA), pp. 16-21.

[4] *Rollo* (A.M. No. 14-02-02-SC-PHILJA), p. 5.

[5] *Id.* at 5, 9, and 14.

[6] *Id.* at 17.

a November 19, 2019 Resolution, the PHILJA Board of Trustees recommended that they be renewed for another two (2) years beginning June 1, 2020.[7] PHILJA Chancellor Adolfo S. Azcuna later forwarded the recommendation to this Court *En Banc* for approval.[8]

Meanwhile, also on November 19, 2019, a certain Honesto Cruz (Cruz) sent a letter to this Court, raising concerns on the appointment renewals of Justice Buzon and Justice Vidallon-Magtolis given their ages and physical limitations. Cruz suggested appointing younger, more qualified, and more experienced professionals to introduce timely innovations to PHILJA.[9]

Created under Republic Act No. 8557, PHILJA is "a separate component unit of the Supreme Court"[10] that provides "continuing good education and training"[11] to members of the Judiciary and its prospective applicants.[12]

It is tasked to "serve as a training school for justices, judges, court personnel, lawyers[,] and aspirants to judicial posts."[13] It is mandated to "provide and implement a curriculum for judicial education, and . . . conduct seminars, workshops[,] and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability."[14]

To effectively carry out PHILJA's mandate, the Corps of Professorial Lecturers, which makes up PHILJA's entire instructional force, is selected by the PHILJA Board of Trustees. The Board comes up with a list of lecturers, which will then

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[7] *Id.*

[8] *Id.* at 16.

[9] *Rollo* (A.M. No. 14-02-01-SC-PHILJA), p. 29.

[10] Republic Act No. 8557 (1998), Sec. 2.

[11] Republic Act No. 8557 (1998), Sec. 1.

[12] Republic Act No. 8557 (1998), Secs. 1 and 2.

[13] Republic Act No. 8557 (1998), Sec. 3.

[14] Republic Act No. 8557 (1998), Sec. 3.

be submitted to this Court for approval and formal appointment for two (2) years.[15]

In A.M. No. 01-1-04-SC-PHILJA, this Court elaborated on the organizational structure and functions of PHILJA officials. It created the Academic Council, whose task is to consider and approve PHILJA's programs, activities, and courses.[16] This body is composed of the Department Chairs, heads of PHILJA's subject areas who are "recognized authorities in the subject areas to which they are appointed."[17]

To ensure that PHILJA efficiently and effectively performs its mandate in the rapidly evolving legal landscape, it must maintain its vibrancy by diversifying the composition of its offices, including its Academic Council and Corps of Professors.

This Court will now discontinue its policy of reappointments without limitations. While the Court does not intend to circumvent the provisions under Republic Act No. 8557, it will take a harder look and more restrictive attitude towards a second reappointment of any person as Chancellor, Vice Chancellor or member of the Executive Committee. This resolution adjusts the composition of the committees and offices in the PHILJA with a view of infusing younger members into the organization to revitalize its operations.

PHILJA plays an important role in ensuring "an efficient and credible Judiciary."[18] Introducing younger officials and professors to PHILJA will amplify its academic expertise and leadership. Nonetheless, aware of the wisdom carried by our seniors, this Court will also maintain a needed proportion between the young and old.

NOW, THEREFORE, this Court resolves as follows:

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[15] Republic Act No. 8557 (1998), Sec. 7.

[16] A.M. No. 01-1-04-SC-PHILJA (2004), Sec. 2.

[17] A.M. No. 01-1-04-SC-PHILJA (2004), Sec. 2.1.

[18] Republic Act No. 8557 (1998), Sec. 1.

1. Acting on the Letter of PHILJA Chancellor Adolfo S. Azcuna, the appointments of Justice Marina L. Buzon as PHILJA's Executive Secretary and Justice Delilah Vidallon-Magtolis as head of PHILJA's Academic Affairs Office are approved for equity reasons but only until December 31, 2020;

2. Except for the Executive Committee composed of the Chancellor, Vice-Chancellor, and Executive Secretary, no retired justice or judge above 75 years old shall be appointed in managerial or supervisory positions. No term of a retired judge or justice may be renewed more than once;

3. Retired justices or judges shall comprise not more than 50% of PHILJA's Corps of Professors and not more than 25% of the Academic Council and Management Offices;

4. The PHILJA Board of Trustees is directed to review and revise the memberships of the Corps of Professors, Academic Council, and Management Offices to ensure compliance with the composition limit within next year, no later than December 31, 2021; and

5. Retired personnel may continue to be appointed as advisers or consultants but without any administrative, managerial, or supervisory functions. No consultant or adviser may sit to vote in any regulatory committee.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., on leave.

EN BANC

[A.M. No. P-08-2576. June 2, 2020]

ALEJANDRO S. BUÑAG, *complainant*, *vs.* **RAUL T. TOMANAN**, *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; KISSING A CO-EMPLOYEE'S HAIR WITHOUT HER KNOWLEDGE OR CONSENT AND COURTING HER DESPITE THEIR MARITAL STATUS AND HER REQUEST FOR HIM TO STOP AMOUNT TO SEXUAL HARASSMENT. —– Time and again, We have said that no married woman would cry assault, subject herself and her family to public scrutiny and humiliation, and strain her marriage in order to perpetrate a falsehood. Thus, We agree with the OCA that Spouses Buñag's candid narration of the events that transpired is more credible than Raul's denial. It is incredulous that Spouses Buñag would fabricate a charge as serious as Ivie's involvement with another man. In fact, Alejandro was in an altercation with Raul because of it. Raul has not provided a plausible reason as to why Spouses Buñag would falsely accuse him. Moreover, one of the pictures submitted by Ivie shows that Raul was inappropriately close to her. This gives weight to Ivie's claim that Raul has not acted in accordance with what is considered as acceptable behavior of a married man. Raul has miserably failed to conduct himself appropriately. He should not have tried to involve himself with Ivie, a married woman, especially when he is married himself. To engage in relations outside of marriage is disgraceful and immoral, especially if one is a member of the judiciary. Moreover, his acts have created an intimidating, hostile, or offensive environment for Ivie such that she transferred to the MTC. Section 53 of the Civil Service Commission (CSC) Resolution No. 01-0940, entitled the Administrative Disciplinary Rules on Sexual Harassment Cases, classifies acts of sexual harassment as light, less grave, and grave offenses. x x x Section 53 states: Sec. 53. Sexual harassment is classified as grave, less grave and light grave offenses. x x x B. Less Grave Offenses shall include but are not limited to: **1. unwanted touching or brushing against a victim's body;**

x x x **6. unwelcome sexual flirtation; advances, propositions;** x x x Raul's act of kissing Ivie's hair qualifies as unwanted touching of Ivie, which is a less grave offense under Section 53(B)(1). His act of courting her is tantamount to unwelcome advances on Ivie that is a light offense under Section 53(C)(6).

2. ID.; ID.; ID.; TOLERATING THE DRINKING OF ALCOHOLIC BEVERAGES INSIDE THE COURT PREMISES CONSTITUTES SIMPLE MISCONDUCT. — Aside from sexually harassing Ivie, Spouses Buñag also accused Raul of tolerating the drinking of alcoholic beverages inside the court. No less than Raul's witnesses admitted to this charge. x x x [D]rinking clearly took place inside the court with Raul's knowledge and permission. But even without their admissions, the pictures show bottles of San Miguel Light Beer and Gran Matador Brandy during Ivie's purported birthday celebration inside the court. Under A.C. No. 1-99, court officials and employees must never permit the drinking of alcoholic beverages within the premises of the court. The reason is that courts are temples of justice and as such, their dignity and sanctity must, at all times, be preserved and enhanced. In the case of *Judge Dalmacio-Joaquin v. Dela Cruz*, We found court employees guilty of simple misconduct for drinking during office hours. Drinking undermines efficiency, is counter-productive, and affects the image of the judiciary as a whole.

3. ID.; ID.; ID.; HAVING BEEN FOUND GUILTY OF SEXUAL HARASSMENT AND SIMPLE MISCONDUCT, THE PENALTY OF DISMISSAL SHOULD BE IMPOSED. — Under Section 57 of CSC Resolution No. 01-0940, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. The most serious charge of Raul is the less grave offense of unwanted touching of Ivie's hair while the light offense of unwelcome advances on Ivie shall be considered as an aggravating circumstance. Thus, the maximum penalty of suspension of six months for the less grave offense of sexual harassment should be imposed upon Raul. Raul is also guilty of the less grave offense of simple misconduct. As provided above, the penalty for the second offense of a less grave offense is dismissal. Since Raul is guilty of two less grave offenses, the penalty of dismissal should be imposed upon him. Under

Section 58 of the RRACCS, the penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

D E C I S I O N

PER CURIAM:

Before Us is an administrative complaint[1] filed by Alejandro Buñag (Alejandro) against Raul Tomanan (Raul), Legal Researcher and Officer-in-Charge, Clerk of Court, Regional Trial Court of Boac, Marinduque, Branch 94 (RTC Branch 94) for grave misconduct, sexual harassment, grave abuse of authority, conduct unbecoming of court employees, and immorality.

Facts of the Case

Alejandro is the husband of Ivie S. Buñag (Ivie), Court Stenographer III of the RTC Branch 94 but detailed at the Municipal Trial Court (MTC) of Gasan, Marinduque. Alejandro and Ivie (collectively, Spouses Buñag) narrated the events that transpired in their respective statements.[2]

During a drinking session inside the chambers of Judge Rodolfo B. Dimaano (Judge Dimaano) on December 5, 2005, Ivie noticed that her officemates laughed while Raul was behind her. She texted him later that night to ask what he did and Raul replied that he kissed her hair twice. Ivie inquired why he did that and he responded "*ano ka ba, di na tayo mga bata para di mo maintindihan yan*."[3]

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[1] *Rollo*, p. 1.

[2] See *Sinumpaang Salaysay* of Alejandro dated October 30, 2007, *id.* at 14-17; *Sinumpaang Salaysay* of Alejandro dated January 29, 2008, *id.* at 3-6; *Sinumpaang Salaysay* of Ivie dated January 28, 2008, *id.* at 7-8; *Pinagsamang Sinumpaang Salaysay* of Spouses Buñag, *id.* at 12-13; and Comment/*Kontra Sinumpaang Salaysay* of Ivie dated January 30, 2009, *id.* at 112-127.

[3] *Id.* at 7.

On December 15, 2005, Ivie went with Raul and their fellow employees, Conchitina R. Luarca (Conchitina) and Rowel Noriega (Rowel), to Sunset Beach Resort in Gasan, Marinduque.[4] However, Ivie sent a text message to Raul in January 2006 telling him to stop whatever he thought was going on between them because it was wrong. Raul replied "*ngayon pa, andito na ito baka lalo tayong magkahiyaan pag magkikita tayo sa opisina*." He confessed that he has feelings for her and that it was too bad that they already had their own families. Raul refused to put an end to whatever was going on between them. When Ivie asked him what would happen if their officemates discovered it, he said "*huwag kang aamin at baka pagtismisan tayo at saka sina Conchitina at Rowel lang naman ang nakakaalam*." Raul also said that he will deal with his wife when she comes home.[5]

On February 24, 2006, Ivie together with Rowel, Conchitina, Raul, Marilyn L. Jardiniano (Marilyn), Gina N. Quimora (Gina), and Sheriff Ferdinand Jandusay (Sheriff Ferdinand) went to Sheriff Floresil Fernandez's (Sheriff Floresil) house in Caganhao-Boac, Marinduque using Judge Dimaano's official vehicle.[6] Later that day, a celebration was held supposedly for Ivie's upcoming birthday at the RTC Branch 94.[7] Photographs were taken during the celebration showing employees of the RTC Branch 94 drinking, eating, and singing *karaoke*.[8] However, Ivie claimed that she merely acceded to her colleague's request to provide food and drinks because her birthday is actually on the 20th of May.[9]

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[4] *Id.* at 118.

[5] *Id.* at 7.

[6] *Id.* at 118.

[7] *Id.* at 123.

[8] *Id.* at 89-102.

[9] *Id.* at 117.

Sheriff Floresil brought Raul and Ivie to his house again on September 1 and 22, 2006.[10] Alejandro was unaware of it until Ivie confessed to him what happened.[11]

On July 27 and 28, 2007, Ivie showed Alejandro text messages containing derogatory remarks, accusations, and threats.[12] They suspected that it was from Raul's wife, Anafe Tomanan (Anafe). They received other messages on August 23, 2007. One message reads "*Hayop kng puta ka ikaw pa ang nagapakita ng motibo asawa ko ikaw p nagabaliktad! Sumpain k ng kalandian mo? Mahiya k sa dios! Puta ka!*." They replied to some messages and deleted the rest.[13]

On the same day, Alejandro accompanied Ivie to the RTC. Afterward, he saw Raul waiting for a vehicle along the street. He could not help himself so he approached Raul and asked him "*Bakit natalo mo ang asawa ko*." This resulted in a fistfight between Raul and Alejandro. Raul filed a complaint for physical injuries against Alejandro the following day. Ivie also filed a complaint for libel against Anafe. Both actions remain unresolved at the time that Alejandro filed his complaint against Raul.[14]

On October 1, 2007, Raul reported back to work after taking a study leave to review for the bar examinations. Ivie noticed that he was accompanied by a bodyguard who sent a text message whenever she would leave the office. On October 11, 2007, Raul told Ivie to tell Alejandro that he was not afraid of him. In the afternoon of October 15, 2007, Ivie called Alejandro to inform him that Raul wanted him to know that he was not afraid of him. Alejandro went to the RTC Branch 94 but was prevented by Sheriff Ferdinand from entering.[15] Alejandro just waited

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[10] *Id.* at 5, 8, 117.

[11] *Id.* at 118.

[12] *Id.* at 3, 120.

[13] *Id.* at 12.

[14] *Id.* at 3.

[15] *Id.* at 4.

for Ivie until she could go home. Juris Jardiniano (Juris), Marilyn's husband, arrived while he was waiting and went inside the office. A commotion occurred.[16] Juris later left the office and was visibly angry.[17] Juris supposedly caught Marilyn drinking and hit her. Consequently, Juris and Marilyn separated.[18]

Spouses Buñag waited for Raul. They saw him board Sheriff Ferdinand's vehicle and followed them. When Raul disembarked from the vehicle, he confronted Spouses Buñag and urged Sheriff Ferdinand to hit Alejandro. Upon the prodding of one Herberto Rosales, Spouses Buñag left and went home.[19]

Ivie also told Alejandro that Rowel and Conchitina were having an extramarital affair.[20] In fact, Conchitina became pregnant sometime in November 2006 but had to undergo surgery because her pregnancy was ectopic. Rowel and Conchitina would constantly fight inside the RTC Branch 94.[21] As for Ivie's transfer to the MTC, she said that she did not request it but merely agreed to it in order to distance herself from Raul.[22]

In his Counter-Affidavit[23] dated March 27, 2008, Raul refuted Spouses Buñag's allegations and staunchly denied having any romantic feelings for Ivie. *First*, he denied that Anafe sent text messages to Ivie. *Second*, he claimed that it was Alejandro who went to the RTC Branch 94 to challenge him to a fistfight. *Third*, Ivie was the one who requested her transfer to the MTC, as proven by her letter to the Executive Judge of the RTC in Boac. *Fourth*, they never had a drinking session in Judge Dimaano's chambers. The pictures submitted by Ivie was during

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[16] *Id.* at 15.

[17] *Id.* at 16.

[18] *Id.* at 5.

[19] *Id.* at 16.

[20] *Id.* at 5.

[21] *Id.* at 119.

[22] *Id.* at 115.

[23] *Id.* at 52-55.

her personal birthday celebration. She assured them that Judge Dimaano permitted her to celebrate her birthday.[24] *Fifth*, he never went with Ivie to Sheriff Floresil's house because he was working at that time. *Sixth*, Conchitina and Rowel were not having an affair. They are professionals who treated each other like siblings. *Seventh*, Marilyn did not separate from Juris because he beat her up.[25]

In support of his defense, Raul submitted the sworn statements of Jose Lucito R. Garcia (Jose),[26] Enrico M. Nebreja (Enrico),[27] Ma. Liza D. Macunat,[28] Ethel L. Moreno,[29] Rowel,[30] Ferdinand,[31] Conchitina,[32] Marilyn,[33] and Gina[34] (collectively, the RTC employees). They all denied the allegations of Spouses Buñag. They claimed that the February 24, 2006 celebration was for Ivie's birthday. She, herself, prepared the food and drinks. They were merely posing for fun in the pictures taken during the event.[35] With respect to what happened on October 15, 2007, they averred that Alejandro exclaimed "*Nasaan ang ulol nyong amo, andine ako sa labas, antayin ko sya*" when he arrived at the RTC. Since Raul was not there, he left. When Raul arrived, he asked who was looking for him and what his problem was. Ivie then called someone on her cellphone. A few moments later, Alejandro arrived. He was shouting and cursing, demanding

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

[25] *Id.* at 54.

[26] *Id.* at 61-62, 65-66.

[27] *Id.* at 65-66.

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

[29] *Id.*

[30] *Id.* at 74-75.

[31] *Id.* at 63-66.

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

[33] *Id.* at 69-70, 78.

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

[35] *Id.* at 65, 67, 69, 74.

that Raul meet him outside. Raul did not go out.[36] The RTC employees also denied that they had drinking sessions inside Judge Dimaano's chambers. If at all, they would do it when there is a special occasion and with the permission of Judge Dimaano.[37]

Conchitina and Rowel denied having an affair with each other.[38] Marilyn also refuted the allegations against her and Juris. She explained that they have personal problems as spouses.[39]

On November 12, 2008, the Court resolved to re-docket the complaint against Raul and all the other court personnel involved as a regular administrative matter and refer it to the Executive Judge of the RTC of Boac, Marinduque for investigation, report, and recommendation within 60 days from receipt of the records.[40]

Investigating Judge Manuelito O. Caballes (Judge Caballes) submitted a partial report[41] dated April 21, 2009 stating that the RTC employees claimed that the celebration on February 24, 2006 was for Ivie's upcoming birthday. Ivie was the one who provided the food and the drinks. She even brought the Magic Sing microphone. They merely posed for the pictures during the incident.[42] Since Supreme Court Administrative Circular (A.C.) No. 1-99[43] prohibits drinking within the premises of the court, including the judge's chamber, Judge Caballes suggested that the employees be required to submit their individual affidavit regarding the pictures so that they may explain their participation.[44]

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[36] *Id.* at 61, 63, 65-69.

[37] *Id.* at 66, 70, 75.

[38] *Id.* at 68, 74.

[39] *Id.* at 78.

[40] *Id.* at 86.

[41] *Id.* at 87-88.

[42] *Id.*

[43] Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees.

[44] *Rollo*, p. 88.

Ivie submitted her Counter-Affidavit[45] on January 26, 2009, wherein she expounded on her allegations against Raul and her co-employees. Thereafter, Alejandro filed motions for inhibition of Judge Caballes and preventive suspension of Raul and other involved personnel[46] but these were denied by the Court on July 8, 2009 for lack of merit.[47]

Due to the excessive delay in the submission of the report, Court Administrator Jose Midas P. Marquez wrote a letter[48] dated November 3, 2015 to Executive Judge Antonina C. Magturo (Executive Judge Magturo) of the RTC of Boac, Marinduque asking for the status of the investigation. Executive Judge Magturo requested for an extension of 30 days within which to find the *rollo* of the case that Judge Caballes failed to turnover.[49] Executive Judge Magturo was finally able to submit the Report/Recommendation[50] dated November 4, 2009 on February 11, 2016.[51]

Judge Caballes recommended the dismissal of the complaints against Raul and Ivie. Judge Caballes held that Ivie acted within the bounds of what can be considered as good behavior. There is no basis to hold her liable for grave misconduct, oppression, grave abuse of authority, and conduct prejudicial to the best interest of the service.[52] Likewise, Raul cannot be held liable for psychological harassment, oppression, and falsification of public document.[53] Ivie failed to prove that the malicious text messages sent to her were from Anafe. Judge Caballes ruled

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[45] *Id.* at 112-127.

[46] *Id.* at 130, 133-138.

[47] *Id.* at 171-172.

[48] *Id.* at 174.

[49] *Id.* at 175.

[50] *Id.* at 176-184.

[51] *Id.* at 185.

[52] *Id.* at 179-180.

[53] *Id.* at 184.

that just because the number of the sender of the text messages has the area code of Saudi Arabia, and Anafe works in said country, does not mean that she sent those messages. After all, there are numerous Filipinos working in Saudi Arabia.[54]

Report and Recommendation of the Office of the Court Administrator

The Office of the Court Administrator (OCA) issued its Memorandum[55] dated December 29, 2016, wherein it recommended that Raul be found guilty of grave misconduct through sexual harassment, immorality, and conduct unbecoming of a court employee and be ordered dismissed from government service with cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and barred from taking civil service examinations.[56] The OCA was convinced that Spouses Buñag's allegations were true. Their candid narration together with the photographs sufficiently established Raul's administrative culpability.[57] That Alejandro exposed himself and Ivie to public ridicule and scrutiny shows that their charges are not fabricated. Thus, their positive testimony is more convincing than Raul's denial, which is not corroborated by disinterested and credible witnesses.[58] Even assuming that Ivie and Raul did not have any sexual relations, he is still liable for immorality. Raul admitted the genuineness of the photographs. His position therein together with Ivie is disgraceful. It was inappropriate and appalling, especially since he is a married man.[59] Further, Raul's admission that he permitted drinking sprees during office hours makes him liable for conduct unbecoming of court personnel.[60]

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

[55] *Id.* at 188-197.

[56] *Id.* at 197.

[57] *Id.* at 194.

[58] *Id.* at 193-195.

[59] *Id.* at 194.

[60] *Id.* at 195.

The OCA recommended the imposition of the penalty of the most serious charge, that is grave misconduct, and considered the charges of immorality and conduct unbecoming a court employee as aggravating circumstances in line with Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).[61]

Issue

The issue before Us is whether Raul is guilty of grave misconduct, immorality, and conduct unbecoming a court employee.

Ruling of the Court

We agree with the recommended penalty of the OCA.

Section 3 of the Court's Administrative Matter No. 03-03-13-SC regarding the Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary defines work-related sexual harassment as those committed by an official or employee in the Judiciary who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the latter. Section 4 states that work-related sexual harassment is committed when:

(a) The sexual favor is made as a condition in the hiring or in the employment, reemployment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee. It shall include, but shall not be limited to, the following modes:

1. Physical, such as malicious touching, overt sexual advances, and gestures with lewd insinuation.

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[61] *Id.* at 197.

2. Verbal, such as requests or demands for sexual favors, and lurid remarks.

3. Use of objects, pictures or graphics, letters or written notes with sexual underpinnings.

4. Other acts analogous to the foregoing.

(b) The above acts would impair the employee's rights or privileges under existing laws; or

(c) The above acts would result in an intimidating, hostile or offensive environment for the employee.

Spouses Buñag accused Raul of sexually harassing Ivie by kissing her hair without her knowledge or permission and courting her in spite of their marital status and her request for him to stop. They also accused Raul of taking advantage of Ivie when she was brought to Sheriff Floresil's house. Raul denied their allegations.

Time and again, We have said that no married woman would cry assault, subject herself and her family to public scrutiny and humiliation, and strain her marriage in order to perpetrate a falsehood.[62] Thus, We agree with the OCA that Spouses Buñag's candid narration of the events that transpired is more credible than Raul's denial. It is incredulous that Spouses Buñag would fabricate a charge as serious as Ivie's involvement with another man. In fact, Alejandro was in an altercation with Raul because of it. Raul has not provided a plausible reason as to why Spouses Buñag would falsely accuse him. Moreover, one of the pictures submitted by Ivie shows that Raul was inappropriately close to her. This gives weight to Ivie's claim that Raul has not acted in accordance with what is considered as acceptable behavior of a married man.

Raul has miserably failed to conduct himself appropriately. He should not have tried to involve himself with Ivie, a married woman, especially when he is married himself. To engage in

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[62] *Tan v. Judge Pacuribot*, A.M. Nos. RTJ-06-1982 & RTJ-06-1983, 371 Phil. 119, 127 (1999).

relations outside of marriage is disgraceful and immoral, especially if one is a member of the judiciary.[63] Moreover, his acts have created an intimidating, hostile, or offensive environment for Ivie such that she transferred to the MTC.

Section 53 of the Civil Service Commission (CSC) Resolution No. 01-0940, entitled the Administrative Disciplinary Rules on Sexual Harassment Cases, classifies acts of sexual harassment as light, less grave, and grave offenses. Section 53 states:

> Sec. 53. Sexual harassment is classified as grave, less grave and light grave offenses.
>
> A. Grave Offenses shall include but are not limited to:
>
> 1. unwanted touching of private parts of the body (genitalia, buttocks, and breast);
>
> 2. sexual assault;
>
> 3. malicious touching;
>
> 4. requesting for sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, a passing grade, the granting of honors or scholarship, or the grant of benefits or payment of a stipend or allowance; and
>
> 5. Other analogous cases.
>
> B. Less Grave Offenses shall include but are not limited to:
>
> **1. unwanted touching or brushing against a victim's body;**
>
> 2. pinching not falling under grave offenses.
>
> 3. derogatory or degrading remarks or innuendoes directed toward the members of one sex or one's sexual orientation or used to describe a person;
>
> 4. verbal abuse or threats with sexual overtones; and
>
> 5. other analogous cases.

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[63] See *Castillo-Macapuso v. Castillejos, Jr.*, A.M. Nos. P-19-3985 & P-19-3986, July 10, 2019.

C. The following shall be considered Light Offenses:

1. surreptitiously looking or stealing a look at a person's private part or warn undergarments;

2. telling sexist/smutty jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advise, when they are by their nature clearly embarrassing, offensive or vulgar;

3. malicious leering or ogling;

4. the display of sexually offensive pictures, materials or graffiti;

5. unwelcome inquiries or comments about a person's sex life;

6. unwelcome sexual flirtation; advances, propositions;

7. making offensive hand or body gestures at an employee;

8. persistent unwanted attention with sexual overtones;

9. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and

10. other analogous cases. (Emphasis supplied)

Raul's act of kissing Ivie's hair qualifies as unwanted touching of Ivie, which is a less grave offense under Section 53(B)(1). His act of courting her is tantamount to unwelcome advances on Ivie that is a light offense under Section 53(C)(6).

However, We cannot act upon the allegation that Raul took advantage of Ivie at Sheriff Floresil's house. Ivie did not narrate what specific acts Raul did. As such, We cannot determine its verity or classification.

Aside from sexually harassing Ivie, Spouses Buñag also accused Raul of tolerating the drinking of alcoholic beverages inside the court. No less than Raul's witnesses admitted to this charge. The RTC employees all made the following statements:

Na ang nabanggit diumanong inumang naganap noong Pebrero 24, 2006 ay advance birthday celebration ng asawa ni Alejandro

Buñag, sa kadahilanang ang birthday ni Ivie Buñag ay Pebrero 25 at pumapatak sa araw ng Sabado at si Ivie pa mismo ang naghanda at ***nagpa-inom*** *na ayon sa kanya (Ivie) ito ay may kapahintulutan na ng huwes* ***kaya pumayag itong aming boss na si Raul Tomanan*** *na i-celebrate ang kanyang advance birthday party*;[64]

x x x x x x x x x

Na kung meron mang inumang naganap, ito ay sa kadahilanang merong okasyon tulad ng Christmas Party o Birthday celebration ng kasama naming empleyado at ito ay may pahintulot ng aming judge.[65] (Italics in the original; emphasis supplied)

Based on the foregoing, drinking clearly took place inside the court with Raul's knowledge and permission. But even without their admissions, the pictures show bottles of San Miguel Light Beer and Gran Matador Brandy during Ivie's purported birthday celebration inside the court.[66] Under A.C. No. 1-99,[67] court officials and employees must never permit the drinking of alcoholic beverages within the premises of the court. The reason is that courts are temples of justice and as such, their dignity and sanctity must, at all times, be preserved and enhanced. In the case of *Judge Dalmacio-Joaquin v. Dela Cruz*,[68] We found court employees guilty of simple misconduct for drinking during office hours. Drinking undermines efficiency, is counter-productive, and affects the image of the judiciary as a whole.[69]

As for the other allegations of Spouses Buñag, We cannot give them any credence. The unauthorized use of Judge Dimaano's official vehicle was not supported by any evidence. The alleged illicit affair of Rowel and Conchitina was likewise

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[64] *Rollo*, pp. 65, 67, 74.

[65] *Id.* at 66, 70, 75.

[66] *Id.* at 90, 93, 97, 99.

[67] Supreme Court Administrative Circular No. 1-99, Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees (1999).

[68] 604 Phil. 256 (2009).

[69] *Id.* at 262.

not satisfactorily proven. Ivie is the lone person attesting to this. Both Rowel and Conchitina denied the affair. Further, Raul cannot be held liable for the text messages supposedly sent by Anafe. Assuming *arguendo* that Anafe was the sender of the text messages, there is still no proof that Raul goaded or instructed her to do it.

Similarly, we cannot fault Raul for the altercation between him and Alejandro on August 23, 2007. Alejandro himself admitted that it was he who instigated the fight. That being said, We are not convinced that Raul summoned Alejandro to the RTC Branch 94 on October 15, 2007. The evidence presented by Spouses Buñag is simply insufficient to prove such contention.

Considering the foregoing, Raul is guilty of sexual harassment, both as a light offense and as a less grave offense, and simple misconduct. The following are the penalties for a light offense of sexual harassment under CSC Resolution No. 01-0940:

> Sec. 56. The penalties for light, less grave, and grave offenses are as follows:
>
> A. For light offenses:
>
> 1st offense — Reprimand
>
> 2nd offense — Fine or suspension not exceeding thirty (30) days
>
> 3rd offense — Dismissal
>
> x x x x x x x x x

The penalty a less grave offense of sexual harassment under CSC Resolution No. 01-0940 is:

> Sec. 56. The penalties for light, less grave, and grave offenses are as follows:
>
> x x x x x x x x x
>
> B. For less grave offenses:
>
> 1st offense — Fine or suspension not less than thirty (30) days and not exceeding six (6) months
>
> 2nd offense — Dismissal

x x x x x x x x x

As for simple misconduct, the penalty under the RRACCS is:

Sec. 46. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

x x x x x x x x x

2. Simple Misconduct;

x x x x x x x x x

Under Section 57 of CSC Resolution No. 01-0940, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. The most serious charge of Raul is the less grave offense of unwanted touching of Ivie's hair while the light offense of unwelcome advances on Ivie shall be considered as an aggravating circumstance. Thus, the maximum penalty of suspension of six months for the less grave offense of sexual harassment should be imposed upon Raul.

Raul is also guilty of the less grave offense of simple misconduct. As provided above, the penalty for the second offense of a less grave offense is dismissal. Since Raul is guilty of two less grave offenses, the penalty of dismissal should be imposed upon him. Under Section 58 of the RRACCS, the penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service. Accordingly, the recommendation of the OCA is well-taken.

WHEREFORE, premises considered, the Court finds respondent Raul T. Tomanan, Legal Researcher and Officer-in-Charge, Clerk of Court, Regional Trial Court of Boac, Marinduque, Branch 94 **GUILTY** of sexual harassment and simple misconduct for which he is **DISMISSED** from the service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., on leave.

EN BANC

[A.M. No. 2019-04-SC. June 2, 2020]

RE: INCIDENT REPORT OF THE SECURITY DIVISION, OFFICE OF ADMINISTRATIVE SERVICES, ON THE ALLEGED ILLEGAL DISCHARGE OF A FIREARM AT THE MAINTENANCE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GRAVE MISCONDUCT; BRINGING A FIREARM INSIDE THE COURT PREMISES AND INDISCRIMINATELY FIRING SAID FIREARM DAMAGING COURT PROPERTIES CONSTITUTE GRAVE MISCONDUCT; PENALTY. — In the instant case, records show that Alumbro

failed to live up to these exacting standards. He committed misconduct by: *first*, bringing a firearm inside the Court premises; and *second*, in indiscriminately firing said firearm, thus, damaging Court properties. His actuations show his culpability, and lack of prudence and responsibility, and without regard to human lives, in general. Alumbro's reprehensible acts, not only constitute irresponsible and improper conduct, but a grave misconduct as it shows total lack of respect for the Court as his acts compromised the image, integrity and uprightness of the courts of law. Alumbro's behavior is contrary to the ethical conduct demanded by Republic Act No. 6713, otherwise known as *Code of Conduct and Ethical Standards for Public Officials and Employees.* x x x Even if the incident occurred outside of the regular work hours, Alumbro's behavior still had no excuse. Alumbro admitted that he was the on-duty electrician on December 25, 2018 when the firing incident transpired. It must be reminded that our laws on ethical behavior and proper decorum must still be observed even outside office hours. Moreso, as Alumbro's misconduct was committed while in the performance of his official functions. Clearly, Alumbro's misconduct was committed with clear intent to violate the law, or flagrant disregard of an established rule. x x x Anent the proper imposable penalty, the Court notes that Grave Misconduct is classified as a grave offense punishable by dismissal from service for the first offense. The penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

2. ID.; ID.; MISCONDUCT, DEFINED; SIMPLE AND GRAVE MISCONDUCT, DISTINGUISHED. — Misconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.

Re: Incident Report of the Security Division, Office of Administrative Services

RESOLUTION

***PER CURIAM*:**

Before this Court is a Memorandum-Letter dated August 5, 2019, by Deputy Clerk of Court and Chief Administrative Officer Atty. Maria Carina M. Cunanan (*Atty. Cunanan*) to Atty. Edgar O. Aricheta, Clerk of Court *En Banc*, relative to an illegal discharge of a firearm which occurred on December 25, 2019 within the premises of the Supreme Court.

Based on the Incident Report submitted by the Security Division, Office of Administrative Services (*OAS*) dated January 3, 2019, on December 27, 2018 at around 3:52 in the afternoon, Engr. Antonio Bayot, Jr. (*Engr. Bayot*), SC Supervising Judicial Staff Officer, Maintenance Division, OAS, called the Security Office to inform about an incident that happened in their office. Overall Shift-In-Charge Gil F. Pastorfide immediately responded and went to the place of incident where they saw a damaged computer desktop monitor with Property Number JDF-2010-1673-29A, on top of the working table of Mr. Dale Derick O. Josue. Upon inspection of the monitor, they discovered that it has multiple holes caused by fired bullets from a .22 caliber firearm based on the slugs recovered. They also noticed that the bullets came from the wooden partition wall dividing the office staff workstation and the locker area of the maintenance personnel. Upon further inspection of the area, it appeared that the gun was deliberately fired inside the maintenance office's locker based on the horizontal trajectory of the bullet. It also appeared that the illegal discharge of firearm occurred during the period when no other people were inside the office except the on-duty maintenance personnel.

Thus, Atty. Cunanan directed maintenance personnel to appear for investigation, and clarificatory questioning. Among those invited were Engr. Antonio Bayot, Jr., Nestor L. Cuaderes, Joseph D. Goloso, Teotimo E. Racho, Jr. (*Racho*), Nicomedes V. Natanauan, Jr. (*Natanauan*), Paulino M. Giducos, Jr. (*Giducos*) and respondent Gerardo H. Alumbro (*Alumbro*).

In the course of the investigation, they were asked who among the maintenance personnel own and possess firearm. It was confirmed *vis-á-vis* the information provided by their Chief of Division Engr. Bernardito R. Bundoc that Messrs. Giducos, Natanauan, and Racho personally own firearms. These three (3) employees, including Alumbro, even applied for a License to Own and Possess Firearms (*LTOPF*) during the caravan conducted by the Philippine National Police in the Supreme Court Compound.

Further investigation also revealed unconfirmed information pointing to Alumbro's alleged involvement in the incident. Engr. Bayot testified that he overheard from some maintenance staff the name of Alumbro as the person most likely responsible for the illegal discharge of firearm. He also confirmed that Alumbro was the on-duty electrician in the Court on December 25, 2018 between 6:00 a.m. to 2:00 p.m.

Giducos, on the other hand, testified that he was the on-duty personnel on December 24, 2018. However, he had another information pertaining to Alumbro's possible involvement in the incident. He said that Ms. Annabelle M. Desamero informed him that she saw Alumbro took his lunch inside the maintenance working area on December 26, 2018, and was seen within the Court compound even when it was not his schedule of duty.

For his part, Alumbro vehemently denied any involvement in the incident of illegal discharge of firearm. Though he confirmed that he was the on-duty electrician on December 25, 2018 from 6:00 a.m. to 2:00 p.m., he alleged that he went home after work. When asked if he owns any firearm, he said that he does not own one, but admitted that he applied for a LTOPF since he was planning to buy a gun for himself.

Alumbro also stated that he just stayed at home the whole day of December 26, 2018 as it was his birthday and denied going to the Supreme Court on the said date. He said that he took his birthday leave on December 27, 2018 and reported back to the office only on the following day, December 28, 2018. Following his statement, a request to the security officers was made to verify the truthfulness of his allegations. Alumbro,

on the other hand, was warned of the possible consequence to him if he was found not telling the truth.

On February 14, 2019, Alumbro was directed to appear again for the continuation of the investigation to answer some clarificatory questions. On this occasion, Alumbro changed his earlier statement and testimony by voluntarily confessing and admitting his responsibility relative to the unlawful bringing and illegal discharge of firearm at the Maintenance Division's Office. When asked why he previously had to lie and gave false information, Alumbro humbly asked for forgiveness and said that he does not want innocent employees to get involved in the incident.

The pertinent portion of Alumbro's statement are as follows:

Q: x x x Ito ay pagpapatuloy lamang dahil meron kaming napag-alaman na mayroon kang testimonyang gustong ibigay o pag-amin na gagawin?
A: Opo.

Q: ***Maaari mo nang sabihin sa amin ngayon kung ano ito, Mr. Alumbro?***
A. Inaamin ko po na ako ang may gawa ng pangyayari.

Q. Inaamin mo na ikaw ang may gawa ng pagpapaputok ng baril?
A. Opo.

Q. Ang testimonya na ibinigay mo sa amin noong January 17, 2019 ay binabago mo?
A. Opo.

Q. Na ang mga nakapaloob sa testimonyang iyon ay pawang mga kasinungalingan at ito ay binabago at itinatama mo ngayon?
A. Opo.

Q. Inuulit ko, ikaw ba ang nagpaputok ng baril doon sa Maintenance Division's office?
A. Opo, Sir.

Q. Kailan mo ginawa ang pagpapaputok ng baril?
A. December 25 po.

Q. December 25, 2018 kung saan ay ikaw ang naka-duty noon? Ikaw ang duty electrician?
A. Opo.

Q. Anong klaseng baril ang ginamit mo?
A. .22 caliber po. Sir.

Q. Saan mo ito pinaputok?
A. Doon sa dingding.

Q. Ang ibig mo bang sabihin 'yung dingding na yun ay inireport ng Security Division na tinamaan ng bala at tumagos doon sa kabila, sa computer ni Mr. Josue?
A. Yes, sir.

Q. Handa ka bang harapin ang mga consequences sa ginawa mong ito?
A. Opo, Sir.

Q. x x x Bakit mo naman nagawang magpaputok ng baril sa loob ng Maintenance Office at bakit mo nagawang magdala ng baril dito sa loob ng Supreme Court?
A. Pinabenta kasi sa akin 'yun, sir, gusto ko lang kumita ng konting halaga. (Emphasis supplied)

x x x x x x x x x

Q. Kailan mo dinala dito ang baril?
A. Umaga.

Q. Umaga ng December 25?
A. Opo.

Q. Bakit mo naman ito pinaputok doon?
A. Kasi ang sabi ay baka palyado po kaya naisip kong paputukin.

Q. Anong oras mo ito pinaputok?
A. Umaga. Bago mag-tanghali.

x x x x x x x x x

Q. May gusto ka pa bang sabihin sa amin?
A. Humihingi po ako ng tawad sa inyo, Sir, dahil hindi ko kaagad inamin.

Q. Ano ang nagudyok sa'yo para umamin?
A. Ayaw kong madamay 'yung...

Q. May pumilit ba sa'yo?
A. Wala. Sarili ko lang.

Q. May nanakot ba sa'yo?
A. Wala, Sir.

Q. Ito bang pag-amin mo ay voluntary?
A. Opo, Sir.

Q. Walang pananakot?
A. Wala po.

Q. Ano ang realization na nangyari sa'yo ngayon? Bakit nung una ay nagsisinungaling ka pa?
A. Ayaw ko pong madamay ang mga walang kinalaman sa mga kasamahan ko. (Emphasis ours)

In her Memorandum dated August 5, 2019, Atty. Cunanan averred that Alumbro's confession of admitting his act of bringing in and carrying a firearm inside the Court's premises, and intentionally firing it four (4) times which, as a result, damaged Court's properties, unequivocally show his guilt.

Thus, Atty. Cunanan, found Alumbro guilty of grave misconduct for illegally bringing a firearm and intentionally firing it inside the Court premises, and recommended that: he be dismissed from service, with forfeiture of all his retirement benefits, except accrued leave benefits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations. Further, Atty. Cunanan recommended that the security personnel be directed to strictly implement the Security Guidelines issued by the Court to prevent repetition of the same or similar incident in the future.

RULING

Time and again, this Court has pronounced that court personnel charged with the dispensation of justice, from the presiding

judge to the lowliest clerk, bear a heavy responsibility in insuring that their conduct are always beyond reproach. The preservation of the integrity of the judicial process is of paramount importance. All those occupying offices in the judiciary should, at all times, be aware that they are accountable to the people.[1]

In the instant case, records show that Alumbro failed to live up to these exacting standards. He committed misconduct by: *first*, bringing a firearm inside the Court premises; and *second*, in indiscriminately firing said firearm, thus, damaging Court properties. His actuations show his culpability, and lack of prudence and responsibility, and without regard to human lives, in general. Alumbro's reprehensible acts, not only constitute irresponsible and improper conduct, but a grave misconduct as it shows total lack of respect for the Court as his acts compromised the image, integrity and uprightness of the courts of law.

Alumbro's behavior is contrary to the ethical conduct demanded by Republic Act No. 6713, otherwise known as *Code of Conduct and Ethical Standards for Public Officials and Employees*.[2]

Section 4(c) of RA 6713 (Code of Conduct Standards for Public Officials and Employees) fittingly provides:

> (c) Justness and sincerity. — ***Public officials and employees shall remain true to the people at all times.*** They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. ***They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.*** (Emphasis supplied)

Even if the incident occurred outside of the regular work hours, Alumbro's behavior still had no excuse. Alumbro admitted that he was the on-duty electrician on December 25, 2018 when

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[1] *Mercado, et al. v. Judge Salcedo (Ret.)*, 619 Phil. 3, 21 (2009).

[2] See *Ganzon v. Arlos*, 720 Phil. 104, 116 (2013).

the firing incident transpired. It must be reminded that our laws on ethical behavior and proper decorum must still be observed even outside office hours. Moreso, as Alumbro's misconduct was committed while in the performance of his official functions. Clearly, Alumbro's misconduct was committed with clear intent to violate the law, or flagrant disregard of an established rule.

Misconduct is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.[3]

Anent the proper imposable penalty, the Court notes that Grave Misconduct is classified as a grave offense punishable by dismissal from service for the first offense. The penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.[4]

As a final note, it must be emphasized that those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Institution demands the best possible individuals in the service and it had never, and will never, tolerate nor condone any conduct which would violate the norms of public accountability, and diminish,

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[3] *Zedmond D. Duque v. Cesar C. Calpo*, A.M. No. P-16-3505 [Formerly OCA I.P.I. No. 13-4134-P], January 22, 2019.

[4] *Perez v. Roxas*, A.M. No. P-16-3595 (Formerly OCA I.P.I. No. 15-4446-P), June 26, 2018.

or even tend to diminish, the faith of the people in the justice system. As such, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public.[5]

WHEREFORE, as recommended, the Court finds **GERARDO H. ALUMBRO**, Electrician II, Maintenance Division, Office of the Administrative Services, Supreme Court of the Philippines, **GUILTY** of **GRAVE MISCONDUCT**, and is hereby **DISMISSED** from the service, with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to reinstatement or re-employment in any agency of the government, including government-owned or controlled corporations.

The Court further **DIRECTS** all Security personnel to **STRICTLY IMPLEMENT** the Security Guidelines issued by the Court to prevent the repetition of the same or similar incident in the future.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., on leave.

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[5] *Judaya, et al. v. Balbona*, 810 Phil. 375, 383 (2017).

EN BANC

[A.M. No. RTJ-96-1336. June 2, 2020]

JOCELYN C. TALENS-DABON, *complainant, vs.* **JUDGE HERMIN E. ARCEO, Regional Trial Court, Branch 43, San Fernando, Pampanga,** *respondent.*

RE: PETITION FOR PAYMENT OF RETIREMENT BENEFITS.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LAW ON EARLY RETIREMENT, VOLUNTARY SEPARATION, AND INVOLUNTARY SEPARATION OF CIVIL SERVICE OFFICERS AND EMPLOYEES DUE TO GOVERNMENT REORGANIZATION (RA 6683); FINDS NO APPLICATION IN THIS CASE TO JUSTIFY THE RELEASE OF RETIREMENT BENEFITS OF A JUDGE WHO HAS BEEN DISMISSED FROM THE SERVICE DUE TO GROSS MISCONDUCT AND IMMORALITY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. — RA 6683 applies only in cases of early retirement, voluntary separation, and involuntary separation due to government reorganization. In particular, Section 11 thereof states that the law applies to "[o]fficials and employees who were **previously separated** from the government service **not for cause** but as a result of the reorganization[.]" As correctly pointed out by the Office of the Chief Attorney in its Report dated March 14, 2019(OCAt Report), Arceo was separated for cause, having been dismissed from the service due to gross misconduct and immorality prejudicial to the best interest of service. Hence, RA 6683 finds no application in Arceo's case as to justify the release of his retirement benefits. The petition may be dismissed on this ground alone.

2. LEGAL ETHICS; JUDGES; PLEA FOR JUDICIAL CLEMENCY; HAVING BEEN EXTENDED JUDICIAL CLEMENCY BEFORE BY LIFTING THE ACCESSORY PENALTY OF DISQUALIFICATION FROM RE-EMPLOYMENT IN ANY

BRANCH OF THE GOVERNMENT, RESPONDENT'S PLEA FOR ANOTHER JUDICIAL CLEMENCY TO RELEASE THE FORFEITED RETIREMENT BENEFITS CANNOT BE GRANTED; AS THE ACT OF MERCY SHOULD BE BALANCED WITH THE PRESERVATION OF PUBLIC CONFIDENCE IN THE COURTS, RELEASING SUCH BENEFITS WOULD BE TOO MUCH LENIENCY CONSIDERING THE SEVERITY OF THE INFRACTION COMMITTED. — While the Court has allowed dismissed judges to enjoy a portion of their retitrement benefits pursuant to a plea for judicial clemency, its grant depends on the unique circumstances of each case. After all, the grant of judicial clemency, which most certainly, includes its parameters and extent, rests exclusively within the sound discretion of the Court pursuant to its authority under the Constitution. It should be noted that, in this case, Arceo was already extended judicial clemency eight (8) years ago, *i.e.*, lifting of the disqualification from re-employment in the government service, which enabled him to earn and save enough for his retirement. As the Court sees it, releasing the forfeited benefits would be too much leniency considering the severity of the infraction committed. The Court has, in numerous cases, wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct. Judicial clemency, as an act of mercy, should be balanced with the preservation of public confidence in the courts.

LEONEN, *J., concurring opinion:*

1. LEGAL ETHICS; JUDGES; PLEA FOR JUDICIAL CLEMENCY; RESPONDENT FAILED TO PROVE THAT HE IS ENTITLED TO ANOTHER JUDICIAL CLEMENCY IN THE FORM OF THE RELEASE OF RETIREMENT BENEFITS TO HIM. — This Court's grant of clemency to a judge dismissed from service is discretionary. An errant judge requesting clemency must show that he or she deserves it. With clemency being an act of mercy, its exercise "should be balanced with the preservation of public confidence in the courts." x x x In this case, Arceo failed to prove that he is entitled to

this Court's additional clemency. He did not show evidence of his remorse. Not submitting manifestations of forgiveness from those he wronged shows how he misunderstands the nature of all legal prohibitions against sexual harassment. He shows no grasp of the consequences of sexual harassment not only to his direct victim, but also to his indirect victims: the rest of his staff who had to survive the hostile environment he had created in his *sala*, where he abused the power he wielded.

2. ID.; ID.; ID.; ID.; RESPONDENT SHOWED GREATER PERVERSITY IN THE SEXUAL HARASSMENT OF HIS STAFF; HE MUST PAY A HIGHER PRICE FOR HAVING SULLIED THE JUDICIARY'S IMAGE, FOR CULTIVATING A HARROWING PLACE OF WORK, AND FOR VIOLATING THE DIGNITY OF HIS EMPLOYEES. — Since the Petition is essentially a second request for judicial clemency in the form of the release of retirement benefits, a stringent determination is required as to whether Arceo is entitled further compassion and liberality from this Court. The severity of his infraction is not only administrative in nature; it is criminal. In November 2004, the Sandiganbayan convicted Arceo for violating Republic Act No. 7877, or the Anti-Sexual Harassment Law. x x x Sexual harassment is not a trivial offense. Its essence lies not in the simple violation of a victim's sexuality, but in a superior's undue exertion of power over the victim. Inherent in this predatory act is the assailant's perverted use of power to dominate his or her subordinate for sexual favors[.] x x x This vile act violates the inherent dignity of a person recognized under the Constitution. If we are to give effect to the State's declaration of how it values every person's dignity, no instance of sexual harassment can be condoned, especially those perpetrated in the Judiciary. x x x As a former judge, Arceo showed greater perversity in the sexual harassment of his staff. x x x Sexual harassment anywhere, let alone within the judge's chambers, is a gross violation of this duty. It shows not only a total disregard of the dignity of the employee directly violated, but also the indirect victims, staff members who are forced to work in an intimidating and hostile environment. As a former judge, Arceo must pay a higher price for having sullied the Judiciary's image, for cultivating a harrowing place of work, and for violating the dignity of his employee[.]

HERNANDO*, J., separate opinion:*

LEGAL ETHICS; JUDGES; PLEA FOR JUDICIAL CLEMENCY; THE RELEASE OF THE DISMISSED JUDGE'S RETIREMENT BENEFIT WAS PREDICATED BY THE MOST RESTRICTIVE, COMPELLING, AND GRIEVOUS CIRCUMSTANCES; RESPONDENT'S ACTS OF ATONEMENT AND EXPRESSIONS OF REMORSE FAILED TO CONVINCE THIS COURT THAT HE DESERVES TO BE GRANTED ANOTHER JUDICIAL CLEMENCY; ERRANT BUT UNAPOLOGETIC JUDGES SHOULD NOT BE PLACED ON EQUAL FOOTING WITH THE ONES WHO HAVE ENDEAVORED TO KEEP THEIR SERVICE RECORDS PRISTINE OR WITH THOSE WHO FAILED TO UPKEEP JUDICIAL MORALITIES AT FIRST BUT EVENTUALLY LABORED ON A SINCERE AND UNTRIVIAL REFORMATION. — **[T]he release of the dismissed judges' retirement benefits was predicated by the most restrictive, compelling, and grievous circumstances.** Respondent's acts of atonement, however, only pale in comparison. His 18-year government service is quite lamentably short to be considered. His basic allegations of deteriorating health and increasing medical expenses are but common and inevitable costs of aging. Moreover, respondent's expressions of remorse cannot be deemed at par with that of former Judge Rivera in *Junio*. Respondent's obstinate and hypocritical refusal to admit to his guilt, even in the face of his criminal conviction, grew more palpable when he had filed *two* motions for reconsideration of his dismissal, both of which were denied. I also note that while the Court in *Junio* accorded full merit to former Judge Rivera's hardships and gave him "whatever monetary benefits due him for his long service in the government, if entitled thereto[,]" there still was no express reinstatement of Judge Rivera's retirement benefits. As respondent failed to rise up to Judge Rivera's standard of acceptable penance, the former should not be allowed to enjoy more than what was accorded to the latter. In any case, respondent is already a fortunate beneficiary of the Court's clemency when it restored in the November 20, 2012 Resolution respondent's entitlement to his accrued leave benefits, and allowed his return to government service at the first formal instance that he sought judicial clemency. In addition, the gravity of respondent's

criminal conviction cannot be ignored. It should bar any further grant of benevolence. Despite the irony, judicial leniency must be exercised only upon a strict assessment of its claimant's worth. A dismissed judge's plea for the Court's compassion should pass rigid scrutiny before administrative penalties are reversed. If the Court would easily be swayed by a generic lapse of time and a sheaf of certifications of apparently-restored morals, penal clauses may lose its deterrent purpose. Errant but unapologetic judges should not be placed on equal footing with the ones who have endeavored to keep their service records pristine, or even with those who, while having strayed from the edicts of judicial moralities at first, eventually and thoroughly labored on a sincere and untrivial reformation.

APPEARANCES OF COUNSEL

Malcolm Law for Judge Hermin E. Arceo.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is the Petition for Payment of Retirement Benefits[1] filed by respondent Judge Hermin E. Arceo (Arceo), former Presiding Judge of the Regional Trial Court of San Fernando, Pampanga, Branch 43, seeking to claim the retirement benefits for his services rendered in the Judiciary.

In 1996, Arceo was dismissed from the service after being found to have committed lewd and lustful acts against complainant Atty. Jocelyn C. Talens-Dabon (complainant). The dispositive portion of the Decision[2] dated July 25, 1996 reads:

WHEREFORE, Judge Hermin E. Arceo is hereby DISMISSED from the service for gross misconduct and immorality prejudicial to the best [interest] of the service, **with forfeiture of all retirement benefits** and with prejudice to re-employment in any branch of the government, including government-owned and controlled corporations.

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[1] *Rollo* (Vol. 1), pp. 452-455.

[2] *Talens-Dabon v. Arceo*, 328 Phil. 692 (1996).

SO ORDERED.[3]

Arceo filed a Petition for Judicial Clemency[4] in 2012 seeking to lift the ban against his re-employment in the government service and to be allowed to receive his accrued leave credits. The Court granted the petition in a Resolution[5] dated November 20, 2012 (2012 Resolution) pursuant to the guidelines[6] for resolving requests for judicial clemency. It added that based on paragraph 1, Section 11, Rule 140 of the Rules of Court, accrued leave credits are exempt from the forfeiture of benefits.[7]

In 2018, Arceo filed the instant petition requesting the release of his retirement benefits for humanitarian consideration. He stated that he is in dire need of funds for his medical expenses and other basic necessities of life, considering that he had already reached the age of 77.[8] In claiming benefits, he cited Section 3 of Republic Act No. (RA) 6683,[9] the last portion of which reads: "any appointive official or employee who has previously been found guilty in an administrative proceeding and whose rank or salary has been reduced shall be paid on the basis of his last salary."

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[3] *Talens-Dabon v. Arceo*, *id*. at 709; emphasis supplied.

[4] *Rollo* (Vol. 1), pp. 403-415.

[5] *Talens-Dabon v. Arceo*, 699 Phil. 1, 8 (2012).

[6] See *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency*, 560 Phil. 1, 5-6 (2007).

[7] See *Talens-Dabon v. Arceo*, *supra* note 5, at 5-8.

[8] *Rollo* (Vol. 1), p. 453.

[9] Entitled "AN ACT PROVIDING BENEFITS FOR EARLY RETIREMENT AND VOLUNTARY SEPARATION FROM THE GOVERNMENT SERVICE, AS WELL AS INVOLUNTARY SEPARATION OF CIVIL SERVICE OFFICERS AND EMPLOYEES PURSUANT TO VARIOUS EXECUTIVE ORDERS AUTHORIZING GOVERNMENT REORGANIZATION AFTER THE RATIFICATION OF THE 1987 CONSTITUTION APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on December 2, 1998. See also Supreme Court Administrative Circular No. 07-89 entitled "IMPLEMENTING GUIDELINES OF REPUBLIC ACT NO. 6683, DATED DECEMBER 2, 1988," approved on January 13, 1989.

The Court notes that Arceo is not qualified to claim the benefits under Section 3 of RA 6683 because he was not administratively sanctioned with a mere reduction of his salary or rank but was, in fact, dismissed from the service.[10]

Notably, RA 6683 applies only in cases of early retirement, voluntary separation, and involuntary separation due to government reorganization. In particular, Section 11 thereof states that the law applies to "[o]fficials and employees who were **previously separated** from the government service **not for cause** but as a result of the reorganization[.]" As correctly pointed out by the Office of the Chief Attorney in its Report[11] dated March 14, 2019 (OCAt Report), Arceo was separated for cause, having been dismissed from the service due to gross misconduct and immorality prejudicial to the best interest of service.[12] Hence, RA 6683 finds no application in Arceo's case as to justify the release of his retirement benefits. The petition may be dismissed on this ground alone.

The Court nevertheless proceeds to examine whether it should release Arceo's retirement benefits pursuant to its power to grant clemency.

Judicial clemency is an act of mercy removing any disqualification from the erring judge.[13] Its grant rests on the sound discretion of the Court.[14] In the 2012 Resolution, Arceo was granted judicial clemency after sufficiently showing his remorse and reformation after his dismissal from the service,[15] but the clemency extended to him back then was **limited only to the lifting of his disqualification from re-employment**

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[10] *Talens-Dabon v. Arceo*, *supra* note 2, at 709.

[11] *Rollo* (Vol. 1), pp. 472-480.

[12] *Id.* at 475.

[13] *Concerned Lawyers of Bulacan v. Judge Villalon-Pornillos*, 805 Phil. 688, 691 (2017).

[14] See *Que v. Atty. Revilla*, 746 Phil. 406, 413 (2014).

[15] *Talens-Dabon v. Arceo*, *supra* note 5, at 6.

in any branch of the government[16] because he then did not pray for the release of his retirement benefits. He now comes before the Court asking for such release of benefits.

Forfeiture of retirement benefits is one of the sanctions that may be imposed on judges who are found guilty of a serious charge. Pursuant to Section 11, Rule 140 of the Rules of Court, the Court may forfeit a judge's retirement benefits in whole or in part, depending on the circumstances of each case. The provision reads:

> Section 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided,* however,
>
> That the forfeiture of benefits shall in no case include accrued leave credits;
>
> x x x x x x x x x (Underscoring supplied)

This sanction for a serious administrative charge is consistent with the accessory penalty provided under Section 57[17] of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS),[18] to wit: "[t]he penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and *forfeiture of retirement benefits.*"

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[16] *Talens-Dabon v. Arceo*, *supra* note 5, at 8.

[17] Section 57. *Administrative Disabilities Inherent in Certain Penalties.* — The following rules shall govern in the imposition of accessory penalties:

> a. The penalty of dismissal shall carry with it cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits. x x x (Underscoring supplied)

[18] Civil Service Commission (CSC) Resolution No. 1701077, approved on July 3, 2017.

To recall, Arceo was found administratively liable in 1996 for committing lewd and lustful acts, the last and most severe of which was summarized by the investigating justice as follows:

> Although outraged [by respondent's poem], complainant respectfully asked permission to leave while putting the poem in the pocket of her blazer. She then proceeded towards the outer room where she was surprised to find the door closed and the chair holding it open now barricaded it. The knob's button was now in a vertical position signifying that door was locked.
>
> Complainant was removing the chair when respondent walked to her in big strides asking her for a kiss. Seconds later[,] he was embracing her and trying to kiss her. Complainant evaded and struggled and pushed respondent away. Then panicking, she ran in the direction of the filing cabinets. Respondent caught up with her, embraced her again, pinned her against the filing cabinets and pressed the lower part of his body against hers. Complainant screamed for help while resisting and pushing respondent. Then she ran for the open windows of the inner room. But before she could reach it[,] respondent again caught her. In the ensuing struggle, complainant slipped and fell on the floor, her elbows supporting the upper part of her body while her legs were outstretched between respondent's feet. Respondent then bent his knees in a somewhat sitting (squatting) position, placed his palms on either side of her head and kissed her on the mouth with his mouth open and his tongue sticking out. As complainant continued to struggle, respondent suddenly stopped and sat on the chair nearest the door of the inner room with his face red and breathing heavily. Complainant angrily shouted "maniac, *demonyo, bastos, napakawalanghiya ninyo*". Respondent kept muttering "I love you" and was very apologetic offering for his driver to take her home. Complainant headed for the Maple Room where, when she entered, she was observed by Bernardo Taruc and Yolanda Valencia to be flushed in the face and with her hair disheveled.[19]

This happened in October 1995, a few months after the Anti-Sexual Harassment Act of 1995[20] came into effect. In recognition

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[19] *Talens-Dabon v. Arceo*, *supra* note 2, at 700-701.

[20] RA 7877 entitled "AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING

of the gravity of the offense, the framework on administrative cases involving sexual harassment charges has been strengthened both within and outside the judiciary. Notably, a few years after the decision against Arceo, the Civil Service Commission (CSC) released Administrative Disciplinary Rules on Sexual Harassment Cases,[21] which was eventually integrated in the 2017 RACCS. Thereafter, the Court released the *Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary*.[22]

With these developments in mind, and weighing all attendant factors, the Court resolves to deny the present petition. While the Court has allowed dismissed judges to enjoy a portion of their retirement benefits pursuant to a plea for judicial clemency,[23] its grant depends on the unique circumstances of each case. After all, the grant of judicial clemency, which most certainly, includes its parameters and extent, rests exclusively within the sound discretion of the Court pursuant to its authority under the Constitution.[24] It should be noted that, in this case, Arceo

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ENVIRONMENT, AND FOR OTHER PURPOSES," approved on February 14, 1995.

[21] CSC Resolution No. 01-0940, approved on May 21, 2001.

[22] A.M. No. 03-03-13-SC (January 3, 2005).

[23] See the Court's Resolution in *Re: "Exposé" of A Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo & Clerk of Court Renato C. San Juan, MTCC-Naga City*, A.M. No. 00-10-230-MTCC, September 23, 2008, citing the Court's Resolution in *Re: An Undated Letter with the Heading "Exposé" of A Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III of the Municipal Trial Court in Cities, Branch 1 (MTCC), Naga City and Clerk of Court Renato C. San Juan, MTCC, Naga City*, A.M. No. 00-10-230-MTCC, December 9, 2003; *Atty. Meris v. Judge Ofilada*, 419 Phil. 603, 608 (2001); and *Guerrero v. Villamor*, 357 Phil. 90, 93 (1998), citing the Court's Resolution in *Sabitsana, Jr. v. Judge Villamor*, A.M. Nos. RTJ-90-474 and RTJ-90-606, April 12, 1994.

[24] The pertinent provision in this case is Section 6, Article VIII of the 1987 CONSTITUTION, which states:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

was already extended judicial clemency eight (8) years ago, *i.e.*, lifting of the disqualification from re-employment in the government service, which enabled him to earn and save enough for his retirement. As the Court sees it, releasing the forfeited benefits would be too much leniency considering the severity of the infraction committed. The Court has, in numerous cases, wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct.[25] Judicial clemency, as an act of mercy, should be balanced with the preservation of public confidence in the courts.[26]

WHEREFORE, the Court resolves to **DENY** the Petition for Payment of Retirement Benefits filed by respondent Judge Hermin E. Arceo.

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Leonen and *Hernando, JJ.*, see separate concurring opinions.

Delos Santos, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

Sexual harassment is not a simple, ordinary offense. It is not victimless. Its perpetrators manifest a clear disregard for the human dignity of their victims while conveniently taking succor in the long miscredited cultural concept of patriarchy. Their actions reveal an utter, gross ignorance of an important part of our Constitution and laws.

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[25] See *Concerned Lawyers of Bulacan v. Presiding Judge Victoria Villalon-Pornillos*, *supra* note 13, at 693.

[26] See *id*.

I agree with the *ponencia*'s denial of Hermin E. Arceo's (Arceo) Petition for Payment of Retirement Benefits.

This Court had already extended him leniency eight (8) years ago when it granted judicial clemency and allowed him to seek reemployment in government.[1] Despite this benevolence, he now comes before this Court for a second act of mercy, citing an inapplicable provision of law no less.[2] In doing so, Arceo fails to understand the severity of the crime he committed, and the value of seeking atonement from those he wronged.

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This Court's grant of clemency to a judge dismissed from service is discretionary.[3] An errant judge requesting clemency must show that he or she deserves it.[4] With clemency being an act of mercy, its exercise "should be balanced with the preservation of public confidence in the courts."[5]

In *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37*,[6] guidelines in resolving petitions for judicial clemency were set:

> Clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. The Court will grant it only if there is a showing that it is merited.

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[1] *Ponencia*, p. 3. See also *Talens-Dabon v. Arceo*, 699 Phil. 1 (2012) [Per *J.* Perlas-Bernabe, *En Banc*].

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

[3] *Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA Ignacio S. Del Rosario*, A.M. No. 2011-05-SC, June 19, 2018, 866 SCRA 425 [*J.* Carpio, *En Banc*].

[4] *Concerned Lawyers of Bulacan v. Villalon-Pornillos*, 805 Phil. 688 (2017) [*Per Curiam*, *En Banc*].

[5] *In Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency*, 560 Phil. 1, 5 (2007) [Per *J.* Corona, *En Banc*].

[6] 560 Phil. 1 (2007) [Per *J.* Corona, *En Banc*].

Proof of reformation and a showing of potential and promise are indispensable.

In the exercise of its constitutional power of administrative supervision over all courts and all personnel thereof, the Court lays down the following guidelines in resolving requests for judicial clemency:

> 1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
>
> 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
>
> 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
>
> 4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.
>
> 5. *There must be other relevant factors and circumstances that may justify clemency*.[7] (Emphasis supplied, citations omitted)

While this Court recognized Arceo's remorse in its 2012 ruling, Arceo has never really shown that he had sought forgiveness from the ones he wronged most—his victims, Atty. Jocelyn C. Talens-Dabon, and the rest of his staff whom he subjected to great distress. To grant Arceo further leniency now would only tip the scales in favor of an unremorseful abuser, neglect the interests of the victims of the offense, and be inconsistent with the principle of restorative justice.

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[7] *Id*. at 5-6.

I advocated in *Anonymous Complaint v. Dagala*[8] that the punishment on a judge's immoral acts should be calibrated with the interests of the victims, such that their genuine forgiveness should be considered:

> The vulnerability of having committed mistakes in the past even assists the human incumbents of our judicial offices. *Past mistakes properly acknowledged, addressed, and atoned broaden the understanding of a judge of human frailty and the possibility of forgiveness from those he or she has wronged. Properly addressed, human sins inscribe compassion for our judges*. Within the limits of the law, he or she will be able to calculate the proper reliefs of penalties appropriate to the action.
>
> Implicit in this understanding is the view that our judiciary is not simply a mechanical cog that dispenses specific penalties without full regard for the context of the facts proven. If this were so, current technology could simply be harnessed to substitute judges and justices, even for this Court, with robots. The legal system composed of the branches that promulgate, execute, and interpellate the law should not be seen as less than human institutions.
>
> Justices should be able to see the general norms that would apply given the set of facts that can be reasonably inferred from the evidence. However, in interpreting the facts, we should always examine the premises we have that are articulated by our conception of our realities that provide us with the basis for our inferences.
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> . . . . . .
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> It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.[9] (Emphasis supplied)

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[8] 814 Phil. 103 (2017) [*Per Curiam, En Banc*].

[9] *J.* Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Presiding Judge Exequil L. Dagala, Municipal Circuit Trial Court, Dapa-*

In *Macarubbo v. Atty. Macarubbo*,[10] this Court lifted the disbarment of an errant lawyer who had been disciplined for gross immoral conduct in light of his bigamous marriage and a third marriage during the subsistence of a valid marriage. This Court appreciated the lawyer's acknowledgment of his faults and the steps he had taken to make amends to his children. For these acts, this Court was satisfied that he had sufficiently shown remorse.

On the other hand, in *Que v. Atty. Revilla*,[11] this Court denied a disbarred lawyer's plea for clemency for not demonstrating moral reformation and rehabilitation, after he had failed to submit sufficient proof of contrition. This Court held:

> Furthermore, we are not persuaded by the respondent's sincerity in acknowledging his guilt. While he expressly stated in his appeal that he had taken full responsibility of his misdemeanor, his previous inclination to pass the blame to other individuals, to invoke self-denial, and to make alibis for his wrongdoings, contradicted his assertion. *The respondent also failed to submit proof satisfactorily showing his contrition. He failed to establish by clear and convincing evidence that he is again worthy of membership in the legal profession. We thus entertain serious doubts that the respondent had completely reformed.*
>
> As a final word, while the Court sympathizes with the respondent's unfortunate physical condition, we stress that in considering his application for reinstatement to the practice of law, *the duty of the Court is to determine whether he has established moral reformation and rehabilitation, disregarding its feeling of sympathy or pity*. Surely at this point, this requirement was not met. Until such time when the respondent can demonstrate to the Court that he has completely rehabilitated himself and deserves to resume his membership in the

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Socorro, Dapa, Surigao Del Norte, 814 Phil. 103, 149-156 (2017) [*Per Curiam, En Banc*].

[10] 702 Phil. 1 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[11] 746 Phil. 406 (2014) [*Per Curiam, En Banc*].

Bar, Our decision to disbar him from the practice of law stands.[12] (Emphasis supplied)

In *Narag v. Atty. Narag*,[13] I opined in my dissent that this Court should have exercised mercy in lifting the lawyer's disbarment, as he has sufficiently shown that he has suffered enough after having been disbarred for 15 years. He has shown true reformation after having been forgiven by his family, and thus, deserved clemency from this Court:

> In this case, 80-year-old Dominador M. Narag filed his petition for readmission to the practice of law 15 years after his disbarment. In his petition for readmission, he expressed remorse and asked for complainant Julieta's and their children's forgiveness. He annexed to his petition a copy of an affidavit executed by his son, Dominador, Jr., attesting that complainant Julieta and their children had forgiven him. He also executed a holographic will in favor of complainant Julieta and their children.
>
> . . . . . .
>
> I disagree with the majority that these manifestations are hollow. I also disagree that the affidavit of Dominador M. Narag's son and the holographic will he presents are not sufficient to prove the forgiveness that has been bestowed upon him by his family. They are the parties that have been wronged and in so far as the State is concerned, he has already suffered enough.
>
> This case does not deal with the question of whether we can impose disciplinary action on acts of immorality by members of the profession. Had it been at issue, I would think that the forgiveness given by the parties that have been wronged should have great bearing on our determination. After all, there are limits to the government's interference into arrangements of intimacies among couples. I fail to grasp the alleged continuing gross immorality and [reprehensible behavior] committed by a remorseful 80-year-old man who has been forgiven by those he has emotionally wronged. I do not believe that the law should be read as being too callous and inflexible so as to be unable to accommodate the unique realities in this case.

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[12] *Id*. at 416-417.

[13] 730 Phil. 1 (2014) [*Per Curiam, En Banc*].

What is at issue in this case is whether Dominador M. Narag has suffered enough from his acts. This court showed them compassion and reinstated them as members of the legal profession in many instances where those disbarred are of old age who suffered "the ignominy of disbarment" long enough, showed remorse, and conducted themselves beyond reproach after their disbarment.

The legal order has had its pound of flesh from Dominador M. Narag. He has committed a transgression, but we have exacted enough retribution. The purpose of the penalty has already been achieved. He is in the twilight of his years when he is at his best to reflect on what his life has been. He is armed by the forgiveness of his family, and he is visited by remorse. In my view, not granting him the mitigation he asks for is a failure of human compassion.[14] (Citations omitted)

In this case, Arceo failed to prove that he is entitled to this Court's additional clemency. He did not show evidence of his remorse. Not submitting manifestations of forgiveness from those he wronged shows how he misunderstands the nature of all legal prohibitions against sexual harassment. He shows no grasp of the consequences of sexual harassment not only to his direct victim, but also to his indirect victims: the rest of his staff who had to survive the hostile environment he had created in his *sala*, where he abused the power he wielded.

II

In *Re: Deceitful Conduct of Ignacio S. Del Rosario*,[15] this Court held that the integrity of the Judiciary prevails over pleas for compassion. Judicial clemency should not be granted if it will not preserve public confidence in the Judiciary:

While petitioner claims that he has been remorseful for his actions, there is no strong indication that he has creditably reformed himself. It is incumbent upon petitioner to prove in sufficient terms how he has effectively reformed himself, given his past transgressions which

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[14] *J.* Leonen, Dissenting Opinion in *Narag v. Atty. Narag*, 730 Phil. 1, 10-12 (2014) [*Per Curiam, En Banc*].

[15] A.M. No. 2011-05-SC, June 19, 2018, 866 SCRA 425 [*J.* Carpio, *En Banc*].

tarnished the Court's image and reputation. Moreover, petitioner likewise failed to present any evidence to demonstrate his promise and potential for public service. To emphasize, proof of reformation and a showing of potential and promise are considered as indispensable requirements to the grant of judicial clemency.

Time and time again, the Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. All court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity not only in the performance of their official duties but also in their private dealings with other people.

It cannot be gainsaid that, as an OCA employee, it was expected from petitioner to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was incumbent upon petitioner to practice a high degree of work ethic and to abide by the exacting principles of ethical conduct and decorum in both his professional and private dealings. Clearly, petitioner failed to meet the aforesaid standards, having placed his personal interest over the interest of Primo, who trusted him wholeheartedly as a friend and confidant.

Blatantly overlooking the Court's interest in the preservation and promotion of the integrity of the Judiciary, petitioner misappropriated the money that was entrusted to him by Primo and made misrepresentations to cover up his misappropriation of the entrusted sum. Petitioner did not even immediately return the money he misappropriated, despite Primo's demands. Petitioner's proffered reason for the misappropriation of the money that was entrusted to him by Primo hardly warrants any showing of mercy and compassion from the Court. In addition, while petitioner eventually paid Primo's financial liability with the Court, it was pointed out by the OAS that such restitution was only borne from petitioner's fear of possible administrative sanction.

Considering the abovementioned circumstances, the Court believes that its compassion has to yield to the higher demand of upholding the integrity of the Judiciary. In the case at bar, what is being considered is the preservation and promotion of the public's confidence in the integrity of the Judiciary. It cannot be denied

that petitioner took advantage of the trust and confidence ascribed to him as a court employee. Petitioner's infractions tainted the public perception of the image of the Court, casting serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees. In an array of cases, the Court has come down hard and wielded the rod of discipline against members of the Judiciary who have failed to meet the exacting standards of judicial conduct. Judicial clemency is not a privilege or a right that can be availed of at anytime. It will only be granted by the Court if there is a showing that it is merited. *A plea for judicial clemency will not be heeded when to grant such a request would put the good name and integrity of the courts of justice in peril.*[16] (Emphasis supplied, citations omitted)

Since the Petition is essentially a second request for judicial clemency in the form of the release of retirement benefits, a stringent determination is required as to whether Arceo is entitled further compassion and liberality from this Court. The severity of his infraction is not only administrative in nature; it is criminal. In November 2004, the Sandiganbayan convicted Arceo for violating Republic Act No. 7877, or the Anti-Sexual Harassment Law.[17]

In defining sexual harassment, Section 3 of the law states in part:

SECTION 3. Work, Education or Training-related Sexual Harassment Defined. — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.

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[16] *Id*. at 435-437.

[17] *Talens-Dabon v. Arceo*, 699 Phil. 1 (2012) [Per *J*. Perlas-Bernabe, *En Banc*].

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

One (1) of the policies in criminalizing sexual harassment is upholding the dignity of workers in their place of work:

SECTION 2. Declaration of Policy. — The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and *uphold the dignity of workers*, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment are hereby declared unlawful. (Emphasis supplied)

Sexual harassment is not a trivial offense. Its essence lies not in the simple violation of a victim's sexuality, but in a superior's undue exertion of power over the victim.[18] Inherent in this predatory act is the assailant's perverted use of power to dominate his or her subordinate for sexual favors:

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[18] *J.* Leonen, Concurring Opinion in *Re: Anonymous Complaint Against Atty. Cresencio P. Co Unlian, Jr.*, A.C. No. 5900, April 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65162> [Per *J.* J. Reyes, Jr. *En Banc*] citing *Philippine Aeolus Auto-Motive Corporation v. National Labor Relations Commission*, 387 Phil. 250, 264 (2000) [Per *J.* Bellosillo, Second Division].

Sexual harassment in the workplace is not about a [person] taking advantage of [another person] by reason of sexual desire; it is about power being exercised by a superior officer over [his or her] subordinates. The power emanates from the fact that the superior can remove the subordinate from his [or her] workplace if the latter would refuse his [or her] amorous advances.[19]

This vile act violates the inherent dignity of a person recognized under the Constitution.[20] If we are to give effect to the State's declaration of how it values every person's dignity, no instance of sexual harassment can be condoned, especially those perpetrated in the Judiciary. Apropos is this Court's condemnation of sexual harassment:

In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices. Indeed, even within this century, persons were discriminated against merely because of gender, creed or the color of their skin, to the extent that the validity of human beings being treated as mere chattel was judicially upheld in other jurisdictions. But in humanity's march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct for, at bottom, history reveals that the moving force of civilization has been to realize and secure a more humane existence. Ultimately, this is what humanity as a whole seeks to attain as we strive for a better quality of life or higher standard of living. Thus, in our nation's very recent history, the people have spoken, through Congress, to deem conduct constitutive of sexual harassment or hazing, acts previously considered harmless by custom, as criminal. In disciplining erring judges and personnel of the Judiciary then, this Court can do no less.[21] (Citation omitted)

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[19] *Floralde v. Court of Appeals*, 392 Phil. 146, 150 (2000) [Per *J*. Pardo, *En Banc*].

[20] CONST., Art. II, Sec. 11 states:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

[21] *Vedaña v. Valencia*, 356 Phil. 317, 332 (1998) [Per *J*. Davide, First Division].

As a former judge, Arceo showed greater perversity in the sexual harassment of his staff. In *Sabitsana, Jr. v. Judge Villamor*,[22] it was held that one (1) of the duties of a judge is to be "an effective manager of the court and its personnel."[23] Sexual harassment anywhere, let alone within the judge's chambers, is a gross violation of this duty. It shows not only a total disregard of the dignity of the employee directly violated, but also the indirect victims, staff members who are forced to work in an intimidating and hostile environment.

As a former judge, Arceo must pay a higher price for having sullied the Judiciary's image, for cultivating a harrowing place of work, and for violating the dignity of his employees:

> We have repeatedly held that, while every office in the government service is a public trust, no position exacts greater moral righteousness than a seat in the judiciary. Performing as he does an exalted role in the administration of justice, *a judge must pay a high price for the honor bestowed upon him.* Thus, a judge must comport himself at all times in such a manner that his conduct, official or otherwise, can weather the most exacting scrutiny of the public that looks up to him as the epitome of integrity and justice.[24] (Emphasis supplied, citations omitted)

It is significant to remember the words of this Court when it imposed the highest and most severe penalty of dismissal to Arceo for gross misconduct and immorality prejudicial to the best interests of the service:

> The integrity of the Judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, is served. Hence,

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[22] 279 Phil. 483 (1991) [*Per Curiam, En Banc*].

[23] *Id*. at 487-488.

[24] *Veloso v. Caminade*, 478 Phil. 1, 7 (2004) [Per *J*. Corona, Third Division].

in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system.[25]

Thus, I concur with the *ponencia* that the Petition for Payment of Retirement Benefits cannot be granted to Arceo, in order to preserve public confidence in this Court. Wielding the rod of discipline against errant members of the Bench increases the confidence of all court personnel in our ability to protect the dignity of the Judiciary's employees. It is time that this Court strongly show disapproval of all gendered inequities and take on the policy of no quarters for judges who sexually harass or abuse another court employee. Our compassion should not be mistaken for connivance.

It is up to this Court to finally stand against sexual harassment, a menace that should be eradicated from all courts. It is time that this Court set a zero-tolerance policy against judges who abuse power and thereafter seek recourse to this Court, invoking a humanitarian reason when they themselves failed to exercise basic human decency.

ACCORDINGLY, I vote to **DENY** the Petition for Payment of Retirement Benefits of Hermin E. Arceo.

SEPARATE OPINION

HERNANDO, *J.*:

I concur with the *ponencia*.

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[25] *Talens-Dabon v. Judge Hermin E. Arceo*, 328 Phil. 692, 705-706 (1996) [*Per Curiam, En Banc*].

The Court had occasion to allow the release of 25% of retirement benefits of an administratively dismissed judge in the following cases:

In *Sabitsana, Jr. v. Judge Villamor*,[1] the Court explicitly declared that the allowance of 25% of former Judge Villamor's retirement benefits was merely *pro hac vice* and will not serve as a precedent for other cases.[2]

In *Atty. Meris v. Ofilada*,[3] former Judge Ofilada had served the government for 37 years when he was dismissed on the grounds of grave abuse of authority, evident partiality, gross incompetence, and ignorance of the law. It was his wife who requested the release of Judge Ofilada's retirement benefits in her *A Plea for Mercy* before the Court, since Judge Ofilada was old, incapacitated, and in dire need of funds to cover his medical expenses. As former Judge Ofilada passed away pending consideration of his wife's letter, the Court allowed the release of 25% of his retirement benefits, among other gratuities to his heirs, albeit citing its supposedly *pro hac vice* ruling in *Sabitsana, Jr.*

In *In Re: An Undated Letter with the Heading "Expose" Of A Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III of the Municipal Trial Court in Cities, Branch 1 (MTCC), Naga City and Clerk of Court Renato C. San Juan, MTCC Naga City*, the Court granted the release of 25% of his retirement benefits only upon former Judge Ocampo's third plea.[4]

I also take the opportunity to mention *Junio v. Judge Rivera, Jr.*,[5] a case more factually similar to that of respondent herein.

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[1] A.M. RTJ-90-474, RTJ-90-606, April 12, 1994, as cited in *Guerrero v. Villamor*, 357 Phil. 90, 90-93 (1998).

[2] *Id.* at 93.

[3] 419 Phil. 603 (2001).

[4] A.M. No. 00-10-230-MTCC, December 9, 2003 and September 23, 2008, following the *ponencia*'s Draft Resolution of this case, p. 4.

[5] A.M. No. MTJ-91-565, 509 Phil. 65 (2005).

In *Junio*, former Judge Rivera's dismissal was grounded on gross misconduct and conduct prejudicial to the best interest of the judiciary, having kissed his boarder's daughter while drunk during his birthday party.[6] The Court lifted his ban from public service and accorded him his due monetary gratuities in view of the following circumstances:

(1) His 35 years of government service;

(2) His case being his first and only administrative offense;

(3) He demonstrated sincere repentance;

(4) He applied for judicial clemency 10 years after his dismissal and "has come to terms with reality and learned [his] lesson"; and

(5) His regressing physical condition caused by old age and various illnesses, *i.e.*, cataract, prostatic enlargement, postural vertigo, hypertension, and arthritis, necessitate financial support.[7]

Moreover, former Judge Rivera had never been found guilty of a criminal offense and never moved for the reconsideration of his dismissal, as he "accepted the verdict, in all humility."[8] Withal, the Court granted former Judge Rivera his prayer for judicial clemency in the following manner:

> WHEREFORE, the letters dated November 17, 2004 and June 17, 2005 of respondent Judge Pedro C. Rivera, Jr. requesting judicial clemency is GRANTED. The prohibition for his "re-employment in any part of the government service including government-owned or controlled corporations" mandated in our Resolution dated August 30, 1993 is LIFTED. He is authorized (1) to be employed (if qualified) in any government office including government-owned or controlled corporations, and (2) to receive whatever monetary benefits due him for his long service in the government, if entitled thereto.[9]

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[6] *Id.* at 66.

[7] *Id.* at 68.

[8] *Id.* at 66.

[9] *Id.* at 70.

The factual circumstances of these four cases do not align with those of herein respondent. **From all the foregoing citations, the release of the dismissed judges' retirement benefits was predicated by the most restrictive, compelling, and grievous circumstances**. Respondent's acts of atonement, however, only pale in comparison. His 18-year government service is quite lamentably short to be considered. His basic allegations of deteriorating health and increasing medical expenses are but common and inevitable costs of aging. Moreover, respondent's expressions of remorse cannot be deemed at par with that of former Judge Rivera in *Junio*. Respondent's obstinate and hypocritical refusal to admit to his guilt, even in the face of his criminal conviction, grew more palpable when he had filed *two* motions for reconsideration of his dismissal, both of which were denied.[10]

I also note that while the Court in *Junio* accorded full merit to former Judge Rivera's hardships and gave him "whatever monetary benefits due him for his long service in the government, if entitled thereto[,]" there still was no express reinstatement of Judge Rivera's retirement benefits. As respondent failed to rise up to Judge Rivera's standard of acceptable penance, the former should not be allowed to enjoy more than what was accorded to the latter. In any case, respondent is already a fortunate beneficiary of the Court's clemency when it restored in the November 20, 2012 Resolution respondent's entitlement to his accrued leave benefits, and allowed his return to government service at the first formal instance that he sought judicial clemency.[11]

In addition, the gravity of respondent's criminal conviction cannot be ignored. It should bar any further grant of benevolence.

Despite the irony, judicial leniency must be exercised only upon a strict assessment of its claimant's worth. A dismissed

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[10] Per the Court's November 20, 2012 Resolution in this case, A.M. No. RTJ-96-1336, 699 Phil. 1 (2012).

[11] *Id.*

judge's plea for the Court's compassion should pass rigid scrutiny before administrative penalties are reversed. If the Court would easily be swayed by a generic lapse of time and a sheaf of certifications of apparently-restored morals, penal clauses may lose its deterrent purpose. Errant but unapologetic judges should not be placed on equal footing with the ones who have endeavored to keep their service records pristine, or even with those who, while having strayed from the edicts of judicial moralities at first, eventually and thoroughly labored on a sincere and untrivial reformation.

In closing, I point out that the Court's tone against sexual harassment in work environments has been set and is already resounding in the Court's July 25, 1996 Resolution in this case:[12]

> The integrity of the Judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, is served. Hence, **in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system**.[13] (Emphasis and underscoring supplied.)

The case should have ended with this July 25, 1996 Resolution dismissing respondent from service. Even so, the Court bestowed judicial clemency upon respondent in its November 20, 2012 Resolution, an award that is evidently beyond his professional merits and moral fiber. To grant further magnanimity to respondent is to cast serious doubt upon the competence of the judiciary in promoting healthy and safe working conditions

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[12] *Supra* note 10.

[13] *Id.*

especially for women, not only in the usual workplaces but also in the Court's very own backyard. The Court should not contradict itself. Never in any case should it be the first one to evade this duty and inflict injustice.

Accordingly, I vote to **DENY** respondent's claim for the release of 25% of his retirement benefits.

EN BANC

[G.R. No. 205632. June 2, 2020]

BANK OF COMMERCE, *petitioner*, *vs.* **JOAQUIN T. BORROMEO**, *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT PROCEEDINGS MAY BE CRIMINAL OR CIVIL IN NATURE, BUT REGARDLESS OF THE NATURE OF THE PROCEEDINGS, IT IS ALWAYS TREATED SEPARATELY EVEN WHEN THE ALLEGED CONTUMACIOUS ACT IS INCIDENTAL TO ANOTHER ACTION AND IT IS NOT SUBJECT TO COMPROMISE, MEDIATION, OR CONCILIATION BETWEEN THE PARTIES. — Contempt proceedings may be criminal or civil in nature. If the purpose is to vindicate and protect the dignity of this Court's authority, the contempt is criminal. But if the purpose is to punish one party for failing to comply with a court's order benefiting the other party, the contempt is civil. However, regardless of the nature of the proceedings, it is always treated separately even when the allegedly contumacious act is incidental to another action. It is not subject to compromise, mediation, or conciliation between the parties.

2. ID.; ID.; JUDGMENTS; THE END OF LITIGATION, UPON THE FINALITY OF JUDGMENT, IS ESSENTIAL FOR THE EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE, AND THE COURT IS DUTY-BOUND TO PUT AN END TO ANY MACHINATION, SCHEME, OR MEASURE TAKEN BY ANY PARTY TO DEFEAT OR FRUSTRATE THE IMPLEMENTATION OF ITS DECISION. — All litigation must end. x x x The end of litigation, upon the finality of judgment, is essential for the effective and efficient administration of justice. This Court is duty-bound to put an end to any machination, scheme, or measure taken by any party to defeat or frustrate the implementation of its decisions x x x. All litigants are warned that this Court does not tolerate attempts to squander its time rehearing cases that are final and executory x x x. Respondent's case has already ended. Thus, his efforts to prolong it cannot be tolerated. The foundation of respondent's estafa, perjury, and Ombudsman cases against petitioner's officials and counsel is his unceasing refrain that he had timely exercised his right to redeem his and his relatives' properties from Traders Royal Bank. x x x after the courts have held that respondent had lost his right of redemption, he still somehow persists in claiming that an opposite conclusion had been reached. He shamelessly cherry-picks portions from court issuances that are favorable to him, and decries all adverse findings, as though his allegations work like a magic wand that could reverse what is already final and executory. Only courts can declare judgments void; respondent's repetitive assertions will not change the validity and finality of the judgment rendered against him.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; COURTS HAVE THE POWER TO PUNISH FOR CONTEMPT TO PRESERVE ORDER IN JUDICIAL PROCEEDINGS, ENFORCE ITS JUDGMENTS, ORDERS, AND MANDATES, BUT IT IS ONLY WHEN THE ACT OF A PARTY IS WILLFUL, AND FOR AN ILLEGITIMATE AND IMPROPER PURPOSE, WILL COURTS FIND A PARTY IN CONTEMPT. — Respondent's relentless and obstinate misrepresentation of the ultimate end of his cause is incurable. It is a waste of court and National Prosecution Service resources, and the prosecution service that could be better spent on cases impressed with merit. Moreover, it is tantamount to harassment of the lawful owners of the properties involved. His actions are patently in flagrant contempt

of this Court. Broadly, contempt of court is willful disregard of public authority that tends to, among others, impair the respect due to such a body x x x. Courts have the power to punish for contempt in order to preserve order in judicial proceedings, enforce its judgments, orders, and mandates. Ultimately, they have the power to administer justice. "[R]espect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation." Courts are mindful to wield the power to punish for contempt judiciously. "The power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle." As an extraordinary remedy of the court, a person may only be held in contempt unless it is necessary to do so, in the interest of justice. Parties that contend for what they believe is right, in good faith, ought not to be considered contumacious, regardless of the error in their beliefs. Thus, it is only when the act of a party is willful, and for an illegitimate and improper purpose, will courts find a party in contempt. Conduct that impedes, obstructs, or degrades the administration of justice is contumacious. x x x It is all too evident that respondent here has a contumacious attitude that spans interminable decades, in defiance of this Court and the Judiciary. Further, his refusal to recognize his defeat has resulted in an obnoxious campaign waged against persons and parties that defeat their rights to peacefully enjoy ownership of properties awarded to them by the courts. He has vexed and taxed the resources of the prosecution service and the courts on baseless and repetitive proceedings. Not even imprisonment and a fine in 1995—imposed by no less than this Court—deterred respondent, or caused him to make any appreciable corrections to his behavior and attitude.

APPEARANCES OF COUNSEL

Dionson Dionson Cezar & Borbajo Law Office for petitioner.

R E S O L U T I O N

LEONEN, *J.*:

The end of litigation, upon the finality of judgment, is essential for the effective and efficient administration of justice. This Court is duty-bound to put an end to any machination, scheme, or measure taken by any party to defeat or frustrate the implementation of its decisions. All litigants are warned that this Court does not tolerate attempts to squander its time rehearing cases that are final and executory.

This is a Petition[1] filed by Bank of Commerce against Joaquin T. Borromeo (Borromeo), praying that this Court hold Borromeo in indirect contempt of court, pursuant to Section 3(b), (c), and (d)[2] of Rule 71 of the Rules of Court.

Borromeo was previously declared guilty of constructive contempt by this Court in its February 21, 1995 Resolution in *In Re: Borromeo*.[3]

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[1] *Rollo*, pp. 3-12.

[2] RULES OF COURT, Rule 71, Sec. 3 states:

Sec. 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by myself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(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 unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

[3] 311 Phil. 441 (1885) [*Per Curiam, En Banc*].

From 1978 to 1980, Borromeo obtained several loans from Traders Royal Bank.[4] Among these was a ₱45,000.00 loan secured by a real estate mortgage for over two (2) lots in Cebu City covered by Transfer Certificates of Title Nos. 59596 and 59755.[5] A third Cebu City lot, under Transfer Certificate of Title No. 71509, also secured a loan taken out by Borromeo.[6] When Borromeo defaulted on his loans with Traders Royal Bank, the bank then foreclosed the mortgages, and eventually, the properties were sold to it. This led to protracted decades-long litigation between Traders Royal Bank and Borromeo, as extensively documented in *In Re: Borromeo*:

A. CIVIL CASES
1. RTC Case No. R-22506; CA G.R. CV No. 07015; G.R. No. 83306

On October 29, 1982 Borromeo filed a complaint in the Cebu City Regional Trial Court for specific performance and damages *against TRB and its local manager, Blas Abril*, docketed as Civil Case No. R-22506. The complaint sought to compel defendants to allow redemption of the foreclosed properties only at their auction price, with stipulated interests and charges, without need of paying the obligation secured by the trust receipt above mentioned. Judgment was rendered in his favor on December 20, 1984 by Branch 23 of the Cebu City RTC; but on defendants' appeal to the Court of Appeals — docketed as CA-G.R. CV No. 07015 — the judgment was reversed, by the decision dated January 27, 1988. The Court of Appeals held that the "plaintiff (Borromeo) has lost his right of redemption and can no longer compel defendant to allow redemption of the properties in question."

Borromeo elevated the case to this Court where his appeal was docketed as G.R. No. 83306. By Resolution dated August 15, 1988, this Court's First Division denied his petition for review "for failure . . . to sufficiently show that the respondent Court of Appeals had committed any reversible error in its questioned judgment, it appearing on the contrary that the said decision is supported by substantial

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[4] *Id.* at 456.

[5] *Id.*

[6] *Rollo*, p. 5.

evidence and is in accord with the facts and applicable law." Reconsideration was denied, by Resolution dated November 23, 1988. A second motion for reconsideration was denied by Resolution dated January 30, 1989, as was a third such motion, by Resolution dated April 19, 1989. The last resolution also directed entry of judgment and the remand of the case to the court of origin for prompt execution of judgment. Entry of judgment was made on May 12, 1989. By Resolution dated August 7, 1989, the Court denied another motion of Borromeo to set aside judgment, and by Resolution dated December 20, 1989, the Court merely noted without action his manifestation and motion praying that the decision of the Court of Appeals be overturned, and declared that "no further motion or pleading . . . shall be entertained[.]"

2. RTC Case No. CEB 8750;
CA-G.R. SP No. 22356

The ink was hardly dry on the resolutions just mentioned before Borromeo initiated another civil action in the same Cebu City Regional Trial Court by which he attempted to litigate the same issues. The action, *against the new TRB Branch Manager, Jacinto Jamero*, was docketed as Civil Case No. CEB-8750. As might have been anticipated, the action was, on motion of the defense, dismissed by Order dated May 18, 1990, on the ground of *res judicata*, the only issue raised in the second action — *i.e.*, Borromeo's right to redeem the lots foreclosed by TRB — having been ventilated in Civil Case No. R-22506 (*Joaquin T. Borromeo vs. Blas C. Abril and Traders Royal Bank*) (*supra*) and, on appeal, decided with finality by the Court of Appeals and the Supreme Court in favor of defendants therein.

The Trial Court's judgment was affirmed by the Court of Appeals in CA-G.R. SP No. 22356.

3. RTC Case No. CEB-9485;
CA-G.R. SP No. 28221

In the meantime, and during the pendency of Civil Case No. R-22506, TRB consolidated its ownership over the foreclosed immovables. Contending that that act of consolidation amounted to a criminal offense, Borromeo filed complaints in the Office of the City Prosecutor of Cebu against the bank officers and lawyers. These complaints were however, and quite correctly, given short shrift by that Office. Borromeo then filed suit in the Cebu City RTC, this time not only *against the TRB, TRB officers Jacinto Jamero and Arceli Bustamante,*

but also against City Prosecutor Jufelinito Pareja and his assistants, Enriqueta Belarmino and Eva A. Igot, and the TRB lawyers, Mario Ortiz and the law firm, HERSINLAW. The action was docketed as Civil Case No. CEB-9485. The complaint charged Prosecutors Pareja, Belarmino and Igot with manifest partiality and bias for dismissing the criminal cases just mentioned; and faulted TRB and its manager, Jamero, as well as its lawyers, for consolidating the titles to the foreclosed properties in favor of the bank despite the pendency of Case No. R-22506. This action also failed. On defendants' motion, it was dismissed on February 19, 1992 by the RTC (Branch 22) on the ground of *res judicata* (being identical with Civil Case Nos. R-22506 and CEB-8750, already decided with finality in favor of TRB), and lack of cause of action (as to defendants Pareja, Belarmino and Igot).

Borromeo's *certiorari* petition to the Court of Appeals (CA-G.R. SP No. 28221) was dismissed by that Court's 16th Division on October 6, 1992, for the reason that the proper remedy was appeal.

4. RTC Case No. CEB-10368; CA-G.R. SP No. 27100

Before Case No. CEB-9845 was finally decided, Borromeo filed, on May 30, 1991, still another civil action for the same cause *against TRB, its manager, Jacinto Jamero, and its lawyers, Atty. Mario Ortiz and the HERSINLAW law office*. This action was docketed as Civil Case No. CEB-10368, and was described as one for "Recovery of Sums of Money, Annulment of Titles with Damages." The case met the same fate as the others. It was, on defendants' motion, dismissed on September 9, 1991 by the RTC (Branch 14) on the ground of *litis pendentia*.

The RTC ruled that —

> "Civil Case No. CEB-9485 will readily show that the defendants therein, namely the Honorable Jufelinito Pareja, Enriqueta Belarmino, Eva Igot, Traders Royal Bank, Arceli Bustamante, Jacinto Jamero, Mario Ortiz and HERSINLAW are the same persons or nearly all of them who are impleaded as defendants in the present Civil Case No. CEB-10368, namely, the Traders Royal Bank, Jacinto Jamero, Mario Ortiz and HERSINLAW. The only difference is that more defendants were impleaded in Civil Case No. CEB-9485, namely, City Prosecutor Jufelinito Pareja and his assistants, Enriqueta Belarmino and Eva Igot. The inclusion of the City Prosecutor and his two

> assistants in Civil Case No. CEB-9485 was however merely incidental as apparently they had nothing to do with the questioned transaction in said case[.]"

The Court likewise found that the reliefs prayed for were the same as those sought in Civil Case No. CEB-9485, and the factual bases of the two cases were essentially the same — the alleged fraudulent foreclosure and consolidation of the three properties mortgaged years earlier by Borromeo to TRB.

For some reason, the Order of September 9, 1991 was set aside by an Order rendered by another Judge on November 11, 1991 — the Judge who previously heard the case having inhibited himself; but this Order of November 11, 1991 was, in turn, nullified by the Court of Appeals (9th Division), by Decision promulgated on March 31, 1992 in CA-G.R. SP No. 27100 (*Traders Royal Bank vs. Hon. Celso M. Gimenez, etc. and Joaquin T. Borromeo*), which decision also directed dismissal of Borromeo's complaint.

5. RTC Case No. CEB-6452

When a new branch manager, Ronald Sy, was appointed for TRB, Cebu City, Borromeo forthwith made that event the occasion for another new action, *against TRB, Ronald Sy, and the banks' attorneys — Mario Ortiz, Honorato Hermosisima, Jr., Wilfredo Navarro and HERSINLAW firm*. This action was docketed as Civil Case No. CEB-6452, and described as one for "Annulment of Title with Damages." The complaint, dated October 20, 1987, again involved the foreclosure of the three (3) immovable above mentioned, and was anchored on the alleged malicious, deceitful, and premature consolidation of titles in TRB's favor despite the pendency of Civil Case No. 22506. On defendants' motion, the trial court dismissed the case on the ground of prematurity, holding that "(a)t this point . . . plaintiff's right to seek annulment of defendant Traders Royal Bank's title will only accrue if and when plaintiff will ultimately and finally win Civil Case No. R-22506."

6. RTC Case No. CEB-8236

> Having thus far failed in his many efforts to demonstrate to the courts the "merit" of his cause against TRB and its officers and lawyers, Borromeo now took a different tack by also suing (and thus also venting his ire on) the members of the appellate courts who had ruled adversely to him. He filed in the Cebu

City RTC, Civil Case No. CEB-8236, *impleading as defendants not only the same parties he had theretofore been suing — TRB and its officers and lawyers (HERSINLAW Mario Ortiz) — but also the Chairman and Members of the First Division of the Supreme Court who had repeatedly rebuffed him in G.R. No. 83306 (SEE sub-head I, A, 1, supra), as well as the Members of the 8th, 9th and 10th Divisions of the Court of Appeals who had likewise made dispositions unfavorable to him*. His complaint, dated August 22, 1989, aimed to recover damages from the defendant Justices for —

". . . maliciously and deliberately stating blatant falsehoods and disregarding evidence and pertinent laws, rendering manifestly unjust and biased resolutions and decisions bereft of signatures, facts or laws in support thereof, depriving plaintiff of his cardinal rights to due process and against deprivation of property without said process, tolerating, approving and legitimizing the patently illegal, fraudulent, and contemptuous acts of defendant TRB, (which) constitute a) GRAVE DERELICTION OF DUTY AND ABUSE OF POWER emanating from the people, b) FLAGRANT VIOLATIONS OF THE CONSTITUTION, CARDINAL PRIMARY RIGHTS, DUE PROCESS, ARTS. 27, 32, CIVIL CODE, Art. 208, REV. PENAL CODE, and R.A. 3019, for which defendants must be held liable under said laws."

The complaint also prayed for reconveyance of the "fake titles obtained fraudulently by TRB/HERSINLAW," and recovery of "₱100,000.00 moral damages; ₱30,000.00 exemplary damages; and ₱5,000.00 litigation expenses." This action, too, met a quick and unceremonious demise. On motion of defendants TRB and HERSINLAW, the trial court, by Order dated November 7, 1989, dismissed the case.

7. RTC Case No. CEB-13069

It appears that Borromeo filed still another case to litigate the same cause subject of two (2) prior actions instituted by him. This was RTC Case No. CEB-13069, *against TRB and the latter's lawyers, Wilfredo Navarro and Mario Ortiz*. The action was dismissed in an Order dated October 4, 1993, on the ground of *res judicata* — the subject matter being the same as that in Civil Case No. R-22506, decision in which was affirmed by the Court of Appeals in CA-G.R.

CV No. 07015 as well as by this Court in G.R. No. 83306 — and *litis pendentia* — the subject matter being also the same as that in Civil Case No. CEB-8750, decision in which was affirmed by the Court of Appeals in CA-G.R. SP No. 22356.

8. RTC Criminal Case No. CBU-19344; CA-G.R. SP No. 28275; G.R. No. 112928

On April 17, 1990 the City Prosecutor of Cebu City filed an information with the RTC of Cebu (Branch 22) against Borromeo charging him with a violation of the Trust Receipts Law. This case was docketed as Criminal Case No. CBU-19344. After a while, Borromeo moved to dismiss the case on the ground of denial of his right to a speedy trial. His motion was denied by Order of Judge Pampio A. Abarintos dated April 10, 1992. In the same order, His Honor set an early date for Borromeo's arraignment and placed the case "under a continuous trial system on the dates as may be agreed by the defense and prosecution." Borromeo moved for reconsideration. When his motion was again found without merit, by Order dated May 21, 1992, he betook himself to the Court of Appeals on a special civil action of *certiorari*, to nullify these adverse orders, his action being docketed as CA-G.R. SP No. 28275.

Here again, Borromeo failed. The Court of Appeals declared that the facts did not show that there had been unreasonable delay in the criminal action against him, and denied his petition for being without merit.

Borromeo then filed a petition for review with this Court (G.R. No. 112928), but by resolution dated January 31, 1994, the same was dismissed for failure of Borromeo to comply with the requisites of Circulars Numbered 1-88 and 19-91. His motion for reconsideration was subsequently denied by Resolution dated March 23, 1994.

a. *Clarificatory Communications to Borromeo Re "Minute Resolutions"*

He next filed a Manifestation dated April 6, 1994 calling the Resolution of March 23, 1994 "Un-Constitutional, Arbitrary and Tyrannical and a Gross Travesty of 'Justice,'" because it was "signed only by a mere clerk and . . . (failed) to state clear facts and law," and "the petition was not resolved on MERITS nor by any Justice but by a mere clerk."

The Court responded with another Resolution, promulgated on June 22, 1994, and with some patience drew his attention to the earlier resolution "in his own previous case (*Joaquin T. Borromeo vs. Court of Appeals and Samson Lao*, G.R. No. 82273, 1 June 1990; 186 SCRA 1) and on the same issue he now raises." Said Resolution of June 22, 1994, after reiterating that the notices sent by the Clerk of Court of the Court *En Banc* or any of the Divisions simply advise of and quote the resolution actually adopted by the Court after deliberation on a particular matter, additionally stated that Borromeo "knew, as well, that the communications (notices) signed by the Clerk of Court start with the opening clause —

> 'Quoted hereunder, for your information, is a resolution of the First Division of this Court dated _____,'

thereby indisputably showing that it is not the Clerk of Court who prepared or signed the resolutions.["]

This was not, by the way, the first time that the matter had been explained to Borromeo. The record shows that on July 10, 1987, he received a letter from Clerk of Court Julieta Y. Carreon (of this Court's Third Division) dealing with the subject, in relation to G.R. No. 77243. The same matter was also dealt with in the letter received by him from Clerk of Court Luzviminda D. Puno, dated April 4, 1989, and in the letter to him of Clerk of Court (Second Division) Fermin J. Garma, dated May 19, 1989. And the same subject was treated of in another Resolution of this Court, notice of which was in due course served on him, to wit: that dated July 31, 1989, in G.R. No. 87897.

B. *CRIMINAL CASES*

Mention has already been made of Borromeo's attempt — with "all the valor of ignorance" — to fasten not only civil, but also criminal liability on TRB, its officers and lawyers. Several other attempts on his part to cause criminal prosecution of those he considered his adversaries, will now be dealt with here.

1. *I.S. Nos. 90-1187 and 90-1188*

On March 7, 1990, Borromeo filed criminal complaints with the Office of the Cebu City Prosecutor *against Jacinto Jamero (then still TRB Branch Manager), "John Doe and Officers of Traders Royal Bank.*" The complaints (docketed as I.S. Nos. 90-1187-88) accused the respondents of "Estafa and Falsification of Public Documents."

He claimed, among others that the bank and its officers, thru its manager, Jacinto Jamero, sold properties not owned by them: that by fraud, deceit and false pretenses, respondents negotiated and effected the purchase of the (foreclosed) properties from his (Borromeo's) mother, who "in duress, fear and lack of legal knowledge," agreed to the sale thereof for only ₱671,000.00, although in light of then prevailing market prices, she should have received ₱588,030.00 more.

In a Joint Resolution dated April 11, 1990, the Cebu City Fiscal's office dismissed the complaint observing that actually, the Deed of Sale was not between the bank and Borromeo's mother, but between the bank and Mrs. Thakuria (his sister), one of the original owners of the foreclosed properties; and that Borromeo, being a stranger to the sale, had no basis to claim injury or prejudice thereby. The Fiscal ruled that the bank's ownership of the foreclosed properties was beyond question as the matter had been raised and passed upon in a judicial litigation; and moreover, there was no proof of the document allegedly falsified nor of the manner of its falsification.

a. *I.S. Nos. 87-3795 and 89-4234*

Evidently to highlight Borromeo's penchant for reckless filing of unfounded complaints, the Fiscal also adverted to two other complaints earlier filed in his Office by Borromeo — involving the same foreclosed properties and directed against respondent bank officers' predecessors (including the former Manager, Ronald Sy) and lawyers — both of which were dismissed for lack of merit. These were:

a. I.S. No. 87-3795 (*JOAQUIN T. BORROMEO vs. ATTY. MARIO ORTIZ and RONALD SY*) for "Estafa Through Falsification of Public Documents, Deceit and False Pretenses." — This case was dismissed by Resolution dated January 19, 1988 of the City Prosecutor's Office because based on nothing more than a letter dated June 4, 1985, sent by the Bank Manager Ronald Sy to the lessee of a portion of the foreclosed immovables, advising the latter to remit all rentals to the bank as the new owner thereof, as shown by the consolidated title; and there was no showing that respondent Atty. Ortiz was motivated by fraud in notarizing the deed of sale in TRB's favor after the lapse of the period of redemption, or that Ortiz had benefited pecuniarily from the transaction to the prejudice of complainant; and

b. I.S. No. 89-4234 (*JOAQUIN T. BORROMEO vs. RONALD SY, ET AL.*) for "Estafa Through False Pretenses and Falsification of

Public Documents." — This case was dismissed by Resolution dated January 31, 1990.

2. *I.S. Nos. 88-205 to 88-207*

While Joaquin Borromeo's appeal (G.R. No. 83306) was still pending before the Supreme Court, an affidavit was executed in behalf of TRB by Arceli Bustamante, in connection with the former's fire insurance claim over property registered in its name — one of two immovables formerly owned by Socorro B. Thakuria (Joaquin T. Borromeo's sister) and foreclosed by said bank. In that affidavit, dated September 10, 1987, Bustamante stated that "On 24 June 1983, TRB thru foreclosure acquired real property together with the improvements thereon which property is located at F. Ramos St., Cebu City covered by TCT No. 87398 in the name of TRB." The affidavit was notarized by Atty. Manuelito B. Inso.

Claiming that the affidavit was "falsified and perjurious" because the claim of title by TRB over the foreclosed lots was a "deliberate, wilful and blatant falsehood in that, among others: . . . the consolidation was premature, illegal and invalid," Borromeo filed a criminal complaint with the Cebu City Fiscal's Office against the affiant (Bustamante) and the notarizing lawyer (Atty. Inso) for "falsification of public document, false pretenses, perjury." On September 28, 1988, the Fiscal's Office dismissed the complaint. It found no untruthful statements in the affidavit or any malice in its execution, considering that Bustamante's statement was based on the Transfer Certificate of Title in TRB's file, and thus the document that Atty. Inso notarized was legally in order.

3. *OMB-VIS-89-00136*

This Resolution of this Court (First Division) in G.R. No. 83306 dated August 15, 1988 — sustaining the judgment of the Court of Appeals (10th Division) of January 27, 1988 in CA-G.R. CV No. 07015, *supra*, was made the subject of a criminal complaint by Borromeo in the Office of the Ombudsman, Visayas, docketed as OMB-VIS-89-00136. His complaint — against "Supreme Court Justice (First Div.) and Court of Appeals Justice (10th Div.)" — was dismissed for lack of merit in a Resolution issued on February 14, 1990 which, among other things, ruled as follows:

> "It should be noted and emphasized that complainant has remedies available under the Rules of Court, particularly on

civil procedure and existing laws. It is not the prerogative of this Office to make a review of Decisions and Resolutions of judicial courts, rendered within their competence. The records do not warrant this Office to take further proceedings against the respondents.

In addition, Sec. 20 of R.A. 6770, the Ombudsman Act states that 'the Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that (1) the complainant had adequate remedy in another judicial or quasi-judicial body'; and Sec. 21 of the same law provides that the Office of the Ombudsman does not have disciplinary authority over members of the Judiciary."[7] (Citations omitted, emphasis in the original)

As observed by this Court in *In Re: Borromeo*, Borromeo waged similar campaigns against United Coconut Planters Bank,[8] Security Bank & Trust Co.,[9] their lawyers,[10] and the Judiciary[11] culminating in at least 50 cases over the course of 16 years.

Because of his history of "groundless and insulting proceedings"[12] in and against the courts, in 1995, this Court found Borromeo guilty of constructive contempt. He was sentenced to 10 days imprisonment and ordered to pay a ₱1,000.00 fine:

Considering the foregoing antecedents and long standing doctrines, it may well be asked why it took no less than sixteen (16) years and some fifty (50) grossly unfounded cases lodged by respondent Borromeo in the different rungs of the Judiciary before this Court decided to take the present administrative measure. The imposition on the time of the courts and the unnecessary work occasioned by respondent's crass adventurism are self-evident and require no further

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[7] *In Re: Borromeo*, 311 Phil. 441, 457-469 (1995) [*Per Curiam, En Banc*].

[8] *Id.* at 469-486.

[9] *Id.* at 486-492.

[10] *Id.* at 492-494.

[11] *Id.* at 495-499.

[12] *Id.* at 522.

elaboration. If the Court, however, bore with him with Jobian patience, it was in the hope that the repeated rebuffs he suffered, with the attendant lectures on the error of his ways, would somehow seep into his understanding and deter him from further forays along his misguided path. After all, as has repeatedly been declared, the power of contempt is exercised on the preservative and not the vindictive principle. Unfortunately, the Court's forbearance had no effect on him.

Instead, the continued leniency and tolerance extended to him were read as signs of weakness and impotence. Worse, respondent's irresponsible audacity appears to have influenced and emboldened others to just as flamboyantly embark on their own groundless and insulting proceedings against the courts, born of affected bravado or sheer egocentrism, to the extent of even involving the legislative and executive departments, the Ombudsman included, in their assaults against the Judiciary in pursuit of personal agendas. But all things, good or bad, must come to an end, and it is time for the Court to now draw the line, with more promptitude, between reasoned dissent and self-seeking pretense. The Court accordingly serves notice to those with the same conceit or delusions that it will henceforth deal with them, decisively and fairly, with a firm and even hand, and resolutely impose such punitive sanctions as may be appropriate to maintain the integrity and independence of the judicial institutions of the country.

WHEREFORE, Joaquin T. Borromeo is found and declared GUILTY of constructive contempt repeatedly committed over time, despite warnings and instructions given to him, and to the end that he may ponder his serious errors and grave misconduct and learn due respect for the Court and their authority, he is hereby sentenced to serve a term of imprisonment of TEN (10) DAYS in the City Jail of Cebu City and to pay a fine of ONE THOUSAND PESOS (₱1,000.00). He is warned that a repetition of any of the offenses of which he is herein found guilty, or any similar or other offense against courts, judges or court employees, will merit further and more serious sanctions.

IT IS SO ORDERED.[13]

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[13] *Id.* at 521-523.

In 2001, Bank of Commerce acquired assets from Traders Royal Bank through a Purchase and Sale Agreement.[14] Among the acquired assets were the properties covered by Transfer Certificates of Title Nos. 59596, 59755, and 71509—Borromeo's foreclosed properties.[15]

On February 22, 2013, Bank of Commerce filed a Petition[16] against Borromeo, praying that this Court cite him for indirect contempt.

In its Petition, petitioner alleges that respondent instituted proceedings against petitioner's officials, namely:

1. A 2011 criminal complaint for estafa against Bank of Commerce officers Arturo T. Medrano, Maximo V. Estrada, and Roy Damole, filed with the Office of the Cebu City Prosecutor, docketed as NPS Docket No. VII-09-INV-11-F-00918.[17] The complaint was dismissed because the properties were no longer owned by respondent,[18] and that respondent's motion for reconsideration was denied in 2012;[19]
2. A January 20, 2012 criminal case (NPS Docket No. VII-09-INV-12A-00129) for perjury against the same three (3) Bank of Commerce officials, filed with the Office of the Cebu City Prosecutor[20] because of the Joint Counter-Affidavit[21] filed by the three (3) in the estafa case. The complaint was dismissed because the officers did not commit perjury when they stated

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[14] *Rollo*, pp. 62-76.

[15] *Id.* at 5-6.

[16] *Id.* at 3-12.

[17] *Id.* at 77-83.

[18] *Id.* at 122-124.

[19] *Id.* at 127-128.

[20] *Id.* at 129-136.

[21] *Id.* at 84-87.

that respondent had failed to redeem the foreclosed properties.[22] After respondent's motion for reconsideration was denied,[23] he then filed an Appeal before the Office of the Regional State Prosecutor, Cebu City;[24]

3. An April 12, 2012 criminal case for perjury against the same Bank of Commerce officers, docketed as NPS Docket No. VII-09-INV-12-D-00628.[25] This time, the complaint was based on the Joint Counter-Affidavit[26] filed by the three (3) in the January 2012 perjury case. The complaint was again dismissed by the Office of the City Prosecutor;[27] and

4. A case against the Cebu City Registrar of Deeds before the Office of the Ombudsman for the Visayas, docketed as CPL-V-12-0296, for allegedly failing to cancel the "patently fake titles" of United Coconut Planters Bank, Traders Royal Bank, and Bank of Commerce.[28]

According to petitioner, these new cases showed that respondent was doing the same acts that had previously led him to be held in contempt by this Court.[29] His repetitive filing of cases all founded on the same transactions, with issues already resolved by the courts, should be deemed contempt of court under the Rule 71, Section 3(c) and (d) of the Rules of Court.[30]

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[22] *Id.* at 172-173.

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

[24] *Id.* at 178-182.

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

[26] *Id.* at 137-140.

[27] *Id.* at 249-250.

[28] *Id.* at 257-258.

[29] *Id.* at 9.

[30] *Id.* at 10.

In compliance with this Court's April 1, 2013 Resolution,[31] respondent then filed his Comment[32] on May 31, 2013. In his Comment, respondent claims that the Petition was intended to intimidate him from filing cases to protect his and his family's properties. He claims that petitioner deliberately concealed the fact that he had already tendered payment to Traders Royal Bank, but that Traders Royal Bank rejected his payment and furtively executed a deed of sale in its favor.[33]

On October 7, 2013, petitioner filed its Reply to the Comment.[34] In its Reply, petitioner points out that respondent filed another perjury case with the Office of the Cebu City Prosecutor against Estrada, Corazon T. Llagas, and Honorato Hermosisima, Jr. (the bank's counsel), docketed as I.S. No. 13-G-01296.[35] Petitioner claims that the perjury case was retaliation for the delivery of possession of the property covered by Transfer Certificate of Title No. 87399, previously owned by respondent, to petitioner.[36]

On March 17, 2014, this Court resolved to give due course to the Petition and ordered the parties to file their Memoranda.[37] Petitioner filed its Memorandum on June 4, 2014,[38] while respondent filed his on June 2, 2014.[39]

In its Memorandum, petitioner also points to a petition for *certiorari* under Rule 65 filed by respondent with the Court of Appeals, docketed as CA-G.R. SP No. 07751.[40] The petition

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[31] *Id.* at 265.

[32] *Id.* at 275-277.

[33] *Id.* at 276.

[34] *Id.* at 282-283.

[35] *Id.* at 287.

[36] *Id.* at 283.

[37] *Id.* at 294-295.

[38] *Id.* at 302-312.

[39] *Id.* at 341-347.

[40] *Id.* at 308.

for *certiorari* assailed the grant by Regional Trial Court Judge Sylva Paderanga of a writ of possession in favor of petitioner, in the course of an *ex parte* petition for the issuance of a writ of possession.[41] Again, the properties involved were respondent's, which petitioner acquired from Traders Royal Bank. The Court of Appeals dismissed the petition for *certiorari* on its September 19, 2013 Decision.[42]

In his Memorandum, respondent argues that he filed the new cases against petitioner's officers and counsel because they kept falsely claiming that he failed to redeem the properties from Traders Royal Bank.[43] He points to the Decision of the Court of Appeals in CA-G.R. CV No. 07015, which he claims affirmed that he had redeemed the properties.[44]

Further, he argues that, since he was already declared guilty of constructive contempt in *In Re: Borromeo*, he cannot be cited in contempt again, as this would violate the right against double jeopardy in Article III, Section 21 of the Constitution. Finally, he claims that petitioner's officials and counsel should be held liable for contempt.[45]

The sole issue to be resolved by this Court is whether or not respondent should be cited in indirect contempt of court.

As a preliminary matter, this Court notes that, on January 4, 2020, respondent filed a motion to refer this case for mediation and conciliation.[46] In his motion, respondent claims that this case is covered by court-annexed mediation pursuant to A.M.

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[41] *Id.* at 329-331.

[42] *Id.* at 327-333. The Decision was penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by now Supreme Court Associate Justice Ramon Paul Hernando and Associate Justice Ma. Luisa C. Quijano-Padilla of the Twentieth Division, Court of Appeals, Cebu.

[43] *Id.* at 344.

[44] *Id.* at 345-346.

[45] *Id.* at 347.

[46] *Id.* at 400-401.

No. 11-1-6-SC-PHILJA, and that he and petitioner's counsel were negotiating towards an amicable settlement of their dispute.

This motion is denied.

Under A.M. No. 11-1-6-SC-PHILJA, otherwise known as the Consolidated and Revised Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation and Judicial Dispute Resolution, the following cases are under the mandatory coverage of court-annexed mediation and judicial dispute resolution:

(1) All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except those which by law may not be compromised;

(2) Special proceedings for the settlement of estates;

(3) All civil and criminal cases filed with a certificate to file action issued by the Punong Barangay or the Pangkat ng Tagapagkasundo under the Revised Katarungang Pambarangay Law;

(4) The civil aspect of Quasi-Offenses under Title 14 of the Revised Penal Code;

(5) The civil aspect of less grave felonies punishable by correctional penalties not exceeding 6 years imprisonment, where the offended party is a private person;

(6) The civil aspect of estafa, theft and libel;

(7) All civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (1) of the Judiciary Reorganization Act of 1980;

(8) All cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (2) of the Judiciary Reorganization Act of 1980;

(9) All civil cases involving title to or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (3) of the Judiciary Reorganization Act of 1980;

(10) All *habeas corpus* cases decided by the first level courts in the absence of the Regional Trial Court judge, that are brought up on appeal from the special jurisdiction granted to the first level courts under Section 35 of the Judiciary Reorganization Act of 1980[.] (Citations omitted)

Contempt proceedings may be criminal or civil in nature. If the purpose is to vindicate and protect the dignity of this Court's authority, the contempt is criminal. But if the purpose is to punish one party for failing to comply with a court's order benefiting the other party, the contempt is civil.[47] However, regardless of the nature of the proceedings, it is always treated separately even when the allegedly contumacious act is incidental to another action.[48] It is not subject to compromise, mediation, or conciliation between the parties.

Thus, respondent is gravely mistaken if he believes that he can evade liability on this basis, especially when this Court had already expressly warned him that "a repetition of any of the offenses of which he is herein found guilty, or any similar or other offense against courts, judges or court employees, will merit further and more serious sanctions."[49]

All litigation must end. In *In Re: Borromeo*:

It is withal of the essence of the judicial function that at some point, litigation must end. Hence, after the procedures and processes for lawsuits have been undergone, and the modes of review set by law have been exhausted, or terminated, no further ventilation of the same subject matter is allowed. To be sure, there may be, on the part of the losing parties, continuing disagreement with the verdict, and the conclusions therein embodied. This is of no moment, indeed, is to be expected; but, it is not their will, but the Court's, which must prevail; and, to repeat, public policy demands that at some definite

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[47] *Converse Rubber Corporation v. Jacinto Rubber & Plastics Co., Inc.*, 186 Phil. 85, 108 (1980) [Per *J.* Barredo, Second Division].

[48] *Mison v. Subido*, 144 Phil. 63, 66 (1970) [Per *J.* Reyes, J.B.L., *En Banc*].

[49] *In Re: Borromeo*, 311 Phil. 441, 523 (1995) [*Per Curiam, En Banc*].

time, the issues must be laid to rest and the court's dispositions thereon accorded absolute finality. As observed by this Court in *Rheem of the Philippines v. Ferrer*, a 1967 decision, a party "may think highly of his intellectual endowment. That is his privilege. And he may suffer frustration at what he feels is others' lack of it. This is his misfortune. Some such frame of mind, however, should not be allowed to harden into a belief that he may attack a court's decision in words calculated to jettison the time-honored aphorism that courts are the temples of right. [50]

The end of litigation, upon the finality of judgment, is essential for the effective and efficient administration of justice.[51] This Court is duty-bound to put an end to any machination, scheme, or measure taken by any party to defeat or frustrate the implementation of its decisions:

> We have time and again ruled that courts should never allow themselves to be a party to maneuvers intended to delay the execution of final decisions. They must nip in the bud any dilatory maneuver calculated to defeat or frustrate the ends of justice, fair play and prompt implementation of final and executory judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them. [52]

All litigants are warned that this Court does not tolerate attempts to squander its time rehearing cases that are final and executory:

> There should be a greater awareness on the part of litigants that the time of the judiciary, much more so of this Court, is too valuable

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[50] *Id.* at 508.

[51] *Gonzales v. Secretary of Labor*, 202 Phil. 151, 162 (1982) [Per *J.* Concepcion, Jr., Second Division]; *Zansibarian Residents Association v. Municipality of Makati*, 219 Phil. 749, 755 (1985) [Per *J.* Cuevas, *En Banc*].

[52] *Spouses Pelayo v. Court of Appeals*, 300 Phil. 650, 655-656 (1994) [Per *J.* Nocon, Second Division].

to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable. [53]

Respondent's case has already ended. Thus, his efforts to prolong it cannot be tolerated.

The foundation of respondent's estafa, perjury, and Ombudsman cases against petitioner's officials and counsel is his unceasing refrain that he had timely exercised his right to redeem his and his relatives' properties from Traders Royal Bank.

In his Motion for Reconsideration of the September 12, 2011 Resolution of the Office of the Cebu Provincial Prosecutor in NPS Docket No. 11F-00918 for estafa, respondent stated:

> I. With due respect, the Hon. Prosecutor has deplorably disregarded indisputable evidence that in fact, TCT Nos. 87399 and 81400 were fraudulently acquired by [Traders Royal Bank]. This fact hinges on respondents' assertion in par. 5 of their Joint Counter-Affidavit that "Complainant failed to redeem the foreclosed properties . . . thus, TRB consolidated its title thereto . . . on June 24, 1985, the Register of Deeds . . . issued TCT Nos. 87399 and 87400 in the name of TRB in lieu of TCT Nos. 59755 and 71509.
>
> However, this assertion under oath by respondents, as stressed in complainant's Comment is FALSE, MISLEADING AND MALICIOUS AND PERJURIOUS, since as admitted by TRB counsel Hermosisima Jr., "There is no question that he (complainant) has the right to make the redemption . . . the only obstacle is the amount he had offered." In his Comment, complainant stressed that TRB itself had stated the redemption price of ₱83,043.91 which is accepted (albeit belatedly by its own initial rejection).
>
> Hence, it cannot be denied as respondents have NOT DENIED, hence ADMIT, that the foreclosed properties had been redeemed. Indeed, Hermosisima's junior associate, Atty. Wilfredo Navarro, made

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[53] *Villaflor v. Reyes*, 130 Phil. 392, 401 (1968) [Per J. Fernando, *En Banc*].

such [damning] admissions under cross-examination by complainant in Civil Case No. CEB-139609[.] [54]

Respondent even claims that the Court of Appeals, in CA-G.R. CV No. 07015, affirmed his right to redeem.[55]

In respondent's January 9, 2012 affidavit in his first perjury case, later docketed as NPS Docket No. VII-09-INV-12A-00129, he also stated:

3. However, in a Decision dated Dec. 20, 1984, the court upheld my right to redeem the properties at the auction sale price of ₱83,043.91 stressing that TRB could not insist in its demand for payment also of the Trust Receipt account. Despite said ruling, TRB refused to allow redemption but appealed the decision. Meantime, without my knowledge, my sister, Socorro B. Thakuria, owner of TCT No. 87398 and fear of losing it, went to TRB and paid the sum of ₱85,000.00. However, TRB refused to release the titles, claiming that said amount was only a "downpayment" *[sic]* for her property's repurchase which it pegged at the price of ₱160,000.00, thereby defying the court's ruling.

4. In its Appeal Brief, TRB admitted that "there is no question that he (I) has the right to make the redemption himself," but that "the only obstacle is the amount he has offered to effect the redemption. This was the only formidable obstacle to the proposed redemption".

5. Unfortunately for TRB, the Court of Appeals sustained the lower court's decision upholding my right to redeem the properties at the auction sale price of ₱83,043.91. But despite said ruling and despite having received said amount, TRB still refused to release the titles, but even worse, it coerced my sister to pay the sum of [₱]671,000.00 for her title to be "repurchased" from the bank, while it continues to hold on to the two other titles it obtained in defiance of the lower and appellate court's decisions.[56]

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[54] *Rollo*, pp. 125-126.

[55] *Id.* See *rollo*, p. 138. Joint Counter-Affidavit of Maximo V. Estrada and Arturo T. Medrano.

[56] *Id.* at 130-131.

Further, in respondent's April 18, 2012 affidavit in his first perjury case, later docketed as NPS Docket No. VII-09-IN-V-12A-00129:

2. On December 20, 1984, the trial court rendered a Decision upholding my right to redeem the properties at the auction price and not as demanded by TRB. TRB appealed but in a Decision dated January 27, 1988, in CA-G.R. CV No. 07015, the Court of Appeals sustained the trial court on the sole issue of the redemption price. Despite said decision which TRB did not appeal, and despite having accepted the redemption price in the amount of ₱83,043.91, TRB refused to release the titles to the redeemed properties, but coerced Thakuria to "repurchase" her property for the whopping sum of ₱671,000.00.

3. Recently, the Bank of Commerce which acquired TRB, thru Roy Damole, Maximo Estrada, and Arturo Medrano, advertised over the Internet, the sale of TCT Nos. 87399 and 87400 for the price of ₱1,122,00.00 and ₱8,209,000.00 respectively. For so doing, I filed a case for Estafa against them docketed as I.S. No. VII-INV-II-F-00918.

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4. In their Counter-Affidavit in said case, copy of which is attached hereto as Annex "A", respondents admitted that "Indeed, complainant Borromeo instituted an action for redemption docketed as CC No. R-22506 . . . in a Decision dated 20 December 1984, THE TRIAL COURT RULED IN HIS FAVOR" (par. 5). But in par. 6, they asserted that TRB elevated the matter before the Court of Appeals docketed as CA-G.R. CV No. 07015 . . . in a Decision on 27 January 1988, the Court of Appeals REVERSED the trial court, ratiocinating that Borromeo "has lost his right of redemption and can no longer compel TRB to allow redemption of the properties in question", and in par. 10, they asserted that "therefore, there is no grain of truth to Borromeo's claim of redemption, rather WE ONLY TOLD THE TRUTH IN SAYING THAT "he failed to redeem the foreclosed properties".

The above underscored assertions of respondents are patently false, baseless, malicious and misleading, hence perjurious, for in fact, the Court of Appeals did not reverse, but SUSTAINED the trial court on the sole issue of the redemption price thus:

"WE SUSTAIN THE LOWER COURT'S CONCLUSION THAT PLAINTIFF IS ENTITLED TO REDEEM . . . AT THE PRICE FOR WHICH THEY WERE ACQUIRED

AT THE AUCTION SALE AND THAT DEFENDANTS CANNOT INSIST THAT THE REDEMPTION PRICE SHOULD ALSO INCLUDE PLAINTIFF'S OUTSTANDING ACCOUNT UNDER THE TRUST RECEIPT."

Pertinent portions of said Decision is attached hereto as Annex "B". To reiterate, this ruling, coupled with TRB's acceptance of the sum of ₱85,000.00, indubitably proves that the foreclosed properties had long ago been redeemed. Hence, respondents are guilty of Perjury in asserting that "Complainant failed to redeem the foreclosed properties."

With respect to the ruling of the Court of Appeals quoted by respondents that "Borromeo lost his right of redemption and can no longer compel TRB to allow redemption", the same is not only void for being contrary to law but is MOOT and ACADEMIC due to TRB's receipt of the redemption price five years before said ruling. The self-contradictions and lack of legal basis in the premises relied upon by the Court are quite apparent and glaring.[57]

Contrary to respondent's claim, the Court of Appeals did no such thing. The Court of Appeals in CA-G.R. CV No. 07015 held that respondent lost his right of redemption. This was affirmed by this Court in its August 15, 1988 Resolution in G.R. No. 83306. On May 12, 1989, entry of judgment was made. All these facts were recognized by this Court in *In Re: Borromeo*:

On October 29, 1982 Borromeo filed a complaint in the Cebu City Regional Trial Court for specific performance and damages against TRB and its local manager, Blas Abril, docketed as Civil Case No. R-22506. The complaint sought to compel defendants to allow redemption of the foreclosed properties only at their auction price, with stipulated interests and charges, without need of paying the obligation secured by the trust receipt above mentioned. Judgment was rendered in his favor on December 20, 1984 by Branch 23 of the Cebu City RTC; but on defendants' appeal to the Court of Appeals — docketed as CA-G.R. CV No. 07015 — the judgment was reversed, by the decision dated January 27, 1988. ***The Court of Appeals held that the "plaintiff (Borromeo) has lost his right of redemption and***

[57] *Id.* at 197-199.

can no longer compel defendant to allow redemption of the properties in question."

Borromeo elevated the case to this Court where his appeal was docketed as G.R. No. 83306. By Resolution dated August 15, 1988, this Court's First Division denied his petition for review "for failure . . . to sufficiently show that the respondent Court of Appeals had committed any reversible error in its questioned judgment, it appearing on the contrary that the said decision is supported by substantial evidence and is in accord with the facts and applicable law." Reconsideration was denied, by Resolution dated November 23, 1988. A second motion for reconsideration was denied by Resolution dated January 30, 1989, as was a third such motion, by Resolution dated April 19, 1989. The last resolution also directed entry of judgment and the remand of the case to the court of origin for prompt execution of judgment. Entry of judgment was made on May 12, 1989. By Resolution dated August 7, 1989, the Court denied another motion of Borromeo to set aside judgment, and by Resolution dated December 20, 1989, the Court merely noted without action his manifestation and motion praying that the decision of the Court of Appeals be overturned, and declared that "no further motion or pleading . . . shall be entertained[.]"[58] (Emphasis supplied)

Decades after the courts have held that respondent had lost his right of redemption, he still somehow persists in claiming that an opposite conclusion had been reached. He shamelessly cherry-picks portions from court issuances that are favorable to him, and decries all adverse findings, as though his allegations work like a magic wand that could reverse what is already final and executory. Only courts can declare judgments void; respondent's repetitive assertions will not change the validity and finality of the judgment rendered against him.

Respondent's relentless and obstinate misrepresentation of the ultimate end of his cause is incurable. It is a waste of court and National Prosecution Service resources, and the prosecution service that could be better spent on cases impressed with merit. Moreover, it is tantamount to harassment of the lawful

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[58] *In Re*: *Borromeo*, 311 Phil. 441, 457-458 (1995) [*Per Curiam, En Banc*].

owners of the properties involved. His actions are patently in flagrant contempt of this Court.

Broadly, contempt of court is willful disregard of public authority that tends to, among others, impair the respect due to such a body:

> Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of, its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase contempt of court is generic, embracing within its legal signification a variety of different acts.[59] (Citations omitted)

Courts have the power to punish for contempt in order to preserve order in judicial proceedings, enforce its judgments, orders, and mandates. Ultimately, they have the power to administer justice.[60] "[R]espect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation." [61]

Courts are mindful to wield the power to punish for contempt judiciously. "The power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle."[62] As an extraordinary remedy of the court, a person may only be held in contempt unless it is necessary to do so, in the interest of justice.[63] Parties that contend for what they

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[59] *Lorenzo Shipping Corp. v. Distribution Management Association of the Philippines*, 672 Phil. 1, 10 (2011) [Per *J.* Bersamin, First Division].

[60] *Id.*

[61] *Id.*

[62] *Honasan II v. Panel of Investigating Prosecutors of the DOJ*, 476 Phil. 127, 133 (2004) [Per *J.* Austria-Martinez, *En Banc*].

[63] *Id.*

believe is right, in good faith, ought not to be considered contumacious, regardless of the error in their beliefs.[64]

Thus, it is only when the act of a party is willful, and for an illegitimate and improper purpose, will courts find a party in contempt.[65] Conduct that impedes, obstructs, or degrades the administration of justice is contumacious.[66] In *Inonog v. Ibay*:[67]

> In *Lu Ym v. Mahinay*, we held that an act, to be considered contemptuous, must be clearly contrary or prohibited by the order of the Court. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required[.] [68]

It is all too evident that respondent here has a contumacious attitude that spans interminable decades, in defiance of this Court and the Judiciary.[69]

Further, his refusal to recognize his defeat has resulted in an obnoxious campaign waged against persons and parties that defeat their rights to peacefully enjoy ownership of properties awarded to them by the courts. He has vexed and taxed the resources of the prosecution service and the courts on baseless and repetitive proceedings. Not even imprisonment and a fine in 1995—imposed by no less than this Court—deterred respondent, or caused him to make any appreciable corrections to his behavior and attitude.

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[64] *Lorenzo Shipping Corp. v. Distribution Management Association of the Philippines*, 672 Phil. 1, 18 (2011) [Per *J.* Bersamin, First Division].

[65] *Id.*

[66] See *Republic v. Lardizabal*, 174 Phil. 624 (1978) [Per *J.* Fernandez, First Division].

[67] 611 Phil. 558 (2009) [Per *J.* Leonardo-De Castro, *En Banc*].

[68] *Id.* at 567-568.

[69] See *Matutina v. Buslon*, 109 Phil. 140 (1960) [Per *J.* Reyes, J.B.L., *En Banc*].

In *Spouses Suarez v. Salazar*,[70] this Court imposed the penalty of three (3) months imprisonment to a person who, having already once been declared in contempt of court, continued to commit the same acts for which he was first cited in contempt. Considering respondent's decades-long refusal to recognize the authority of this Court's rulings, a more severe penalty of both imprisonment and fine must be imposed upon respondent. Pursuant to Rule 71, Section 7 of the Rules of Court,[71] he should be sentenced to serve a term of imprisonment of three (3) months in the City Jail of Cebu City and ordered to pay a fine of Thirty Thousand Pesos (₱30,000.00).

However, this Court recognizes the extraordinary situation brought about by the global pandemic due to the coronavirus disease caused by the virus SARS-CoV-2 (COVID-19).[72] Thus, in light of respondent's age, and COVID-19's effects on the

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[70] 374 Phil. 103 (1999) [Second Division].

[71] RULES OF COURT, Rule 71, Sec. 7 states:

Section 7. Punishment for indirect contempt. — If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. If he is adjudged guilty of contempt committed against a lower court, he may be punished by a fine not exceeding five thousand pesos or imprisonment not exceeding one (1) month, or both. If the contempt consists in the violation of a writ of injunction, temporary restraining order or *status quo* order, he may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved.

The writ of execution, as in ordinary civil actions, shall issue for the enforcement of a judgment imposing a fine unless the court otherwise provides.

[72] *Naming the coronavirus disease (COVID-19) and the virus that causes it*, WORLD HEALTH ORGANIZATION, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it> (last accessed on June 3, 2020).

conditions of the City Jail of Cebu City,[73] an additional fine shall then be imposed upon respondent in lieu of imprisonment.

WHEREFORE, the Petition is **GRANTED**. Joaquin T. Borromeo is **GUILTY** of indirect contempt of court. He is hereby sentenced to pay a fine of Three Hundred Thousand Pesos (₱300,000.00). Borromeo, his representatives, and any persons acting in his behalf are **ORDERED** to refrain from committing the same or similar acts tending to obstruct the full execution of this Court's August 15, 1988 Resolution and the May 12, 1989 entry of judgment in G.R. No. 83306. Borromeo is **WARNED** that the failure to pay the fine, or any repetition of any of the offenses of which he is found guilty, or any similar or other offense against courts, judges, or court employees, shall constitute contempt of court; and result in the imposition of the penalty of three (3) months imprisonment.

Let copies of this Decision be furnished the National Prosecution Service, the Integrated Bar of the Philippines, and the Office of the Court Administrator, which shall circulate the same to all courts in the country for their information and guidance.

Costs against respondent.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., on leave.

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[73] *COVID-19 cases in Cebu breach 1,000 as Mandaue City Jail reports 60 more cases*, CNN PHILIPPINES, May 3, 2020, <https://cnnphilippines.com/news/2020/5/3/Cebu-COVID-19-cases-breach-1000-as-Mandaue-City-Jail-reports-60-more-cases.html> (last accessed on June 3, 2020).

EN BANC

[G.R. No. 218544. June 2, 2020]

ATTY. CAMILO L. MONTENEGRO, *petitioner, vs.* **COMMISSION ON AUDIT, HON. KHEM N. INOK, Director IV, Legal and Adjudication Office-National, and HON. LEONOR D. BOADO, Director IV, LSS Ad Hoc Committee,** *respondents.* **CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA),** *intervenor.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; EXTENSIONS OF SERVICE; AN EMPLOYEE CAN BE ALLOWED TO EXTEND HIS SERVICE BEYOND THE COMPULSORY RETIREMENT AGE SUBJECT TO THE PRIOR APPROVAL OF THE CIVIL SERVICE COMMISSION. — A hearing officer of the CBAA in a holdover capacity beyond compulsory retirement age is not exempt from civil service laws, rules and regulations. In the instant case, there is an interplay of factors that complicated Atty. Montenegro's continuance in service as a hearing officer in a holdover capacity beyond his compulsory retirement age. To note, he was appointed on February 26, 1993 and his term ended on February 25, 1999. Before his term expired, CBAA, through a board resolution allowed him to continue in service as a hearing officer on the holdover principle, until his successor has been chosen and qualified, for the exigency of the service. The CBAA issued another Resolution on June 20, 2003 in anticipation of Atty. Montenegro's compulsory retirement which again allowed the latter to continue in office in a holdover capacity until a successor is appointed. x x x [T]he exigency of the service necessitated that Atty. Montenegro remained as hearing officer despite the lapse of his six-year term and his compulsory retirement age until a successor is qualified and appointed. The basis for ND No. 2005-025 was the illegality of the extension of Atty. Montenegro's service for the period from July 1, 2003 to November 30, 2003 after his compulsory retirement on June 30, 2000 pursuant to CSC MC No. 27, Series of 2001. CSC MC

No. 27, Series of 2001 dated October 8, 2001, requires the prior approval of the CSC before an employee could be allowed to extend his/her service beyond the compulsory retirement age x x x. A perusal of the aforecited CSC Circular would indicate that extensions of service beyond the compulsory retirement age is allowed, albeit subject to the approval of the CSC. In the absence of a CSC resolution for extension of service, an employee who is allowed to perform the duties of the position shall make the official responsible for the continued service of the employee liable for the salaries.

2. ID.; ID.; ID.; SALARIES AND EMOLUMENTS; THE SALARY AND OTHER EMOLUMENTS GIVEN TO A GOVERNMENT EMPLOYEE WHO EXTENDS HIS SERVICES BEYOND THE COMPULSORY RETIREMENT AGE IS AN IRREGULAR EXPENDITURE AND ONLY THE OFFICIAL WHO AUTHORIZED THE DISBURSEMENT OF THE SAME MAY BE HELD LIABLE, BUT THE ACTUAL SERVICES RENDERED BY THE EMPLOYEE SHALL BE SUBJECT TO THE APPLICATION OF THE PRINCIPLE OF *QUANTUM MERUIT*. — The theory of COA as to the subject disallowance is mainly grounded on Atty. Montenegro's noncompliance with the Civil Service Rules applicable to a public official who renders service beyond his compulsory retirement age. x x x [T]he Court finds valid and proper COA's disallowance of Atty. Montenegro's salary and other emoluments actually received after his compulsory retirement. The Court finds no grave abuse of discretion on the part of COA in sustaining the disallowance. A *fortiori*, in the interest of substantial justice and equity, the principle of *quantum meruit* should benefit Atty. Montenegro for the actual services which he rendered. To deny Atty. Montenegro the compensation for the services which he rendered during the period of his engagement would be tantamount to injustice which the Court cannot countenance. Accordingly, while his failure to observe the proper procedure for the extension of his service beyond compulsory retirement necessitated the disallowance of his salary, emoluments and other benefits, personal liability should not attach to Atty. Montenegro. It should be noted that CSC MC No. 27, Series of 2001 dated October 8, 2001 only holds the responsible official liable. An indication that it acknowledges the employee's time or work performed as compensable, notwithstanding the presence

of a procedural infirmity. The salary and other emoluments given to a government employee who extends his services beyond the compulsory retirement age is an expenditure or use of government funds, which is irregular since it was incurred without adhering to established rules, regulations, procedural guidelines, policies, principles, or practices that have gained recognition in law, more particularly, the requisite filing with the CSC for a request of extension of service on account of an employee's compulsory retirement. As defined by the COA rules, irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law; whereas the former is incurred in violation of applicable rules and regulations other than the law.

APPEARANCES OF COUNSEL

The Law Firm of Hermosisima Hermosisima & Hermosisima for petitioner.

The Solicitor General for respondents.

D E C I S I O N

INTING, *J.*:

This is a Petition for *Certiorari*[1] filed pursuant to Rule 64 of the Rules of Court seeking to annul and set aside Decision No. 2013-213[2] of the Commission on Audit (COA) dated December 3, 2013. The COA disallowed in audit the salaries and emoluments of Atty. Camilo L. Montenegro (Atty. Montenegro) as hearing officer of the Central Board of Assessment Appeals (CBAA), Visayas Field Office on the basis of the expiration of his term on February 25, 1999.

Antecedents

Atty. Montenegro was appointed as hearing officer of the CBAA in the Visayas Field Office from February 26, 1993

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[1] *Rollo*, pp. 5-26.

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

until February 25, 1999, or for a term of six years. Prior to the expiration of his term and for lack of qualified applicants, the CBAA issued a Resolution[3] dated February 15, 1999 that authorized Atty. Montenegro to continue service in a holdover capacity indefinitely until his successor is chosen pursuant to Section 230 of the Local Government Code (LGC).[4]

On June 20, 2003, the CBAA issued another Resolution[5] that further authorized Atty. Montenegro to continue service indefinitely despite his compulsory retirement on even date.

Ruling of the COA — Legal and Adjudication Office-National (COA-LAO)

On July 12, 2005, Notice of Disallowance (ND) No. 2005-025[6] was issued against CBAA for ₱132,844.50, a portion of which is cited herein for reference:

> We have audited the Audit Observation Memorandum (AOM) No. 04-0001-101 (03) dated February 11, 2004, issued by the Supervising Auditor, Mr. Charlie [S.] Baldago, Central Board of Assessment Appeals, Department of Finance and its supporting documents relative to the payment of salary, PERA and additional Compensation, Representation And Transportation Allowance (RATA), Loyalty Award, Clothing Allowance, Productivity Incentive Benefit, Christmas Bonus and Cash Gift to Atty. Camilo Montenegro, Hearing Officer for the Visayas, in the total amount of ₱132,844.50 for the period from July 1, 2003 to November 30, 2003 after his compulsory retirement on June 30, 2003, which we found illegal without the CSC[']s approval/resolution on the extension of his services pursuant to CSC Memorandum Circular No. 27 S. 2001, hence this disallowance:
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> x x x x x x x x x[7]

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[3] *Id.* at 102.

[4] *Id.* at 29.

[5] *Id.* at 103.

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

[7] *Id.* at 54.

ND No. 2010-09-095[8] dated September 6, 2010 was likewise issued for the amount of ₱1,432,339.93 on account of the expiration of the six-year term of Atty. Montenegro as hearing officer and his continuation in office even after his term without the approval of the Civil Service Commission (CSC) in violation of CSC Memorandum Circular (MC) No. 40, Series of 1998.

Atty. Montenegro, CBAA Chairman Cesar S. Gutierrez (Gutierrez), Cynthia V. Macabuhay (Macabuhay) as Accountant II, Angel P. Palomares, and Nelia C. Cabbab as Administrative Officer III, all from CBAA, were determined liable for Notice of Disallowance No. 2005-025;[9] while only Gutierrez and Macabuhay were adjudged liable under Notice of Disallowance No. 2010-09-095.[10]

Meanwhile, on December 9, 2010, Atty. Montenegro submitted a resignation letter.[11] However, Gutierrez noted on the letter that Atty. Montenegro would not be deemed as resigned until his replacement has been chosen.[12]

Ruling of the COA — Commission Proper

In the Decision[13] dated December 3, 2013, the Petition for Review[14] filed by the CBAA through its chairman, Gutierrez, was denied for lack of merit.[15] It reiterated the findings of the COA-LAO and ruled that Atty. Montenegro had been in a holdover capacity for more than nine years without approval from the CSC even far beyond his six-year term and more, beyond the latter's compulsory retirement age.[16] It declared

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[8] *Id.* at 50-51.

[9] *Id.* at 55.

[10] *Id.* at 51.

[11] *Id.* at 104.

[12] *Id.*

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

[14] *Id.* at 39-51.

[15] *Id.* at 36.

[16] *Id.* at 33.

that the principle of *quantum meruit* could not apply because as early as February 11, 2004, audit observation memoranda to stop payment and find a replacement for Atty. Montenegro's position were already given to CBAA.[17]

Only Atty. Montenegro filed a Motion for Reconsideration,[18] which the COA-Commission Proper denied in a Resolution[19] dated March 9, 2015, Hence, this Petition for *Certiorari* filed by Atty. Montenegro.

The Issue

The issues brought to the Court for resolution are worded as follows:

I

PUBLIC RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN DECLARING THAT MONTENEGRO, IN HOLDING HIS POSITION IN HOLDOVER CAPACITY, NEEDS PRIOR APPROVAL FROM CSC.

II

PUBLIC RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN CITING THE CASE OF *TOMALI VS. CIVIL SERVICE COMMISSION* TO SUPPORT ITS DECISION; AND, DISREGARDING THE *LECAROS CASE* CITED BY THE HONORABLE ACTING CHAIRMAN, CSC.[20]

Simply put, the issue boils down to whether Atty. Montenegro is entitled to the salary, emoluments, and benefits as a hearing officer of the CBAA by reason of the extension of his appointment in a holdover capacity even beyond his compulsory retirement.

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[17] *Id.* at 35.

[18] *Id.* at 83-98.

[19] *Id.* at 38.

[20] *Id.* at 11.

The Petition

Filed under Rule 64 of the Rules of Court, Atty. Montenegro alleges that he remained in the service in a holdover capacity as authorized by two CBAA Resolutions; thus, he is entitled to receive his salary and emoluments for actual services rendered.[21]

During the pendency of the petition, Atty. Montenegro applied for an Extremely Urgent Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction[22] on COA's Order of Execution which the Court granted on January 19, 2016.[23]

CBAA then filed its Petition-in-Intervention[24] wherein it adopts and incorporates the arguments raised by Atty. Montenegro.

COA's Comment on the Petition

The COA, as represented by the Office of the Solicitor General (OSG), reiterates its stance that the appointment of CBAA hearing officers shall be subject to civil service laws, rules and regulations; hence, the CBAA Resolutions that granted an indefinite extension of service that lasted for more than nine years is literally a reappointment as hearing officer that is proscribed under Section 230 of the LGC. Moreover, the CBAA Resolutions authorizing the holdover violate Section 1, Rule VI of CSC MC No. 40, Series of 1998, which requires that an appointment shall be submitted to the CSC within 30 days from date of issuance. Assuming that the grant of holdover capacity does not need the approval of the CSC, the COA emphasizes that Section 5, Rule III of CSC MC No. 40, Series of 1998 still requires the submission to the CSC of personnel actions which do not involve changes in position title, rank, or status. More importantly, the COA is of the view that, in the case of extensions

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[21] *Id.* at 22-25.

[22] *Id.* at 280-286.

[23] *Id.* at 298-302.

[24] *Id.* at 373-391.

after the compulsory age of retirement, the approval by the CSC is required by law.

The COA likewise finds no justification for the failure of CBAA to hire a qualified successor for more than nine years considering that the position is not highly technical and at most required only at least five years of practice of law in the Philippines. For the COA, the CBAA failed to establish that there were efforts done to search for Atty. Montenegro's replacement.

With respect to the Petition-in-Intervention, the COA argues that it should be dismissed. Being parties during the proceedings before the COA, the failure of CBAA or its officers to timely file a motion for reconsideration or a petition for that matter rendered the COA decision and resolution final and executory.

The Ruling of the Court

On the Petition-in-Intervention filed by the CBAA

Preliminarily, the Court disposes of the Petition-in-Intervention filed by the CBAA.

Interventions are sanctioned under Section 1, Rule 19 of the Rules of Court:

> Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In *Hi-Tone Marketing Corp. v. Baikal Realty Corp.*,[25] the Court defined intervention as a remedy by which a third

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[25] 480 Phil. 545 (2004).

party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding.[26] Indeed, as correctly observed by the COA, the CBAA, being a party during the proceedings before the COA, cannot be allowed to circumvent procedural technicalities by allowing its petition-for-intervention that penultimately merely adopted by reference all the arguments raised by Atty. Montenegro in his petition. CBAA's petition-in-intervention, in effect, is a bid to cure its failure, together with its officers, to timely file a motion for reconsideration or a petition for that matter, which the Court cannot tolerate.

Thus, the only issue left for the determination of the Court is ND No. 2005-025 for the amount of ₱132,844.50 wherein Atty. Montenegro was determined as one of the parties accountable. With respect to ND No. 2010-09-095 which referred to the amount of ₱1,432,339.93, Atty. Montenegro was not decreed liable by the COA.

Montenegro's Continuation of Service in a Holdover Capacity Beyond Compulsory Retirement Age

A hearing officer of the CBAA in a holdover capacity beyond compulsory retirement age is not exempt from civil service laws, rules and regulations.

In the instant case, there is an interplay of factors that complicated Atty. Montenegro's continuance in service as a hearing officer in a holdover capacity beyond his compulsory retirement age. To note, he was appointed on February 26, 1993 and his term ended on February 25, 1999. Before his term expired, CBAA, through a board resolution allowed him to continue in service as a hearing officer on the holdover principle, until his successor has been chosen and qualified, for the exigency

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[26] *Id.* at 569, citing *Manalo v. Court of Appeals*, 419 Phil. 215, 233 (2001).

of the service.[27] The CBAA issued another Resolution on June 20, 2003 in anticipation of Atty. Montenegro's compulsory retirement which again allowed the latter to continue in office in a holdover capacity until a successor is appointed.[28]

Per letter of Gutierrez, addressed to Myrna K. Sebial, State Auditor V, Supervising Auditor of the Department of Finance, there were no qualified applicants for the position of hearing officer after the expiration of the term of Atty. Montenegro despite the quarterly report of CBAA to the CSC of all its existing vacancies, as well as the publication of the position in major newspapers.[29] It was also raised in the same letter that they still have three vacant positions of hearing officer that needed to be filled up,[30] which emphasized the difficulty of engaging someone for that position. As underscored in the CBAA Resolution dated February 15, 1999, it is important and necessary that there is an incumbent to the position who will attend to, try, and receive evidence on the appealed assessment cases in the Visayas as well as for Mindanao.[31] The CBAA Resolution dated June 20, 2003 for the extension of Atty. Montenegro's service despite his compulsory retirement contained the same wordings.[32] Veritably, the exigency of the service necessitated that Atty. Montenegro remained as hearing officer despite the lapse of his six-year term and his compulsory retirement age until a successor is qualified and appointed.

The basis for ND No. 2005-025 was the illegality of the extension of Atty. Montenegro's services for the period from July 1, 2003 to November 30, 2003 after his compulsory retirement on June 30, 2000 pursuant to CSC MC No. 27, Series of 2001.

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[27] *Rollo*, p. 102.

[28] *Id.* at 103.

[29] *Id.* at 76-77.

[30] *Id.* at 76.

[31] *Id.* at 102.

[32] *Id.* at 103.

CSC MC No. 27, Series of 2001 dated October 8, 2001, requires the prior approval of the CSC before an employee could be allowed to extend his/her service beyond the compulsory retirement age:

Relative thereto, the Commission has issued CSC Resolution No. 011624 amending and clarifying Section 12, Rule XIII of CSC MC No. 15, s. 1999, as follows:

> Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.
>
> However, in meritorious cases, the Commission may allow the extension of service of 3 person who has reached the compulsory retirement age of 65 years, for a period of six (6) months only unless otherwise stated. Provided, that, such extension may be for a maximum period of one (1) year for one who will complete the fifteen (15) years of service required under the GSIS Law.
>
> A request for extension shall be made by the head of office and shall be filed with the Commission not later than three (3) months prior to the date of the official/employee's compulsory retirement.
>
> Henceforth, the only basis for Heads of Offices to allow an employee to continue rendering service after his/her 65th birthday is a Resolution of the Commission granting the request for extension. Absent such Resolution, the salaries of the said employee shall be for the personal account of the responsible official.
>
> Services rendered during the period of extension shall no longer be credited as government service. However, services rendered specifically for the purpose of completing the 15 years of service under the GSIS Law shall be credited as part of government service for purposes of retirement.
>
> An employee on service extension shall be entitled to salaries, allowances and other remunerations, that are normally considered part and parcel of an employee's compensation package, subject to existing regulations on the grant thereof.

a.1. The following documents shall be submitted to the Commission:

1. Request for extension of service signed by the Head of Office, containing the justifications for the request;
2. Certification that the employee subject of request is still mentally and physically fit to perform the duties and functions of his/her position;
3. Certified true copy of the employee's Certificate of Live Birth;
4. Service record of the employee if the purpose of the extension is to complete the 15-year service requirement under the GSIS law;
5. Proof of payment of the filing fee in the amount of Two Hundred Pesos (₱200.00).

b) A person who has already reached the compulsory retirement age of 65 can still be appointed to a coterminous/primarily confidential position in the government.

A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/he services are earlier terminated. (Italics omitted; underscoring supplied.)

A perusal of the aforecited CSC Circular would indicate that extensions of service beyond the compulsory retirement age is allowed, albeit subject to the approval of the CSC. In the absence of a CSC resolution for extension of service, an employee who is allowed to perform the duties of the position shall make the official responsible for the continued service of the employee liable for the salaries.

The COA did not err when it Disallowed Montenegro's Salary, Emoluments and other Benefits

The theory of COA as to the subject disallowance is mainly grounded on Atty. Montenegro's noncompliance with the Civil Service Rules applicable to a public official who renders service

beyond his compulsory retirement age. Based from the foregoing cited rules, the Court finds valid and proper COA's disallowance of Atty. Montenegro's salary and other emoluments actually received after his compulsory retirement. The Court finds no grave abuse of discretion on the part of COA in sustaining the disallowance.

A *fortiori*, in the interest of substantial justice and equity, the principle of *quantum meruit* should benefit Atty. Montenegro for the actual services which he rendered. To deny Atty. Montenegro the compensation for the services which he rendered during the period of his engagement would be tantamount to injustice which the Court cannot countenance. Accordingly, while his failure to observe the proper procedure for the extension of his service beyond compulsory retirement necessitated the disallowance of his salary, emoluments and other benefits, personal liability should not attach to Atty. Montenegro. It should be noted that CSC MC No. 27, Series of 2001 dated October 8, 2001 only holds the responsible official liable. An indication that it acknowledges the employee's time or work performed as compensable, notwithstanding the presence of a procedural infirmity. The salary and other emoluments given to a government employee who extends his services beyond the compulsory retirement age is an expenditure or use of government funds, which is irregular since it was incurred without adhering to established rules, regulations, procedural guidelines, policies, principles, or practices that have gained recognition in law,[33] more particularly, the requisite filing with the CSC for a request of extension of service on account of an employee's compulsory retirement. As defined by the COA rules, irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law; whereas the former is incurred in violation of applicable rules and regulations other than the law.[34]

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[33] Commission on Audit Circular No. 85-55-A dated September 8, 1985.

[34] *Id.*

Veritably, the appointing authority, Gutierrez and the other officials found liable by the COA who authorized the disbursement of the salaries, emoluments, and benefits to Atty. Montenegro for the services actually rendered by the latter despite noncompliance with Civil Service Rules should be held accountable for the amount covered in ND No. 2005-025.

WHEREFORE, the Petition for *Certiorari* is **PARTIALLY GRANTED**. The Decision No. 2013-213 of the Commission on Audit dated December 3, 2013 is hereby **AFFIRMED with MODIFICATION** in that petitioner Atty. Camilo L. Montenegro is absolved from liability under Notice of Disallowance No. 2005-025. This pronouncement is without prejudice to any other administrative or criminal liabilities of the officials responsible for the illegal disbursement.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, and *Gaerlan, JJ.,* concur

Delos Santos, J., on leave.

EN BANC

[G.R. No. 222482. June 2, 2020]

PRINCESS RACHEL DEVELOPMENT CORPORATION and BORACAY ENCLAVE CORPORATION, *petitioners, vs.* **HILLVIEW MARKETING CORPORATION, STEFANIE DORNAU and ROBERT DORNAU,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; RIGHT OF ACCESSION; BUILDER IN BAD FAITH; A PERSON IS DEEMED A BUILDER IN BAD FAITH IF HE IS NOT UNAWARE THAT IT POSSESSES THE ENCROACHED PORTION IMPROPERLY OR WRONGFULLY. — Bad faith contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.,* that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it. The factual circumstances surrounding the instant case lead the Court to inevitably conclude that Hillview was a builder in bad faith. x x x [T]he encroachment in this case covers 2,783 sq m. Given that such encroachment is substantial, visible to the naked eye, and not merely negligible, Hillview could not feign ignorance thereof. Hillview was also actually informed by Engr. Lopez of the intrusion, but nevertheless proceeded with the development. x x x Hillview also took advantage of the fact that PRDC's adjoining property was vacant, thus, it proceeded with the construction which remained unhampered as PRDC knew nothing thereof. Further, at the trial before the RTC, Hillview was given the opportunity to present evidence to dispute the alleged encroachment. However, instead of doing so, Hillview submitted a mere consolidated sketch plan which was accomplished without the surveyor conducting an actual physical survey. Hillview also sought to postpone the survey to be conducted by the court-appointed Commissioner, and when the survey was not postponed, Hillview impugned the same as supposedly having been made clandestinely. Significantly as well, Hillview is not an ordinary landowner, but a property developer. Hillview is undeniably engaged in large-scale property development projects where it is expected to exercise a higher degree of diligence. More so in this case where there was no noticeable mark or boundary which delineated the adjoining properties. As a large property developer, Hillview ought to have, and which it could have easily dispensed, verified the definite boundaries of the property it sought to improve. Clearly, these facts when taken together, show that Hillview was not

unaware that it possesses the encroached portion improperly or wrongfully. Bad faith on the part of Hillview is, thus, evident.

2. **ID.; ID.; ID.; LANDOWNER IN GOOD FAITH; A LANDOWNER MAY BE DEEMED IN GOOD FAITH WHEN THE FACT OF ENCROACHMENT IS NOT KNOWN TO IT. —** As a registered owner, PRDC enjoys the indefeasibility of its titles and, thus, "may rest secure without necessity of waiting in the portals of the court sitting in the '*mirador de su casa*' to avoid the possibility of losing his land." Thus, PRDC had the right to eject any person illegally occupying its property, and although it may be aware of Hillview's encroachment, PRDC maintains the right to demand the return of its property as registered owner thereof. However, in relation to possession, a landowner may be in good faith or may be deemed in bad faith depending on the landowner's knowledge of the fact of encroachment. A landowner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen not to act on it. In such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. x x x The circumstances of the instant case show that PRDC had become aware of Hillview's encroachment only in 2007 when it decided to conduct a relocation survey on its properties because of the contemplated sale to Boracay Enclave. While the construction of the Alargo Residences commenced in 2004, the fact of encroachment was not known to PRDC at that time considering that it holds office in Quezon City while the properties were in Boracay. From PRDC's discovery of Hillview's encroachment in 2007 as a consequence of the relocation survey, PRDC lost no time in asserting its right and protecting its interest by sending Hillview notices to vacate which unfortunately went unheeded and which eventually lead to the immediate filing of the complaint *a quo*. Thus, PRDC is a landowner in good faith.

3. **ID.; ID.; ID.; LANDOWNER IN GOOD FAITH AND BUILDER IN BAD FAITH; RIGHTS AND OBLIGATIONS; APPLIED IN CASE AT BAR. —** [T]he x x x provisions of the Civil Code governing the rights of a landowner in good faith and a builder in bad faith find application in this case x x x. Thus, petitioners have the right to appropriate what has been built on its property, without any obligation to pay indemnity therefor. Due to its bad faith, Hillview forfeits what it has built without any right

to be paid indemnity. While necessary expenses shall be refunded to the builder, whether he built the same in good faith or in bad faith, PRDC's properties were in fact not preserved but used, and were consequently damaged, for the construction of Hillview's project. Notably, as well, Hillview did not file a counterclaim for the refund of necessary expenses to which it may have been entitled, if at all. Neither does Hillview have the right of retention over the encroached portions as the right of retention is afforded only to a possessor in good faith. Should petitioners choose not to exercise its right to appropriate the improvements as granted to it under Article 449 of the Civil Code, it may exercise either of its alternative rights under Articles 450 and 451, *i.e.*, (a) to demand the removal or demolition of what has been built at Hillview's expense; or (b) to compel Hillview to pay the price or value of the portions it had encroached upon, whether or not the value of the land is considerably more than the value of the improvements.

4. **ID.; ID.; ID.; BUILDER IN BAD FAITH; THE LANDOWNER HAS THE RIGHT TO RECOVER DAMAGES FROM THE BUILDER IN BAD FAITH. —** Article 451 of the Civil Code grants the landowner the right to recover damages from a builder in bad faith. While Article 451 does not provide the basis for damages, the amount thereof should reasonably correspond with the value of the properties lost or destroyed as a result of the occupation in bad faith, as well as the fruits from those properties that the landowner reasonably expected to obtain.

5. **ID.; OBLIGATIONS AND CONTRACTS; DAMAGES; ACTUAL DAMAGES; MUST BE DULY PROVEN. —** While the Court had allowed the award of actual damages representing reasonable compensation or monthly rental for the use and occupation of the landowner's property, we find no basis to award actual or compensatory damages in this case considering that PRDC itself deleted its prayer for reasonable rentals and other damages as may be determined by the Court. Article 2199 of the Civil Code also provides that actual damages must be duly proved. For these reasons, as well, we find the CA's deletion of the award of ₱3,402,669.00 to be proper.

6. **ID.; ID.; ID.; NOMINAL DAMAGES; AWARDED IN EVERY CASE WHERE ANY PROPERTY RIGHT HAS BEEN INVADED. —** Temperate damages could not x x x be awarded since there is

no basis for the Court to conclude that PRDC indeed suffered some pecuniary loss and that only the amount thereof cannot be ascertained. Nevertheless, since Article 451 of the Civil Code guarantees the award of damages in favor of the landowner and as further punishment for the builder's bad faith, we find it proper to award nominal damages. Nominal damages are awarded in every case where any property right has been invaded. x x x Since Hillview indubitably violated the property rights of PRDC, the Court finds that nominal damages in the amount of ₱100,000.00 is warranted under the circumstances.

7. MERCANTILE LAW; CORPORATION LAW; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; REQUISITES. — To hold a corporate officer personally liable for corporate obligations, two requisites must concur: (a) it must be alleged that the officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (b) such unlawful acts, negligence or bad faith must be clearly and convincingly proven. Here, apart from its allegation, petitioners have not presented proof that Hillview was a mere alter ego of individual respondents to justify the piercing of the veil of corporate fiction. The question of whether a corporation is a mere alter ego is purely one of fact. Thus, before this doctrine can be applied, the parties must have presented evidence for and/or against piercing the veil of corporate fiction. Fundamental is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Failing in its burden to prove by clear and convincing evidence that individual respondents Stefanie and Robert assented to Hillview's unlawful acts or are guilty of gross negligence or bad faith, petitioners cannot hold said individual respondents personally and solidarily liable with Hillview's corporate liabilities.

LEONEN, *J., concurring opinion:*

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); LAND REGISTRATION; TORRENS SYSTEM; GUARANTEES THE INTEGRITY OF LAND TITLES AND PROTECTS THEIR INDEFEASIBILITY ONCE THE CLAIM OF OWNESRHIP IS ESTABLISHED AND RECOGNIZED. — The main purpose of

registration under the Torrens System is "to make registered titles indefeasible." Under the Torrens System, when an application for the registration of the land title is presented before the Court of Land Registration, "the theory of the law is that *all* occupants, adjoining owners, adverse claimants, and other interested persons are notified of the proceedings, and have a right to appear in opposition to such application." Otherwise stated, "the proceeding is against the whole world." Presidential Decree No. 1529, otherwise known as the Property Registration Decree, aims to reinforce the Torrens System. The objective of integrating the Torrens System into our jurisdiction "is to guarantee the integrity of land titles and to protect their *indefeasibility* once the claim of ownership is established and recognized." This is intended to prevent "any possible conflicts of title that may arise by giving the public the right to rely upon the face of the Torrens title and dispense with the need of inquiring further as to the ownership of the property."

2. ID.; ID.; ID.; CONSIDERED AN *IN REM* PROCEEDING, AND IT IS NEEDLESS TO GIVE PERSONAL NOTICE TO THE OWNER OR CLAIMANTS OF THE LAND SOUGHT TO BE REGISTERED, TO VEST THE COURT WITH AUTHORITY OVER THE *RES*, AS IT IS THE PUBLICATION OF THE NOTICE OF APPLICATION THAT BRINGS IN THE WHOLE WORLD AS A PARTY AND VESTS THE COURT WITH JURISDICTION TO HEAR THE CASE. — Section 2 of Presidential Decree No. 1529 explicitly provides that land registration is an *in rem* proceeding x x x. As an *in rem* proceeding, "[j]urisdiction is acquired by virtue of the power of the court over the *res*." Furthermore, "[s]uch a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment *without* personal service upon the claimants within the state or notice by mail to those outside of it." In other words, it would be needless "to give personal notice to the owners or claimants of the land sought to be registered, to vest the court with authority over the *res*." As provided for under Section 23 of Presidential Decree No. 1529, upon the filing of an application for land registration, the date of initial hearing will then be set through an order where the public will be given notice through publication, mailing, and posting. It is the publication of the notice of application—*which informs everyone that a petition has been filed and whomsoever may oppose or contest*—"that

brings in the *whole world* as a party and vests the court with jurisdiction to hear the case." Thus, if no person files any opposition within the time prescribed to do so, Section 26 of Presidential Decree No. 1529 provides that an order of default in favor of the applicant will follow x x x. After considering the evidence presented and the court finds that the applicant has sufficient title appropriate for registration, it will render a judgment confirming title which, in turn, will attain finality after 30 days from receipt of the notice of judgment. Thereafter, the court releases an order to cause the issuance of the decree of registration and certificate of title in favor of the applicant. The court's judgment confirming the applicant's title and the subsequent order of registration under the latter's name, "when final, [constitutes] *res judicata* against the whole world." Accordingly, the resultant decree of registration shall be *conclusive* against all persons x x x.

3. ID.; ID.; ID.; ONCE A TITLE IS REGISTERED, ALL PERSONS DEALING WITH THE LAND SO RECORDED, OR ANY PORTION OF IT, MUST BE CHARGED WITH NOTICE OF WHATEVER IT CONTAINS, AND IT IS ONLY INCUMBENT ON THE PART OF THE PROPERTY OWNER TO BE CHARGED WITH NOTICE OF EVERY FACT APPEARING ON HIS TITLE. — Consistent with the nature of land registration as an *in rem* proceeding, once a title is registered, "[a]11 persons must take notice [and] [n]o one can plead ignorance of the registration." On the part of the owner, he or she "may rest secure, without the necessity of waiting in the portals of the court, or sitting in the '*mirador de su casa*', to avoid the possibility of losing his [or her] land." Considering that "[a]ll persons dealing with the land so recorded, or any portion of it, must be charged with notice of *whatever* it contains[,]" it is only incumbent on the part of the property owner to be charged with notice of *every* fact appearing on his or her title. This encompasses not only the land's technical description (as reflected in the owner's decree of registration and certificate of title), but also the property's actual boundaries *on site*. Simply put, the duty to know everything about one's property is inherent in the nature of the right as an owner of a registered land.

4. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; RIGHT OF ACCESSION; LANDOWNER IN GOOD FAITH;

A LANDOWNER IS DEEMED IN GOOD FAITH WHEN, UPON DISCOVERING THE ENCROACHMENT, IT LOST NO TIME IN ASSERTING ITS RIGHT AND PROTECTING ITS INTEREST. — A landowner is in bad faith "when the act of *building*, planting, or sowing was done with his [or her] knowledge and without opposition on his [or her] part." x x x Undeniably, Princess Rachel is a landowner in good faith. x x x [I]t "lost no time in asserting its right and protecting its interest[.]" To emphasize, when Princess Rachel discovered that Hillview unlawfully held a portion of its property, it promptly sent demand letters directing Hillview to vacate the encroached lot. However, despite the advice given, Hillview seemingly "turned a blind eye and deaf ear" and still commenced with making improvements in the area owned by Princess Rachel. x x x Princess Rachel never slept on its right. In fact, it was committed in asserting its claim over its property that all the actions against Hillview ensued within just five (5) to six (6) months from the time it discovered the encroachment. As a holder of a Torrens title, Princess Rachel has the right "to eject any person illegally occupying [its] property." Besides, "[t]he right to possess and occupy the land is an attribute and a logical consequence of [its] ownership."

5. ID.; ID.; ID.; LANDOWNER IN GOOD FAITH AND BUILDER IN BAD FAITH; RIGHTS AND DUTIES; APPLIED IN CASE AT BAR. — [O]n the premise that Princess Rachel is a landowner in good faith and Hillview is a builder in bad faith, we apply the x x x Civil Code provisions in determining the rights and duties of the parties x x x. Thus, Princess Rachel has the following alternative rights against Hillview: (1) to appropriate what has been built without any obligation to pay indemnity therefor, *or* (2) to demand that [Hillview] remove what [it] had built, *or* (3) to compel [Hillview] to pay the value of the land. *In any case, [Princess Rachel] is entitled to damages* under Article 451 x x x.

CAGUIOA, *J., separate concurring opinion:*

1. CIVIL LAW; CIVIL CODE AND PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); ENCROACHMENT CASES; WHEN THE ADJOINING PROPERTIES ARE BOTH UNREGISTERED, THE GENERAL

PRESUMPTION OF GOOD FAITH UNDER THE CIVIL CODE APPLIES, BUT WHEN THE PROPERTY ENCROACHED UPON IS REGISTERED UNDER THE TORRENS SYSTEM, THE APPLICABLE RULE SHALL DEPEND ON THE NATURE OF THE ADJOINING PROPERTY. — In encroachment scenarios, the general presumption of good faith shall apply when the properties involved are both unregistered. **Conversely, when either or both of the properties involved are registered under the Torrens system, it is the constructive notice rule that applies.** This is evident under Articles 18 and 711 of the Civil Code, which state that the general law defers to the special law with respect to matters governed by the latter x x x. [T]he interplay between the general provisions of the Civil Code and the specific provisions of PD 1529 can be reconciled, as follows: 1. When the adjoining properties are both unregistered, the general presumption of good faith under the Civil Code applies. 2. When the property encroached upon is registered under the Torrens system, the applicable rule shall depend on the nature of the adjoining property. a. When the encroachment is done by an adjacent owner of *unregistered* land, the constructive notice rule under Section 52 of PD 1529 shall apply against such adjacent owner. The adjacent owner shall be deemed a builder in bad faith as he is charged with *constructive* notice of the metes and bounds of the registered property encroached upon. b. When the encroachment is done by an adjacent owner of *registered* land and there is *no overlap* in the Torrens titles involved, Sections 15 and 31 of PD 1529 shall apply against such adjacent owner. The adjacent owner shall be deemed a builder in bad faith as he is charged with *actual* knowledge of the metes and bounds of his own property, and *constructive* notice of the metes and bounds of the registered property encroached upon. c. When the encroachment is done by an adjacent owner of *registered* land and it is established that a portion of the Torrens titles involve an overlap, Sections 15 and 31 of PD 1529 shall also apply. Nevertheless, the adjacent owner shall be deemed in good faith with respect to improvements he built within the bounds of his own Torrens title inasmuch as he has the right to rely on said title until it is declared null and void, even if he is deemed to have constructive notice of the metes and bounds of the registered property encroached upon. d. When the encroachment is done by an adjacent owner of *registered* land and it is established that

the property covered by his Torrens title is completely subsumed within that of the owner of the property encroached upon, the constructive notice rule under PD 1529 shall apply against such adjacent owner if it is established that he derives his title from a later registrant. Priority of registration shall govern, following the established rule that once property is registered under the Torrens system, then it is taken out of the mass of properties that can still be registered. Stated differently, the registered owner of the property encroached upon is preferred if the title of said owner is derived from the earlier registrant of said property, and the subsequent Torrens title that had been issued from which the adjacent owner derives his title is necessarily invalid. 3. When the property encroached upon is unregistered, but the encroachment is done by an adjacent owner of registered land, the adjacent owner shall be deemed a builder in bad faith as he is charged with actual knowledge of the metes and bounds of his own property.

2. ID.; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); LAND REGISTRATION; CONSTRUCTIVE NOTICE RULE; THE DECREE OF REGISTRATION AND THE CORRESPONDING CERTIFICATE OF TITLE, BOTH OF WHICH CONTAIN THE DESCRIPTION OF THE LAND TO WHICH THEY PERTAIN, FALL WITHIN THE SCOPE OF THE CONSTRUCTIVE NOTICE RULE, INASMUCH AS THEY ARE, BY LAW, CONCLUSIVE AGAINST ALL PERSONS. — Here, the lots encroached upon are registered under the Torrens system in the name of Princess Rachel Development Corporation (PRDC). Thus, the determination of the existence of good faith on the part of landowner PRDC and builder Hillview Marketing Corporation (Hillview) should be done in consonance with the provisions of PD 1529, the latter being the special law governing registered land. Accordingly, reference to Section 52 of PD 1529 is proper. x x x In turn, Sections 31 and 39 of the same statute detail **the scope of constructive notice with respect to the decree of registration** x x x. These provisions confirm that the decree *and* the corresponding certificate of title, ***both of which contain the description of the land to which they pertain***, fall within the scope of the constructive notice rule, inasmuch as they are, by law, conclusive against *all* persons. Since the original certificate of title is "entered in [the Registrar of Deeds'] record

book," and serves as a true copy of the decree of registration, the constructive notice rule should necessarily be understood as covering all that appears on the face of such title, *including* the technical description of the property to which it corresponds.

3. ID.; ID.; ID.; ID.; IN CASES INVOLVING THE ENCROACHMENT OF REGISTERED PROPERTY, THE BUILDER CANNOT BE CONSIDERED IN LAW TO BE ONE IN GOOD FAITH SINCE HE IS DEEMED TO HAVE PRESUMPTIVE KNOWLEDGE OF THE REGISTERED OWNER'S TORRENS TITLE, WHICH REFLECTS THE METES AND BOUNDS OF THE LATTER'S PROPERTY. — [T]his case involves Hillview's encroachment upon land covered by Torrens titles issued in the name of PRDC (now, Boracay Enclave Corporation). Here, the Court is called upon to resolve the issue of good faith in the context of encroachment of registered land. Verily, the Court's rulings in *J.M. Tuason & Co., Inc. v. Macalindong* (*1962 J.M. Tuason case*) squarely apply in this case. x x x J.M. Tuason filed a subsequent case involving the usurpation of another portion of the same registered lot x x x. The case eventually reached the Court and was docketed as *J.M. Tuason & Co., Inc. v. Estrella Vda. de Lumanlan* (*1968 J.M. Tuason case*). x x x [T]he *1962 and 1968 JM Tuason cases* instruct that one who builds upon property covered by a Torrens title and/or possesses the same is charged with the presumptive knowledge of said title's its existence. Thus, in cases involving the encroachment of registered property, the builder cannot be considered ***in law*** to be one in good faith since he is deemed to have presumptive knowledge of the registered owner's Torrens title, which reflects the metes and bounds of the latter's property. It is crystal clear that under PD 1529, the presumption of good faith that is accorded to possessors and/or builders under the Civil Code does not apply in cases of encroachment of registered property, because what is applicable is the constructive notice rule.

4. ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; RIGHT OF ACCESSION; LANDOWNER IN GOOD FAITH; THE REGISTERED OWNER CANNOT BE DEEMED IN BAD FAITH WHEN THERE ARE NO CIRCUMSTANCES INDICATING THAT SUCH OWNER HAD KNOWLEDGE OF THE FACT OF ENCROACHMENT AND, IN EFFECT, PERMITTED IT; CASE AT BAR. — PRDC is charged with

actual knowledge of the boundaries of its registered lots. Nevertheless, it must be stressed that PRDC stands as the owner of the lots encroached upon. Accordingly, the protection afforded by the Torrens system in this case extends to PRDC. In this context, a distinction must be made between PRDC's knowledge of its own land boundaries on the one hand, and the *fact* of encroachment on the other. x x x [T]he registered owner cannot be deemed in bad faith when there are no circumstances indicating that such owner had knowledge of the *fact* of encroachment and, in effect, permitted it. Once land is duly registered under the Torrens system, "the owner may rest secure, without the necessity of waiting in the portals of the court, or, sitting in the *mirador de su casa* to avoid the possibility of losing his land." Here, the registered owner's lack of knowledge of the *fact* of encroachment is not taken against him, as he is indeed protected by the Torrens system. However, the registered owner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen *not* to act on it. In such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. This is pursuant to the express provision of Article 453 of the Civil Code, which provides that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part. x x x [T]here appears to be no indication that PRDC had knowledge of Hillview's encroachment before 2007 x x x. By the time PRDC discovered the encroachment in 2007, Alargo Residences had already been constructed. Hence, PRDC was left with no other recourse but to file the Complaint since Hillview refused to heed its demand to vacate.

5. ID.; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); LAND REGISTRATION; TORRENS SYSTEM; THE PRECISE EXTENT OR LOCATION OF ONE'S REGISTERED PROPERTY CANNOT BE DETERMINED BY MERELY EXAMINING THE TECHNICAL DESCRIPTION APPEARING ON THE FACE OF ONE'S TORRENS TITLE, BUT THE EXAMINATION OF THE REGISTRY AND THE ASCERTAINMENT OF THE ACTUAL BOUNDARIES OF ONE'S LAND ARE PART AND PARCEL OF THE DUE DILIGENCE EXACTED UPON THOSE DEALING WITH LAND REGISTERED UNDER THE TORRENS SYSTEM.

— [T]here is no dispute that the precise extent or location of one's registered property cannot be determined by merely examining the technical description appearing on the face of one's Torrens title. x x x "[T]he actual boundaries as plotted on the ground will only be apparent after examining the registry and accomplishing several additional processes x x x." ***However*, it must be emphasized that the examination of the registry and the ascertainment of the actual boundaries of one's land area are part and parcel of the due diligence that PD 1529 exacts upon those dealing with land registered under the Torrens system**. To note, confirmation of title under PD 1529 is a tedious process. It requires hearing, publication, posting, and personal notice to adjoining owners, among others. These stringent requirements are necessitated not only by the nature of land registration cases as proceedings *in rem*, but also by the strength of the Torrens title resulting therefrom.

6. ID.; ID.; ID.; ID.; THE STABILITY OF THE TORRENS SYSTEM MUST BE UPHELD AND THE PRIMACY OF THE PROPERTY REGISTRATION DECREE MUST BE ACCORDED IN EVERY CASE INVOLVING ENCROACHMENT ON REGISTERED LANDS. — In every case involving the encroachment on registered land, it is the stability of the Torrens system that must first and foremost be upheld, and secondly, if not equally important, the primacy of PD 1529, being the special law applicable to registered land, must be accorded. **To accord good faith in favor of Hillview based on an erroneous relocation survey prepared by its geodetic engineer who is the supposed expert in the precise science of geodesy creates a dangerous precedent. It will make it almost impossible to rebut such "proof" of good faith. The correctness of a relocation survey prepared by a geodetic engineer will be rendered immaterial, as good faith will be automatically assured to the party who relies on it.** Such a precedent will dangerously confer on the builder a preferred status under Article 448 to the detriment of the registered owner, and open the floodgates to wealthy land grabbers who will be permitted to unscrupulously oust innocent landowners from their registered property through encroachment, by building improvements of significant value which the latter would not be able to acquire. I fail to see how adherence to the principles of the Torrens system would lead to the impairment of the real estate industry. On the contrary, I believe that such

stance will enhance the real estate industry as it operates, as it always has, as a cloak of protection to valid titleholders. x x x The landowner has two mutually exclusive options under x x x Article [448 of the Civil Code]: (1) to appropriate as his own the works or the improvements, or (2) to oblige the one who built to pay the price of the land. If the improvements are of significant value beyond the capacity of the registered landowner, the latter is left with no practical alternative but to choose the second option. This means that the registered owner is forced to lose the encroached portion of his registered land. Worse, if the wealthy land grabber unscrupulously builds on the entire registered land, the registered owner risks losing his entire registered land. In this situation, the Torrens system would have failed to protect the registered owner because one of its safeguards, the constructive notice rule, would have been disregarded. This should not be allowed. Such ruling puts owners of unregistered land, who are not bound by the irrefutable presumption of constructive knowledge on the metes and bounds of their property, in a position better than those who have placed their real property under the coverage of the Torrens system and are bound by such rule — this undermines the very purpose of the Torrens system and throws away the protection it was designed to afford.

LAZARO-JAVIER, *J., separate concurring opinion:*

CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS, RIGHT OF ACCESSION; GOOD FAITH; THE LAW ALWAYS PRESUMES GOOD FAITH, SUCH THAT THE ONE WHO ALLEGES BAD FAITH MUST PROVE IT BY CLEAR AND CONVINCING EVIDENCE, AND WHEN ONE'S STRUCTURE HAPPENS TO ENCROACH ON A REGISTERED PROPERTY OR PORTION BELONGING TO ANOTHER, THIS FACT ALONE DOES NOT SUPPORT A FINDING OF BAD FAITH, AS THE SAME MUST BE ESTABLISHED BY INDEPENDENT AND COMPETENT EVIDENCE. — [T]he standard of constructive notice x x x for the purpose of upholding or rejecting one's claim of good faith cannot be applied here. We should instead apply ***Co Tao v. Joaquin Chan Chico*** and ***Tecnogas Philippines Manufacturing Corporation v. Court of Appeals***. x x x Indeed, the law always presumes good faith. The one who alleges bad faith must prove it by

clear and convincing evidence x x x. In resolving the issue of good faith, the Court in ***Co Tao*** and ***Tecnogas*** considered several factors. x x x The Court may also consider the circumstances that led to the fact of encroachment, including the history of the encroaching party's claim of title. Thus, the Court deemed it proper to evaluate the peculiar circumstances by which Chico and Tecnogas acquired their respective properties. Here, the courts below found that Hillview encroached on petitioners' property by 2,783 sqm. By itself, however, the size of the encroachment is not sufficient to support the conclusion that Hillview acted in bad faith. Compared to the entire expanse of petitioners' property, extending up to 30,000 sqm. altogether, the size of the encroached area may appear miniscule. Besides, in cases of encroachment, there should always be margins for error and possibilities of good faith. x x x To emphasize, no one can determine the **precise** extent or location of his or her property by merely examining the four (4) corners of his or her paper title. Although a paper title may inform a person of the specific points bounding a property, how these points are plotted on actual land is beyond the expertise of a layperson. Even licensed geodetic engineers sometimes make mistakes on the exact physical location of a titled property. When honest mistakes are committed, the good faith of the builder serves as his or her own protection. Suffice it to state that the metes and bounds of a piece of land do not jump out of the page to tell the reader where the piece of land is, how big it is, what shape it is and what its edges are. The actual boundaries as plotted on the ground will only be apparent after examining the registry and accomplishing several additional processes that all require expertise and expense. It is therefore unreasonable to conclude that just because a property is registered, all persons dealing with them may already be charged with constructive notice of not only the technical metes and bounds but also how the same will appear when actually laid on the ground. x x x When one's structure happens to encroach on a registered property or portion belonging to another, this fact alone does not support a finding of bad faith. The same must be established by independent, nay, competent evidence. x x x Verily, the cases of ***Co Tao*** and ***Tecnogas*** are applicable here. Any finding of bad faith on the part of Hillview, therefore, should not be based on any mere presumption but should be warranted by the factual circumstances obtaining in the present

case. On this score, I agree that the factual circumstances here support a finding of bad faith against Hillview.

ZALAMEDA, *J., separate concurring opinion:*

1. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; RIGHT OF ACCESSION; GOOD FAITH; APPLIED TO POSSESSION, ONE IS CONSIDERED IN GOOD FAITH IF HE IS NOT AWARE THAT THERE EXISTS IN HIS TITLE OR MODE OF ACQUISITION ANY FLAW WHICH INVALIDATES IT. — Based on the facts and evidence on hand, it is correct that respondent Hillview be held liable for being a builder in bad faith. x x x It is axiomatic in jurisprudence that the essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. In the instant case, based on the figures alone, it can already be fairly deduced that respondent Hillview was well-aware of its intrusion into the lots of petitioner. Tommy Sarceno, respondent Hillview's own witness, testified that respondent Hillview only bought a total of 5,100 square meters of spouses Tirol's property, which means that the encroachment extended to more than 50% of respondent Hillview's own lot. An increase in the land area of such proportion is too great to be left undiscovered by respondent Hillview at any time before, or during the construction of the *Alargo Residence*, with Engineer Lester Madlangbayan describing **the encroachment as very visible**. Respondent Hillview ought to have known the actual land area or the metes and bounds of its own property as part of its due diligence, being the developer of the *Alargo Residence* subdivision project. x x x [I]t is certain that respondent Hillview knew very well of its encroachment into petitioner's properties, and should be declared a builder in bad faith.

2. ID.; ID.; ID.; IN RESOLVING ENCROACHMENT DISPUTES, THE GOOD FAITH OR BAD FAITH OF A BUILDER MUST BE DETERMINED BASED ON THE CIRCUMSTANCES OF THE CASE, NOT ON A STRICT APPLICATION OF THE CONSTRUCTIVE NOTICE RULE AND THE PRESUMPTIVE KNOWLEDGE OF TORRENS TITLE. — I still have not

wavered in my view that a declaration of the good faith or bad faith strictly on *a priori* application of the constructive notice rule and the presumptive knowledge of Torrens title may lead to iniquitous results. To reiterate, an indiscriminate, blind application of these rules, without regard to the peculiar factual circumstances of each case, may not be the best approach to dispense justice. x x x Indeed, subservience to the provisions of the pertinent provisions of PD 1529, or a literal application thereof, is not always the rational and judicious way of resolving encroachment cases like this, as have been amply proven in jurisprudence. Badges of good faith of the builders or their transferees would be negated if the Court expands the scope and application of the constructive notice rule under PD 1529 to include a presumptive knowledge of the metes and bounds of every registered land, as reflected in the technical description thereof. Verily, certificates of titles are not always free from errors; hence, there has been a need for their correction in many instances. Most of the time, however, the errors are only realized much later, often after the owners have already constructed their improvements. There are also instances of honest mistakes by the builders, as when the lots delivered to them by the sellers are different, a case which is prevalent in subdivision developments. x x x [T]he Court has had many occasions where it recognized good faith beyond its limited definition, by declaring the builder to be in good faith despite a finding that the latter encroached or built on a registered lot belonging to another. x x x [The] involved real estate properties [are] registered under the Torrens system. Yet, these cases prove that even if the provisions of PD 1529 supposedly require an indiscriminate and overreaching application of the constructive notice rule and presumptive knowledge of Torrens title, the Court nevertheless has had so many occasions where it did not apply the same, but instead judiciously considered the peculiar facts of the case in determining the good faith or bad faith of the builder instead. x x x The use of the factual approach in the case at bar in determining the good faith or bad faith of the builder is clearly neither novel nor an aberration, but finds clear support from jurisprudence. Prudence and the interest of justice dictate that We should apply the same going forward. Withal, in *PNB v. Heirs of Militar*, the Court elucidated that in ascertaining good faith, or the lack of it, which is a question of intention, **courts are necessarily controlled by the evidence**

> **as to the conduct and outward acts by which alone the inward motive may, with safety, be determined**. x x x By this yardstick, it is more judicious for the Court to take on a calibrated examination of the facts and evidence in resolving similarly situated encroachment disputes, as acknowledged by the *ponente* in this case.

APPEARANCES OF COUNSEL

Lopez and Partners for petitioners.
Most Law for respondents.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the November 28, 2014 Decision[1] and the January 15, 2016 Resolution[2] of the Court of Appeals-Cebu City (CA) in CA-G.R. C.V. No. 04415 which affirmed with modification the April 30, 2012 Decision[3] of the Regional Trial Court, Kalibo, Aklan, Branch 6 (RTC) in Civil Case No. 8237, a case for *accion publiciana* and damages.

While the RTC and the CA agreed on the fact of encroachment by respondent Hillview Marketing Corporation (Hillview) on petitioners' properties, they differed on their findings as to whether Hillview was a builder in good faith or bad faith.

The Antecedents

On January 25, 2008, petitioner Princess Rachel Development Corporation (PRDC) filed a Complaint for *Accion Publiciana* and Damages with Prayer for Issuance of Writ of Preliminary

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[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Edgardo L. Delos Santos (now a Member of the Court), and Jhosep Y. Lopez, concurring; *rollo*, pp. 61-102.

[2] *Id.* at 104-107.

[3] Penned by Presiding Judge Jemena L. Abellar Arbis; *id.* at 136-171.

Injunction against respondents Hillview, Stefanie Dornau (Stefanie) and Robert Dornau (Robert; collectively, respondents). The original complaint was amended to expunge claims for damages representing reasonable rentals in the amount of ₱3,402,669.00.[4] Later on, PRDC's prayer to hold respondents "liable to pay damages in such amount" as may be determined by the RTC was likewise expunged.[5]

In its Complaint, PRDC alleged that it is the registered and absolute owner of the following parcels of land: Lot 1-B-7-A-1 of the subdivision plan Psd-06-015339, with an area of 10,000 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. T-24348; and Lot 1-B-7-B-1 of subdivision plan Psd-06-015339, with an area of 20,000 sq m, more or less, covered by TCT No. T-24349, both of the Register of Deeds of Kalibo, Aklan.

PRDC has been in physical possession of the said properties as early as May 1996 and has religiously paid the realty taxes thereon. In August 2007, Engineer Lester Madlangbayan (Engr. Madlangbayan) conducted a relocation survey on the properties and it was discovered that Hillview, which owns the adjoining property known as Lot 1-B-7-A-2, has encroached an area of 2,614 sq m, more or less.[6] Further, respondents have built condominium units known as the Alargo Residences on the encroached area without PRDC's knowledge and consent. A survey conducted by Engr. Madlangbayan in September 2007 showed an encroachment of 4,685 sq m when he inadvertently included a portion of a property belonging to the Vargas family in the survey.[7]

PRDC alleged that the construction of the buildings on the encroached area was done in bad faith as the respondents have full knowledge of the territorial boundaries of their respective

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[4] *Id.* at 15 and 66.

[5] *Id.* at 69.

[6] *Id.* at 12.

[7] *Id.* at 13.

properties. Consequently, on September 20, 2007, PRDC sent respondents a demand letter requesting them to vacate the subject premises, but the latter ignored it. A subsequent letter to vacate was sent on September 27, 2007, but it was likewise left unheeded.

In their Answer, respondents counter that petitioner did not have prior physical possession over the disputed area. There was no manifestation of PRDC's claim of possession over the area in controversy and there was no noticeable mark or boundary which delineated the adjoining properties. The Alargo Residences project was allegedly constructed within respondents' own land which they bought from Leo Niel Tirol and Dem Tirol (the Tirols). Further, respondents diligently examined the titles and boundaries of the properties, and even obtained an approved survey plan thereof before they started the construction of the Alargo Residences project sometime in 2004.

Respondents also argue that PRDC has no cause of action against Stefanie and Robert because Hillview is imbued with a separate juridical personality, and there was no allegation of any specific wrongful act or omission on the part of Stefanie and Robert. Respondents contend that Hillview is both a buyer and builder in good faith, having bought the land free from any liens or encumbrances, and having constructed structures within the premises of the land which they bought from the Tirols.

The RTC directed the parties to submit their respective survey reports which shall be reviewed and evaluated by the court-appointed Commissioner. In compliance, PRDC submitted the relocation survey report with the attached survey plans, revealing an encroachment of about 2,614 sq m. Respondents, on the other hand, submitted the consolidated sketch plan, but not the relocation survey report. The consolidated sketch plan was a table survey which was made without the surveyor conducting an actual survey on the ground.[8]

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[8] *Id.* at 16.

A survey was then scheduled by the court-appointed Commissioner. This survey was sought to be postponed by respondents on various grounds.[9] The survey was nevertheless conducted and, thereafter, the Commissioner submitted his Report,[10] with the following observations:

> When plotted all structures using all references intact in actual ground, it was found out that portion of perimeter of concrete fence constructed by [Hillview] encroached the area claimed by [PRDC]. Area encroached in Lot 1-B-7-B-1 is 383 square meters and 2,400 square meters in Lot 1-B-7-A-1 with a total area of 2,783 square meters.
>
> The land in question is fully developed with 3 conc. houses inside and a swimming pool.[11]

Respondents opposed the Commissioner's Report and were, thus, instructed by the RTC to submit its own survey on the land. Trial on the merits thereafter ensued.

Among the witnesses presented by PRDC was Engr. Reynaldo Lopez (Engr. Lopez) who testified that he was hired by Hillview to survey Lot 1-B-7-A-2. At the survey, Engr. Lopez discovered an error in the concrete monuments mounted on the boundary limits of Hillview that encroached upon the boundary of PRDC. He informed Stefanie's husband and one of Hillview's owners, Martin Dornau (Martin), of the encroachment, but the latter instructed him to nevertheless proceed with the survey and that he will be responsible for the error.[12] Since the adjoining property was vacant, Hillview kept developing the property.

Engr. Lopez further testified that he made an actual survey of the boundaries of Hillview and discovered that the boundary pointed by Hillview is not in accordance with the title. The boundary line agreed upon by the Tirols and the Vargases does not conform to the titles of the lots, and using this boundary

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[9] *Id.* at 17 and 67-68.

[10] *Id.* at 121-122.

[11] *Id.* at 122.

[12] *Id.* at 140.

line will result in encroachment. Again, Engr. Lopez informed Martin of his findings, but the latter nevertheless instructed him to proceed since the adjoining lot was vacant.[13] The lots were then surveyed and all corner monuments were fully monumented, but the geographical position on the ground was altered and not in accordance with the title.[14] They then proceeded with the partition and Hillview made improvements thereon.

Engr. Lopez explained that the reason why no encroachment was stated in the subdivision plans of Hillview was because the plans were based on the wrong boundary lines.[15] He further explained that he was not allowed by the Vargases to place monuments as the existing concrete monuments were along the boundary of the Tirols and the Vargases. When he surveyed the lot of the Tirols being sold to Hillview, there were monuments that were already planted, but it was not in accordance with the technical description of the land.[16] Engr. Lopez stressed that he informed Martin of the foregoing.[17]

For its part, respondents presented, among others, the testimony of Althea C. Acevedo (Acevedo), the Chief of Technical Services Section of the Department of Environment and Natural Resources (DENR). Acevedo testified that the survey plans were submitted by Engr. Lopez and were approved by the DENR since said survey plans did not overlap with any previous plans. She further testified that the survey plans did not indicate any encroachment. On cross-examination, she confirmed that there can be a situation where no encroachment is indicated in the survey plans, but at actual ground survey there is an encroachment because of the reference point that was used. She testified that in this case, the reference monument was transferred two to three meters

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[13] *Id.*

[14] *Id.* at 141.

[15] *Id.* at 142.

[16] *Id.*

[17] *Id.*

and that, accordingly, there is a great possibility of an encroachment.[18]

The testimony of Atty. Rodolfo B. Pollentes (Atty. Pollentes), a geodetic engineer hired by respondents, was also presented. He sought to excuse respondents' non-submission of their own relocation survey for lack of reliable reference point within the two properties.[19] He also impugns the survey conducted by the court-appointed Commissioner as it was supposedly conducted while the parties' representatives were discussing about the postponement of the survey.[20] Atty. Pollentes also represented that since Engr. Lopez refutes his own survey, he should be liable for damages and revocation of license.[21]

Notably, respondents did not present any geodetic engineer who may have conducted a relocation survey of its own property.

On rebuttal, Engr. Lopez testified that since there was a mistake in the survey plans which he submitted to the DENR, he wrote a letter seeking for the cancellation of said plans.[22] Acevedo confirmed receipt of Engr. Lopez's request for cancellation, but stressed that if titles were already issued for the sub-lots, these titles should first be cancelled before the cancellation of the survey plans.[23]

Meanwhile, PRDC sold its properties to Boracay Enclave Corporation (Boracay Enclave). For this reason, Boracay Enclave was joined as a party to the case.[24]

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[18] *Id.* at 145.

[19] *Id.* at 146.

[20] *Id.*

[21] *Id.* at 147.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 19.

The RTC Ruling

In a Decision dated April 30, 2012, the RTC ruled that there was encroachment on the basis of the survey conducted by the court-appointed Commissioner. It found that respondents encroached on about 383 sq m on Lot 1-B-7-B-1 and into about 2,400 sq m in Lot 1-B-7-A-1 of PRDC's properties, or a total of 2,783 sq m.

The RTC noted that the adjoining properties of PRDC and respondents were registered and, as such, encroachment can be determined by checking the metes and bounds of the properties as set forth in the titles. The parties' titles in this case contained no errors in the technical descriptions. To settle the issue of encroachment, the RTC emphasized that it ordered the parties to submit their respective relocation surveys, but respondents failed to comply.[25] At any rate, the RTC observed that the fact of encroachment was settled through the actual survey conducted by the court-appointed Commissioner.[26]

As to the issue of whether or not respondents are builders in bad faith, the RTC took note that PRDC anchored its imputation of bad faith on the testimony of Engr. Lopez. While noting that Engr. Lopez was the one who conducted the survey, discovered the encroachment, caused the survey to be approved, and who later on assailed these surveys as erroneous, the RTC was nevertheless convinced that Engr. Lopez has informed Martin of the encroachment which the latter ignored. The RTC found that respondents deliberately ignored Engr. Lopez's discovery as they were bent on developing the properties. In fact, the RTC noted that at the time of the survey, respondents have a subdivision plan already prepared.[27]

The RTC also held that respondents' bad faith was further proven by the fact that Martin, despite having knowledge of the encroachment, acquiesced to the use of the wrong boundary

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[25] *Id.* at 150.

[26] *Id.* at 151.

[27] *Id.* at 155.

line dividing the properties of the Tirols and the Vargases.[28] The RTC declared that it was beneficial for the respondents to just maintain the use of the wrong boundary line as there were already established improvements on the premises. The use of the wrong boundary line resulted to the encroachment upon PRDC's adjoining properties.[29]

Anent respondents' defense that their survey plans were approved and adopted by the DENR, the RTC ruled that such approval does not prove that there was no error in the conduct of the surveys or that respondents did not consent to the encroachment. The RTC noted that an approved survey may actually later on be corrected or cancelled.[30] It likewise noted that Engr. Lopez himself assails the correctness of the surveys he conducted and prepared, thus, there was no reason for respondents to insist on adopting and relying upon such surveys.[31]

In conclusion, the RTC held that respondents acted in bad faith in introducing improvements on the encroached areas of PRDC's properties, and that, in spite of this, respondents refused to vacate the area despite demand.

Consequently, the RTC ordered respondents, jointly and severally, to vacate and demolish the buildings and improvements in the encroached premises at its own cost, and to return physical possession thereof to PRDC. The RTC also ordered respondents to pay attorney's fees in the amount of ₱200,000.00 and litigation expenses in the total amount of ₱3,546,163.20, composed of ₱143,494.20 as legal fees and ₱3,402,669.00 as additional filing fees.

The *fallo* reads:

WHEREFORE, in view of the foregoing premises, this Court hereby rules and so holds that the defendants have encroached into the

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[28] *Id.* at 160.

[29] *Id.* at 164.

[30] *Id.* at 167.

[31] *Id.* at 170.

properties of the plaintiff consisting of 383 sq m in Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 sq m in Lot 1-B-7-A-1 covered by TCT No. T-24348 or a total of 2,783 sq m in the name of plaintiff Princess Rachel Development Corporation and now in the name of Boracay Enclave Corporation. This Court also finds the defendants acting in bad faith in introducing the improvements on the said encroached areas of plaintiff's properties. By reason of the encroachment by defendant of plaintiff's properties and having refused to vacate said area despite demand, the plaintiff was forced to file this case and is entitled to recover litigation expenses in the amount of ₱143,494.20 (Legal Fees form dated January 25, 2008) plus ₱3,402,669.00 as additional filing fees or a total of ₱3,546,163.20 and attorney's fee of ₱200,000.00.

For this reason, the defendants, jointly and severally, are hereby ordered to vacate the said premises and demolish the buildings and improvements made in the encroached premises at its own cost and to return to plaintiff the physical possession of the encroached premises and to pay plaintiff the amount of ₱3,546,163.20 for litigation/filing fees and ₱200,000.00 as attorney's fees.

SO ORDERED.[32]

Aggrieved, respondents appealed to the CA on the arguments that the encroachment was not established since the survey conducted by the court-appointed Commissioner was void since the latter did not take an oath before assuming his duties and that, instead, the approved survey plans prepared by Engr. Lopez which do not show any encroachment should be given weight. Respondents also dispute the finding of bad faith as they allegedly built on their own land which they bought from the Tirols. Should there be any finding of encroachment, they argued that it should be Engr. Lopez who must be held accountable because of his professional misconduct.[33] Respondents also questioned the RTC's award of attorney's fees and litigation expenses for lack of basis.[34]

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

[33] *Id.* at 81.

[34] *Id.* at 82.

The CA Ruling

In a Decision dated November 28, 2014, the CA affirmed with modification the RTC's ruling.

The CA disregarded respondents' contention as regards the validity of the survey conducted by the court-appointed Commissioner and upheld the RTC's finding that respondents encroached on 2,783 sq m of PRDC's properties.

Nevertheless, the CA declared that Hillview is a builder in good faith.

The CA held that there was no sufficient proof of bad faith because the testimony of Engr. Lopez was inherently weak. As an expert in the field, it was Engr. Lopez's duty to see to it that the subdivision and survey plans he prepared for Hillview were true and accurate. As such, his clients had the right to rely on the survey reports and respondents could not be faulted for doing so. According to the CA, there was no showing that Martin's alleged knowledge of the encroachment was relayed to the respondents.[35]

The CA further held that the subdivision and survey plans prepared by Engr. Lopez remain valid and subsisting to this date. These were the same plans which respondents relied upon when they caused the construction of Alargo Residences.[36]

The CA likewise noted that PRDC waited for a considerable time before protecting its rights since the construction of the Alargo Residences began in 2004 while the complaint was filed only in 2007.[37]

Citing Article 527 of the Civil Code, the CA held that since good faith is presumed and there is no sufficient proof to show that respondents are guilty of bad faith, they should be presumed to have built the properties in good faith.

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[35] *Id.* at 92.

[36] *Id.* at 93.

[37] *Id.* at 93-94.

As builders in good faith, the CA held that the provisions of the Civil Code, specifically, Article 448 (giving the landowner the choice to appropriate the building by payment of indemnity or to pay the price of the land), Article 546 (giving the builder in good faith the right to be indemnified for the necessary and useful expenses) and Article 548 (giving the possessor in good faith the right to remove ornaments without causing injury to the principal thing) should be applied.[38]

The CA affirmed the RTC's award for attorney's fees and litigation expenses, but deleted the award of ₱3,402,669.00 as additional filing fees on the ground that PRDC did not pay such amount when they filed the complaint as they in fact deleted the claim for rentals over the encroached property.

Anent the liability of Stefanie and Robert, the CA held that they cannot be held solidarily liable with Hillview which enjoys a separate juridical personality in the absence of proof that said stockholders acted in bad faith.[39]

Hence, the CA disposed the case in this wise:

> WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED and the assailed Decision dated April 30, 2012 is AFFIRMED with MODIFICATION. The award of ₱3,402,669.00 as additional filing fees in favor of plaintiffs-appellees is DELETED. Only defendant-appellant Hillview Marketing Corporation is liable. The case is REMANDED to the Regional Trial Court, Branch 6, Kalibo, Aklan for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the Civil Code, as follows:
>
> 1. The trial court shall determine:
>
> a. [T]he present fair price of the plaintiff-appellees' lot encroached upon;
>
> b. [T]he amount of the expenses spent by defendants-appellants for the construction of the buildings situated on plaintiffs-appellees' lot;

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[38] *Id.* at 96.

[39] *Id.* at 97.

c. [T]he increase in value ("plus value") which the said lot may have acquired by reason of the construction; and

d. [W]hether the value of said land is considerably more than that of the improvements built thereon.

2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render judgment, as follows:

a. The trial court shall grant the plaintiffs-appellees a period of fifteen (15) days within which to exercise their option under Article 448 of the Civil Code, whether to appropriate the improvements as their own by paying to defendants-appellants either the amount of the expenses spent by them for the building of the improvements, or the increase in value ("plus value") which the said lot may have acquired by reason thereof, or to oblige [the] defendants-appellants to pay the price of the said land. The amounts to be respectively paid by the plaintiffs-appellees and defendants-appellants, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

b. The trial court shall further order that if the plaintiffs-appellees exercises the option to oblige defendants-appellants to pay the price of the land but if the latter rejects such purchase because, as found by the trial court, the value of the land is considerably more than those of the buildings, defendants-appellants shall give written notice of such rejection to the plaintiffs-appellees and to the Court within fifteen (15) days from notice of the plaintiffs-appellees' option to sell the land.

In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its *provisos*. If no agreement is reached by the parties, the trial court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since petitioners have occupied the subject area. The rental

thus fixed shall be increased by ten percent (10%) for the second year of the forced lease.

Defendants-appellants shall not make any further constructions or improvements on the lot. Upon expiration of the two(2)-year period, or upon default by defendants-appellants in the payment of rentals for two (2) consecutive months, the plaintiffs-appellees shall be entitled to terminate the forced lease, to recover their land, and to have the improvements removed by defendants-appellants at the latter's expense. The rentals herein provided shall be tendered by defendants-appellants to the Court for payment to the plaintiffs-appellees, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c. In any event, defendants-appellants shall pay the plaintiffs-appellees reasonable compensation for the occupancy of plaintiffs-appellees' land for the period counted from the year defendants-appellants occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d. The periods to be fixed by the trial court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

SO ORDERED.[40]

PRDC and Boracay Enclave (collectively, petitioners) moved for reconsideration, but the same was denied by the CA in a Resolution dated January 15, 2016. Hence, this petition for review on *certiorari* raising the following errors:

I

THE [CA] ERRED IN HOLDING THAT THE TESTIMONY OF ENGR. LOPEZ WAS INHERENTLY WEAK AND WAS INSUFFICIENT TO PROVE BAD FAITH ON THE PART OF THE RESPONDENTS.

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[40] *Id.* at 99-102.

II

THE [CA] ERRED IN HOLDING THAT SINCE THE SUBDIVISION AND SURVEY PLANS PREPARED BY ENGR. LOPEZ REMAINED VALID AND SUBSISTING TO THIS DAY, THE RESPONDENTS WHO JUST RELIED THEREON ARE NOT BUILDERS IN BAD FAITH.

III

THE [CA] ERRED IN RULING THE RESPONDENTS BUILDERS IN GOOD FAITH BASED ON THE PERCEIVED INACTION OF THE PETITIONERS TO PROTECT THEIR RIGHTS.[41]

Petitioners argue that Engr. Lopez had personally known about respondents' encroachment on petitioners' properties and he had personally informed Martin, thus, respondents were already aware that the area where they built the Alargo Residences were not theirs; that respondents never refuted the allegations of Engr. Lopez about Martin's prior knowledge of petitioners' ownership of the encroached premises; that respondents did not even bother to present any testimonial evidence to prove their good faith; and that it is the duty of respondents to deny any knowledge on their part about the encroachment and prove that Martin never relayed to them such information.[42]

In their Comment,[43] respondents counter that they have the right to rely on the subdivision and survey plans prepared by Engr. Lopez because these were approved by the DENR-LMS, a government agency tasked to verify the same; that the approved subdivision and survey plans are public documents which carry with it the presumption of regularity and constitute *prima facie* evidence of the facts stated therein; that Hillview should be considered a builder in good faith because it merely relied on the regular, official and professional execution of Engr. Lopez's duty as a duly licensed geodetic engineer when he surveyed the properties it acquired from the Tirols; and that after being shown the sketch plans, Hillview relied in good faith on Engr.

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[41] *Id.* at 22.

[42] *Id.* at 23-50.

[43] *Id.* at 190-206.

Lopez's technical and professional opinion, and was convinced that the properties sought to be purchased were within the technical boundaries as stated in their titles and did not encroach on the adjoining properties.

In their Reply,[44] petitioners contend that the validity of the subdivision plans does not determine whether respondents had knowingly constructed their structures in the properties of petitioners; and that even at the time of the initial surveys of the lots in issue, Engr. Lopez already informed Martin about the encroachment on petitioners' lots, but the same was just dismissed by Martin who then told Engr. Lopez to proceed with the survey of the lot.

The Court's Ruling

There is merit in the petition. There is no dispute as regards the fact of encroachment as this much was settled by the RTC and the CA, which factual finding being amply supported by evidence binds the Court. The controversy lies as to whether Hillview was a builder in good faith or bad faith, as the character of its possession over the encroached portion largely determines the parties' relative rights and obligations.

I.
Hillview is a Builder in Bad Faith

Bad faith contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[45] To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it.[46]

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[44] *Id.* at 211-221.

[45] See *Villanueva v. Sandiganbayan*, 295 Phil. 615, 623 (1993).

[46] *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95, 102 (2017).

The factual circumstances surrounding the instant case lead the Court to inevitably conclude that Hillview was a builder in bad faith.

As competently pointed out by Justice Zalameda and Justice Carandang, the encroachment in this case covers 2,783 sq m. Given that such encroachment is substantial, visible to the naked eye, and not merely negligible, Hillview could not feign ignorance thereof.

Hillview was also actually informed by Engr. Lopez of the intrusion, but nevertheless proceeded with the development. The Court, thus, takes with a grain of salt Hillview's contention that it merely relied on the surveys prepared by Engr. Lopez given the latter's testimony that he discovered the use of the wrong boundary line as early as the time when the property was being sold by the Tirols to Hillview. The use of this wrong boundary line despite the resultant encroachment was nevertheless maintained by Hillview.

Hillview also took advantage of the fact that PRDC's adjoining property was vacant, thus, it proceeded with the construction which remained unhampered as PRDC knew nothing thereof.

Further, at the trial before the RTC, Hillview was given the opportunity to present evidence to dispute the alleged encroachment. However, instead of doing so, Hillview submitted a mere consolidated sketch plan which was accomplished without the surveyor conducting an actual physical survey. Hillview also sought to postpone the survey to be conducted by the court-appointed Commissioner, and when the survey was not postponed, Hillview impugned the same as supposedly having been made clandestinely.

Significantly as well, Hillview is not an ordinary landowner, but a property developer. Hillview is undeniably engaged in large-scale property development projects where it is expected to exercise a higher degree of diligence. More so in this case where there was no noticeable mark or boundary which delineated the adjoining properties. As a large property developer, Hillview

ought to have, and which it could have easily dispensed, verified the definite boundaries of the property it sought to improve.

Clearly, these facts when taken together, show that Hillview was not unaware that it possesses the encroached portion improperly or wrongfully.[47] Bad faith on the part of Hillview is, thus, evident.

II.
PRDC is a Landowner in Good Faith

As a registered owner, PRDC enjoys the indefeasibility of its titles and, thus, "may rest secure without necessity of waiting in the portals of the court sitting in the '*mirador de su casa*' to avoid the possibility of losing his land."[48] Thus, PRDC had the right to eject any person illegally occupying its property, and although it may be aware of Hillview's encroachment, PRDC maintains the right to demand the return of its property as registered owner thereof.[49]

However, in relation to possession, a landowner may be in good faith or may be deemed in bad faith depending on the landowner's knowledge of the fact of encroachment. A landowner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen not to act on it. In such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. Article 453 of the Civil Code provides:

> ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

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[47] CIVIL CODE, Art. 528.

[48] *Salao v. Salao*, 162 Phil. 89, 116 (1976).

[49] See *Arroyo v. Bocago Inland Development Corp.*, 698 Phil. 626, 636 (2012), citing *Labrador v. Spouses Perlas*, 641 Phil. 388, 396 (2010).

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part. (Emphasis supplied)

The circumstances of the instant case show that PRDC had become aware of Hillview's encroachment only in 2007 when it decided to conduct a relocation survey on its properties because of the contemplated sale to Boracay Enclave. While the construction of the Alargo Residences commenced in 2004, the fact of encroachment was not known to PRDC at that time considering that it holds office in Quezon City while the properties were in Boracay. From PRDC's discovery of Hillview's encroachment in 2007 as a consequence of the relocation survey, PRDC lost no time in asserting its right and protecting its interest by sending Hillview notices to vacate which unfortunately went unheeded and which eventually lead to the immediate filing of the complaint *a quo*. Thus, PRDC is a landowner in good faith.

III.
Rights and obligations of the parties

Because of the CA's erroneous conclusion that Hillview was a builder in good faith, the CA likewise erred in applying Articles 448 in relation to Articles 546 and 548 of the Civil Code (possessor's right of reimbursement and retention) as these provisions apply where the builder acted in good faith.

Instead, the following provisions of the Civil Code governing the rights of a landowner in good faith and a builder in bad faith find application in this case:

> ART. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity.
>
> ART. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

ART. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

ART. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

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ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Thus, petitioners have the right to appropriate what has been built on its property, without any obligation to pay indemnity therefor. Due to its bad faith, Hillview forfeits what it has built without any right to be paid indemnity. While necessary expenses shall be refunded to the builder, whether he built the same in good faith or in bad faith, PRDC's properties were in fact not preserved but used, and were consequently damaged, for the construction of Hillview's project. Notably, as well, Hillview did not file a counterclaim for the refund of necessary expenses to which it may have been entitled, if at all.[50] Neither does Hillview have the right of retention over the encroached portions as the right of retention is afforded only to a possessor in good faith.

Should petitioners choose not to exercise its right to appropriate the improvements as granted to it under Article 449 of the Civil Code, it may exercise either of its alternative rights under Articles 450 and 451, *i.e.*, (a) to demand the removal or demolition of what has been built at Hillview's expense; or (b) to compel Hillview to pay the price or value of the portions it had encroached upon, whether or not the value of the land is considerably more than the value of the improvements.

These considered, the RTC's order to "demolish the buildings and improvements made in the encroached premises at its own cost" should be modified so as to correctly reflect the foregoing alternative rights given to the landowner.

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[50] See *Beltran v. Valbuena*, 53 Phil. 697, 700-701 (1929).

IV.
Award of damages

In addition, Article 451 of the Civil Code grants the landowner the right to recover damages from a builder in bad faith. While Article 451 does not provide the basis for damages, the amount thereof should reasonably correspond with the value of the properties lost or destroyed as a result of the occupation in bad faith, as well as the fruits from those properties that the landowner reasonably expected to obtain.[51]

While the Court had allowed the award of actual damages representing reasonable compensation or monthly rental for the use and occupation of the landowner's property,[52] we find no basis to award actual or compensatory damages in this case considering that PRDC itself deleted its prayer for reasonable rentals and other damages as may be determined by the Court. Article 2199 of the Civil Code also provides that actual damages must be duly proved.[53] For these reasons, as well, we find the CA's deletion of the award of ₱3,402,669.00 to be proper.

Temperate damages could not likewise be awarded since there is no basis for the Court to conclude that PRDC indeed suffered some pecuniary loss and that only the amount thereof cannot be ascertained.[54] Nevertheless, since Article 451 of the Civil Code guarantees the award of damages in favor of the landowner and as further punishment for the builder's bad faith, we find it proper to award nominal damages. Nominal damages are awarded in every case where any property right

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[51] *Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125, 155 (2000).

[52] *Spouses Aquino v. Spouses Aguilar*, 762 Phil. 52, 71 (2015).

[53] CIVIL CODE, Art. 2199 provides:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[54] See *Seven Brothers Shipping Corp. v. DMC-Construction Resources, Inc.*, 748 Phil. 692, 701 (2014).

has been invaded. Articles 2221 and 2222 of the Civil Code provide:

> ART. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.
>
> ART. 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, **or in every case where any property right has been invaded.** (Emphasis supplied)

Since Hillview indubitably violated the property rights of PRDC, the Court finds that nominal damages in the amount of ₱100,000.00 is warranted under the circumstances.[55]

V.
Solidary liability of respondents

Finally, petitioners question the CA's reversal of the RTC's finding of respondents' solidary liability on the argument that individual respondents Stefanie and Robert, as stockholders and corporate officers, benefited from the construction of the Alargo Park Residences.[56] Petitioners, thus, urge the Court to pierce the veil of corporate fiction.

To hold a corporate officer personally liable for corporate obligations, two requisites must concur: (a) it must be alleged that the officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (b) such unlawful acts, negligence or bad faith must be clearly and convincingly proven.[57]

Here, apart from its allegation, petitioners have not presented proof that Hillview was a mere alter ego of individual respondents to justify the piercing of the veil of corporate fiction. The question

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[55] See *Pen Development Corporation v. Martinez Leyba, Inc*., 816 Phil. 554, 573 (2017).

[56] *Rollo,* p. 45.

[57] *Zaragoza v. Tan,* 847 Phil. 437, 454 (2017).

of whether a corporation is a mere alter ego is purely one of fact.[58] Thus, before this doctrine can be applied, the parties must have presented evidence for and/or against piercing the veil of corporate fiction. Fundamental is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[59]

Failing in its burden to prove by clear and convincing evidence that individual respondents Stefanie and Robert assented to Hillview's unlawful acts or are guilty of gross negligence or bad faith, petitioners cannot hold said individual respondents personally and solidarily liable with Hillview's corporate liabilities. As such, we find no reason to reverse the CA's finding on this score.

WHEREFORE, the petition is **PARTLY GRANTED**.

The November 28, 2014 Decision and the January 15, 2016 Resolution of the Court of Appeals in CA-G.R. C.V. No. 04415 are **REVERSED** insofar as it found Hillview Marketing Corporation to be a builder in good faith and insofar as it applied the provisions of Articles 448, 546, and 548 of the Civil Code in determining the rights and obligations of the parties.

Accordingly, the April 30, 2012 Decision of the Regional Trial Court, Kalibo, Aklan, Branch 6 in Civil Case No. 8237 is **REINSTATED** insofar as it:

1. Found respondent Hillview Marketing Corporation to have encroached on 383 sq m of Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 sq m of Lot 1-B-7-A-1 covered by TCT No. T-24348 registered in the name of petitioner Princess Rachel Development Corporation, and to have acted in bad faith in introducing improvements thereon;

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[58] *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 966 (1996).

[59] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

2. Ordered Hillview Marketing Corporation to vacate the encroached portions and surrender possession thereof to petitioners; and

3. Awarded litigation expenses in the amount of ₱143,494.20 and attorney's fees in the amount of ₱200,000.00.

The case is **REMANDED** to the Regional Trial Court for further proceedings for the proper application of Articles 449, 450, and 451 of the Civil Code. The trial court shall grant petitioners a reasonable period within which to exercise its option either to:

1. Appropriate what has been built without any obligation to pay indemnity therefor, or

2. Demand that Hillview Marketing Corporation remove what it had built, or

3. Compel Hillview Marketing Corporation to pay the value of the land.

In any case, Hillview Marketing Corporation is further **ORDERED** to pay nominal damages in the amount of ₱100,000.00.

The Decision and the Resolution of the Court of Appeals are **AFFIRMED** insofar as it absolved individual respondents Stefanie Dornau and Robert Dornau of solidary liability with Hillview Marketing Corporation, and deleted the award of additional filing fees in the amount of ₱3,546,163.20.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Gesmundo, Hernando, Carandang, Inting, Lopez, and *Gaerlan, JJ.*, concur.

Leonen, Caguioa, Lazaro-Javier, and *Zalameda, JJ.*, see separate concurring opinions.

Delos Santos, J., on leave and no part.

CONCURRING OPINION

LEONEN, *J.*:

Both the Regional Trial Court[1] and the Court of Appeals[2] found that Hillview Marketing Corporation (Hillview) encroached on 2,783 sq. m.[3] of Princess Rachel Development Corporation's (Princess Rachel) property. However, in determining the rights and duties of the parties, the trial and appellate courts contrarily decided on whether Hillview, in doing so, acted in good or bad faith.

On the basis of Engineer Reynaldo Lopez's[4] (Engineer Lopez) testimony, the Regional Trial Court declared Hillview a builder in bad faith.[5] Engineer Lopez testified that when he "discovered an error in the concrete monuments mounted on the boundary limits"[6] of Hillview's property, he relayed the matter of intrusion to one of Hillview's owners, Martin Dornau (Martin).[7] Despite the notice, Martin nevertheless directed Engineer Lopez to continue with the survey assuring that he will stand accountable for the error mentioned.[8]

Accordingly, the Regional Trial Court ordered Hillview to vacate the encroached portion and to remove the improvements made on it at its own cost.[9] The dispositive portion of the trial court's Decision reads:

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[1] *Ponencia*, p. 6.

[2] *Id.* at 8.

[3] *Id.* at 3-4. Based on the survey conducted by the court-appointed Commissioner, Hillview encroached on 383 square meters in Lot 1-B-7-B-1 and 2,400 square meters in Lot 1-B-7-A-1 of Princess Rachel's properties.

[4] Hillview is the owner of the adjoining property identified as Lot 1-B-7-A-2. It hired Engineer Lopez to survey the property.

[5] *Id.* at 6-7.

[6] *Id.* at 4.

[7] *Id.* Martin Dornau is also the husband of the other respondent, Stefanie Dornau.

[8] *Id.*

[9] *Id.* at 7.

WHEREFORE, in view of the foregoing premises, this Court hereby rules and so holds that the defendants have encroached into the properties of the plaintiff consisting of 383 square meters in Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 square meters in Lot 1-B-7-A-1 covered by TCT No. T-24348 or a total of 2,783 square meters in the name of plaintiff Princess Rachel Development Corporation and now in the name of Boracay Enclave Corporation. This Court also finds the defendants acting in bad faith in introducing the improvements on the said encroached areas of plaintiff's properties. By reason of the encroachment by defendant of plaintiff's properties and having refused to vacate said area despite demand, the plaintiff was forced to file this case and is entitled to recover litigation expenses in the amount of ₱143,494.20 (Legal Fees form [sic] dated January 25, 2008) plus ₱3,402,669.00 as additional filing fees or a total of ₱3,546,163.20 and attorney's fee of ₱200,000.00.

For this reason, the defendants, jointly and severally, are hereby ordered to vacate the said premises and demolish the buildings and improvements made in the encroached premises at its own cost and to return to plaintiff the physical possession of the encroached premises and to pay plaintiff in the amount of ₱3,546,163.20 for litigation/ filing fees and ₱200,000.00 as attorney's fees.

SO ORDERED.[10] (Emphasis in the original)

On appeal, however, the testimony of Engineer Lopez was found innately weak.[11] Hinging on his proficiency, the Court of Appeals pointed out that Engineer Lopez should have ensured that the survey and subdivision plans he made were "true and accurate."[12] Hillview, as a client, cannot be faulted in relying on these survey reports.[13]

The Court of Appeals added that there was no indication that Martin conveyed the information he got from Engineer Lopez to Hillview.[14] It also emphasized Princess Rachel's belated

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[10] *Id.* at 7-8.

[11] *Id.* at 8.

[12] *Id.*

[13] *Id.*

[14] *Id.*

filing of the complaint in 2007 despite the construction of the Alargo Residences as early as 2004.[15]

Accordingly, the Court of Appeals declared that Hillview is a builder in good faith[16] and ruled that Articles 448,[17] 546,[18] and 548[19] of the Civil Code apply in its favor.[20] The dispositive portion of the appellate court's Decision provides:

WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED and the assailed Decision dated April 30, 2012 is AFFIRMED with MODIFICATION. The award of ₱3,402,669.00

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[15] *Id.* at 9.

[16] *Id.*

[17] CIVIL CODE, Art. 448 provides:

ARTICLE 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[18] CIVIL CODE, Art. 546 provides:

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor. Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[19] CIVIL CODE, Art. 548 provides:

Article 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

[20] *Ponencia*, p. 9.

as additional filing fees in favor of plaintiffs-appellees is DELETED. Only defendant-appellant Hillview Marketing Corporation is liable. The case is REMANDED to the Regional Trial Court, Branch 6, Kalibo, Aklan for further proceedings consistent with the proper application of Articles 448, 546 and 548 of the Civil Code, as follows:

1. The trial court shall determine:

    a. the present fair price of the plaintiff-appellees' lot encroached upon;

    b. the amount of the expenses spent by defendant-appellants for the construction of the buildings situated on the plaintiffs-appellees' lot;

    c. the increase in value ("plus value") which the said lot may have acquired by reason of the construction; and

    d. whether the value of said land is considerably more than that of the improvements built thereon.

2. After said amounts shall have been determined by competent evidence, the Regional Trial Court shall render the judgment, as follows:

    a. The trial court shall grant the plaintiffs-appellees a period of fifteen (15) days within which to exercise their option under Article 448 of the Civil Code, whether to appropriate the improvements as their own by paying the defendants-appellants either the amount of the expenses spent by them for the building of the improvements, or the increase in value ("plus value") which the said lot may have acquired by reason thereof, or to oblige the defendants-appellants to pay the price of the said land. The amounts to be respectively paid by the plaintiff-appellees and defendants-appellants, in accordance with the option thus exercised by written notice of the other party and to the Court, shall be paid by the obligor within fifteen (15) days from such notice of the option by tendering the amount to the Court in favor of the party entitled to receive it;

    b. The trial court shall further order that if the plaintiffs-appellees exercises the option to oblige defendants-appellants to pay the price of the land but if the latter rejects such purchase because, as found by the trial court, the value of the land

> is considerably more than those of the buildings, defendants-appellant[s] shall give written notice of such rejection to the plaintiffs-appellees and to the Court within fifteen (15) days from notice of the plaintiffs-appellees' option to sell the land.

In that event, the parties shall be given a period of fifteen (15) days from such notice of rejection within which to agree upon the terms of the lease, and give the Court formal written notice of such agreement and its provisos. If no agreement is reached by the parties, the trial court, within fifteen (15) days from and after the termination of the said period fixed for negotiation, shall then fix the terms of the lease, payable within the first five (5) days of each calendar month. The period for the forced lease shall not be more than two (2) years, counted from the finality of the judgment, considering the long period of time since petitioners have occupied the subject area. The rental thus fixed shall be increased by ten percent (10%) for the second year of the forced lease.

Defendants-appellants shall not make any further constructions or improvements on the lot. Upon expiration of the two (2)-year period, or upon default by defendants-appellants in the payment of rentals for two (2) consecutive months, the plaintiffs-appellees shall be entitled to terminate the forced lease, to recover their land, and to have the improvements removed by defendants-appellants at the latter's expense. The rentals herein provided shall be tendered by defendants-appellants to the Court for payment to the plaintiffs-appellees, and such tender shall constitute evidence of whether or not compliance was made within the period fixed by the Court.

c. In any event, defendant-appellants shall pay the plaintiffs-appellees reasonable compensation for the occupancy of plaintiffs-appellees' land for the period counted from the year defendants-appellants occupied the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d. The periods to be fixed by the trial court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

SO ORDERED.[21] (Emphasis in the original)

Contrary to the Court of Appeals' pronouncement, the *ponencia* declared that Hillview is a builder in bad faith.[22]

Hinging on Hillview's presumptive knowledge of Princess Rachel's Torren's title over the encroached portion, the *ponencia* underscored that Hillview is similarly charged with presumptive knowledge of the property's actual boundaries as reflected in the owner's title:

[I]n cases involving the encroachment of registered property, the builder cannot be considered in law to be in good faith since he is deemed to have presumptive knowledge of the registered owner's Torrens title, which, in turn, reflects the metes and bounds of [Princess Rachel's] property.

In the instant case, when Hillview built upon [Princess Rachel's] registered property, [it] should be deemed to have acted in bad faith for [it] is presumed to have knowledge of the metes and bounds of [Princess Rachel's] property as described in its title.

For Hillview to be regarded as a builder or possessor in good faith, it must prove that it built within the property as described in its own Torrens title or that the encroached portion fell within its own boundaries, or that the encroached portion overlapped with that of [Princess Rachel's], for then it would have rightfully relied on the indefeasibility of its own title.

However, as established, the improvements were built on a portion belonging to [Princess Rachel] and that there was no error in the technical descriptions of either [Princess Rachel] or Hillview's properties. On the contrary, Hillview used a wrong boundary line that does not conform with Hillview's title. Thus, there is no basis for the Court to deem Hillview a builder in good faith.[23] (Emphasis supplied)

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[21] *Id.* at 9-11.

[22] *Id.* at 16.

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

Moreover, as a registered owner, the *ponencia* emphasized that Hillview must have actual knowledge of its property's extent.[24] For this reason, it "is deemed to have known that it constructed improvements beyond the boundaries of its own lots, and consequently encroached upon [the] lots belonging to the adjacent owner, [Princess Rachel]."[25] The *ponencia* disposed the case in this wise:

WHEREFORE, the petition is **PARTLY GRANTED**.

The November 28, 2014 Decision and January 15, 2016 Resolution of the Court of Appeals in CA-G.R. C.V. No. 04415 are **REVERSED** insofar as it found Hillview Marketing Corporation to be a builder in good faith and insofar as it applied the provisions of Article 448, 546, and 548 of the Civil Code in determining the rights and obligations of the parties.

Accordingly, the April 30, 2012 Decision of the Regional Trial Court, Kalibo, Aklan, Branch 6 in Civil Case No. 8237 is **REINSTATED** insofar as it:

1. found respondent Hillview Marketing Corporation to have encroached on 383 square meters of Lot 1-B-7-B-1 covered by TCT No. T-24349 and 2,400 square meters of Lot 1-B-7-A-1 covered by TCT No. T-24348 registered in the name of petitioner Princess Rachel Development Corporation, and to have acted in bad faith in introducing improvements thereon;
2. ordered Hillview Marketing Corporation to vacate the encroached portions and surrender possession thereof to petitioners; and
3. awarded litigation expenses in the amount of ₱143,494.20 and attorney's fees in the amount of ₱200,000.00.

The case is **REMANDED** to the Regional Trial Court for further proceedings for the proper application of Article 449, 450, and 451 of the Civil Code. The trial court shall grant petitioners a reasonable period within which to exercise its option either to:

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[24] *Id.* at 17.

[25] *Id.*

1. appropriate what has been built without any obligation to pay indemnity thereof, or
2. demand that Hillview Marketing Corporation remove what it had built, or
3. compel Hillview Marketing Corporation to pay the value of the land.

In any case, Hillview Marketing Corporation is further **ORDERED** to pay nominal damages in the amount of ₱100,000.00.

The decision and resolution of the Court of Appeals are **AFFIRMED** insofar as it absolved individual respondents Stefanie Dornau and Roberto Dornau of solidary liability with Hillview Marketing Corporation, and deleted the award of additional filing fees in the amount of ₱3,546,163.20.

SO ORDERED.[26] (Emphasis in the original)

I concur with the *ponencia* that Hillview is a builder in bad faith. In addition to the points raised, I wish to emphasize that the concomitant duty of a registered owner to be charged with notice of everything about his or her property (including its actual metes and bounds on site) is *inherent* in the nature of the right. Therefore, as an owner of a registered land under the Torrens System, Hillview ought to know the exact parameters of its property.

Besides, it is highly improbable that Hillview could not have known such encroachment. For one, a higher degree of diligence is expected of it since it is engaged in large property development projects. Also, there are relevant circumstances indicating that despite prior knowledge of the intrusion, Hillview heedlessly persisted with the construction of the project being complained of.

I

The main purpose of registration under the Torrens System is "to make registered titles indefeasible."[27] Under the Torrens

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[26] *Id.* at 22-23.

[27] *Alba v. Dela Cruz*, 17 Phil. 49, 58-59 (1910) [Per *J.* Trent, First Division]. The case also said that the "*Torrens Land Registration System*"

System, when an application for the registration of the land title is presented before the Court of Land Registration, "the theory of the law is that *all* occupants, adjoining owners, adverse claimants, and other interested persons, are notified of the proceedings, and have a right to appear in opposition to such application."[28] Otherwise stated, "the proceeding is against the whole world."[29]

Presidential Decree No. 1529, otherwise known as the Property Registration Decree, aims to reinforce the Torrens System.[30] The objective of integrating the Torrens System into our jurisdiction "is to guarantee the integrity of land titles and to protect their *indefeasibility* once the claim of ownership is established and recognized."[31] This is intended to prevent "any possible conflicts of title that may arise by giving the public the right to rely upon the face of the Torrens title and dispense with the need of inquiring further as to the ownership of the property."[32] Corollary, Section 2 of Presidential Decree No. 1529 explicitly provides that land registration is an *in rem* proceeding:

> SECTION 2. *Nature of Registration Proceedings; Jurisdiction of Courts. — Judicial proceedings for the registration of lands throughout the Philippines shall be in rem* and shall be based on the generally accepted principles underlying the Torrens system. (Emphasis supplied)

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was initiated by Sir Robert Torrens in South Australia on 1857 and this system of registration was taken into consideration by the legislature when it passed Act No. 496 otherwise known as the "Land Registration Act." This is the predecessor of Presidential Decree No. 1529.

[28] *Id.*

[29] *Id.*

[30] See *Whereas* Clauses of Presidential Decree No. 1529 (1978).

[31] *Spouses Stilianopoulos v. Register of Deeds of Legazpi City*, G.R. No. 224678, July 3, 2018, <http://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/64392> [Per *J.* Perlas-Bernabe, *En Banc*].

[32] *Id.*

As an *in rem* proceeding, "[j]urisdiction is acquired by virtue of the power of the court over the *res*."[33] Furthermore, "[s]uch a proceeding *in rem*, dealing with a tangible *res*, may be instituted and carried to judgment *without* personal service upon the claimants within the state or notice by mail to those outside of it."[34]

In other words, it would be needless "to give personal notice to the owners or claimants of the land sought to be registered, to vest the court with authority over the *res*."[35] As provided for under Section 23[36] of Presidential Decree No. 1529, upon

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[33] *Acosta v. Salazar*, 609 Phil. 48, 57 (2009) [Per *J.* Nachura, Third Division].

[34] *Id.*

[35] *Ignacio v. Basilio*, 418 Phil. 256, 264 (2001) [Per *J.* Quisumbing, Second Division]. Land Registration was then governed by Act 496 (The Land Registration Act), enacted on November 6, 1902. However, Act 496 was superseded by Presidential Decree No. 1529 (Property Registration Decree) on June 11, 1987 which, in turn, codified the laws relative to Property Registration.

[36] Pres. Decree No. 1529, Sec. 23 provides:

SECTION 23. *Notice of Initial Hearing, Publication, etc.* — The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. —

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however,* that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern". Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

2. By mailing. —

(a) Mailing of notice to persons named in the application. — The Commissioner of Land Registration shall also, within seven days after

the filing of an application for land registration, the date of initial hearing will then be set through an order where the public will be given notice through publication, mailing, and posting.

It is the publication of the notice of application—*which informs everyone that a petition has been filed and whomsoever may oppose or contest*—"that brings in the *whole world* as a party and vests the court with jurisdiction to hear the case."[37] Thus, if no person files any opposition within the time prescribed to do so, Section 26 of Presidential Decree No. 1529 provides that an order of default in favor of the applicant will follow:

> SECTION 26. *Order of Default; Effect*. — If no person appears and answers within the time allowed, the court shall, upon motion of the applicant, no reason to the contrary appearing, order a default to be recorded and require the applicant to present evidence. By the description in the notice "To all Whom It May Concern", all the world are made parties defendant and shall be concluded by the default order.

After considering the evidence presented and the court finds that the applicant has sufficient title appropriate for registration, it will render a judgment confirming title[38] which, in turn, will attain finality after 30 days from receipt of the notice of

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> publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.
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> . . . . . .
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> 3. By posting.
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> The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

[37] *Ignacio v. Basilio*, 418 Phil. 256, 264 (2001) [Per *J.* Quisumbing, Second Division].

[38] Presidential Decree No. 1529, Sec. 29.

judgment.[39] Thereafter, the court releases an order to cause the issuance of the decree of registration and certificate of title in favor of the applicant.[40]

The court's judgment confirming the applicant's title and the subsequent order of registration under the latter's name, "when final, [constitutes] *res judicata* against the whole world."[41] Accordingly, the resultant decree of registration[42] shall be *conclusive* against all persons:

> SECTION 31. *Decree of Registration*. Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his [or her] age. It shall ***contain a description of the land as finally determined by the court***, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.
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> The **decree of registration** shall **bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law.** It shall be ***conclusive*** **upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "*To all whom it may concern*."** (Emphasis supplied)

Consistent with the nature of land registration as an *in rem* proceeding, once a title is registered, "[a]ll persons must take

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[39] Pres. Decree No. 1529, Sec. 30.

[40] Pres. Decree No. 1529, Sec. 30.

[41] *Ting v. Heirs of Lirio, et al.*, 547 Phil. 237, 241 (2007) [Per *J.* Carpio-Morales, Second Division].

[42] Pres. Decree No. 1529, Sec. 31.

notice [and] [n]o one can plead ignorance of the registration."[43] On the part of the owner, he or she "may rest secure, without the necessity of waiting in the portals of the court, or sitting in the '*mirador de su casa*', to avoid the possibility of losing his [or her] land."[44]

Considering that "[a]ll persons dealing with the land so recorded, or any portion of it, must be charged with notice of *whatever* it contains[,]"[45] it is only incumbent on the part of the property owner to be charged with notice of *every* fact appearing on his or her title. This encompasses not only the land's technical description (as reflected in the owner's decree of registration and certificate of title), but also the property's actual boundaries *on site*. Simply put, the duty to know everything about one's property is inherent in the nature of the right as an owner of a registered land.

In *Spouses Padilla, Jr. v. Malicsi, et al.*,[46] this Court defined a builder in good faith:

A builder in good faith is a builder who was not aware of a defect or flaw in his or her title when he or she introduced improvements on a lot that turns out to be owned by another.

Philippine National Bank v. De Jesus explains that the essence of good faith is an honest belief of the strength and validity of one's right while being ignorant of another's superior claim at the same time:

> Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it *encompasses, among other things, an honest belief, the*

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[43] *Heirs of Fama v. Garas*, 637 Phil. 46, 63 (2010) [Per *J.* Villarama, Jr., Third Division] With reference to the antecedent facts of the case, land registration was then governed by Act 496 (The Land Registration Act).

[44] *Id.*

[45] *Legarda, et al. v. Saleeby*, 31 Phil. 590, 600 (1915) [Per *J.* Johnson, *En Banc*].

[46] 795 Phil. 794 (2016) [Per *J.* Leonen, Second Division].

[47] *Id.* at 803-804.

> *absence of malice and the absence of design to defraud or to seek an unconscionable advantage*. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. *It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry*. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another[.][47] (Citations omitted) (Emphasis supplied)

Applying the foregoing to the case at hand, Hillview's claim that it acted in good faith[48] fails to persuade. It is undisputed that both parties are registered property owners.[49] However, as between Princess Rachel and Hillview, the latter was the active participant in the matter of encroachment. As it is inherent in Hillview's right as a registered owner to know the precise boundaries of its property on site, it cannot be in good faith when it built the constructions on Princess Rachel's lot.

Furthermore, Hillview's own insistence that "[t]here was no manifestation of [Princess Rachel's] claim of possession over the area in controversy [as] there was *no noticeable mark* or boundary which delineated the adjoining properties"[50] should have put it in inquiry all the more. Also, considering that Hillview is capable of engaging in huge property development projects such as this, it should have exercised a higher degree of diligence in verifying the definite boundaries of the land that it sought to improve. Surprisingly, however, it proceeded heedlessly with construction without regard to the properties of adjoining owners that it encroached on a *significant* extent of 2,783 square meters. Indubitably, this falls short of a status of a builder in good faith.

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[48] *Ponencia*, p. 12.

[49] *Id.* at 13.

[50] *Id.* at 3.

[51] *Id.* at 4.

Finally, this Court cannot simply disregard the statements of Engineer Lopez that he informed Martin about the encroachment[51] which, according to Princess Rachel, was unrefuted by Hillview.[52] While Hillview may possibly be in good faith when it relied on the misplaced concrete monuments erected on its land, such alleged good faith ceased when it was already forewarned about the intrusion. The fact that Hillview ensued with the construction, despite prior notice, buttress bad faith.

II

Impelled by a forthcoming sale of its property to Boracay Enclave Corporation,[53] Princess Rachel directed Engineer Lester Madlangbayan to conduct a relocation survey in August 2007.[54] It was only from that moment when Princess Rachel came to know about the encroachment.[55]

On September 20, 2007, Princess Rachel sent Hillview a demand letter directing it "to vacate the subject premises, but the latter ignored it."[56] On September 27, 2007, it sent another letter but the same was also unheeded.[57] Ultimately, on January 25, 2008, Princess Rachel was constrained to file a complaint for *accion publiciana* and damages[58] before the Regional Trial Court of Kalibo, Aklan.[59]

A landowner is in bad faith "when the act of *building*, planting, or sowing was done with his [or her] knowledge and without

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[52] *Id.* at 12.

[53] *Id.* at 18.

[54] *Id.* at 2.

[55] *Id.* at 18.

[56] *Id.* at 3.

[57] *Id.*

[58] With Prayer for Issuance of Writ of Preliminary Injunction.

[59] *Ponencia*, p. 2

opposition on his [or her] part."[60] As provided for under Article 453 of the Civil Code:

> ARTICLE 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the Land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.
>
> *It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.* (Emphasis supplied)

Undeniably, Princess Rachel is a landowner in good faith. As aptly underscored in the *ponencia*, it "lost no time in asserting its right and protecting its interest[.]"[61] To emphasize, when Princess Rachel discovered that Hillview unlawfully held a portion of its property, it promptly sent demand letters directing Hillview to vacate the encroached lot. However, despite the advice given, Hillview seemingly "turned a blind eye and deaf ear"[62] and still commenced with making improvements in the area owned by Princess Rachel.

Contrary to the Court of Appeals' ruling,[63] Princess Rachel never slept on its right. In fact, it was committed in asserting its claim over its property that all the actions against Hillview ensued within just five (5) to six (6) months from the time it discovered the encroachment. As a holder of a Torrens title, Princess Rachel has the right "to eject any person illegally occupying [its] property."[64] Besides, "[t]he right to possess

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[60] *Delos Santos v. Abejon*, 807 Phil. 720, 732 (2017) [Per J. Perlas-Bernabe, First Division].

[61] *Ponencia*, p. 18.

[62] See *Pen Development Corp. v. Martinez Leyba, Inc*., 816 Phil. 554, 578 (2017) [Per J. Del Castillo, First Division].

[63] *Ponencia*, p. 11. Princess Rachel asserted that the Court of Appeals erred in ruling that Hillview is a builder in good faith "based on the perceived inaction of [Princess Rachel] to protect their rights."

[64] *Supapo v. Spouses De Jesus*, 758 Phil. 444, 462 (2015) [Per J. Brion, Second Division].

and occupy the land is an attribute and a logical consequence of [its] ownership."[65]

Finally, on the premise that Princess Rachel is a landowner in good faith and Hillview is a builder in bad faith, we apply the following Civil Code provisions in determining the rights and duties of the parties:

ARTICLE 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

ARTICLE 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

ARTICLE 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

ARTICLE 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

Thus, Princess Rachel has the following alternative rights against Hillview:

(1) to appropriate what has been built without any obligation to pay indemnity therefor, *or* (2) to demand that [Hillview] remove what [it] had built, *or* (3) to compel [Hillview] to pay the value of the land. *In any case, [Princess Rachel] is entitled to damages* under Article 451, [as] above cited.[66] (Emphasis supplied)

ACCORDINGLY, I concur that Hillview is a builder in bad faith and hence, the pertinent provisions of Articles 449, 450, 451 and 452 of the Civil Code shall be applied in determining the rights and obligations of the parties.

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[65] *Id.*

[66] *Padilla, et al. v. Malicsi, et al.*, 795 Phil. 794, 811 (2016) [Per *J.* Leonen, Second Division]. Citing *Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

The crux of the controversy stems from the perceived conflict between the general presumption of good faith regarding possession embodied in Article 527[1] of the Civil Code and the principle of constructive notice of registration provided in Section 52[2] of Presidential Decree No. (PD) 1529[3] or the Property Registration Decree.

I submit this Separate Concurring Opinion to clarify that there is, in fact, no conflict between these two seemingly opposing principles, as they differ in scope.

In encroachment scenarios, the general presumption of good faith shall apply when the properties involved are both unregistered.

Conversely, when either or both of the properties involved are registered under the Torrens system, it is the constructive notice rule that applies. This is evident under Articles 18 and 711 of the Civil Code, which state that the general law defers to the special law with respect to matters governed by the latter, thus:

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[1] The provision states:

ART. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

[2] The provision states:

SEC. 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be **constructive notice to all persons from the time of such registering, filing or entering**. (Emphasis supplied)

[3] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES.

ART. 18. In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied by the provisions of this Code.

ART. 711. For determining what titles are subject to inscription or annotation, as well as the form, effects, and cancellation of inscriptions and annotations, the manner of keeping the books in the Registry, and the value of the entries contained in said books, the provisions of the Mortgage Law, the Land Registration Act,[4] and other special laws shall govern.

In my view, the interplay between the general provisions of the Civil Code and the specific provisions of PD 1529 can be reconciled, as follows:

1. When the adjoining properties are both unregistered, the general presumption of good faith under the Civil Code applies.
2. When the property encroached upon is registered under the Torrens system, the applicable rule shall depend on the nature of the adjoining property.
    a. When the encroachment is done by an adjacent owner of *unregistered* land, the constructive notice rule under Section 52 of PD 1529 shall apply against such adjacent owner. The adjacent owner shall be deemed a builder in bad faith as he is charged with *constructive* notice of the metes and bounds of the registered property encroached upon.
    b. When the encroachment is done by an adjacent owner of *registered* land and there is *no overlap* in the Torrens titles involved, Sections 15 and 31[5]

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[4] Now PD 1529.

[5] The provision states, in part:

SEC. 15. *Form and contents*. — The application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there

of PD 1529 shall apply against such adjacent owner. The adjacent owner shall be deemed a builder in bad faith as he is charged with *actual* knowledge of the metes and bounds of his own property, and *constructive* notice of the metes and bounds of the registered property encroached upon.

c. When the encroachment is done by an adjacent owner of *registered* land and it is established that a portion of the Torrens titles involve an overlap, Sections 15 and 31 of PD 1529 shall also apply. Nevertheless, the adjacent owner shall be deemed

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is more than one applicant, the application shall be signed and sworn to by and in behalf of each. **The application shall contain a description of the land** and shall state the citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. **It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them.** (Emphasis supplied)

x x x x x x x x x

SEC. 31. *Decree of registration.* — Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern".

in good faith with respect to improvements he built within the bounds of his own Torrens title inasmuch as he has the right to rely on said title until it is declared null and void, even if he is deemed to have constructive notice of the metes and bounds of the registered property encroached upon.

d. When the encroachment is done by an adjacent owner of *registered* land and it is established that the property covered by his Torrens title is completely subsumed within that of the owner of the property encroached upon, the constructive notice rule under PD 1529 shall apply against such adjacent owner if it is established that he derives his title from a later registrant. Priority of registration shall govern, following the established rule that once property is registered under the Torrens system, then it is taken out of the mass of properties that can still be registered.[6] Stated differently, the registered owner of the property encroached upon is preferred if the title of said owner is derived from the earlier registrant of said property, and the subsequent Torrens title that had been issued from which the adjacent owner derives his title is necessarily invalid.

3. When the property encroached upon is unregistered, but the encroachment is done by an adjacent owner of

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[6] See *Legarda v. Saleeby*, 31 Phil. 590 (1915) penned by Associate Justice Elias Finley Johnson, with the concurrence of Chief Justice Cayetano Arellano and Associate Justices Florentino Torres and Manuel Araullo. Therein, the Court held that "[t]he holder of the first original certificate and his successors should be permitted to rest secure in their title, against one who had acquired rights in conflict therewith and who had full and complete knowledge of their rights. The purchaser of land included in the second original certificate, by reason of the facts contained in the public record and the knowledge with which he is charged and by reason of his negligence, should suffer the loss, if any, resulting from such purchase, rather than he who has obtained the first certificate and who was innocent of any act of negligence."

See also *Aguilar v. Caoagdan*, 105 Phil. 661 (1959) citing Section 45 of

> registered land, the adjacent owner shall be deemed a builder in bad faith as he is charged with actual knowledge of the metes and bounds of his own property.
>
> I expound.

The rights and obligations of the builder and landowner in an encroachment situation are spelled out under Articles 448 to 454 of the Civil Code. These provisions state:

> ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.
>
> ART. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.
>
> ART. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

Act No. 496 which states "the obtaining of a decree of registration and the entry or a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all successors in title that the land shall be and always remain registered land x x x." In *Viajar v. Court of Appeals*, 250 Phil. 404 (1988), the Court held that "[s]ince there is no provision in PD 1529 which is inconsistent with or in conflict with this Section of Act 496, [Section 4.5 is] still the law on the matter."

ART. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

ART. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

ART. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

ART. 454. When the landowner acted in bad faith and the builder, planter or sower proceeded in good faith, the provisions of Article 447 shall apply.

Pursuant to these provisions, good faith determines the rights and obligations of the builder and landowner in the event of an encroachment. Hence, as correctly observed by the *ponencia*, the character of Hillview's possession over the encroached portion determines the parties' relative rights and obligations.[7]

Under the Civil Code, good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. This presumption regarding good faith possession is, however, rebuttable.

Articles 448 to 454 of the Civil Code do not appear to distinguish between registered and unregistered properties. However, pursuant to Articles 18 and 711 of the same statute, the general provisions of the Civil Code shall apply ***only if*** the properties involved in the encroachment are both unregistered. Conversely, if either or both properties involved are registered under the Torrens system, Articles 448 to 454 should be applied in conjunction with the provisions of PD 1529.

Here, the lots encroached upon are registered under the Torrens system in the name of Princess Rachel Development Corporation

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[7] *Ponencia*, p. 12.

(PRDC). Thus, the determination of the existence of good faith on the part of landowner PRDC and builder Hillview Marketing Corporation (Hillview) should be done in consonance with the provisions of PD 1529, the latter being the special law governing registered land.

Accordingly, reference to Section 52 of PD 1529 is proper. It states:

SEC. 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, **judgment, instrument or entry affecting registered land** shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be **constructive notice to all persons** from the time of such registering, filing or entering. (Emphasis supplied)

In turn, Sections 31 and 39 of the same statute detail **the scope of constructive notice with respect to the decree of registration**, thus:

SEC. 31. *Decree of Registration.* — **Every decree of registration** issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: Provided, however, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. **It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.**

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern".

x x x x x x x x x

SEC. 39. *Preparation of decree and Certificate of Title*. — After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, 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 original certificate of title shall be a true copy of the decree of registration**. The decree of registration shall be signed by the Commissioner, entered and filed in the Land Registration Commission. **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**. (Emphasis and underscoring supplied)

These provisions confirm that the decree *and* the corresponding certificate of title, ***both of which contain the description of the land to which they pertain***, fall within the scope of the constructive notice rule, inasmuch as they are, by law, conclusive against *all* persons. Since the original certificate of title is "entered in [the Registrar of Deeds'] record book,"[8] and serves as a true copy of the decree of registration, the constructive notice rule should necessarily be understood as covering all that appears on the face of such title, *including* the technical description of the property to which it corresponds.

Speaking of the parameters of the constructive notice rule, the Court, in *Legarda v. Saleeby*[9] (*Legarda*) held:

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[8] See PD 1529, Sec. 40.

[9] *Legarda v. Saleeby, supra* note 6.

When a conveyance has been properly recorded such record is constructive notice of its contents and all interests, legal and equitable, included therein. x x x

Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebuttable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. **This presumption cannot be overcome by proof of innocence or good faith. *Otherwise the very purpose and object of the law requiring a record would be destroyed*.** Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[10] (Emphasis, italics and underscoring supplied; citations omitted)

In *Legarda,* the Court resolved conflicting claims of **ownership** over a parcel of land registered in the name of both adjacent owners. Applying the constructive notice rule, the Court held that "in case of double registration under the Land Registration Act,[11] x x x the owner of the earliest certificate is the owner of the land."[12]

I maintain that *Legarda* remains controlling with respect to the determination of **ownership** in cases of overlapping Torrens titles issued to different parties.

However, as I stated in my Concurring and Dissenting Opinion in *Pen Development Corp. v. Martinez Leyba, Inc.*[13] (*Pen Development*), I oppose the "wholesale, indiscriminate, blind application of the constructive notice [rule] espoused in *Legarda* without regard to the peculiar factual circumstances of each

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

[11] Now PD 1529.

[12] *Legarda v. Saleeby*, *supra* note 6 at 598-599.

[13] 816 Phil. 554 (2017).

case[.]"[14] In turn, the peculiar circumstances which I alluded to in *Pen Development* were: (i) the case did *not* merely involve the issue of ownership, but *also* possession; and (ii) the case involved valid *albeit* overlapping Torrens titles issued to different parties. Taking these peculiar circumstances into account, I stated:

> This case is NOT a simple boundary dispute where a neighbor builds a structure on an adjacent registered land belonging to another. Here, the area where the former had built happens to be within the land registered in his name which overlaps with the titles of the latter. Thus, this is a proper case of overlapping of certificates of title belonging to different persons.
>
> Given the fact that this case involves overlapping of titles, I fully concur with the Decision that as between Martinez Leyba, Inc. (MLI) and Las Brisas Resorts Corp. (Las Brisas), MLI has a superior right to the overlapped or encroached portions in issue being the holder of a transfer certificate of title that can be traced to the earlier original certificate of title.
>
> **In case of double registration where land has been registered in the name of two persons, priority of registration is the settled rule**. x x x
>
> x x x x x x x x x
>
> TCT Nos. 250242, 250243 and 250244 registered in the name of MLI conflict with TCT No. 153101 registered in the name of Las Brisas. x x x The overlapped portions add up to 3,454 square meters. Given that the total area of TCT No. 153101 is 3,606 square meters and 3,454 square meters will be deducted therefrom because that portion rightfully pertains to MLI pursuant to prevailing and settled rule on double registration, only 152 square meters will remain under TCT No. 153101 in the name of Las Brisas.
>
> **However, I cannot agree with the finding that Las Brisas is a builder in bad faith. Thus, my dissent tackles directly and mainly the issue of good faith on the part of a registered owner (Las Brisas) who built within a portion of the parcel of land delimited by the boundaries or technical descriptions of its own certificate of title**

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[14] *Id.* at 585.

that turns out to be within the boundaries or technical descriptions of the adjoining titled parcels of land despite prior written notices by the registered owner (MLI) of the adjoining parcels of land that the former owner was building within the latter owner's registered property.

The Decision rules in favor of MLI and affirms the finding of the Court of Appeals (CA) that Las Brisas is a builder in bad faith. x x x

x x x x x x x x x

With due respect, the determination of the good faith of Las Brisas should not be made to depend solely on the written notices sent by MLI to Las Brisas warning the latter that it was building and making improvements on MLI's parcels of land. **I firmly subscribe to the view that the fact that Las Brisas built within its titled property and the doctrine of indefeasibility or incontrovertibility of its certificate of title should also be factored in.**

The provision of the Civil Code on the definition of a possessor in good faith, Article 526, provides:

> ART. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.
>
> He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.
>
> Mistake upon a doubtful or difficult question of law may be the basis of good faith.

In turn, Article 528 of the Civil Code provides: "Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully."

When did Las Brisas become aware of facts which show that it was possessing the disputed areas or portions improperly or wrongfully? There are several ***en banc*** Decisions of the Court which may find application in this case. These are [*Legarda*] (1915), *Dizon v. Rodriguez* (1965), *De Villa v. Trinidad* (1968) and *Gatioan v. Gaffud* (1969).

In *Legarda*, the Court had to grapple with Sections 38, 55 and 112 of Act No. 496 which indicate that the vendee may acquire rights

and be protected against the defenses which the vendor would not and speak of available rights in favor of third parties which are cut off by virtue of the sale of the land to an "innocent purchaser." Thus, the Court said:

> May the purchaser of land which has been included in a "second original certificate" ever be regarded as an "innocent purchaser" as against the rights or interest of the owner of the first original certificate, his heirs, assigns, or vendee? The first original certificate is recorded in the public registry. It is never issued until it is recorded. The record is notice to all the world. All persons are charged with the knowledge of what it contains. All persons dealing with the land so recorded, or any portion of it, must be charged with notice of whatever it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses. x x x
>
> When a conveyance has been properly recorded such record is constructive notice of its contents and all interests, legal and equitable, included therein. x x x
>
> Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebutable. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.
>
> x x x x x x x x x

Legarda was concerned more with the issue of ownership than with the issue of possession: To bar transferees of the "second or later original certificate of title" from ever having a right of ownership superior to those who derive their title from the "earlier or first original certificate of title," *Legarda* ruled that the "innocent purchaser [for

value]" doctrine should not apply because "[w]hen land is once brought under the [T]orrens system, the record of the original certificate and all subsequent transfers thereof is notice to all the world." However, that notice is constructive and not actual.

If *Legarda* is strictly and uniformly applied, then holders of transfer certificates of title emanating from the "second or later original certificate of title" or any person deriving any interest from them can never be buyers in good faith.

I am not advocating in this dissent that the *Legarda* doctrine on double registration or titling be abandoned or overturned. I submit that it is and remains controlling in that respect. Rather, I take the position that a wholesale, indiscriminate, blind application of the constructive notice doctrine espoused in *Legarda* without regard to the peculiar factual circumstances of each case may not be the best approach to dispense justice.

Dizon v. Rodriguez did not involve double registration. It involved titled lots which are "actually part of the territorial waters and belong to the State." While the Court ruled that "the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land thus covered is not capable of registration," **the Court nonetheless upheld the CA's finding of possession in good faith in favor of the registered owners until the latter's titles were declared null and void**, *viz.*:

> On the matter of possession of plaintiffs-appellants, the ruling of the Court of Appeals must be upheld. There is no showing that plaintiffs are not purchasers in good faith and for value. **As such title-holders, they have reason to rely on the indefeasible character of their certificates.**
>
> x x x x x x x x x

In *Gatioan v. Gaffud*, the Court did not only cite *Legarda* but held it controlling. In that case, while the appellant therein (Philippine National Bank) did not impugn the lower court's ruling in declaring null and void and cancelling OCT No. P-6038 in favor of defendant spouses Gaffud and Logan, it insisted that the lower court should have declared it an innocent mortgagee in good faith and for value as regards the mortgages executed in its favor by said defendant spouses and duly annotated on their OCT and that consequently, the said mortgage annotations should be carried over to and considered

encumbrances on the land covered by TCT No. T-1212 of appellee which is the identical land covered by the OCT of the Gaffuds. The Court found the contention of the appellant therein without merit and quoted extensively *Legarda* wherein the Court held that the purchaser of the land or a part thereof which has been included in a "second original certificate" cannot be regarded as an "innocent purchaser" under Sections 38, 55, and 112 of Act No. 496 because of the facts contained in the record of the first original certificate.

However, in the same breath, the Court also took judicial notice that before a bank grants a loan on the security of a land, it first undertakes a careful examination of title of the applicant as well as a physical and on- the-spot investigation of the land itself offered as security. In that case, had the appellant bank taken such a step which was demanded by the most ordinary prudence, it would have easily discovered the flaw in the title of the defendant spouses. As such, it was held guilty of gross negligence in granting the loans in question. x x x

x x x x x x x x x

Thus, the Court in *Gatioan* took "a more factual approach" in determining the good faith of the mortgagee who derived its right from the owner of the "second original certificate" and it did not simply apply the constructive notice doctrine espoused in *Legarda*.

In the Decision, the factual approach is being adopted. This is evident when it reproduced the Regional Trial Court of Antipolo City, Branch 71 (RTC) Decision's citation and discussion of *Ortiz v. Fuentebella*, wherein it was held that the defendant's possession in bad faith began from the receipt by the defendant of a letter from the daughter of the plaintiff therein, advising the defendant to desist from planting on a land in possession of the defendant. x x x

x x x x x x x x x

Unfortunately, Ortiz — decided "103 years ago" according to the *ponente* — is not squarely in point. There, the subject land is not registered land. It was merely covered by a possessory information title, which was allowed under the Spanish Mortgage Law. The *informacion posesoria* was a method of acquiring title to public lands, subject to two conditions, to wit: (1) the inscription or registration thereof in the Registry of Property, and (2) actual, public, adverse and uninterrupted possession of the land for 20 years.

If the constructive notice doctrine embodied in Section 52 of PD 1529 and espoused in *Legarda* has been strictly applied in this case and the *ponente* has not taken a "more factual approach," then it would be erroneous to hold that "they [referring to petitioners, Las Brisas and Pen Development Corporation, which are one and the same entity] acquired TCT 153101 in good faith and for value" or "petitioners may have been innocent purchasers for value with respect to their land," and that Las Brisas' good faith turned into bad faith upon "being apprised of the encroachment" by MLI — because Las Brisas should automatically be deemed to have had constructive notice of MLI's certificates of title that overlapped the certificate of title of Republic Bank which Las Brisas acquired as a foreclosed property. By the same token, a finding that Las Brisas is an "innocent purchaser for value with respect to its land" is precisely what *Legarda* wanted to avoid because that would result in a transferee of the "second or later original certificate of title" having a right of ownership superior to that of a transferee of the "first or earliest original certificate of title." Clearly, the Decision here betrays a fundamental confusion on the import of these earlier rulings.

I agree that the factual approach is preferable over the indiscriminate application of the constructive notice doctrine in cases of double registration with respect to the determination of the good faith or bad faith of the possessor or builder who derives his right from the "second original certificate of title."[15] (Emphasis and underscoring supplied; emphasis in the original omitted; citations omitted)

However, my Concurring and Dissenting Opinion in *Pen Development* should not be used as basis to conclude that the constructive notice rule applies only in cases involving conflicting claims of ownership over registered land.

For clarity, I stress that the constructive notice rule is a statutory feature of the Torrens system which attaches to all lands registered under PD 1529 and its predecessor law. Necessarily, the constructive notice rule still applies in cases involving possession of registered land, *albeit* applied in

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[15] *J.* Caguioa, Concurring and Dissenting Opinion, *Pen Development Corp. v. Martinez Leyba, Inc*., *supra* note 13 at 580-591.

consonance with the doctrine of indefeasibility or incontrovertibility of title in cases **where the land in question is covered by overlapping titles**, as in *Pen Development*.

The constructive notice rule applies to cases of usurpation and encroachment of registered lands.

As Associate Justice Amy C. Lazaro-Javier observes, this case involves Hillview's encroachment upon land covered by Torrens titles issued in the name of PRDC (now, Boracay Enclave Corporation).[16]

Here, the Court is called upon to resolve the issue of good faith in the context of encroachment of registered land. Verily, the Court's rulings in *J.M. Tuason & Co., Inc. v. Macalindong*[17] (*1962 J.M. Tuason case*) squarely apply in this case.

J.M. Tuason & Co., Inc. (J.M. Tuason) filed a complaint to oust Teodosio Macalindong (Macalindong) from a portion of its registered property in Sta. Mesa Heights Subdivision, Quezon City. Macalindong vigorously opposed the complaint, claiming that he had purchased the disputed portion, and that he, together with his vendor and the latter's predecessors-in-interest "prior to 1955 and since time immemorial x x x have been in open, adverse, public, continuous and actual possession of the [disputed portion] in the concept of owner and, by reason of such possession, he had made improvement[s] thereon valued at ₱9,000.00."[18]

The Court of First Instance (CFI) granted the complaint. According to the CFI, Macalindong's claim of possession cannot defeat J.M. Tuason's title, considering that the

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[16] *J.* Lazaro-Javier, Separate Concurring Opinion, p. 2.

[17] 116 Phil. 1227 (1962). Penned by Associate Justice Jose Ma. Paredes, with the concurrence of Chief Justice Jose Bengzon and Associate Justices Sabino Padilla, Felix Angelo Bautista, Roberto Concepcion, J.B.L. Reyes, Jesus Barrera and Querube Makalintal.

[18] *Id.* at 1229.

disputed portion had been registered in the latter's name since 1914. Accordingly, the CFI ordered Macalindong to vacate the disputed portion, remove his improvements thereon, and pay J.M. Tuason monthly rental from the date of usurpation until possession in the latter's favor is restored.

Macalindong sought recourse before the Court where he argued, among others, that the CFI erred when it failed to consider him a possessor in good faith who was entitled to retention until he was reimbursed for the full value of his improvements. Addressing Macalindong's assertions, the Court held:

> Appellant claims that he should have been declared a builder in good faith, that he should not have been ordered to pay rentals, and that the complaint should have been dismissed. Again this question is being raised for the first time on appeal. It was not alleged as a defense or counter-claim and the trial court did not make any finding on this factual issue. **From the documents submitted, however, it appears that appellant was not a builder in good faith. From the initial certificate of title of appellee's predecessors-in-interest issued on July 8, 1914, there is a presumptive knowledge by appellant of appellee's Torrens [t]itle (which is a notice to the whole world) over the subject premises** and consequently appellant [cannot], in good conscience, say now that he believed his vendor (Flores), his vendor's vendor (Teotico) and the latter's seller (De Torres) had rights of ownership over said lot. x x x[19] (Emphasis and underscoring supplied)

J.M. Tuason filed a subsequent case involving the usurpation of another portion of the same registered lot, this time against Estrella *Vda. de* Lumanlan (Lumanlan), who possessed and built improvements on an 800-square meter portion of J.M. Tuason's registered property. The case eventually reached the Court and was docketed as *J.M. Tuason & Co., Inc. v. Estrella Vda. de Lumanlan*[20] (*1968 J.M. Tuason case*). There, the

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[19] *Id.* at 1234.

[20] 131 Phil. 756 (1968). Penned by Acting Chief Justice J.B.L. Reyes, with the concurrence of Associate Justices Arsenio Dizon, Querube Makalintal, Jose Bengzon, Calixto Zaldivar, Conrado Sanchez, Fred Ruiz Castro and Enrique Fernando.

Court similarly rejected Lumanlan's assertion that she should be deemed a builder in good faith, thus:

> As to Lumanlan's allegation in her counterclaim that she should be deemed a builder in good faith, a similar contention has been rejected in [the *1962 J.M. Tuason case*] where We ruled that there being a presumptive knowledge of the Torrens titles issued to [J.M. Tuason] and its predecessors in interest since 1914, the buyer from Deudors (or from their transferees) cannot, in good conscience, say now that she believed her vendor had rights of ownership over the lot purchased. x x x[21]

In sum, the *1962 and 1968 JM Tuason cases* instruct that one who builds upon property covered by a Torrens title and/or possesses the same is charged with the presumptive knowledge of said title's existence. Thus, in cases involving the encroachment of registered property, the builder cannot be considered ***in law*** to be one in good faith since he is deemed to have presumptive knowledge of the registered owner's Torrens title, which reflects the metes and bounds of the latter's property.

It is crystal clear that under PD 1529, the presumption of good faith that is accorded to possessors and/or builders under the Civil Code does not apply in cases of encroachment of registered property, because what is applicable is the constructive notice rule.

In this connection, I find that the *1962 and 1968 J.M. Tuason cases* correctly applied the constructive notice rule, considering that the parties who claimed to be possessors in good faith in these cases did not hold Torrens titles over the lots subject of their claims. To stress, the *1962 and 1968 J.M. Tuason cases* did *not* involve overlapping Torrens titles, but claims of ownership concerning lots which fell entirely within the Torrens titles of J.M. Tuason.

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[21] *Id.* at 761.

Consistent with my position in *Pen Development*, I stress that the only way by which Hillview could be considered ***in law*** as a builder in good faith is if it had shown that the encroachment falls within the boundaries of its own subsisting Torrens titles, and that such portion overlaps with a portion of land covered by the Torrens titles belonging to PRDC. In such case, Hillview could be deemed to have built on the overlapping portion in good faith, as it would have the right to rely on the indefeasibility or incontrovertibility of its Torrens titles until they are declared null and void.[22]

Here, PRDC presented Engineer Madlangbayan's Relocation Plan[23] to show that the portion encroached upon fell within the boundaries of its own registered lots as described in its Torrens titles:

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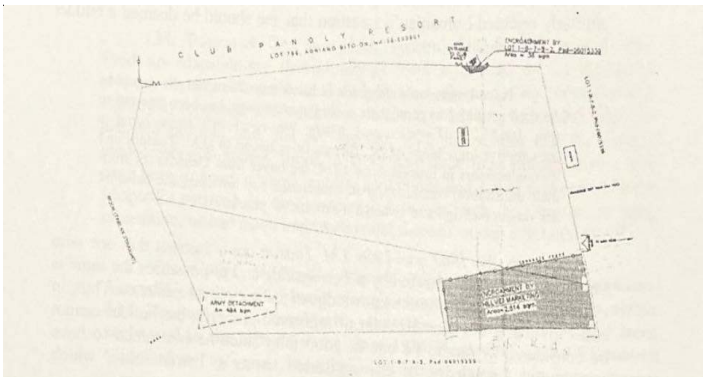
[22] Section 32 of PD 1529 states:

SEC. 32. *Review of decree of registration; Innocent purchaser for value.* — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[23] See *rollo*, p. 116.



Hence, it became incumbent upon Hillview to present similar evidence to show that the encroached portion falls within the bounds of its registered lots, spanning 5,100 square meters.[24] **Since Hillview failed to do so, the Court is left without any basis to conclude that Hillview built within the bounds of its own registered lots in good faith.**

Contrary to Hillview's assertions, its reliance on the erroneous survey plans prepared by Engineer Lopez does not support its claim of good faith. As observed by Senior Associate Justice Estela M. Perlas-Bernabe, the attendant circumstances show that Hillview had knowledge of the erroneous boundary line previously used by its predecessors, the Tirols. Nonetheless, Hillview proceeded with the construction of Alargo Residences despite the apparent encroachment upon PRDC's registered lots. Also notable is the *ponencia's* observation that Hillview's own witness, Althea Acevedo of the Department of Environment and Natural Resources admitted in her testimony that "the

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[24] Lot No. 1-B-7-A-2-B-1 covered by TCT No. T-34199; Lot No. 1-B-7-A-2-B-2 covered by TCT No. T-34200; Lot No. 1-B-7-A-2-B-3-A covered by TCT No. T-35280; Lot No. 1-B-7-A-2-B-3-B-1 covered by TCT No. T-35976; and Lot No. 1-B-7-A-2-B-3-B-2 covered by TCT No. T-35977. See Comment, *rollo*, pp. 193-196.

reference monument [in this case] was **transferred** [by] 2 to 3 meters."[25]

These facts, taken together, completely belie Hillview's claim of good faith.

Conversely, PRDC is charged with *actual* knowledge of the boundaries of its registered lots. Nevertheless, it must be stressed that PRDC stands as the owner of the lots encroached upon. Accordingly, the protection afforded by the Torrens system in this case extends to PRDC.

In this context, a distinction must be made between PRDC's knowledge of its own land boundaries on the one hand, and the *fact* of encroachment on the other.

As astutely observed by Associate Justice Rodil V. Zalameda, the registered owner cannot be deemed in bad faith when there are no circumstances indicating that such owner had knowledge of the *fact* of encroachment and, in effect, permitted it. Once land is duly registered under the Torrens system, "the owner may rest secure, without the necessity of waiting in the portals of the court, or, sitting in the *mirador de su casa* to avoid the possibility of losing his land."[26] Here, the registered owner's lack of knowledge of the *fact* of encroachment is not taken against him, as he is indeed protected by the Torrens system. However, the registered owner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen *not* to act on it. In such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. This is pursuant to the express provision of Article 453 of the Civil Code, which provides that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

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[25] *Ponencia,* p. 5.

[26] See *Salao, et al. v. Salao,* 162 Phil. 89, 116 (1976).

As likewise observed by Associate Justice Rodil V. Zalameda, there appears to be no indication that PRDC had knowledge of Hillview's encroachment before 2007, considering that its main office was located in Quezon City. By the time PRDC discovered the encroachment in 2007, Alargo Residences had already been constructed. Hence, PRDC was left with no other recourse but to file the Complaint since Hillview refused to heed its demand to vacate.

The Court's ruling in Co Tao v. Chico should be abandoned.

Hillview attempts to escape liability by insisting that it relied in good faith on the erroneous survey plans submitted by Engineer Lopez, none of which showed any encroachment upon PRDC's property. Hillview's argument appears to find support in *Co Tao v. Chico*[27] (*Co Tao*), a 1949 case.

In *Co Tao*, the Court held:

> It is now claimed by petitioner that the respondent's house took a portion of petitioner's land. The Court of Appeals, after examining the evidence, found that respondent's house occupies 6.97 square meters of petitioner's lot, but that respondent acted in good faith. Accordingly, the Court of Appeals declared "that the plaintiff (petitioner) has the right to elect to purchase that portion of the defendant's (respondent's) house which protrudes into the plaintiff's property, or to sell to the defendant the land upon which the said portion of the defendant's house is built." And the case was remanded to the Court of First Instance "with direction to require the plaintiff to make the election as herein provided, within the time that the Court shall fix, and thereafter to reset the case for the admission of the evidence on the value of the improvement, in case the plaintiff elects to buy the same, or the value of the land, in case he elects to sell it, and to render decision as the result of the new trial shall warrant." From this decision petitioner appealed by *certiorari* to this Court.
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> All the questions raised by the petitioner are unmeritorious. **He alleges, for instance, that respondent could not have acted in good**

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[27] 83 Phil. 543 (1949).

faith in building a portion of his house beyond the limits of his land, because he ought to know the metes and bounds of his property as stated in his certificate of title. But, as rightly stated by the Court of Appeals[,] "[i]t is but stating the obvious to say that outside of the individuals versed in the science of surveying, and this is already going far, no one can determine the precise extent or location of his property by merely examining his paper title. The fact is even surveyors cannot with exactitude do so. The disagreement among the three surveyors in the case at hand who have made a resurvey of the ground with the aid of scientific devices and of their experience and knowledge of surveying, is a graphic and concrete illustration of this truth."[28] (Emphasis and underscoring supplied)

I believe that it is high time for the Court *en banc* to explicitly abandon its ruling in *Co Tao* lest confusion ensue.

Co Tao was decided in 1949, over a decade prior to the promulgation of the *1962 J.M. Tuason case*. As earlier stated, the Court's pronouncement in the latter case was reiterated in the *1968 J.M. Tuason case*. Accordingly, the *1962 and 1968 J.M. Tuason cases*, which adhere to the presumptive/constructive knowledge principle/rule, must take precedence.

The subsequent case of *Tecnogas Philippines Manufacturing Corp. v. CA*[29] (*Tecnogas*) which relied on the Court's ruling in *Co Tao* should be deemed an aberration. Nonetheless, the ruling in *Tecnogas* was promulgated in division, **while the 1962 and 1968 *J.M. Tuason cases* were both *en banc***. Thus, the principles set forth in the latter cases, which have been discussed above, may not be authoritatively overturned or abandoned except through another case similarly decided *en banc*.[30]

Moreover, there is no dispute that the precise extent or location of one's registered property cannot be determined by merely

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[28] *Id.* at 544-545.

[29] 335 Phil. 471 (1997).

[30] See INTERNAL RULES OF THE SUPREME COURT, Rule 2, Sec. 3(h).

examining the technical description appearing on the face of one's Torrens title. As Justice Lazaro-Javier points out, "the actual boundaries as plotted on the ground will only be apparent after examining the registry and accomplishing several additional processes x x x."[31] ***However*, it must be emphasized that the examination of the registry and the ascertainment of the actual boundaries of one's land area are part and parcel of the due diligence that PD 1529 exacts upon those dealing with land registered under the Torrens system**.

To note, confirmation of title under PD 1529 is a tedious process. It requires hearing, publication, posting, and personal notice to adjoining owners, among others.[32] These stringent requirements are necessitated not only by the nature of land registration cases as proceedings *in rem*, but also by the strength of the Torrens title resulting therefrom.

The protection afforded by PD 1529 to registered land will be diluted if the exercise of due diligence on the part of those dealing with such land is deemed "unreasonable", considering that the difficulty in ascertaining the precise metes and bounds of registered property that might have existed in 1949 and 1970, when the improvements in question in *Co Tao* and *Tecnogas* were built, no longer obtains at present due to significant advancements in the field of surveying and the relative inexpensiveness of hiring a geodetic engineer.

To my mind, the fact that licensed geodetic engineers sometimes make mistakes when determining the exact physical location of titled property does not warrant a wholesale abdication of the rule on constructive notice. Geodesy, by nature, is a precise science. The occasional errors or mistakes made by licensed geodetic engineers are the exception rather than the general rule. The strength of the Torrens system lies in the full faith and credit accorded to the Torrens titles and their contents. The integrity of the Torrens system cannot be made subject to

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[31] *J.* Lazaro-Javier, Separate Concurring Opinion, p. 7.

[32] See PD 1529, Secs. 15 and 23.

the claims of laymen and experts alike, if such claims are not consistent with what is reflected on the Torrens titles.

Finally, it may not be amiss to state that both *Co Tao* and *Tecnogas* involved registered land. In *Co Tao*, respondent Joaquin Chan Chico built improvements beyond the boundaries of his own Torrens title.[33] In *Tecnogas*, petitioner Tecnogas Philippines Manufacturing Corporation purchased registered land with improvements that encroached on the adjoining land registered in the name of respondent Eduardo Uy. Nevertheless, both cases applied the general presumption of good faith under the Civil Code in determining the rights and obligations of the encroaching party. This reliance on the Civil Code is what I submit to be incorrect given that the properties involved in these cases were registered properties.

As stated at the outset, the general presumption of good faith under the Civil Code applies in an encroachment scenario when both properties involved are unregistered. **When either or both of the properties involved are registered under the Torrens system, it is the constructive notice rule espoused in PD 1529 that applies.** I respectfully submit that *Co Tao* and *Tecnogas* cannot serve as basis to carve out, as an exception to the constructive notice rule, situations where one's structure encroaches upon property registered in the name of another, ***for no such exception exists in law***.

Final Note

In every case involving the encroachment on registered land, it is the stability of the Torrens system that must first and foremost be upheld, and secondly, if not equally important, the primacy of PD 1529, being the special law applicable to registered land, must be accorded.

To accord good faith in favor of Hillview based on an erroneous relocation survey prepared by its geodetic engineer who is the supposed expert in the precise science

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[33] See *Co Tao v. Chico*, *supra* note 27 at 544.

of geodesy creates a dangerous precedent. It will make it almost impossible to rebut such "proof" of good faith. The correctness of a relocation survey prepared by a geodetic engineer will be rendered immaterial, as good faith will be automatically assured to the party who relies on it.

Such a precedent will dangerously confer on the builder a preferred status under Article 448 to the detriment of the registered owner, and open the floodgates to wealthy land grabbers who will be permitted to unscrupulously oust innocent landowners from their registered property through encroachment, by building improvements of significant value which the latter would not be able to acquire. I fail to see how adherence to the principles of the Torrens system would lead to the impairment of the real estate industry. On the contrary, I believe that such stance will enhance the real estate industry as it operates, as it always has, as a cloak of protection to valid titleholders.

Article 448 of the Civil Code provides:

> ART. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

The landowner has two mutually exclusive options under this Article: (1) to appropriate as his own the works or the improvements, or (2) to oblige the one who built to pay the price of the land. If the improvements are of significant value beyond the capacity of the registered landowner, the latter is left with no practical alternative but to choose the second option.

This means that the registered owner is forced to lose the encroached portion of his registered land. Worse, if the wealthy land grabber unscrupulously builds on the entire registered land, the registered owner risks losing his entire registered land. In this situation, the Torrens system would have failed to protect the registered owner because one of its safeguards, the constructive notice rule, would have been disregarded. This should not be allowed. Such ruling puts owners of unregistered land, who are not bound by the irrefutable presumption of constructive knowledge on the metes and bounds of their property, in a position better than those who have placed their real property under the coverage of the Torrens system and are bound by such rule — this undermines the very purpose of the Torrens system and throws away the protection it was designed to afford.

Proceeding from the foregoing, I vote to reverse the Decision and Resolution respectively dated November 28, 2014 and January 15, 2016 rendered by the Court of Appeals in CA-G.R. CV No. 04415, insofar as they hold that respondent Hillview Marketing Corporation is a builder in good faith.

In view of the Court's finding that respondent is a builder in bad faith, the present case should be remanded to the Regional Trial Court for proper determination of the parties' respective rights and fulfillment of their respective obligations in accordance with Articles 449, 450 and 451 of the Civil Code.

SEPARATE CONCURRING OPINION

LAZARO-JAVIER, *J.*:

I concur in the result.

In ***Legarda v. Saleeby***[1] and the twin cases of ***JM Tuason & Co., Inc. v. Macalindong***[2] and ***JM Tuason & Co., Inc. v.***

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[1] G.R. No. L-8936, October 2, 1915.

[2] G.R. No. L-15398, December 29, 1962.

Lumanlan,[3] the Court essentially held that a person who occupies a titled property is **presumed** to have knowledge of this title, including the metes and bounds of the property. These cases do not apply here.

In the 1915 *En Banc* case of ***Legarda v. Saleeby***, plaintiffs and defendant owned adjoining lots in Ermita, Manila. For years, a stone wall had stood between these lots. The parties' respective predecessors-in-interest filed separate petitions for registration of their individual properties. The trial court granted plaintiffs' petition on October 25, 1906, and defendant's petition, on March 25, 1912. On even dates, the court also issued their individual original certificates of title. Both their titles, however, included the portion where the dividing wall stood. The issue --- who owned this portion? The Court held:

> The question, who is the owner of land registered in the name of two different persons, has been presented to the courts in other jurisdictions. In some jurisdictions, where the "torrens" system has been adopted, the difficulty has been settled by express statutory provision. In others it has been settled by the courts. Hogg, in his excellent discussion of the "Australian Torrens System," at page 823, says: **"The general rule is that in the case of two certificates of title, purporting to include the same land, the earlier in date prevails, whether the land comprised in the latter certificate be wholly, or only in part, comprised in the earlier certificate.** Hogg adds however that, "if it can be clearly ascertained by the ordinary rules of construction relating to written documents, that the inclusion of the land in the certificate of title of prior date is a mistake, the mistake may be rectified by holding the latter of the two certificates of title to be conclusive." Niblack, in discussing the general question, said: "**Where two certificates purport to include the same land the earlier in date prevails** . . . In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest

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[3] G.R. No. L-23497, April 26, 1968.

certificate issued in respect thereof. While the acts in this country do not expressly cover the case of the issue of two certificates for the same land, they provide that a registered owner shall hold the title, and the effect of this undoubtedly is that **where two certificates purport to include the same registered land, the holder of the earlier one continues to hold the title"**. (emphases added, citations omitted)

These facts significantly differ from the present petition. ***Legarda*** involved the same portion covered by both titles. Consequently, the Court held that real property sold to two different persons belonged to the person who first inscribed it in the registry.

Here, it does not appear that the title certificates of Princess Rachel and Boracay Enclave, on the one hand, and Hillview, on the other, overlap substantially or otherwise. What exists here is Hillview's encroachment on a portion of the lot belonging to Princess Rachel/Boracay Enclave.

I submit that ***Legarda*** would only apply when **there are at least two title certificates purporting to include the same land or portion.** To resolve the parties' conflicting claims of ownership, the Court ruled that the second registrant is charged with constructive notice of the metes and bounds of the first registrant's property pursuant to Section 52 of Presidential Decree (PD) 1529, *viz*:

Section 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

As ***Legarda*** elucidated:

Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebutable. **He is charged with notice of every fact shown by the record** and is presumed to know every fact which an examination of the record would have disclosed. This presumption

cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation. (emphases added)

To emphasize, the rule on constructive notice is expressed in decisional law only as to the existence of instruments properly executed and placed on the records of the title and all that is shown or found thereon. **If the overlap, therefore, is apparent on the face of at least two certificates of title, the second registrant is presumed to have acted in bad faith should he or she subsequently build on the same area already covered by the title of the first registrant.** As shown, this doctrine finds no application to the present case.

The twin ***JM Tuason*** cases, decided by the Court *En Banc* in 1962 and 1968, do not apply here either. There, respondents Macalindong and Lumanlan were claiming ownership over two (2) smaller lots forming part of the bigger parcel registered in the name of JM Tuason. They traced their claim of ownership to one Pedro Deudor who allegedly acquired the lots from JM Tuason through a compromise agreement. Ultimately, the Court ruled in favor of JM Tuason when it discovered that the compromise agreement did not grant to Deudor ownership of the two lots in question, but a mere preferential right to purchase the same, thus:

Careful analysis of this paragraph of the compromise agreement will show that while the same created "a sort of contractual relation" between the J.M. Tuason & Co., Inc., and the Deudor vendees (as ruled by this Court in *Evangelista vs. Dendor, ante*), the same in no way obligated Tuason & Co. to sell to those buyers the lots occupied by them at the price stipulated with the Deudors, but at "the current prices and terms specified by the OWNERS (Tuason) in their sales of lots in their subdivision known as 'Sta. Mesa Heights

Subdivision'." This is what is expressly provided. Further, paragraph plainly imports that these buyers of the Deudors must "recognize the title of the OWNERS (Tuason) over the property *purportedly* bought by them" from the Deudors, and "sign, whenever possible, new contracts of purchase for said property"; and, if and when they do so, "the sums paid by them to the Deudors . . . shall be credited to the buyers." **All that Tuason & Co. agreed to, therefore, was to grant the Deudor buyers preferential right to purchase "at current prices and terms" the lots occupied by them, upon their recognizing the title of Tuason & Co., Inc., and signing *new* contracts therefor; and to credit them for the amounts they had paid to the Deudors.** (emphases added)

On whether respondents Macalindong and Lumanlang acted in bad faith in taking possession of subject lots, the Court held:

xxx There being a presumptive knowledge of the Torrens title issued to Tuason & Co., and its predecessors-in-interest since 1914, the buyer from the Deudors cannot in good conscience claim that she believed her vendor had rights of ownership over the lot purchased. She is bound conclusively by Tuason's Torrens title. Respondent is, therefore, not a builder in good faith.

Indubitably, **the parties in the *JM Tuason* cases were both claiming ownership over the same subject lots.** There was no issue on the identity of these lots. Macalindong and Lumanlan never denied that JM Tuason had registered title over them but insisted that their right thereto was superior to that of JM Tuason.

The situations in ***Legarda*** and ***JM Tuason*** are not too different from each other. In both cases, the parties laid conflicting claims of ownership over the same lot or area. In stark contrast, the present petition does not present conflicting claims of ownership. It hinges solely on the merits of Hillview's defense of good faith *vis-à-vis* its encroachment on a portion of petitioners' property.

Considering such fundamental difference between ***Legarda*** and the ***JM Tuason*** cases, on the one hand, and the present case, on the other, the standard of constructive notice in the

former cases for the purpose of upholding or rejecting one's claim of good faith cannot be applied here.

We should instead apply ***Co Tao v. Joaquin Chan Chico***[4] and ***Tecnogas Philippines Manufacturing Corporation v. Court of Appeals***.[5]

In the 1949 *En Banc* case of ***Co Tao***, Chico was the owner of a property described as Lot No. 7 and covered by Certificate of Title No. 24239. Co Tao owned the adjoining lot No. 6. The conflict arose when Chico asserted that the house constructed by Co Tao encroached on a portion of Chico's land. After due proceedings, the Court ultimately found it was actually Chico who encroached on Co Tao's property by 6.97 sqm.; not the other way around. The Court emphasized though that the fact alone that Co Tao's property was registered did not automatically mean that Chico was a builder in bad faith insofar as the encroachment was concerned. The Court aptly decreed:

> xxx It is but stating the obvious to say that outside of the individuals versed in the science of surveying, and this is already going far, **no one can determine the precise extent or location of his property by merely examining his paper title. The fact is even surveyors cannot with exactitude do so.** The disagreement among the three surveyors in the case at hand who have made a resurvey of the ground with the aid of scientific devices and of their experience and knowledge of surveying, is a graphic and concrete illustration of this truth. (emphasis and underscoring added)

Notably, ***Co Tao*** was cited in the 1997 case of ***Tecnogas***, decided by the Third Division. To recall, Tecnogas was the registered owner of a lot in Barrio San Dionisio, Parañaque City, known as Lot 4531-A and covered by Transfer Certificate of Title No. 409316. It bought the property from Pariz Industries in 1970, together with all the buildings and improvements thereon. Meanwhile, Eduardo Uy was the registered owner of

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[4] G.R. No. L-49167, April 30, 1949.

[5] 335 Phil. 471 (1997).

the adjoining parcels covered by Transfer Certificate of Title Nos. 279838 (Lot 4531-B) and 31390, respectively. Tecnogas later learned that portions of the structures it bought actually stood on a small portion of Uy's property. For this reason, Tecnogas offered to buy this portion, but Uy refused and sued Tecnogas instead.

The Court ruled that Tecnogas did not act in bad faith when it built on a portion of Uy's titled property. The Court even rejected the application of the ***JM Tuason*** cases in resolving ***Tecnogas***, thus:

> Respondent Court, citing the cases of ***J.M. Tuason & Co., Inc. vs. Vda. De Lumanlan*** **and** ***J. M. Tuason & Co., Inc. v. Macalindong***, ruled that petitioner "cannot be considered in good faith" because as a land owner, it is "presumed to know the metes and bounds of his own property, specially if the same are reflected in a properly issued certificate of title. One who erroneously builds on the adjoining lot should be considered a builder in *(b)ad (f)aith*, there being presumptive knowledge of the Torrens title, the area, and the extent of the boundaries."
>
> We disagree with respondent Court. The two cases it relied upon do not support its main pronouncement that a registered owner of land has presumptive knowledge of the metes and bounds of its own land, and is therefore in bad faith if he mistakenly builds on an adjoining land. Aside from the fact that **those cases had factual moorings radically different from those obtaining here**, there is nothing in those cases which would suggest, however remotely, that bad faith is imputable to a registered owner of land when a part of his building encroaches upon a neighbor's land, simply because he is supposedly presumed to know the boundaries of his land as described in his certificate of title. No such doctrinal statement could have been made in those cases because such issue was not before the Supreme Court. Quite the contrary, we have rejected such a theory in ***Co Tao vs. Chico***, where we held that **unless one is versed in the science of surveying, "no one can determine the precise extent or location of his property by merely examining his paper title."**

The Court declined to apply the supposed irrebuttable presumption of bad faith in ***JM Tuason***. Instead, the Court

applied the disputable presumption of good faith considering the attendant circumstances, *viz*:

> There is no question that **when petitioner purchased the land from Pariz Industries, the buildings and other structures were already in existence.** The record is not clear as to who actually built those structures, but it may well be assumed that petitioner's predecessor-in-interest, Pariz Industries, did so. **Article 527 of the Civil Code presumes good faith, and since no proof exists to show that the encroachment over a narrow, needle-shaped portion of private respondent's land was done in bad faith by the builder of the encroaching structures, the latter should be presumed to have built them in good faith.** It is presumed that possession continues to be enjoyed in the same character in which it was acquired, until the contrary is proved. Good faith consists in the belief of the builder that the land he is building on is his, and his ignorance of any defect or flaw in his title. Hence, such good faith, by law, passed on to Pariz's successor, petitioner in this case. Further, "(w)here one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former." And possession acquired in good faith does not lose this character except in case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully. The good faith ceases from the moment defects in the title are made known to the possessor, by extraneous evidence or by suit for recovery of the property by the true owner.
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> Recall that the encroachment in the present case was caused by a very slight deviation of the erected wall (as fence) which was supposed to run in a straight line from point 9 to point 1 of petitioner's lot. It was an error which, in the context of the attendant facts, was consistent with good faith. x x x

Indeed, the law always presumes good faith. The one who alleges bad faith must prove it by clear and convincing evidence, *viz*:

> **Article 527.** Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. (434)

In resolving the issue of good faith, the Court in ***Co Tao*** and ***Tecnogas*** considered several factors. For instance, the 6.97 sqm. encroachment over the titled property in ***Co Tao*** and the "very slight deviation" of a constructed wall in ***Tecnogas*** did not automatically render Chico and Tecnogas builders in bad faith. The Court may also consider the circumstances that led to the fact of encroachment, including the history of the encroaching party's claim of title. Thus, the Court deemed it proper to evaluate the peculiar circumstances by which Chico and Tecnogas acquired their respective properties.

Here, the courts below found that Hillview encroached on petitioners' property by 2,783 sqm. By itself, however, the size of the encroachment is not sufficient to support the conclusion that Hillview acted in bad faith. Compared to the entire expanse of petitioners' property, extending up to 30,000 sqm. altogether, the size of the encroached area may appear miniscule. Besides, in cases of encroachment, there should always be margins for error and possibilities of good faith. For who among us mortals, by our naked eye alone, can instantly and accurately ascertain that 2,783 sqm. when plotted on the ground is already the same size as the courtyard of the Supreme Court facing Padre Faura?

To emphasize, no one can determine the **precise** extent or location of his or her property by merely examining the four (4) corners of his or her paper title. Although a paper title may inform a person of the specific points bounding a property, how these points are plotted on actual land is beyond the expertise of a layperson. Even licensed geodetic engineers sometimes make mistakes on the exact physical location of a titled property. When honest mistakes are committed, the good faith of the builder serves as his or her own protection.

Suffice it to state that the metes and bounds of a piece of land do not jump out of the page to tell the reader where the piece of land is, how big it is, what shape it is and what its edges are. The actual boundaries as plotted on the ground will only be apparent after examining the registry and accomplishing several additional processes that all require expertise and expense.

It is therefore unreasonable to conclude that just because a property is registered, all persons dealing with them may already be charged with constructive notice of not only the technical metes and bounds but also how the same will appear when actually laid on the ground.

Co Tao did not overrule ***Legarda*** and does not conflict with ***JM Tuason***. Similarly, ***Tecnogas***, which was decided by a Division of the Court, did not as it could not have overturned ***JM Tuason***. These cases govern different facts, hence, at no point can there be conflict between them. All told, I respectfully suggest that the following guidelines be considered in the application of these cases:

1. When it appears on the face of two (2) Torrens titles that they include the same property or portion, the second of the two (2) registrants is presumed to have acted in bad faith when he or she encroaches on the land of the first registrant (***Legarda***);

2. When the identity, location and the extent of a property as appearing on the registry record are not in dispute, a person, not being the registered owner, who appropriates the property as his or her own is presumed to have acted in bad faith (***JM Tuason*** cases); and

3. When one's structure happens to encroach on a registered property or portion belonging to another, this fact alone does not support a finding of bad faith. The same must be established by independent, nay, competent evidence. (***Co Tao*** and ***Tecnogas***)

Verily, the cases of ***Co Tao*** and ***Tecnogas*** are applicable here. Any finding of bad faith on the part of Hillview, therefore, should not be based on any mere presumption but should be warranted by the factual circumstances obtaining in the present case. On this score, I agree that the factual circumstances here support a finding of bad faith against Hillview.

I therefore join the majority in granting the petition and remanding the same to the trial court for further proceedings on the proper application of Articles 449, 450 and 451 of the Civil Code.

SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

I concur. The issue of good faith or bad faith of the builder and the landowner should be considered based on the peculiar circumstances surrounding the case.

Petitioner Princess Rachel Development Corporation is a landowner in good faith, and it must be categorically declared to be so

It need not be underscored that the laws applicable here enjoin the courts not only to make a finding on the builder's good faith or bad faith, but also make a specific determination of the landowner's good faith or the absence of it. Simply put, the determination of the respective rights and liabilities of the parties essentially depends on the finding of good faith or bad faith on their part.

While respondent Hillview Marketing Corporation (respondent Hillview), along with its co-respondents Stefanie Dornau and Robert Dornau (Stefanie and Robert), is adamant that petitioner Princess Rachel Development Corporation (petitioner) should be held in bad faith for sleeping on its rights in this case, the respective decisions of the Regional Trial Court (RTC) and the Court of Appeals (CA) are conspicuously silent on the matter. Although the CA had the occasion to point out petitioner's alleged inactions or negligence in protecting its rights as landowner, it nevertheless shunned away from the responsibility of making a categorical finding whether petitioner is a landowner in good faith or bad faith.

The *ponente* aptly fills the *lacuna* with the pertinent discussion and duly declares petitioner to be a landowner in good faith.

Verily, petitioner, being a registered landowner, can rightfully claim protection under the Torrens system, in that it may rest

secure, without the necessity of waiting in the portals of the court, or sitting in the *mirador de su casa*, to avoid the possibility of losing its land.[1] In addition, Article 453[2] of the New Civil Code is categorical that bad faith may only be attributed to a landowner when the act of building, planting, or sowing was done with his knowledge and without opposition on his or her part.[3]

As I have consistently pointed out from the start, the scrutiny of the established facts readily reveals petitioner's good faith in this case.

Contrary to what the CA opined in the assailed decision, petitioner had shown sufficient justification for not being able to object to the construction of respondent Hillview from 2004-2007. Its office is located in Metro Manila while the disputed properties are situated in Aklan. Respondent Hillview's intrusion into petitioner's properties was discovered only in 2007, after the latter caused a relocation survey of the same due to the impending sale thereof to Boracay Enclave Corporation. From then on, however, petitioner diligently notified respondent Hillview of the encroachment, and sent the appropriate demands for the latter to vacate and return possession of the encroached lots to petitioner. When such demands unfortunately fell on deaf ears, petitioner immediately filed the complaint. All these actions were undertaken by petitioner in a matter of months after its discovery of respondent Hillview's encroachment.

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[1] See *Wee v. Mardo*, G.R. No. 202414, 4 June 2014; 735 Phil. 420-434 (2014); 725 SCRA 242.

[2] ARTICLE 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith. It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

[3] See *Dinglasan-Delos Santos v. Abejon*, G.R. No. 215820, 20 March 2017; 807 Phil. 720-737 (2017); 821 SCRA 132.

In fine, as discussed in the *ponencia*, petitioner cannot be said to have slept on its right and must therefore be regarded as a landowner in good faith, entitled to the protections provided under the New Civil Code.

Bad faith of respondent Hillview in building on the disputed properties is clear and unmistakable from the established facts

The RTC and the CA were unanimous in finding that respondent Hillview encroached upon a huge portion of petitioner's properties. This factual finding binds this Court, as it is clearly supported by evidence. Be that as it may, the trial and appellate courts were diametrically opposed on the responsibilities of respondent Hillview: the RTC found respondent Hillview liable under the circumstances based mainly on the "revelations" of Engineer Reynaldo Lopez (Engr. Lopez) imputing actual knowledge of the encroachment on respondent Hillview, while the CA found no liability on the part of the latter applying the presumption of good faith in its favor.

In resolving the impasse, the *ponencia* upheld the RTC's view that respondent Hillview is indeed a builder in bad faith, albeit for an entirely different reason.

Based on the facts and evidence on hand, it is correct that respondent Hillview be held liable for being a builder in bad faith. This must be so notwithstanding the rather unreliable testimony of Engr. Lopez. Indeed, regardless of my strong misgivings on the motivation of Engr. Lopez' surprising shift of allegiance in this case, the CA committed reversible error in applying the presumption of good faith in favor of respondent Hillview.

It is axiomatic in jurisprudence that the essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another. Applied to possession, one is considered in good faith if he is

not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[4]

In the instant case, based on the figures alone, it can already be fairly deduced that respondent Hillview was well-aware of its intrusion into the lots of petitioner. Tommy Sarceno, respondent Hillview's own witness, testified that respondent Hillview only bought a total of 5,100 square meters of spouses Tirol's property,[5] which means that the encroachment extended to more than 50% of respondent Hillview's own lot. An increase in the land area of such proportion is too great to be left undiscovered by respondent Hillview at any time before, or during the construction of the *Alargo Residence*, with Engineer Lester Madlangbayan describing **the encroachment as very visible**.[6]

Respondent Hillview ought to have known the actual land area or the metes and bounds of its own property as part of its due diligence, being the developer of the *Alargo Residence* subdivision project. To be sure, the encroachment in this case spanned 2,783 square meters, and every square inch thereof was a potential source of huge profit for respondent Hillview. As found in the records, a unit at the *Alargo Residence* — an upscale and sophisticated residential project — was pegged at USD200,000.00.[7] Needless to say, no prudent and savvy developer could miss that vital information.

If that is not enough, it bears pointing out that respondent Hillview, in a desperate attempt to hide the fact of encroachment, even resorted to several schemes to repeatedly avoid the RTC's order for the parties to submit their respective survey reports within the period provided. When it was left with no other ruse to employ, it instead submitted a consolidated sketch plan, or

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[4] See *Ochoa v. Apeta*, G.R. No. 146259, 13 September 2007; 559 Phil. 650-657 (2007); 533 SCRA 235.

[5] RTC Decision; *rollo*, pp. 143-144.

[6] *Id.* at 139.

[7] *Id.* at 143-144.

a table survey prepared by its chosen geodetic engineer, without even conducting an actual survey on the ground.[8]

With the foregoing factual findings, it is certain that respondent Hillview knew very well of its encroachment into petitioner's properties, and should be declared a builder in bad faith.

The ponente is right in declaring the good faith or bad faith of a builder, as in the case of the landowner, based on the peculiar circumstances of the case, not on a strict application of the constructive notice rule

Despite the long, tedious deliberation of the members of this Court, I still have not wavered in my view that a declaration of the good faith or bad faith strictly on *a priori* application of the constructive notice rule and the presumptive knowledge of Torrens title may lead to iniquitous results. To reiterate, an indiscriminate, blind application of these rules, without regard to the peculiar factual circumstances of each case, may not be the best approach to dispense justice.

To illustrate, A bought a registered lot from a subdivision developer and after receiving a go signal from the latter, built a house thereon. After completion of the construction, B, the adjoining lot owner and A's neighbor, found through a recently concluded technical survey that A's house and lot encroached on his property because of an error committed by the subdivision developer. A, who built on the lot, relying in good faith on the subdivision developer's title and representations, and without negligence on his part should not be deemed a builder in bad faith under the circumstances.

Indeed, subservience to the provisions of the pertinent provisions of PD 1529, or a literal application thereof, is not always the rational and judicious way of resolving encroachment cases like this, as have been amply proven in jurisprudence.

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[8] *Rollo*, p. 16.

Badges of good faith of the builders or their transferees would be negated if the Court expands the scope and application of the constructive notice rule under PD 1529 to include a presumptive knowledge of the metes and bounds of every registered land, as reflected in the technical description thereof. Verily, certificates of titles are not always free from errors; hence, there has been a need for their correction in many instances. Most of the time, however, the errors are only realized much later, often after the owners have already constructed their improvements. There are also instances of honest mistakes by the builders, as when the lots delivered to them by the sellers are different, a case which is prevalent in subdivision developments.

Jurisprudence abound where the Court, in declaring the rights and liabilities of a builder, made use of the factual circumstances approach, instead of a blind application of the constructive notice rule

It has been said that Article 448[9] of the Civil Code applies only when the builder believes that he is the owner of the land or that by some title he has the right to build thereon, or that, at least, he has a claim of title thereto.[10] It is not amiss to underscore, however, that Article 527[11] of the New Civil Code

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[9] ARTICLE 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[10] See *Communities Cagayan, Inc. v. Spouses Nanol*, G.R. No. 176791, 14 November 2012; 698 Phil. 648-669 (2012); 685 SCRA 453.

[11] ARTICLE 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

provides that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. Corollarily, **the settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith.**[12] However, bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill-will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.[13]

Following these settled principles, the Court has had many occasions where it recognized good faith beyond its limited definition,[14] by declaring the builder to be in good faith despite a finding that the latter encroached or built on a registered lot belonging to another.

In the vintage case of *Co Tao v. Chico*,[15] the three (3) surveyors who made a resurvey of the ground with the aid of their scientific devices, along with their experience and knowledge of surveying, still had a disagreement on the results of their respective measurements. **Hence, the Court, in declaring the builder to be in good faith, underscored that unless one is versed in the science of surveying, no one can determine the precise extent or location of his property by merely examining his paper title when even the surveyors cannot, with exactitude, do so.**

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[12] *Spouses Espinoza v. Spouses Mayandoc*, G.R. No. 211170 , 3 July 2017; 812 Phil. 95-107 (2017); 828 SCRA 601.

[13] *Adriano v. La Sala*, G.R. No. 197842, 9 October 2013; 719 Phil. 408-421 (2013); 707 SCRA 345.

[14] *Supra* at note 10.

[15] G.R. No. L-49167, 30 April 1949; 83 Phil. 543-547 (1949).

Also, in *Tecnogas Philippines Manufacturing Corporation v. Court of Appeals, et al.*,[16] the Court, after taking into consideration all the circumstances established in the said case, adjudged petitioner *Tecnogas* in good faith despite its property encroaching a "narrow, needle-shaped portion of private respondent's land."

Meanwhile, the Court, in *Sarmiento v. Hon. Agana*,[17] found the builder to be in good faith despite building his residential house on a lot owned by another. The Court held therein that the builder was in good faith in view of the peculiar circumstances under which he had constructed his house. **As the facts disclosed, he proceeded to build on the erroneous assumption that land was owned by his mother-in-law who gave her consent, and thus, could reasonably be expected to later on give him the lot.**

Similarly, *Rosales v. Castelltort*,[18] *Briones v. Macabagdal, et al.*,[19] and *Pleasantville Development Corporation v. Court of Appeals, et al.*,[20] all declared the builders therein in good faith despite building their improvements on the properties of another. **In these cases, the builders constructed their houses on the lots of another on the honest, albeit mistaken, belief that the lots they built on were the ones sold to them by their predecessors or developers.**

In *Spouses Aquino v. Spouses Aguilar*,[21] the Court was categorical in acknowledging that it is, in fact, aware of some

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[16] G.R. No. 108894, 10 February 1997; 335 Phil. 471-489 (1997); 268 SCRA 5.

[17] G.R. No. 57288, 30 April 1984; 214 Phil. 101-106 (1984).

[18] G.R. No. 157044, 5 October 2005; 509 Phil. 137-156 (2005); 427 SCRA 144.

[19] G.R. No. 150666, 3 August 2010; 640 Phil. 343-358 (2010); 626 SCRA 300.

[20] G.R. No. 79688, 1 February 1996; 323 Phil. 12-29 (1996); 253 SCRA 10.

[21] G.R. No. 182754, 29 June 2015; 762 Phil. 52-72 (2015); 760 SCRA 444.

instances where it allowed the application of Article 448 to a builder who has constructed improvements on the land of another with the consent of the owner. **The Court explained therein that builders may be adjudged in good faith even though they are aware of the construction of their improvement on a land owned by another for as long as the landowners knew and approved or acquiesced to the construction of improvements on their property.** This was also the declaration of the Court in *Communities Cagayan, Inc. v. Spouses Nanol*.[22]

In *Pen Dev't. Corp. v. Leyba, Inc.*,[23] the Court likewise determined the bad faith of the builder therein on a "more factual approach" rather than by a mechanical application of the constructive notice rule.

Lest it be forgotten, the foregoing cases and several more, involved real estate properties registered under the Torrens system. Yet, these cases prove that even if the provisions of PD 1529 supposedly require an indiscriminate and overreaching application of the constructive notice rule and presumptive knowledge of Torrens title, the Court nevertheless has had so many occasions where it did not apply the same, but instead judiciously considered the peculiar facts of the case in determining the good faith or bad faith of the builder instead.

The determination of the good faith or bad faith must indeed be on a case to case basis

The use of the factual approach in the case at bar in determining the good faith or bad faith of the builder is clearly neither novel nor an aberration, but finds clear support from jurisprudence. Prudence and the interest of justice dictate that We should apply the same going forward. Withal, in *PNB v.*

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[22] *Supra* at note 10.

[23] G.R. No. 211845, 9 August 2017; 816 Phil. 554-595 (2017); 836 SCRA 548.

Heirs of Militar,[24] the Court elucidated that in ascertaining good faith, or the lack of it, which is a question of intention, **courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined**. Expounding further, the Court stressed:

> Good faith, or want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can be judged by actual or fancied token or signs. Good faith, or want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied token or signs. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another. Accordingly, in *University of the East v. Jader* we said that "[g]ood faith connotes an honest intention to abstain from taking undue advantage of another, even though the forms and technicalities of law, together with the absence of all information or belief of facts, would render the transaction unconscientious."
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> Contrastingly, in *Magat, Jr. v. Court of Appeals* the Court explained that "[b]ad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud." In *Arenas v. Court of Appeals* the Court held that the determination of whether one acted in bad faith is evidentiary in nature. Thus "[s]uch acts (of bad faith) must be substantiated by evidence." Indeed, the unbroken jurisprudence is that "[b]ad faith under the law cannot be presumed; it must be established by clear and convincing evidence.

By this yardstick, it is more judicious for the Court to take on a calibrated examination of the facts and evidence in resolving similarly situated encroachment disputes, as acknowledged by the *ponente* in this case.

Accordingly, I vote to GRANT the petition.

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[24] G.R. No. 164801, 30 June 2006; 526 Phil. 788-808 (2006); 494 SCRA 308.

EN BANC

[G.R. No. 225301. June 2, 2020]

THE DEPARTMENT OF TRADE AND INDUSTRY, represented by its SECRETARY, the UNDERSECRETARY OF THE CONSUMER PROTECTION GROUP, MEMBERS OF THE SPECIAL INVESTIGATION COMMITTEE, and the DIRECTOR OF LEGAL SERVICE, *petitioners*, *vs.* **DANILO B. ENRIQUEZ**, *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); A DEPARTMENT SECRETARY HAS DISCIPLINARY JURISDICTION OVER OFFICERS AND EMPLOYEES UNDER HIM IN ACCORDANCE WITH LAW REGARDLESS OF WHETHER OR NOT SUCH OFFICER IS A PRESIDENTIAL APPOINTEE. — The administrative structure of our government is laid down in the Administrative Code of 1987. Indeed, pursuant to Section 1, Article VII of the 1987 Constitution, Section 11, Chapter 3, Book II of the Administrative Code provides that the executive power shall be vested in the President of the Philippines. Needless to say, not every task in the executive department can be undertaken by the President and its office. Hence, the Administrative Code provides for the organization and maintenance of several departments as are necessary for the functional distribution of the work of the President. Each department shall have jurisdiction over bureaus, offices, regulatory agencies, and government-owned or -controlled corporations assigned to it by law. The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be, vested in the Secretary, who shall have supervision and control of the Department. The x x x provisions of the Administrative Code unambiguously provide for the Department Secretary's disciplinary jurisdiction over officers and employees under him in accordance with law. Clearly, thus, a bureau director, which heads a mere subdivision of a department, is under the Department Secretary's disciplinary

supervision. It is important to emphasize that the aforequoted provisions made no distinction between presidential and non-presidential appointees with regard to the Secretary's disciplinary jurisdiction.

2. ID.; ID.; ID.; EO 292 *VIS-Á-VIS* THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); POWER TO IMPOSE PENALTY AND THE POWER TO INVESTIGATE, EXPLAINED AND DISTINGUISHED; THE POWER OF THE CIVIL SERVICE COMMISSION (CSC) AND THE DEPARTMENT SECRETARIES TO IMPOSE PENALTY IS LIMITED TO NON-PRESIDENTIAL APPOINTEES; THE POWER TO IMPOSE PENALTY TO PRESIDENTIAL APPOINTEES RESIDES WITH THE PRESIDENT. — The distinction between presidential and non-presidential appointees becomes relevant only with respect to the Department Secretary's "power to impose penalties" and "power to investigate." The Revised Rules on Administrative Cases in the Civil Service (RRACCS), as well as the 2017 Rules on Administrative Cases in the Civil Service (RACCS) which superseded the RRACCS, provide the distinction for the disciplinary jurisdiction of the department heads and secretaries. Said rules provide for the disciplinary powers that the CSC and the department heads and secretaries have over non-presidential appointees. Section 9 of the RRACCS, the applicable rules during Enriquez's service, provides that the department secretaries have original concurrent jurisdiction with the CSC over cases cognizable by the latter[.] It is also noteworthy that RRACCS, as well as the RACCS, define a "disciplining authority" to be the person or body **"duly authorized to impose the penalty"** provided for by law or rules. Hence, read in conjunction with the relevant provisions of the Administrative Code above-quoted, the disciplinary authority, *i.e.*, the power to impose penalty, of the CSC and department secretaries are limited to non-presidential appointees. For presidential appointees, the power to impose penalty resides with the President pursuant to his power of control under the Constitution and the Administrative Code. Likewise, the Ombudsman, under the Constitution and Republic Act (R.A.) No. 6770, was given such power to impose penalties. Certainly, concomitant to such disciplinary authority is the power to investigate and to designate a committee or officer to conduct such investigation pursuant

to Section 7(5), Chapter 2, Title III, Book IV of the Administrative Code above-cited, as well as the relevant provisions of R.A. No. 6770. In fine, the power to impose penalty necessarily includes the power to investigate. Contrarily, the power to investigate does not necessarily include the power to impose penalty. While the power to impose penalty remains with the President or the Ombudsman, the power to investigate, as well as to designate a committee or officer to investigate, and thereafter to report its findings and make recommendations, may be delegated to and exercised by subordinates or a special commission or committee specifically created for such purpose. Stated more specifically, while it is the President as the Chief Executive, or the Ombudsman as mandated by law, who has the authority to impose penalty upon erring presidential appointees, it does not preclude said disciplining authorities from utilizing, as a matter of practical administrative procedure, the aid of subordinates to investigate and report to them the facts, on the basis of which the President or the Ombudsman, as the case may be, make their decision. It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law. x x x As held in *Baculi v. Office of the President*, while the Administrative Code has vested the Department Secretary with the authority to investigate matters involving a presidential appointee, Section 38 of Presidential Decree (P.D.) No. 807 or the Civil Service Decree of the Philippines, which was exactly echoed in Section. 48, Chapter 7, Title I-A, Book V of the Administrative Code, has drawn a definite distinction between subordinate officers or employees who are presidential appointees and those who are non-presidential appointees with regard to the authority to decide on the disciplinary matter. Said provisions speak of the procedure in administrative cases *against non-presidential appointees* before the CSC as the latter has no disciplinary authority over presidential appointees. The Court explained that this is so because substantial distinctions set presidential appointees apart from non-presidential appointees. One of such distinctions is that presidential appointees come under the direct disciplining authority of the President pursuant to the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority in whom the power to appoint is vested.

3. ID.; ID.; ID.; ID.; ID.; FULL DISCRETION IS GIVEN TO THE PRESIDENT TO REMOVE HIS APPOINTEES; EVEN THE DOCTRINE OF QUALIFIED POLITICAL AGENCY CANNOT BE USED TO GRANT DEPARTMENT HEADS THE POWER TO IMPOSE PENALTY UPON ERRING SUBORDINATES WHO ARE PRESIDENTIAL APPOINTEES WITHOUT THE PRESIDENT'S PRIOR APPROVAL; DOCTRINE OF QUALIFIED POLITICAL AGENCY, EXPLAINED. — The principle finds basis in the Constitutional grant of power upon the President to appoint such officials as provided in the Constitution and laws. Full discretion is, therefore, given to the President to remove his appointees. Unless otherwise provided by the Constitution, such concomitant power of the appointing authority to remove cannot be attenuated by allowing even his alter ego to discipline and worse, to remove the former's appointee, lest the executive department would be put into a precarious situation where the very person particularly chosen by the President will be removed by his own subordinate without his prior express conformity. Thus, even the doctrine of qualified political agency cannot be used to grant the department heads the power to impose penalty upon erring subordinates who are presidential appointees without prior approval of the President. This doctrine of qualified political agency or the alter ego doctrine was introduced in our jurisdiction in the landmark case of *Villena v. The Secretary of Interior*. The Court explained that said doctrine essentially postulates that the heads of the various executive departments are the alter egos of the President and, as such, the actions taken by them in the performance of their official duties are deemed the acts of the President unless the latter disapproves such acts. x x x The Court in said case disagreed with the mayor and upheld his suspension, ruling that the alter ego doctrine justified the suspension ordered by the Secretary of Interior. As can be readily gleaned from this case, even with the doctrine of qualified political agency, the Court upheld the Secretary of Interior's act of imposing penalty considering that the President had already approved the Secretary's recommendation to suspend the mayor. In fine, prior conformity of the President was still necessarily secured. x x x Granting the Department Secretary the power to impose penalty without the President's prior express conformity would result to a circuitous situation wherein the removal or any action effected by the Department

Secretary may later on be countermanded by the President at any time. x x x [T]his does not prevent the Department Secretary from conducting investigations and forwarding their findings and recommendations to the President for approval. In the alternative, their findings may also be forwarded to the PACC for further investigation and recommendation to the President, or to the Ombudsman in applicable cases.

4. ID.; ID.; ID.; EO 292 IS NOT MERELY AN EXECUTIVE ACT BUT IS ACTUALLY A LAW HAVING BEEN ISSUED BY PRESIDENT CORAZON AQUINO IN THE EXERCISE OF HER EXTRAORDINARY POWER OF LEGISLATION UNDER THE FREEDOM CONSTITUTION; HENCE, EO 292 CANNOT BE REPEALED BY SUBSEQUENT EOs; THERE IS NO INCONGRUITY BETWEEN EO 292 AND THE INVOKED EXECUTIVE ORDERS AS THE LATTER DO NOT INDICATE ANY INTENTION TO TOTALLY REMOVE THE DEPARTMENT SECRETARY'S POWER TO INVESTIGATE OVER HIS SUBORDINATE WHO ARE PRESIDENTIAL APPOINTEES. — E.O. No. 151 and the subsequent E.O.s above-cited, or "E.O. No. 13 and its allied E.O.s" as referred to by the RTC in its assailed Decision, could not have repealed the Administrative Code, contrary to the RTC's conclusion. Foremost, an executive order cannot repeal a law. Ordinarily, since both the Administrative Code and E.O. No. 13 and "its allied E.O.s" are all presidential issuances, one may repeal or otherwise alter, modify or amend the other, depending on which comes later. The intricacy of this case, however, is owed to the fact that E.O. No. 292 or the Administrative Code was signed into law by President Corazon C. Aquino, not merely as an executive act, but in the exercise of her transitory legislative powers under the Freedom Constitution. Section 6, Article XVIII of the 1987 Constitution states that "[t]he incumbent President shall continue to exercise legislative powers until the first Congress convened." The Administrative Code was signed into law on July 25, 1987, or two days before the first Congress convened on July 27, 1987. Hence, having been issued by the President in the exercise of her extraordinary power of legislation during the transition from the authoritarian regime to the revolutionary government, the Administrative Code is not merely an executive order which has the force and effect of law, but is actually a law. Moreover, basic is the principle in statutory

construction that interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the legal maxim "*interpretare et concordare leges legibus est optimus interpretandi modus.*" A careful perusal of the invoked executive orders clearly reveals no incongruity with the Administrative Code. As discussed above, the creation and reorganization of the investigative and recommendatory Commissions/Office through said executive orders, do not indicate any intention to totally remove the Department Secretary's power to investigate over his subordinates who are presidential appointees. None of the executive orders provides for an express exclusionary provision that removes such power to investigate from the Department Secretary as provided under the Administrative Code. Thus, said executive orders neither supersede nor conflict with the Administrative Code which allows the Department Secretary to investigate his subordinates, may they be presidential appointees or non-presidential appointees. It is, therefore, flawed to argue and conclude that said executive orders granted the investigative Commissions the exclusive jurisdiction to investigate presidential appointees.

5. ID.; ID.; ID.; EO 292 *VIS-Á-VIS* THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); THE UNAVAILABILITY OF AN APPEAL TO THE CSC FROM THE DEPARTMENT SECRETARY'S FINDINGS CANNOT BE USED AS A GROUND TO DIVEST THE DEPARTMENT HEAD OF HIS STATUTORY AUTHORITY TO INVESTIGATE; NO ELEMENT OF FINALITY CHARACTERIZES SUCH FINDINGS AND REPORT SINCE THEY ARE MERELY RECOMMENDATORY FOR THE PRESIDENT'S CONSIDERATION. — The fact that no appeal can be made to the CSC from the findings of the Department Secretary and/or the committee which was designated to conduct the investigation on a presidential appointee, cannot be validly used as a ground to divest the Department Secretary of his statutory authority to exercise such power to investigate, contrary to the RTC's conclusion. Indeed, as discussed above, the CSC has no disciplinary authority over presidential appointees. Hence, it has neither original nor appellate jurisdiction over disciplinary cases against presidential

appointees. Contrary, however, to the court *a quo's* interpretation, such "void in the appeal process" is the logical consequence of the principle that an appeal may be taken only from a judgment or final order unless otherwise provided by law or executive order. A final judgment or order is one that finally disposes of a case, leaving nothing more to do for the proper authority vested by law to finally decide on the matter. In the exercise of the Department Secretary's power to investigate presidential appointees, no element of finality characterizes his findings and report considering that from the nature of such power delegated to him, his findings and report are merely recommendatory for the President's consideration. Hence, an appeal is naturally not an available remedy from the Department Secretary's findings and recommendation. Nevertheless, there is no logical, much less legal and jurisprudential basis, to conclude that such unavailability of appeal from the findings and recommendations of the Department Secretary is a ground to divest the latter of the investigative and recommendatory authority granted to him by law over presidential appointees.

6. **ID.; ID.; ID.; ID.; TO UPHOLD THE AUTHORITY OF THE DEPARTMENT SECRETARY TO INVESTIGATE HIS SUBORDINATE WHO MAY BE A PRESIDENTIAL APPOINTEE IS NOT TO UNDERMINE THE PRESIDENT'S POWER OF CONTROL AS A CHIEF EXECUTIVE. —** Once again contrary to the RTC's ruling, to uphold the authority of the Department Secretary to investigate his subordinate who may be a presidential appointee is not to undermine the President's power of control as the Chief Executive. Since the Department Secretary's exercise of disciplinary power is merely investigative and recommendatory, the President retains the power to alter or modify, or even nullify or set aside the former's findings and recommendation, and to substitute his judgment to that of the former. This is precisely the concept of the power of control in administrative law. This is likewise in consonance with the doctrine of qualified political agency as explained above.

7. **ID.; ID.; ID.; ID.; THE POWER OF THE DEPARTMENT SECRETARY TO INVESTIGATE HIS SUBORDINATES NECESSARILY INCLUDES THE POWER TO IMPOSE PREVENTIVE SUSPENSION BY AUTHORITY OF THE**

PRESIDENT. — The power of the Department Secretary to investigate his subordinates being established, such power necessarily includes the authority to impose preventive suspension. Preventive suspension is authorized under the Administrative Code[.] x x x Inasmuch as the Department Secretary was given the power to investigate his subordinates by authority of the President, his power to impose preventive suspension also by authority of the President, cannot likewise be denied. It is well to point out that preventive suspension pending investigation is not punitive in nature. In the early case of *Nera v. Garcia*, the Court explained that suspension is a preliminary step in an administrative investigation. The need for the preventive suspension may arise from several causes, such as the danger of tampering or destruction of evidence in the possession of the person being investigated and the intimidation of witnesses, among others. Thus, to enable an effective and unhampered investigation, and to foreclose any threat to the success of the same, the authority conducting the same should be given the discretion to decide when the person facing administrative charges should be preventively suspended.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; REMEDIES OF PETITION FOR *CERTIORARI*, PROHIBITION, AND *MANDAMUS* AND THE "EXPANDED" SCOPE OF JUDICIAL REVIEW UNDER THE 1987 CONSTITUTION, DISTINGUISHED AND ELABORATED. — Petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court have long been used as remedies to keep lower courts within the confines of their granted jurisdictions. The 1987 Constitution, however, introduced the "expanded" scope of judicial power. Thus, Section 1, Article VIII thereof provides: x x x Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which 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.** In *Francisco, Jr. v. The House of Representatives*, the Court 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.'" Further distinctions

between the traditional *certiorari* petitions under Rule 65 of the Rules of Court and that under the expanded jurisdiction were exhaustively discussed by the Court *En Banc* in the case of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. Department of Health*. One of the material distinctions is the cited ground. A *certiorari* petition under Rule 65 of the Rules of Court speaks of *lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction*, while the remedy under the court's expanded jurisdiction expressly mentions only *grave abuse of discretion amounting to lack or excess of jurisdiction*. The distinction is apparently not legally significant as to what remedy should be resorted to, traditional or expanded, when the case involves an action with grave abuse of discretion. When, however, lack of jurisdiction is involved, no consideration is made as to how the government entity exercised its function. Indeed, no discretion is allowed in areas outside of an agency's granted authority. Certainly, before a court could take cognizance of a case filed before it, it should primarily determine the ground on which its jurisdiction is being invoked. It is, thus, imperative to look into the ground upon which the petition is based. x x x However, another distinction between the traditional *certiorari* petition under Rule 65 of the Rules of Court and *certiorari* pursuant to the expanded jurisdiction under Section 1(2), Article VIII of the Constitution is equally relevant in this case. Aside from the cited ground, another critical question comes up and that is, under what capacity did the respondent-agency act? In order that a special civil action for *certiorari* under Rule 65 may be invoked, the petition must be directed against any tribunal, board, or officer *exercising judicial or quasi-judicial functions*, which 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 plain, speedy, and adequate remedy in the ordinary course of law. Similarly, a petition for prohibition may be filed by an aggrieved person against a tribunal, corporation, board, officer or person, *exercising judicial, quasi-judicial, or ministerial functions*, which were done 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 likewise no plain, speedy, and adequate remedy in the ordinary course of law, praying that judgment be rendered commanding the respondent

to desist from further proceedings in the subject action or matter, or otherwise, for the grant of such incidental reliefs as law and justice may require. A petition for *mandamus,* on the other hand, is a remedy available only when a 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 plain, speedy and adequate remedy in the ordinary course of law. The main objective of *mandamus* is to compel the performance of a ministerial duty on the part of the respondent. In other instances, the petition must be filed based on the court's expanded jurisdiction. It is important, thus, to determine the nature of the questioned act/s to determine the available and proper remedy under the law.

9. ID.; ID.; ID.; THE PRESENT PETITION ASSAILED THE DEPARTMENT SECRETARY'S EXERCISE OF HIS POWER TO INVESTIGATE A SUBORDINATE, WHICH IS NOT JUDICIAL, QUASI-JUDICIAL, NOR MINISTERIAL IN NATURE, THUS, A PETITION FOR *CERTIORARI*, PROHIBITION, AND *MANDAMUS* WAS NOT PROPER. — It bears stressing that what is being assailed in this case is the Department Secretary's exercise of his power to investigate a subordinate. The Department Secretary's limited disciplinary authority being assailed herein involves a function which is not judicial, *quasi*-judicial, nor ministerial in nature for his act to be the proper subject of *certiorari,* prohibition, or *mandamus*. He is not clothed with power to adjudicate and impose a penalty with regard to administrative disciplinary actions against subordinates who are presidential appointees as above-discussed. His function is merely investigative and recommendatory, which is purely executive or administrative. *Quasi*-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and, after such determination, to decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. In the performance of a *quasi*-judicial, and of course judicial, acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted,

and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties. Neither is there a ministerial duty involved in this case which may be compelled to be done through *mandamus.* While Enriquez was temporarily excluded from his office pending investigation, the remedy of *mandamus* is not available to compel the investigating officer or committee to lift the order of preventive suspension as the same is authorized by law pending investigation, unless such suspension exceeded the period of 90 days for non-presidential employees, or the period of suspension for presidential employees became unreasonable as the circumstances of the case may warrant. Hence, the petition for *certiorari*, prohibition, and *mandamus* was not proper, whether it be filed before the RTC or the CA.

10. ID.; ACTIONS; MOOT AND ACADEMIC, NOT A CASE OF; THE INSTANT CASE IS NOT RENDERED MOOT AND ACADEMIC BY THE TERMINATION OF RESPONDENT'S SERVICE JUST AS THE ADMINISTRATIVE CASE AGAINST HIM BEFORE THE DEPARTMENT OF TRADE AND INDUSTRY (DTI) IS NOT MOOTED BY SUCH CESSATION. –– Having established the DTI Secretary's investigative and recommendatory disciplinary authority over Enriquez, we cannot subscribe to the latter's argument that the petition should be dismissed for becoming moot and academic due to his separation from service. A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not mooted by Enriquez's separation from service considering that the administrative case against him before the DTI is not mooted by such cessation of service. It must be pointed out that prior to the termination of his term of office, a formal charge for Gross Insubordination, Gross Misconduct/Gross Neglect of Duty, Grave Abuse of Authority, and Conduct Prejudicial to the Best Interest of the Service had already been filed after a determination of a *prima facie* case against him upon the conclusion of SIC's preliminary investigation. The disquisition of the Office of the President in Administrative Order (A.O.) No. 67, Series of 2003 is relevant to the issue and instructive: **While it is generally conceded that an administrative proceeding is predicated on the holding**

of an office or position in the government *x x x* **the rule is qualified and, therefore, recognized to admit an exception,** as amplified by the Supreme Court, in this wise: x x x **the severance of official ties with the government of a public official or employee constitutes a bar to the subsequent filing of an administrative case against him for an act or acts committed during his incumbency. A sesu contrario, once an administrative charge is initiated against such respondent, his compulsory or optional retirement, resignation or separation from the service during the pendency thereof does not nullify or moot the proceedings, which should continue to its logical conclusion. And if so closed or terminated for that reason alone, it may be reopened by the Office of the President on its own motion, if respondent is a presidential appointee, or at the instance of the department head concerned, if non-presidential appointee.** x x x As the administrative case against Enriquez survives the cessation of his tenure, this Court is still well-within its jurisdiction to resolve the legal issues raised before it.

PERLAS-BERNABE, *J., separate concurring opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); THE POWER OF DEPARTMENT SECRETARIES OVER THEIR SUBORDINATES INCLUDING THEIR AUTHORITY TO INVESTIGATE AND DECIDE MATTERS INVOLVING DISCIPLINARY ACTIONS AGAINST THEIR PERSONNEL ARE CIRCUMSCRIBED BY THE RULE THAT PRESIDENTIAL APPOINTEES COME UNDER THE DIRECT DISCIPLINING AUTHORITY OF THE PRESIDENT. — [W]hile the Administrative Code authorizes Department Secretaries to "[e]xercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation," and provides that they shall have ''jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction," these powers are circumscribed by the rule that: "**[p]residential appointees come under the direct disciplining authority of the President.** This proceeds from the well-settled principle that, in the absence of a contrary law, the power to

remove or to discipline is lodged in the same authority on which the power to appoint is vested."

2. ID.; ID.; ID.; ID.; THE DIRECT DISCIPLINARY AUTHORITY OF THE PRESIDENT DOES NOT DIVEST DEPARTMENT SECRETARIES OF THEIR POWER TO INVESTIGATE, AND INCIDENTAL THERETO, PREVENTIVELY SUSPEND PRESIDENTIAL APPOINTEES WITHIN THEIR DEPARTMENT; RULING IN *BACULI V. OFFICE OF THE PRESIDENT*, REITERATED. — [I]t should be clarified that **the direct disciplinary authority of the President does not divest Department Secretaries of their power to conduct investigations, and incidental thereto, preventively suspend presidential appointees within their department.** In order to harmonize the principles and provisions of law, Department Secretaries are only bereft of the power to impose penalties, but not the power to investigate. This has already been recognized by the Court in *Baculi v. Office of the President*[.] x x x In *Baculi,* therein petitioner Francisco T. Baculi (Baculi), a presidential appointee under the Department of Agrarian Reform (DAR), was investigated by the DAR Secretary x x x for certain irregular contracts. x x x He was eventually found guilty and was dismissed from service. x x x [T]he Court affirmed Baculi's dismissal by the President. It held that "Baculi, as a presidential appointee, came under the disciplinary jurisdiction of the President in line with the principle that the 'power to remove is inherent in the power to appoint.' As such, the DAR Secretary **held no disciplinary jurisdiction over him**." Nevertheless, it upheld the validity of the RIC report finding that **"[i]n the absence of a law or administrative issuance barring the DAR-RIC from conducting its own investigation** of Baculi even when there was no complaint being first filed against him, **the eventual report rendered after investigation was valid**."

3. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC, NOT A CASE OF; THE CASE HAS NOT BEEN RENDERED MOOT AND ACADEMIC BY RESPONDENT'S CESSATION FROM OFFICE. — The rule is that "jurisdiction at the time of the filing of the administrative complaint is not lost by the mere fact that the respondent had ceased in office during the pendency of the case." The rationale is that cessation from office "is not a way out to evade administrative liability when facing administrative sanction. [It] does not preclude the finding of

any administrative liability to which he or she shall still be answerable." Here, the DTI Secretary, through the Special Investigation Committee (SIC), had already commenced investigation proceedings against respondent as early as April 2016. In fact, respondent was already served with a "***Formal Charge with Preventive Suspension***" on May 20, 2016, through which he was officially notified of the charges against him, placed in preventive suspension, and directed to file an answer, which he later did. These incidents all occurred before June 30, 2016, or the date when he ceased from office. In the Supreme Court, the rule is that the administrative complaint must first be docketed prior to the respondent's cessation from office; otherwise, jurisdiction is lost. However, in this instance, a Formal Charge filed by the investigating committee signifies the institution of the complaint. In *Baculi*, the Court observed that the formal charge filed by the Department of Agrarian Reform - Regional Investigating Committee, which is similar to the SIC in this case, "became the administrative complaint contemplated by law." Hence, based on the foregoing, the case has not been rendered moot and academic.

4. ID.; ID.; ID.; AS THE PETITION DID NOT QUALIFY OR DISTINGUISH BETWEEN THE DEPARTMENT SECRETARY'S POWER TO INVESTIGATE AND RECOMMEND *VIS-À-VIS* THE POWER TO IMPOSE PENALTY, IT SHOULD ONLY BE PARTLY GRANTED; THE ASSAILED DECISION MUST BE REVERSED AND SET ASIDE INSOFAR AS IT FAILED TO RECOGNIZE THE SECRETARY'S POWER TO INVESTIGATE AND RECOMMEND; THE INVESTIGATION AGAINST RESPONDENT IS VALID AND THE RESULTING FINDINGS AND RECOMMENDATION MAY THEN BE FORWARDED TO THE PRESIDENT, WHO HAS THE POWER TO IMPOSE PENALTIES AGAINST HIS APPOINTEES. — [C]onsidering the limited power of a Department Secretary over a subordinate official within his department who is, at the same time, a presidential appointee as herein discussed, I vote to grant the petition but only in part, the reasons for which shall be discussed below. To recount, records show that the Regional Trial Court (RTC), in a Decision dated June 27, 2016: *(a)* nullified the formal charges against respondent; (*b)* enjoined the SIC from hearing and adjudicating the charges against respondent; and (c) ordered petitioners to restore respondent to his post.

In so ruling, the RTC held that petitioner DTI Secretary Cristobal had no disciplinary authority over respondent, considering that, as a presidential appointee, the latter fell under the direct disciplinary authority of the President, who, at that time, had delegated the authority to investigate, hear, and decide administrative cases against all presidential appointees in the Executive Branch with at least a Salary Grade of "26" to the ODESLA-IAD. x x x **In their petition, petitioners did not qualify or distinguish between the Department Secretary's power to investigate and recommend *vis-á-vis* the power to impose a penalty.** In fact, it appears that petitioners argue for full and complete disciplinary authority of a Department Secretary over a subordinate department official albeit appointed by the President based on the alter ego doctrine. As explained in this Opinion, there is a crucial distinction between the power to investigate and recommend *vis-á-vis* the power to impose a penalty. This was not accounted for in the petition; hence, it should only be partly granted. Accordingly, the ultimate conclusion is that the RTC Decision must be reversed and set aside insofar as it failed to recognize the limited power of the Department Secretary to investigate and recommend. In this limited respect, the investigation against respondent is valid and hence, allowed to proceed. The resulting findings and recommendations may then be forwarded to the President, through the Office of the President, who has the power to impose penalties against his appointees.

ZALAMEDA, *J.*, *separate concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; THE PRESIDENT'S POWER OF CONTROL *VIS-À-VIS* THE AUTHORITY TO DISCIPLINE, EXPLAINED AND DISTINGUISHED; THE DISCIPLINING AUTHORITY OF A DEPARTMENT SECRETARY DOES NOT EMANATE FROM THE PRESIDENT'S POWER OF CONTROL; THE PRESIDENT'S POWER OF CONTROL DOES NOT EXTEND TO THE AUTHORITY TO DISCIPLINE, THE LATTER HAVING BEEN DERIVED FROM THE PRESIDENT'S CONSTITUTIONAL POWER TO APPOINT. — Contrary to the reasons put forward in the *ponencia*, a department secretary's disciplining authority over a subordinate who is a presidential appointee **finds its basis in law and is tempered by the limits set by the President's power to appoint.** It is not borne out

of the President's power of control. Authority to discipline is an agglomeration of powers which includes the power to remove from office, the power to impose additional penalties, the power to impose penalties short of removal, the power to impose preventive suspension, and the power to conduct an investigation. **While the President exercises the full extent of this authority, a department secretary's authority to discipline excludes the power to remove from office a subordinate who is a presidential appointee. The power to remove can only be exercised by the person with the power to appoint.** The President has the power to appoint and may, consequently, remove his appointee. The department secretary has no such power to appoint and may thus *only* recommend to the President the removal of a subordinate who is a presidential appointee. On the other hand, the President exercises the power of control expressed through the acceptance or rejection of the department secretary's recommendation to remove a subordinate who is a presidential appointee. The power of control refers to "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." **Under this definition, the President's power of control does not extend to the authority to discipline, the latter having been derived from the President's constitutional power to appoint.** And the 1987 Constitution supports this conclusion, separately articulating the President's power of control and power to appoint. Section 17 of Article VII of the 1987 Constitution provides that "[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." The first sentence refers to the President's power of control, while the second sentence refers to the President's power of supervision.

2. ID.; ID.; ID.; DISTINCTION BETWEEN THE POWER OF CONTROL AND THE POWER OF GENERAL SUPERVISION; THE PRESIDENT'S POWER OF CONTROL REFERS TO THE EXERCISE OF DISCRETION, AND NOT OF DISCIPLINE. — A distinction was also made between the power of control and the power of general supervision, underscoring that the President's power of control refers to the exercise of discretion, and **not of discipline.** x x x [T]his [word "control"] is based on the principle that under a presidential form of government, there is only one executive and it is the President. And the

power of control in jurisprudence is acquired very definitely. **It means the authority of a superior to substitute his judgment for the judgment of an inferior. It has reference only to the exercise of judgment. It has nothing to do with discipline but just the exercise of discretion. The discretion of the superior who has the power of control can always be substituted for that exercise of jurisdiction of the inferior.** This is to be distinguished from the power of general supervision which is nothing more than the power to see to it that the inferior follows the law. The power of general supervision does not allow the superior to substitute his judgment.

3. ID.; ID.; ID.; PRESIDENT'S POWER OF CONTROL AND POWER TO APPOINT, DISTINGUISHED. — The power to appoint x x x is articulated in Section 16, Article VII of the 1987 Constitution[.] x x x The cases of *Ang-Angco v. Castillo (Ang-Angco)* and *Villaluz v. Zaldivar (Villaluz)* distinguished the President's power of control from the President's power to appoint. First, the President's power of control does not include the power to remove. Second, the President's power to remove is inherent in the power to appoint. Both *Ang-Angco* and *Villaluz* state that the removal of an inferior officer cannot be construed to come within the meaning of control over a specific policy of government. After all, the government is in the business of governing a country, and not the removal of its civil servants. In the 1963 case of *Ang-Angco*, We declared that the power of control of the President applies to the acts, and not the person, of his subordinate. This empowers the President to set aside the judgment or action taken by a subordinate in the performance of his duties. Subsequently, the 1965 case of *Villaluz* adopted Our ruling in *Ang-Angco* in declaring that the President has the disciplining authority over presidential appointees in the civil service. Presidential appointees in the executive department are also referred to as civil service employees in the non-competitive or unclassified service of the government.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); A DEPARTMENT SECRETARY'S DISCIPLINING AUTHORITY OVER PRESIDENTIAL APPOINTEES IS BASED ON LAW; IN THE EXERCISE OF DISCIPLINING POWERS AS WELL AS THE POWER OF CONTROL, A DEPARTMENT SECRETARY NEED

NOT DISTINGUISH BETWEEN PRESIDENTIAL AND NON-PRESIDENTIAL APPOINTEES. — The Administrative Code of 1987 enumerates the officials who are presidential appointees, which includes Directors and Assistant Directors of Bureaus, Regional and Assistant Regional Directors, Department Service Chiefs, and their Equivalents. It also vests upon the President the power to appoint the head of a bureau, such as Dir. Enriquez, as in this case. **Under the same Code, a department secretary is given disciplinary powers over officers and employees in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation.** Section 7(5) includes the power to investigate, and the power to designate a committee or officer to investigate, in the disciplining powers of a department secretary. Meanwhile, Section 7(7) explicitly states that the department secretary has the power to "[e]xercise jurisdiction over all bureaus, offices, agencies and corporations, under the Department x x x." **Neither Section 7(5), which refers to disciplining powers, nor Section 7(7), which refers to the power of control, mentions or distinguishes between presidential appointees and non-presidential appointees.** This means that a department secretary need not distinguish between presidential and non-presidential appointees in the exercise of disciplining powers, as well as the power of control. It is only in Section 7(6) of the Administrative Code of 1987, which pertains to the power to appoint, where a distinction between presidential appointees and non-presidential appointees finds support.

5. ID.; ID.; ID.; THE DISCIPLINING AUTHORITY OF A DEPARTMENT SECRETARY *VIS-À-VIS* THE DISCIPLINING AUTHORITY OF THE CIVIL SERVICE COMMISSION (CSC), EXPLAINED. — The scope of the disciplining authority of a department secretary should also be examined along with the disciplining authority of the Civil Service Commission (CSC). Sections 47, 48, and 51 of the Administrative Code of 1987 provide for the disciplining powers of a department secretary if the case falls under the disciplining jurisdiction of the CSC. Specifically, these provisions lay down a department secretary's powers to: investigate (Sec. 47); decide matters involving disciplinary action against officers and employees (Sec. 47); delegate the power to investigate to subordinates (Sec. 47); initiate administrative proceedings against subordinates through a sworn written complaint (Sec. 48); and

to issue preventive suspension pending an investigation of a subordinate if the charges against the subordinate involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service (Sec. 51). Concededly, the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which were applicable during Dir. Enriquez's tenure, specifically enumerated the cases under the jurisdiction of the CSC. The RRACCS limited the CSC's jurisdiction to those specifically enumerated in the Rules and made a distinction between presidential and non-presidential appointees, whereas the Administrative Code of 1987 made no such distinction when it outlined a department secretary's authority to discipline. **Thus, the RRACCS should be harmonized and read in conjunction with the said Code.**

6. ID.; ID.; ID.; A DEPARTMENT SECRETARY'S AUTHORITY TO DISCIPLINE NECESSARILY INCLUDES THE POWER TO INVESTIGATE AND TO CREATE AN INVESTIGATING COMMITTEE, AND THE POWER TO PREVENTIVELY SUSPEND. — Jurisprudence asserts that the disciplining authority of a department secretary includes the investigation of subordinates who are presidential appointees and the creation of a committee to undertake the same. In *Department of Health v. Camposano, et al. (Camposano),* the Court explicitly recognized that the Administrative Code vested department secretaries with the power to investigate matters involving disciplinary actions involving officers, including presidential appointees. x x x [A] demarcation must be made between the power to impose penalties and the power to impose preventive suspension. A department secretary can only recommend the imposition of penalties against presidential appointees to either the Office of the President or the Office of the Ombudsman. This, does not mean, however, that a department secretary is precluded from imposing preventive suspension against a presidential appointee under investigation. To emphasize, preventive suspension is not a penalty but a measure intended to enable the investigating authority to investigate the charges against the subordinate and to prevent the latter from intimidating, or in any way influencing, the witnesses.

LEONEN*, J., separate concurring and dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); THE PRESIDENT'S POWER TO DISCIPLINE A SUBORDINATE CAN BE VALIDLY DELEGATED TO CABINET SECRETARIES AS PART OF THEIR SUPERVISION AND CONTROL OVER THEIR RESPECTIVE DEPARTMENTS; IN EXERCISING DISCIPLINARY AND CONTROL POWERS, A CABINET SECRETARY DOES NOT NEED TO DISTINGUISH BETWEEN PRESIDENTIAL AND NON-PRESIDENTIAL APPOINTEES. —The power to discipline a subordinate is not "of similar gravitas and exceptional import" to declaring martial law and suspending the writ of *habeas corpus*, as exemplified in *Spouses Constantino, Jr.*, both of which understandably require the exclusive exercise of the president's power. Rather, the power to discipline a subordinate can be validly delegated to cabinet secretaries as part of their supervision and control over their respective departments under the Administrative Code. Book IV, Chapter 2, Section 7 of the Administrative Code enumerates a cabinet secretary's powers and functions[.] x x x A cabinet secretary's power to discipline a subordinate can be found in Section 7(5), which adds that this power includes investigation and the creation of a committee for such purpose. Section 7(5) does not distinguish between presidential appointees and non-presidential appointees when it comes to the secretary's power to discipline. Neither does Section 7(7), which refers to the power of control, make any distinction. In fact, the distinction only crops up in Section 7(6), which refers to the power to appoint. Hence, in exercising disciplinary and control powers, a cabinet secretary does not need to distinguish between presidential appointees and non-presidential appointees.

2. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; ALTER EGO DOCTRINE; CABINET SECRETARIES HAVE THE POWER TO DISCIPLINE AND IMPOSE PENALTIES ON PRESIDENTIAL APPOINTEES FOR AFTER ALL THEY ARE THE PRESIDENT'S ALTER EGO; THEIR ACTS ARE PRESUMED TO BE THE PRESIDENT'S UNLESS REVERSED OR DISAPPROVED BY THE PRESIDENT; TO UPHOLD THE THOUGHT THAT ONLY THE PRESIDENT MAY IMPOSE

PENALTIES, AND HIS SUBORDINATES ARE LIMITED TO INVESTIGATING AND RECOMMENDING PENALTIES, WOULD BE TO DENY A RESPONDENT THE REMEDY OF AN APPEAL. –– Contrary to the *ponencia's* statement that cabinet secretaries have no power to discipline and impose penalties on presidential appointees, they retain the power to discipline *both* presidential appointees and non-presidential appointees. They are, after all, the president's alter-egos, whose acts are presumed to be the president's — unless they are reversed or disapproved by the president. As Justice Lazaro-Javier puts it, it is best to leave the disciplining of a subordinate to the cabinet secretary as "he or she knows better how the presidential appointee has been performing or conducting himself or herself in the public service." Ultimately, though, the final say still belongs with the president, as the cabinet secretary's decision "remains subject to the president's disapproval or reversal." Additionally, to subscribe to the *ponencia's* train of thought that only the president may impose penalties, and his or her subordinates are limited to investigating and recommending penalties, would be to deny a respondent the remedy of an appeal. By withholding the power to discipline from cabinet secretaries, the president's disciplinary action will immediately become final without the possibility of an appeal. The power of control contained in Article VII, Section 17 of the Constitution means that the president can "alter or modify or nullify or set aside" a subordinate officer's action and substituted it with his or her own judgment. It gives the president the opportunity to correct the subordinate's actions.

CAGUIOA*, J., concurring and dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); THE DISCIPLINARY AUTHORITY OVER PRESIDENTIAL APPOINTEES BELONGS CONCURRENTLY TO THE OFFICE OF THE PRESIDENT (OP) AND THE OFFICE OF THE OMBUDSMAN (OMB); BUT SUCH DISCIPLINARY JURISDICTION OF THE OP AND THE OMB OVER PRESIDENTIAL APPOINTEES DOES NOT NEGATE THE POWER OF A DEPARTMENT SECRETARY TO CONDUCT A PRELIMINARY INVESTIGATION SHORT OF TAKING DISCIPLINARY ACTION. –– Disciplinary authority over presidential appointees belongs concurrently to the Office of

the President (OP) and the Office of the Ombudsman (OMB). Thus, the conduct of the formal investigation of a presidential appointee contemplated under Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Executive Order No. 292 or the Administrative Code of 1987 (Administrative Code), subsequent to the filing of a complaint or Formal Charge is exclusively within the jurisdiction of the OP and OMB. However, there is no legal impediment to a preliminary investigation by the Secretary of a subordinate short of taking disciplinary action *(e.g.,* placing a presidential appointee under preventive suspension or filing a formal charge, as in this case). This is inherent to the power of supervision and control over a department that a Secretary is given by law. x x x [T]he Secretary has the power to investigate a subordinate for purposes of determining whether a complaint should be filed or referred to the proper disciplining authority, or to prevent the disruption of the operations of his office. Without more, this appears to be the extent of the disposition of the court *a quo*. This qualification is also confirmed by the fact that the preliminary investigation is still nevertheless allowed to produce effect by the *ponencia (i.e.,* referral of findings of the Department of Trade and Industry (DTI) Secretary to the OP or OMB for the conduct of proper proceedings), similar to the case of *Baculi.* A more precise rule, to my mind, is that the disciplinary jurisdiction of the OP and the OMB over presidential appointees does not negate the power of a Secretary of a department to conduct a preliminary investigation short of taking disciplinary action *(e.g.,* placing a presidential appointee under preventive suspension or filing a formal charge).

2. ID.; ID.; ID.; THE SECRETARY'S DISCIPLINARY JURISDICTION DOES NOT APPEAR OPERATIONAL AS REGARDS PRESIDENTIAL APPOINTEES AS THEY ARE UNDER THE DIRECT DISCIPLINARY JURISDICTION OF THE OP AND THE OMB; THUS, THE POWER TO IMPOSE PENALTIES AND PLACING THE EMPLOYEE UNDER PREVENTIVE SUSPENSION DO NOT PERTAIN TO THE DEPARTMENT SECRETARY, BUT TO OP AND OMB. — Section 38(a) of Presidential Decree No. 807 and Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Administrative Code speak only of the procedures in administrative cases against non-presidential employees. Sections 47 and 51 relating to the disciplinary jurisdiction of Secretaries

do not appear operational as regards presidential appointees. By its own rules as contained in the 2017 Revised Rules on Administrative Cases in the Civil Service (2017 RRACS), the Civil Service Commission (CSC) recognizes that it does not have jurisdiction over presidential appointees. Section 9, Rule 2 of the 2017 RRACS echoes the provisions of Section 47(2) of the Administrative Code, also signaling inapplicability to presidential appointees. In this regard, I believe that Sections 6 and 7(5), Chapter 2, Book IV of the Administrative Code are sufficient legal bases for the Secretary's exercise of the power to investigate and designate a committee or officer to conduct such investigation, without further reliance on the non-exclusive language of Section 47(2), Chapter 7, A, Subtitle A, Title I, Book V of the Administrative Code. Insofar as presidential appointees coming under the direct disciplinary jurisdiction of the OP and OMB, the provisions of Sections 46 to 52 of the Administrative Code relating to the "disciplining authority" and "proper disciplining authority" must be read to pertain to the OP and OMB. Thus, for presidential appointees, the power to impose disciplinary penalties in Section 46, resort to summary proceedings under Section 50, and placing the employee under preventive suspension under Section 51 do not pertain to the Department Secretary, but to the OP and OMB.

3. ID.; ID.; ID.; ID.; ID.; THE POWER TO IMPOSE PREVENTIVE SUSPENSION MUST BE INTERPRETED TO PERTAIN TO THE OP OR OMB; EXPRESS CONFORMITY OR PRIOR APPROVAL OF THE OP IS A REASONABLE REQUIREMENT FOR A DEPARTMENT SECRETARY BEFORE IMPOSING PREVENTIVE SUSPENSION OR DISCIPLINARY PENALTIES AGAINST PRESIDENTIAL APPOINTEES. –– While I agree that preventive suspension is not a penalty, the power to impose it must be interpreted to pertain to the OP or OMB as proper disciplining authority— as necessitated by consistency. That said, there is nothing that prevents the Secretary from imposing preventive suspension, conducting the investigation subsequent to the institution of a formal complaint, and imposing disciplinary penalties with the express conformity of or prior approval from the OP. As between a unilateral exercise of full disciplinary jurisdiction over a presidential appointee that flies in the face of the President's direct disciplinary jurisdiction, obtaining the

express conformity or prior approval of the OP prior to the taking of disciplinary action is not an unreasonable requirement for a Secretary who is an *alter ego.*

4. ID.; ID.; ID.; EFFECT OF SUBSEQUENT EXECUTIVE ISSUANCES; EXECUTIVE ORDERS RELATING TO CONSTITUTIONAL OR STATUTORY POWERS MAY BE READ AS A CONTINUING DECISION OF THE PRESIDENT TO DIRECTLY TAKE COGNIZANCE OF COMPLAINTS AND CASES AGAINST PRESIDENTIAL APPOINTEES, THUS, LIMITING THE APPLICABILITY OF QUALIFIED POLITICAL AGENCY; THE GENERAL PROPOSITION THAT AN EO CANNOT REPEAL A LAW DOES NOT HOLD TRUE IN THIS CASE. — The doctrine of qualified political agency must be consistent with the President deciding to directly investigate and take cognizance of complaints and administrative cases against presidential appointees. For suspected graft and corrupt practices as is involved in this case, the OP had issued Executive Orders (EO) creating the Presidential Anti-Graft Commission, transferring its powers, duties and functions to Office of the Deputy Executive Secretary for Legal Affairs, and under the current administration, the Presidential Anti-Corruption Commission for that specific purpose. Viewed in this light, the holding in *Baculi* followed by the court *a quo* has sound basis. Executive issuances and those of other national government agencies affirm the contemporaneous construction that the direct disciplinary jurisdiction over presidential appointees belongs to the OP and OMB. Hence, only the investigation can be done by the Secretary. The procedure envisioned in Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Administrative Code, subsequent to the filing of a Formal Charge is within the jurisdiction of the OP and OMB. These issuances, issued under the ordinance power of the President relating to constitutional or statutory powers *(i.e.*, the sharing of disciplinary jurisdiction with heads of offices) may be read as a continuing decision of the President to directly take cognizance of complaints and cases against presidential appointees, limiting the applicability of qualified political agency with respect to the exercise of disciplinary jurisdiction over presidential appointees. In this class of cases, EOs, while not repealing laws, may validly modify them. Hence, the general proposition that an EO cannot repeal a law does not hold true in this case.

5. ID.; ID.; ID.; ADMINISTRATIVE JURISDICTION OVER A PRESIDENTIAL APPOINTEE MAY ONLY BE HAD BY THE TIMELY FILING OF A FORMAL CHARGE BEFORE THE OP OR THE OMB DURING THE INCUMBENCY OF THE SAID APPOINTEE; PRINCIPLE, APPLIED. — While I agree that the issues raised in this case remain justiciable despite respondent Enriquez's separation, my position is that for presidential appointees, administrative jurisdiction may only be had by the timely filing of a Formal Charge before the OP or the OMB during the incumbency of the said appointee. This is not inconsistent with the jurisprudence dealing with either dismissed or resigned officials. The Formal Charge herein was not brought to the OP or OMB during the respondent's tenure; hence, no complaint was timely instituted before the proper disciplining authority. There is no valid pending or subsisting administrative complaint that could be the avenue to find administrative liability at this stage. This is in stark contrast with the fact pattern in *Baculi:* the Department of Agrarian Reform Secretary forwarded his findings and recommendations to the OP while the petitioner was still in office; the OP, in turn, dismissed the petitioner therein from the service. Hence, I do not believe that there is basis to refer the SIC's findings to the OP for imposition of administrative penalties, if any. x x x [S]eparate from the issue of whether the DTI Secretary has disciplinary jurisdiction over a subordinate presidential appointee, I believe that DTI's failure to bring the Formal Charge before the proper disciplining authority *(i.e.,* OP or OMB) prior to the respondent's separation from office means no disciplinary jurisdiction can be had over him at this stage. It also forecloses the continuation of proceedings with a view of finding administrative liability on the part of respondent Enriquez.

LAZARO-JAVIER*, J., concurring and dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); CLEARLY VESTS DISCIPLINARY JURISDICTION TO THE DEPARTMENT HEADS OVER THEIR SUBORDINATES WITHOUT DISTINCTION AS TO WHETHER THEY ARE PRESIDENTIAL OR NON-PRESIDENTIAL APPOINTEES; THE PRESIDENT MAY ASSUME AND EXERCISE

DISCIPLINARY JURISDICTION OVER AN ADMINISTRATIVE CASE INVOLVING EITHER A PRESIDENTIAL OR NON-PRESIDENTIAL APPOINTEE AT ANY STAGE OF THE ADMINISTRATIVE PROCEEDINGS. —[T]he **appropriate statutory provisions** which define the **disciplinary jurisdiction** of heads of the Executive Departments over their subordinates who are presidential appointees are Sections 6 and 7(5), Chapter 2, Title III, Book IV; Section 47(2), Chapter 7, Title I, Book V; and, Section 51, Chapter 4, Book V, all of EO 292. The **headings** or **head notes** or **epigraphs** of these statutory provisions are themselves **convenient indexes to their contents** - "Authority," "Responsibility," "Powers," "Functions" and "Disciplinary Jurisdiction." *More important,* the language and wordings of the foregoing statutory provisions **clearly indicate** who are **subject to the Secretary's disciplinary jurisdiction** - the **Secretary's subordinates *WITHOUT DISTINCTION*** as to whether the public officer is a presidential appointee or a non-presidential appointee. The **procedure** involved in the administrative case may be different from one to the other, but the **disciplinary jurisdiction of the Secretary over both of them** is very clear from the aforementioned provisions. Sections 6 and 7(5) of Book IV, Section 47(2) of Book V, and Section 51 of Book V, all of EO 292, could not have been made any clearer as to their meaning. It bears emphasis that the *disciplinary jurisdiction of the Secretary over both presidential and non-presidential appointees* is **not exclusive** of the **disciplinary jurisdiction** that the President *may choose at any time to assume and exercise* over both types of appointees. Hence, **at any time,** the President **may assume and exercise disciplinary jurisdiction over an administrative case** involving either a presidential appointee or a non-presidential appointee **at any stage** of the administrative proceedings before the heads of the Executive Departments. The **reason** for this ***reserved authority and power* of the President as Chief Executive** lies in the nature of our constitutional presidential system whereby all executive and administrative organizations are adjuncts of the Executive Department, and the heads of the various executive departments are mere assistants and agents of the President as Chief Executive. Except in cases where the Chief Executive is required by the *Constitution* or the law to act in person, or the exigencies of the situation demand that he or she act personally,

the nature of the presidential bureaucracy involves the multifarious executive and administrative functions of the President as Chief Executive being performed by and through the executive departments, as his or her mere assistants and agents.

2. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; DOCTRINE OF QUALIFIED POLITICAL AGENCY, EXPLAINED AND APPLIED; A DEPARTMENT SECRETARY DOES NOT NEED AN EXPRESS AND CATEGORICAL MANDATE FROM THE PRESIDENT TO EXERCISE DISCIPLINARY JURISDICTION OVER A SUBORDINATE PRESIDENTIAL APPOINTEE BECAUSE IMPLIEDLY, THE SECRETARY ALREADY HAS SUCH MANDATE AS THE PRESIDENT'S ALTER EGO. — Under this doctrine, **department secretaries are alter egos or assistants of the President and their acts are presumed to be those of the latter unless disapproved or reprobated by him.** x x x **[A]pplying the doctrine of qualified political agency,** when a *Secretary*, such as the Secretary of the Department of Trade and Industry in the case at bar, *exercises disciplinary jurisdiction over a subordinate presidential appointee,* **the Secretary is doing so as the President's alter ego.** In resorting to the doctrine, *assuming there is no statutory authority granting the Secretary such power, which I strongly dispute,* the Secretary **does not need** an express and categorical mandate from the President to exercise disciplinary jurisdiction over the Secretary's subordinate presidential appointees, because **impliedly, the Secretary already has such mandate** as the President's alter ego. The Secretary's action *vis-a-vis* the subordinate presidential appointee is **deemed** to be the President's action - this **deeming rule** is the substance of the doctrine of qualified political agency – unless reprobated by the President himself. It **goes without saying** that the doctrine of qualified political agency if resorted to by a head of an executive department **does not vest *exclusive*** disciplinary jurisdiction upon the latter *to the exclusion* of the President as Chief Executive. This is because, *consistent with the nature of a presidential system as stated above, and also with the nature of an agency relationship,* the department heads are **the President's mere factotums** whom the President as Chief Executive can at any time *hire, fire, replace, or take over from* at any stage of the department heads' execution of their functions. As a statement of our country's rule of law,

the doctrine of qualified political agency is well entrenched. In practical terms, the doctrine is responsive to the multifarious concerns that the President has to attend to and the fact that there are just so many presidential appointees out there. **At the first instance,** it is *best to leave the disciplining to the President's alter ego* as **he or she knows better how the presidential appointee has been performing or conducting himself or herself** in the public service.

3. ID.; ID.; ID.; ID.; TYPE OF PRESIDENTIAL POWERS THAT MAY BE DELEGATED, ENUMERATED; EXCEPTIONAL CIRCUMSTANCES THAT DEMAND THE EXCLUSIVE EXERCISE BY THE PRESIDENT OF THE CONSTITUTIONALLY VESTED POWER AND THUS, MAY NOT BE DELEGATED TO AN ALTER EGO OF THE PRESIDENT, CITED. –– *Spouses Constantino v. Cuisia,* discussed the type of presidential powers that may be delegated - (i) those that may be considered to be within the expertise of the Cabinet member concerned, (ii) those that require focus on a welter of time-consuming detailed activities, which would unduly hamper the President's effectivity in running the government, those involving the formulation and execution of schemes pursuant to the policy publicly expressed by the President himself or herself, or (iii) though of vital public interest, those only akin to any contractual obligation undertaken by the sovereign arising not from any extraordinary incident but from the established functions of governance. On the other hand, the exception includes "certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import." x x x An example of a presidential power that falls outside the ambit of the doctrine of qualified political agency is found in *Resident Marine Mammals of the Protected Seascape of Tañon*

Strait v. Reyes, - the execution of a service contract for the exploration of petroleum under paragraph 4, Section 2, Article XII of the *Constitution*, which requires that the President himself or herself to enter into such contract.

4. ID.; ID.; ID.; ID.; ID.; THE REMOVAL OF A PRESIDENTIAL APPOINTEE OF THE RANK AND RESPONSIBILITIES OF RESPONDENT FALLS WITHIN THE TYPE OF PRESIDENTIAL POWERS THAT MAY BE DELEGATED; WHILE THE REMOVAL WAS DECIDED AND IMPLEMENTED BY THE CABINET MEMBER IN THE ORDINARY COURSE OF LAW DOES NOT MEAN THAT THE PRESIDENT IS BY-PASSED AND HIS OR HER POWER TO DISCIPLINE HIS OR HER APPOINTEES IS DILUTED INASMUCH AS SAID CABINET MEMBER IS BOUND TO SECURE THE PRESIDENT'S PRIOR CONSENT TO OR SUBSEQUENT RATIFICATION OF HIS OR HER ACTS. — [T]he power to remove a presidential appointee of respondent's rank and responsibilities is *not* of the type that engages the exception to the doctrine. It is *not* one that the Court has previously declared must be exercised personally by the President. It is *not* one that arises out of exceptional circumstances, or if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. On the contrary, it is *one of those* falling within any of the enumerated exceptions to the exception. The removal of a presidential appointee of the rank and responsibilities of respondent is within the expertise of the Cabinet member concerned; it requires focus on a welter of time-consuming detailed activities, which would unduly hamper the President's effectivity in running the government; it involves the execution of the President's publicly stated policy against misfits in government; and, it is an ordinary incident that is part and parcel of the established functions of governance. *As* a result, it *cannot be seriously argued* that the power involved falls within the exception to the application of the doctrine of qualified political agency. I *also have to caution* that just because the removal is decided and implemented by the Cabinet member in the ordinary course of law does not mean that the President is by-passed and his or her power to discipline his or her appointees is diluted. This is far from it. As mentioned, the

designated alter ego of the President is bound to secure the latter's prior consent to or subsequent ratification of his or her acts. For the President's repudiation of the very acts performed by the alter ego in this regard will definitely have a binding effect. If it is demonstrated that the President actually withheld approval or repudiated the alter ego's action, which in this day and age is easy to accomplish, there could be a cause of action to nullify the latter's acts. It is only when there is utter lack of showing that the President countermanded the acts of his or her Cabinet member can we conclude that these acts carried presidential approval.

5. ID.; ID.; ID.; ID.; THE APPLICATION OF THE DOCTRINE OF QUALIFIED POLITICAL AGENCY IN THE INSTANT CASE IS ESPECIALLY CONVINCING; RATIONALE. – – Recognizing the application of the doctrine of qualified political agency in the instant case is especially convincing during emergency times. It gives department secretaries the latitude in helping the President in his tasks without unnecessarily burdening him. This is because the department secretaries know the capacities and actual performance of their subordinates, be they presidential or non-presidential appointees, as it is often the case that these subordinates, even those appointed by the President, are so appointed only upon the respective recommendations of the department secretaries. More, these Presidential appointees are mostly career people who are recommended and appointed on the basis of fitness and merit: not because they enjoy the trust and confidence of the President. They enjoy security of tenure and may be removed only upon valid or just cause. They do not serve at the pleasure of the President. Hence, unless disapproved by the President, it behooves us in the Court to recognize the dynamics within each department which the secretary concerned has foremost knowledge of. In any event, these presidential appointees are not removed whimsically and immediately but must be based on cause as they were appointed on the basis of merit and fitness. This is the necessary check that what the department secretaries are doing as personnel movements within their respective turfs are easily monitored and principled.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Fernando Lagman & Avenida Law Office for respondent.

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, which seeks to annul the Decision[2] dated June 27, 2016 of the Regional Trial Court (RTC) of Quezon City, Branch 77, in Civil Case No. R-QZN-16-05101.

The Facts

Prompted by a news article[3] about corrupt practices in the issuance of importation clearances by an unnamed high-ranking officer of the Department of Trade and Industry (DTI), then DTI Secretary Adrian Cristobal, Jr. (Sec. Cristobal) instructed Consumer Protection Group Undersecretary Victorino Mario Dimagiba (Usec. Dimagiba) to conduct an investigation thereon.[4]

After acting upon said directive, Usec. Dimagiba issued a Memorandum[5] dated April 14, 2016, reporting his initial findings to Sec. Cristobal, finding unauthorized issuances of respondent Danilo B. Enriquez (Enriquez), then Fair Trade and Enforcement Bureau (FTEB) Director, with regard to certain importations. Pursuant to these findings, Usec. Dimagiba opined that there is sufficient basis to file administrative and/or criminal complaints

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[1] *Rollo*, pp. 59-110.

[2] Penned by Acting Presiding Judge Cleto R. Villacorta III; *id.* at 175-201.

[3] *Philippine Star*, April 3, 2016, "Curse of the Haciendero Presidents" by Cito Beltran under his column "Ctalk"; *id.* at 202-203.

[4] *Id.* at 559-560.

[5] *Id.* at 206-209.

against Enriquez, recommending, thus, that a full-blown investigation on all activities in Enriquez's office be conducted and that the latter be preventively suspended pending investigation.[6]

Thus, Sec. Cristobal issued Department Order (D.O.) No. 16-34[7] dated April 22, 2016, creating a Special Investigation Committee (SIC), mandated to conduct a full investigation on Enriquez. The D.O. also clothed the SIC the authority to issue a preventive suspension order, among others.

Learning about the SIC, Enriquez issued a Memorandum[8] dated May 2, 2016 addressed to Usec. Dimagiba, formally requesting clarification on the "unverified" findings of the preliminary investigation conducted against him and also formally demanding for the immediate release of said findings and/or report, invoking due process, fair play, and the higher interest of justice.

On even date, Enriquez issued another Memorandum,[9] addressed to Sec. Cristobal and the individual members of the SIC, questioning the regularity of the investigation conducted by Usec. Dimagiba, not only on the ground of want of authority, but also because the lack of opportunity to present countervailing evidence or counter-affidavit during said investigation.

On May 5, 2016, Enriquez issued another Memorandum,[10] also addressed to the SIC individual members, objecting to the proceedings conducted by the latter on the ground that it is the Office of the Ombudsman which has the disciplinary authority over him.

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[6] *Id.* at 561-563.

[7] *Id.* at 210-211.

[8] *Id.* at 212-213.

[9] *Id.* at 214-216.

[10] *Id.* at 217-218.

On May 6[11] and 12,[12] 2016, Enriquez issued separate memoranda, reiterating his objections to the validity of D.O. No. 16-34 with regard to the authority of the SIC to conduct investigation upon him and order preventive suspension against him.

On May 12, 2016, the SIC issued a "Show Cause Memorandum,"[13] directing Enriquez to explain in writing, within 48 hours from receipt, why no administrative charges should be filed against him with regard to Usec. Dimagiba's findings.

In response, Enriquez issued a Memorandum[14] dated May 18, 2016, maintaining his objections to the SIC's disciplinary authority over him, being a presidential appointee, holding a career and high-level position with Salary Grade "28."

On May 19, 2016, the SIC issued a Memorandum[15] stating that Enriquez did not give a responsive answer to the "Show Cause Memorandum" and as such, failed to present an explanation why no administrative case should be filed against him. Thus, the SIC found *prima facie* case against Enriquez and formally charged him with Gross Insubordination, Gross Misconduct/Gross Neglect of Duty, Grave Abuse of Authority, and Conduct Prejudicial to the Best Interest of the Service, stating therein the specific acts constituting the offenses, as well as the laws, rules and regulations alleged to be violated. Attached with said formal charge were pieces of documentary evidence substantiating the charges. Enriquez was also ordered to file an answer to the formal charge within 72 hours. The SIC further placed Enriquez on preventive suspension for a period of 90 days effective immediately upon receipt of said Memorandum.

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

[12] *Id.* at 221-223.

[13] *Id.* at 224.

[14] *Id.* at 226-233.

[15] *Id.* at 234-237.

On May 23, 2016, Enriquez filed a Protest and Answer *Ex Abudante Cautelam*,[16] specifically denying the charges against him and maintaining his objection to the SIC's authority to conduct investigations and order his preventive suspension.

Enriquez also filed a Petition for *Certiorari*, Prohibition, and *Mandamus* with Very Extreme Urgent Prayer for the Issuance of a *Status Quo Ante* Order and Temporary Restraining Order (TRO) and a Writ of Preliminary Injunction[17] before the RTC against Sec. Cristobal, Usec. Dimagiba, and the members of the SIC (collectively, petitioners).

In the main, Enriquez's petition was grounded upon the lack of disciplinary jurisdiction of Sec. Cristobal, and consequently the SIC as well, over him, being a presidential appointee occupying a high-ranking position with Salary Grade "28." Enriquez averred that it is the Presidential Anti-Graft Commission (PAGC) which has the authority and jurisdiction to investigate, hear, and decide administrative cases against a presidential appointee occupying a director position with Salary Grade "28." Enriquez invoked Executive Order (E.O.) No. 12, as amended by E.O. No. 531 and E.O. Nos. 531-A and 531-B.

Enriquez also argued that the investigation conducted by Usec. Dimagiba, as well as the resulting creation of the SIC and its order of preventive suspension, are acts of oppression and clear abuse of authority, which violated his right to due process.

Hence, Enriquez prayed that D.O. No. 16-34 and all the Memoranda issued by Usec. Dimagiba and the SIC relative to the investigation/s against him, be nullified; that petitioners be ordered to restrain from further continuing with the administrative disciplinary proceedings against him; and that a memorandum be issued stating that petitioners do not have jurisdiction over administrative cases involving presidential appointees and the

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[16] *Id.* at 287-291.

[17] *Id.* at 253-285.

proper remedy or referral of the case to the appropriate authority.[18]

Petitioners, through the Office of the Solicitor General (OSG), countered that the RTC has no jurisdiction over the petition. Petitioners argued that the petition involves the DTI Secretary's exercise of its *quasi-judicial* function in an administrative disciplinary proceeding. Hence, according to the petitioners, a review thereof is within the jurisdiction of the Court of Appeals (CA) pursuant to Section 4, Rule 65 of the Rules of Court. Petitioners further argued that they have disciplinary jurisdiction over Enriquez, which include the authority to investigate and designate a committee to conduct such investigation, invoking Section 7(5), as well as Section 47(2) and (3), Chapter 2, Book IV and Section 51, Chapter 6, Book V of E.O. No. 292 or the Administrative Code of 1987. Petitioners further averred that due process was observed in the exercise of their disciplinary authority over Enriquez.[19]

In its June 27, 2016 Decision, the RTC ruled in favor of Enriquez as follows:

WHEREFORE:

1. The instant petition is granted in part.

2. The *Formal Charge with Preventive Suspension dated May 19, 2016* is nullified and set aside.

3. The Special Investigation Committee is prohibited from hearing and adjudicating the *Formal Charge with Preventive Suspension dated May 19, 2016*.

4. The [petitioners] are commanded to restore [Enriquez] to his post as Director of the Fair Trade Enforcement Bureau of the Department of Trade and Industry, *unless his term of office has already expired and he can no longer resume such post under the present Administration*.

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[18] *Id.* at 284-285.

[19] *Id.* at 454-493.

SO ORDERED.[20] (Italics in the original)

Meanwhile, the DTI, through its then newly-appointed Secretary, Ramon M. Lopez, issued D.O. No. 16-63 dated July 4, 2016, which designated Assistant Director Ferdinand L. Manfoste as Officer-In-Charge of the FTEB in concurrent capacity, effectively implying the expiration of Enriquez's term of office.

This Petition was then filed. Petitioners argue, in the main, that the DTI Secretary has disciplinary jurisdiction, which includes the authority to investigate and to designate a committee for such purpose, over subordinates though they may be presidential appointees such as Enriquez. Petitioners also question the RTC's jurisdiction to review the questioned act/s of the DTI Secretary and the SIC through a petition for *certiorari*, prohibition, and *mandamus*. Further, petitioners maintain that, contrary to Enriquez's claim, due process of law was observed in the process of investigation.

In his Comment/Opposition with Leave (Re: Petition for Review on *Certiorari*),[21] Enriquez argues that the expiration of the term of his office has rendered the instant petition moot and academic.

In their Reply,[22] petitioners, through the OSG, argue that Enriquez's separation from service does not render the instant petition moot and academic considering that administrative proceedings or investigations commenced against a public officer is not mooted upon the latter's subsequent separation from service as accessory penalties may still be imposed against erring public officials. Put differently, petitioners posit that Enriquez's separation from service only rendered moot the imposition of the penalty of dismissal, not the administrative proceedings or investigations against him. Hence, according to

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[20] *Id.* at 201.

[21] *Id.* at 509-511.

[22] *Id.* at 524-533.

petitioners, the review of the instant Petition, which is rooted from the petition filed by Enriquez before the RTC, cannot be mooted by the latter's separation from service.

In their Memorandum,[23] thus, petitioners raise the additional issue of whether or not the petition was rendered moot and academic due to Enriquez's separation from office. On the other hand, in his Memorandum, Enriquez argues that his right to due process of law was violated when he was investigated upon by a committee which has no authority to investigate, hear, and decide administrative cases over him, who is a presidential appointee with Salary Grade "28." Enriquez insists that it is the PAGC, not the DTI Secretary or the committee he designated, which has disciplinary authority over him pursuant to E.O. No. 12, as amended.

The Issues

I. Does the Department Secretary have disciplinary jurisdiction over a presidential appointee?

II. Did the RTC err in giving due course to the petition for *certiorari*, prohibition, and *mandamus*?

III. Is the petition rendered moot and academic by the expiration of Enriquez's term of service?

The Court's Ruling

I.

The DTI Secretary has authority to investigate, as well as to designate a committee or an officer for such purpose, a bureau director who is a presidential appointee such as Enriquez.

In ruling against the authority of the DTI Secretary to proceed in the administrative investigation of Enriquez, the RTC reasoned as follows:

From these legal facts, one can **necessarily infer** two things:

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[23] *Id.* at 558-618.

(i) The heads of departments, agencies and other instrumentalities **have no jurisdiction as well** over disciplinary cases against **presidential** appointees. This is **because** in effect their decisions **cannot be appealed** to the **proper** appellate body, which is the Civil Service Commission, and therefore, this scheme of disciplinary procedure **leaves a void** in the appeal process, which as a matter of statutory interpretation is **undesirable**; and

(ii) As a result, the heads of departments, agencies and other instrumentalities **must pursue a track other than** Sec. 7(5), Chap. 2, Bk. IV, *Administrative Code of 1987* and Sec. 47(2) [and] (3), Chap. 6, Tit. I, Bk. V, *Administrative Code of 1987* in *pursuing administrative complaints* against **presidential** appointees. The **appropriate track** is **provided for** by *Executive Order No. 13* and its *allied EOs*.

Further, Sec. 47(2) (3), Chap. 6, Tit. I, Bk. V, *Administrative Code of 1987* **must be correlated to** and therefore **restricted by** Sec. 48 which refers to "Procedures in Administrative Cases Against **Non-Presidential** Appointees."

Very clearly, the **provisions cited by** [petitioners] against the administrative discipline of [Enriquez] appear to be **out-of-synch with** his service classification as a **presidential** appointee.

Indeed, **pursuant to his power of control**, the President may **supplant** and **directly assume** and **exercise** the **investigatory functions** of **departments** and agencies within the executive department.

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The President's power of control under the *Constitution* and the *Administrative Code* is confined only to the executive department.

[Petitioners] **also justified** their assumption of jurisdiction over [Enriquez] by asserting that they or at least the Honorable Secretary are the **alter egos** of the President. The **existence** of *this doctrine* of course is **undeniable**.

But since the **President has already spoken** through **Executive Order No. 13** as quoted above, **[petitioners] should have followed** the prescriptions thereof **instead of** doing things **apart from** and **independent of** EO 13.

The **reasonable interpretation** of the President's institution of EO 13 as against presidential appointees is that *pursuant to* the President's *power of control* **he has taken over** through the procedures set forth

in the Executive Order **all disciplinary matters involving his appointees**. This is apparent from three perspectives:

(i) the vesting of jurisdiction in the EO 13 body and its predecessors over administrative cases against presidential appointees;

(ii) the **express** recognition of only the Office of the Ombudsman's jurisdiction as being concurrent with the EO 13 body, thus excluding concurrency with the Secretary or any other head of office or agency; and

(iii) the Secretary's lack of jurisdiction over presidential appointees.

Further, [petitioners] **cannot put forward** the alter ego doctrine because the powers they are *erroneously* **invoking** are powers **expressly** provided by the *Administrative Code of 1987* to the Secretary ***sua sponte*** or as Secretary ***qua*** **Secretary**. The cited provisions of the *Administrative Code* **do not refer to** the powers of control and removal of the President because **these powers** of the President **do not** derive from statute **but from** the **Constitution** and the **President's inherent powers**.

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The **Executive Orders have the force and effect of law** as both an exercise of the President's power under the *Constitution* and the *Administrative Code of 1987*. As a result, these EOs **cannot be taken lightly** and x x x ***ignored***. **He is the President** and **the Principal of [petitioners]**. [Petitioners] as the President's alter egos **ought not** to *downgrade* and *degrade* his powers as such.[24] (Emphases and italics in the original)

In brief, the court *a quo* ratiocinated that the heads of the departments, agencies and other instrumentalities have no disciplinary jurisdiction over presidential appointees since their decision thereon cannot be appealed to the Civil Service Commission (CSC), thereby leaving a void in the appeal process. Moreover, according to the RTC, the President, pursuant to its power of control over the executive branch, has directly assumed the investigatory functions of the department heads over

[24] *Rollo*, pp. 448-450.

presidential appointees, through E.O. No. 13 "and its allied E.O.s." The RTC then theorized that such assumption of function, done pursuant to a Constitutional mandate, cannot be ignored by the President's mere alter egos by invocation of the Administrative Code provisions.

The Court cannot subscribe to this interpretation.

Disciplinary Authority of the Department Secretary under the Administrative Code

The administrative structure of our government is laid down in the Administrative Code of 1987. Indeed, pursuant to Section 1, Article VII of the 1987 Constitution, Section 11, Chapter 3, Book II of the Administrative Code provides that the executive power shall be vested in the President of the Philippines. Needless to say, not every task in the executive department can be undertaken by the President and its office. Hence, the Administrative Code provides for the organization and maintenance of several departments as are necessary for the functional distribution of the work of the President.[25] Each department shall have jurisdiction over bureaus, offices, regulatory agencies, and government-owned or -controlled corporations assigned to it by law.[26] The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.[27]

Section 7, Chapter 2, Title III, Book IV of the Administrative Code further provides for the powers and functions of the Department Secretary, *viz.*:

SEC. 7. *Powers and Functions of the Secretary*. — The Secretary shall:

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[25] Executive Order No. 292 (1987), Book IV, Chapter 1, Sec. 1.

[26] *Id.* at Sec. 4.

[27] *Id.* at Chapter 2, Sec. 6.

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, However, that where the Department is regionalized on a department-wide basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

(7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;

(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and

(9) Perform such other functions as may be provided by law. (Emphases supplied)

Corollary, Section 47(2) and (3), Chapter 6, Title I-A, Book V of the Administrative Code provides:

SEC. 47. *Disciplinary Jurisdiction.* —

x x x x x x x x x

(2) **The Secretaries** and heads of agencies and instrumentalities, provinces, cities and municipalities **shall have jurisdiction to investigate** and decide **matters involving disciplinary action against officers and employees under their jurisdiction**. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

(3) **An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of** bureau or office or **department** within the period specified in Paragraph (4) of the following Section. (Emphases supplied)

The foregoing provisions of the Administrative Code unambiguously provide for the Department Secretary's disciplinary jurisdiction over officers and employees under him in accordance with law. Clearly, thus, a bureau director, which heads a mere subdivision of a department, is under the Department Secretary's disciplinary supervision. It is important to emphasize that the aforequoted provisions made no distinction between presidential and non-presidential appointees with regard to the Secretary's disciplinary jurisdiction.

Power to Impose Penalty vis-à-vis Power to Investigate

The distinction between presidential and non-presidential appointees becomes relevant only with respect to the Department Secretary's "power to impose penalties" and "power to investigate."

The Revised Rules on Administrative Cases in the Civil Service (RRACCS),[28] as well as the 2017 Rules on Administrative Cases

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[28] The Civil Service rules applicable during Enriquez's tenure. Promulgated on November 8, 2011.

in the Civil Service (RACCS)[29] which superseded the RRACCS, provide the distinction for the disciplinary jurisdiction of the department heads and secretaries. Said rules provide for the disciplinary powers that the CSC and the department heads and secretaries have over non-presidential appointees.

Section 9 of the RRACCS, the applicable rules during Enriquez's service, provides that the department secretaries have original concurrent jurisdiction with the CSC over cases cognizable by the latter, *viz.*:

> SEC. 9. Jurisdiction of Heads of Agencies. — The Secretaries and heads of agencies, and other instrumentalities, provinces, cities and municipalities shall have original concurrent jurisdiction with the Commission over their respective officers and employees. They shall take cognizance of complaints involving their respective personnel. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

Notably, the RRACCS limited the CSC's jurisdiction to those enumerated in the rules. Sections 7 and 8 of the RRACCS provide:

> SEC. 7. *Cases Cognizable by the Civil Service Commission*. — **The Civil Service Commission shall take cognizance of the following cases:**
>
> **A. Disciplinary**
>
> 1. Decisions of Civil Service Commission Regional Offices brought before it on appeal or petition for review;
>
> 2. Decisions of heads of agencies imposing penalties exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary brought before it on appeal;

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[29] Promulgated on July 3, 2017.

3. Complaints brought against Civil Service Commission personnel;

4. Complaints against officials who are not presidential appointees;

5. Decisions of heads of agencies imposing penalties not exceeding 30 days suspension or fine equivalent thereto but violating due process;

6. Requests for transfer of venue of hearing on cases being heard by Civil Service Commission Regional Offices;

7. Appeals from the order of preventive suspension; and

8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumeration.

B. Non-Disciplinary

1. Decisions of heads of agencies on personnel actions;

2. Decisions of Civil Service Commission Regional Offices;

3. Requests for favorable recommendation on petition for the removal of administrative penalties or disabilities;

4. Protests against appointments, or other personnel actions, involving non-presidential appointees;

5. Requests for Extension of Service;

6. Reassignment of public health workers and public social workers brought before it on appeal;

7. Request for correction of personal information in the records of the Commission within five (5) years before mandatory retirement; and

8. Such other analogous actions or petitions arising out of or in relation with the foregoing enumeration.

SEC. 8. *Cases Cognizable by Regional Offices*. — Except as otherwise directed by the Commission, the Civil Service Commission Regional Offices shall take cognizance of the following cases:

A. Disciplinary

1. Cases initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or omissions were committed within the jurisdiction of the Regional Office, including

Civil Service examination anomalies or irregularities and/or the persons complained of are rank-and-file employees of agencies, local or national, within said geographical areas;

2. Complaints involving Civil Service Regional Office personnel who are appointees of said office; and

3. Petitions to place respondent under preventive suspension.

B. Non-Disciplinary

1. Disapproval/Recall of Approval/Invalidation of appointments brought before it on appeal;

2. Decisions of heads of agencies, except those of the department secretaries and bureau heads within their geographical boundaries relative to protests and other personnel actions and other non-disciplinary actions brought before it on appeal;

3. Requests for accreditation of services; and

4. Requests for correction of personal information in the records of the Commission not falling under Section 7(B) Item 7 of this Rules. (Emphases supplied)

Relatedly, Section 48 of the Administrative Code provides for the manner of initiation of cases within the disciplinary jurisdiction of the CSC:

SEC. 48. *Procedure in Administrative Cases* ***Against Non-Presidential Appointees***. — x x x

(1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person. (Emphasis supplied)

It is also noteworthy that RRACCS, as well as the RACCS, define a "disciplining authority" to be the person or body "**duly authorized to impose the penalty**" provided for by law or rules.[30] Hence, read in conjunction with the relevant provisions of the Administrative Code above-quoted, the disciplinary

[30] RRACCS, Sec. 4(h) and RACCS, Section 4(j).

authority, *i.e.*, the power to impose penalty, of the CSC and department secretaries are limited to non-presidential appointees.

For presidential appointees, the power to impose penalty resides with the President pursuant to his power of control under the Constitution[31] and the Administrative Code.[32] Likewise, the Ombudsman, under the Constitution[33] and Republic Act (R.A.) No. 6770,[34] was given such power to impose penalties. Certainly, concomitant to such disciplinary authority is the power to investigate and to designate a committee or officer to conduct such investigation pursuant to Section 7(5), Chapter 2, Title III, Book IV of the Administrative Code above-cited, as well as the relevant provisions of R.A. No. 6770. In fine, the power to impose penalty necessarily includes the power to investigate. Contrarily, the power to investigate does not necessarily include the power to impose penalty.

While the power to impose penalty remains with the President or the Ombudsman, the power to investigate, as well as to designate a committee or officer to investigate, and thereafter to report its findings and make recommendations, may be delegated to and exercised by subordinates or a special commission or committee specifically created for such purpose. Stated more specifically, while it is the President as the Chief Executive, or the Ombudsman as mandated by law, who has the authority to impose penalty upon erring presidential appointees, it does not preclude said disciplining authorities from utilizing, as a matter of practical administrative procedure, the aid of subordinates to investigate and report to them the facts, on the basis of which the President or the Ombudsman, as the case may be, make their decision. It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law.[35]

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[31] CONSTITUTION, Art.VII, Sec. 17.

[32] Executive Order No. 292 (1987), Book III, Title I, Chapter 1, Sec. 1.

[33] CONSTITUTION, Art. XI, Sec. 13.

[34] Republic Act No. 6770 (1989), Sec. 25.

[35] See *American Tobacco Company v. Director of Patents*, 160-A Phil. 439, 446 (1975).

Such delegation of the power to investigate presidential appointees is precisely what was accomplished when E.O. No. 292 or the Administrative Code was signed into law by then revolutionary government President Corazon C. Aquino using her transitory powers, as well as when E.O. Nos. 151, 268, 12, as amended, 13, and 43 were issued by the respective subsequent Chief Executives.

As above-stated, the Administrative Code expressly provides for the Department Secretary's power to investigate and to designate a committee or officer for such purpose. In the same vein, in 1994, President Fidel V. Ramos issued E.O. No. 151,[36] creating the Presidential Commission Against Graft and Corruption (PCAGC), which was specifically tasked to investigate presidential appointees charged with graft and corruption. PCAGC was then abolished and repealed under President Joseph Ejercito Estrada's administration in 2000, through E.O. No. 268,[37] which created the National Anti-Corruption Commission (NACC) and given the powers of an investigating body over charges of graft and corrupt practices against presidential and non-presidential appointees alike. The NACC, however, was never activated. Hence, E.O. No. 12,[38] as amended, under President Gloria Macapagal-Arroyo, abolished both PCAGC and NACC, and created the Presidential Anti-Graft Commission (PAGC), which likewise has the authority to investigate or hear administrative cases or complaints against all presidential appointees. In 2010, under President Benigno Simeon C. Aquino III's administration, the PAGC was abolished and its investigative, adjudicatory,

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[36] CREATING A PRESIDENTIAL COMMISSION TO INVESTIGATE ADMINISTRATIVE COMPLAINTS INVOLVING GRAFT AND CORRUPTION. Signed on January 11, 1994.

[37] CREATING THE NATIONAL ANTI-CORRUPTION COMMISSION AND ABOLISHING THE PRESIDENTIAL COMMISSION AGAINST GRAFT AND CORRUPTION CREATED UNDER EXECUTIVE ORDER 151, s. 1994, AS AMENDED. Signed on July 18, 2000.

[38] CREATING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES, AND FUNCTIONS AND FOR OTHER PURPOSES. Signed on April 16, 2001.

and recommendatory functions were transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) through E.O. No. 13.[39]

At present, President Rodrigo R. Duterte issued E.O. No. 43[40] in 2017, creating the Presidential Anti-Corruption Commission (PACC) "to directly assist the President in investigating and/or hearing administrative cases primarily involving graft and corruption against all presidential appointees classified as Salary Grade '26' and higher."[41] The powers, duties, and functions of the ODESLA were effectively transferred to PACC. PACC also has the authority to recommend to the President the issuance of an order of preventive suspension under the circumstances provided in E.O. No. 43.[42] Notably, its investigative and adjudicatory authority over said class of employees is concurrent with the Ombudsman.[43]

In sum, it bears stressing that the disciplinary jurisdiction of the department secretary over presidential appointees is limited. As above-stated, the power to investigate does not include the power to impose penalty. It has long been settled that the power to decide on such disciplinary matters and impose penalty upon said category of officers remains with the appointing authority.

As held in *Baculi v. Office of the President*,[44] while the Administrative Code has vested the Department Secretary with

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[39] ABOLISHING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND TRANSFERRING ITS INVESTIGATIVE, ADJUDICATORY AND RECOMMENDATORY FUNCTIONS TO THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT. Signed on November 15, 2010.

[40] CREATING THE PRESIDENTIAL ANTI-CORRUPTION COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES AND FUNCTIONS, AND FOR OTHER PURPOSES. Signed on October 4, 2017.

[41] Executive Order No. 43 (2017), Sec. 5.

[42] *Id.* at Sec. 6.

[43] *Id.*

[44] 807 Phil. 52 (2017).

the authority to investigate matters involving a presidential appointee, Section 38 of Presidential Decree (P.D.) No. 807[45] or the Civil Service Decree of the Philippines, which was exactly echoed in Section 48, Chapter 7, Title I-A, Book V of the Administrative Code, has drawn a definite distinction between subordinate officers or employees who are presidential appointees and those who are non-presidential appointees with regard to the authority to decide on the disciplinary matter. Said provisions speak of the procedure in administrative cases *against non-presidential appointees* before the CSC as the latter has no disciplinary authority over presidential appointees. The Court explained that this is so because substantial distinctions set presidential appointees apart from non-presidential appointees. One of such distinctions is that presidential appointees come under the direct disciplining authority of the President pursuant to the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority in whom the power to appoint is vested.[46]

The principle finds basis in the Constitutional grant of power upon the President to appoint such officials as provided in the Constitution and laws.[47] Full discretion is, therefore, given to the President to remove his appointees. Unless otherwise provided by the Constitution, such concomitant power of the appointing authority to remove cannot be attenuated by allowing even his alter ego to discipline and worse, to remove the former's appointee, lest the executive department would be put into a precarious situation where the very person particularly chosen by the President will be removed by his own subordinate without his prior express conformity. Thus, even the doctrine of qualified political agency cannot be used to grant the department heads

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[45] PROVIDING FOR THE ORGANIZATION OF THE CIVIL SERVICE COMMISSION IN ACCORDANCE WITH PROVISIONS OF THE CONSTITUTION, PRESCRIBING ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES. Enacted on October 6, 1975.

[46] *Baculi v. Office of the President, supra* note 44, at 64.

[47] CONSTITUTION, Art.VII, Sec. 16; Executive Order No. 292 (1987), Book III, Title I, Chapter 5, Sec. 16.

the power to impose penalty upon erring subordinates who are presidential appointees without prior approval of the President.

This doctrine of qualified political agency or the alter ego doctrine was introduced in our jurisdictions in the landmark case of *Villena v. The Secretary of Interior*.[48] The Court explained that said doctrine essentially postulates that the heads of the various executive departments are the alter egos of the President and, as such, the actions taken by them in the performance of their official duties are deemed the acts of the President unless the latter disapproves such acts.[49] In said case, the Secretary of Interior investigated then Makati City Mayor Jose D. Villena (Mayor Villena) and found him guilty of bribery, extortion, and abuse of authority. Upon such finding, the Secretary of Interior recommended to the President the suspension from office of Mayor Villena. Upon approval by the President of such recommendation, the Secretary of Interior implemented the suspension. Mayor Villena then questioned his suspension, arguing that the Secretary of Interior had no authority to suspend him from office considering that there was no law granting such power to the Secretary of Interior. According to Mayor Villena it was solely the President who was empowered to discipline local government officials. The Court in said case disagreed with the mayor and upheld his suspension, ruling that the alter ego doctrine justified the suspension ordered by the Secretary of Interior. As can be readily gleaned from this case, even with the doctrine of qualified political agency, the Court upheld the Secretary of Interior's act of imposing penalty considering that the President had already approved the Secretary's recommendation to suspend the mayor. In fine, prior conformity of the President was still necessarily secured.

In *Spouses Constantino v. Hon. Cuisia*,[50] while the Court upheld the Secretary of Finance's act of executing a debt-

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[48] 67 Phil. 451 (1939).

[49] *Atty. Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, 705 Phil. 331, 347-348 (2013).

[50] 509 Phil. 486 (2005).

relief contract by virtue of the doctrine of qualified political doctrine, among others, the Court included in its disquisition an important qualification, *i.e.*, the Secretary of Finance or any designated alter ego of the President is still bound to secure the latter's prior consent to or subsequent ratification of his acts.

Precisely, this explains the necessity of forwarding the Department Secretary's findings and recommendation to the President with regard to administrative cases against presidential appointees. Granting the Department Secretary the power to impose penalty without the President's prior express conformity would result to a circuitous situation wherein the removal or any action effected by the Department Secretary may later on be countermanded by the President at any time.

Then again, to be clear, this does not prevent the Department Secretary from conducting investigations and forwarding their findings and recommendations to the President for approval. In the alternative, their findings may also be forwarded to the PACC for further investigation and recommendation to the President, or to the Ombudsman in applicable cases.

At this juncture, it is imperative to note that the present case merely involves the DTI Secretary's act of ordering the conduct of an initial investigation on the issues raised against Enriquez; creating and authorizing the SIC to conduct a full investigation thereon; and, of filing a formal charge against Enriquez upon its finding of a *prima facie* case against the latter. There is no imposition of penalty, much less order of dismissal, from the DTI Secretary involved in this case. Hence, as Sec. Cristobal merely exercised his power to investigate and designate an officer and/or committee to investigate his subordinate pursuant to the Administrative Code, his actions, as well as the resulting report from such investigation should be validly sustained absent any finding of irregularity in the conduct thereof.

E.O. No. 151 and the subsequent E.O.s vis-à-vis the Administrative Code

Inasmuch as such power to investigate was given to the aforesaid Commissions, the power given to the Department Secretary to investigate and to designate a committee or officer to investigate a subordinate, who may be a presidential or non-presidential appointee, cannot likewise be denied.[51] The investigative and recommendatory authority of the fact-finding Commissions under the above-cited executive orders are by no means exclusive and, thus, can be shared with any officer or agency likewise tasked to investigate and recommend findings and conclusions.

Therefore, in the absence of a law or legal justification prohibiting the Department Secretary to conduct its own investigation on its subordinates, such power of the Department Secretary to investigate, even a presidential appointee, under the Administrative Code, should then be upheld.

Furthermore, E.O. No. 151 and the subsequent E.O.s above-cited, or "E.O. No. 13 and its allied E.O.s" as referred to by the RTC in its assailed Decision, could not have repealed the Administrative Code, contrary to the RTC's conclusion.

Foremost, an executive order cannot repeal a law. Ordinarily, since both the Administrative Code and E.O. No. 13 and "its allied E.O.s" are all presidential issuances, one may repeal or otherwise alter, modify or amend the other, depending on which comes later. The intricacy of this case, however, is owed to the fact that E.O. No. 292 or the Administrative Code was signed into law by President Corazon C. Aquino, not merely as an executive act, but in the exercise of her transitory legislative powers under the Freedom Constitution. Section 6, Article XVIII of the 1987 Constitution states that "[t]he incumbent President shall continue to exercise legislative powers until the first Congress convened." The Administrative Code was signed into law on July 25, 1987, or two days before the first Congress convened on July 27, 1987. Hence, having been issued by the President in the exercise of her extraordinary power of legislation

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[51] See *Hon. Joson v. Executive Secretary Torres*, 352 Phil. 888, 914 (1998).

during the transition from the authoritarian regime to the revolutionary government, the Administrative Code is not merely an executive order which has the force and effect of law, but is actually a law.[52]

Moreover, basic is the principle in statutory construction that interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the legal maxim "*interpretare et concordare leges legibus est optimus interpretandi modus*."[53]

A careful perusal of the invoked executive orders clearly reveals no incongruity with the Administrative Code. As discussed above, the creation and reorganization of the investigative and recommendatory Commissions/Office through said executive orders, do not indicate any intention to totally remove the Department Secretary's power to investigate over his subordinates who are presidential appointees. None of the executive orders provides for an express exclusionary provision that removes such power to investigate from the Department Secretary as provided under the Administrative Code. Thus, said executive orders neither supersede nor conflict with the Administrative Code which allows the Department Secretary to investigate his subordinates, may they be presidential appointees or non-presidential appointees. It is, therefore, flawed to argue and conclude that said executive orders granted the investigative Commissions the exclusive jurisdiction to investigate presidential appointees.

The Unavailability of Appeal from the Department Secretary's Exercise of its Investigative and Recommendatory Function

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[52] See *Philippine Association of Service Exporters, Inc. (PASEI). v. Hon. Torres*, 296-A Phil. 427, 432 (1993).

[53] "To interpret and harmonize laws is the best method of interpretation." *Civil Service Commission v. Court of Appeals*, 696 Phil. 230, 259 (2012).

The fact that no appeal can be made to the CSC from the findings of the Department Secretary and/or the committee which was designated to conduct the investigation on a presidential appointee, cannot be validly used as a ground to divest the Department Secretary of his statutory authority to exercise such power to investigate, contrary to the RTC's conclusion.

Indeed, as discussed above, the CSC has no disciplinary authority over presidential appointees. Hence, it has neither original nor appellate jurisdiction over disciplinary cases against presidential appointees. Contrary, however, to the court *a quo*'s interpretation, such "void in the appeal process" is the logical consequence of the principle that an appeal may be taken only from a judgment or final order unless otherwise provided by law or executive order. A final judgment or order is one that finally disposes of a case, leaving nothing more to do for the proper authority vested by law to finally decide on the matter.[54]

In the exercise of the Department Secretary's power to investigate presidential appointees, no element of finality characterizes his findings and report considering that from the nature of such power delegated to him, his findings and report are merely recommendatory for the President's consideration. Hence, an appeal is naturally not an available remedy from the Department Secretary's findings and recommendation.

Nevertheless, there is no logical, much less legal and jurisprudential basis, to conclude that such unavailability of appeal from the findings and recommendations of the Department Secretary is a ground to divest the latter of the investigative and recommendatory authority granted to him by law over presidential appointees.

The President's Power of Control vis-à-vis the Department Secretary's Power to Investigate and Recommend

Once again contrary to the RTC's ruling, to uphold the authority of the Department Secretary to investigate his subordinate who

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[54] See *Spouses Mendiola v. Court of Appeals*, 691 Phil. 244, 261 (2012).

may be a presidential appointee is not to undermine the President's power of control as the Chief Executive. Since the Department Secretary's exercise of disciplinary power is merely investigative and recommendatory, the President retains the power to alter or modify, or even nullify or set aside the former's findings and recommendation, and to substitute his judgment to that of the former. This is precisely the concept of the power of control in administrative law. This is likewise in consonance with the doctrine of qualified political agency as explained above.

Effect of Divesting the Department Secretary of the Power to Investigate Presidential Appointees

The RTC's conclusion that the power to investigate presidential appointees was removed from the Department Secretary and directly assumed by the President through its power of control not only lacks legal basis, but also practical consideration. No benefit can be had if we rule for the removal of the power to investigate presidential appointees from the Department Secretary because, at any rate, the President may still delegate such power to the Department Secretary, being his subordinate, to assist him in the investigative function. We must keep in mind that the grant of administrative power over the executive department to the President is surely always grounded upon the consideration of fixing a uniform standard of administrative efficiency to enable him to discharge his duties as Chief Executive effectively.[55]

The Power to Investigate Includes the Power to Preventively Suspend

The power of the Department Secretary to investigate his subordinates being established, such power necessarily includes the authority to impose preventive suspension.

Preventive suspension is authorized under the Administrative Code, *viz.*:

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[55] See *Review Center Association of the Philippines v. Executive Secretary Ermita*, 602 Phil. 342, 366 (2009), citing *Ople v. Torres*, 354 Phil. 948 (1998).

SEC. 51. *Preventive Suspension*. — The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service. [56]

Inasmuch as the Department Secretary was given the power to investigate his subordinates by authority of the President, his power to impose preventive suspension also by authority of the President, cannot likewise be denied. It is well to point out that preventive suspension pending investigation is not punitive in nature. In the early case of *Nera v. Garcia*,[57] the Court explained that suspension is a preliminary step in an administrative investigation. The need for the preventive suspension may arise from several causes, such as the danger of tampering or destruction of evidence in the possession of the person being investigated and the intimidation of witnesses, among others. Thus, to enable an effective and unhampered investigation, and to foreclose any threat to the success of the same, the authority conducting the same should be given the discretion to decide when the person facing administrative charges should be preventively suspended.[58]

Due process of law was observed in the conduct of the investigation on Enriquez.

The pronouncement of the Court in the case of *Vivo v. Philippine Amusement and Gaming Corporation*[59] on this matter is on point, *viz.*:

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due

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[56] Executive Order No. 292 (1987), Book V, Chapter 4, Sec. 51.

[57] 106 Phil. 1031 (1960).

[58] *Dra. Buenaseda v. Secretary Flavier*, 297 Phil. 719, 727-728 (1993).

[59] 721 Phil. 34, 39-40 (2013).

process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* elaborates on the well-established meaning of due process in administrative proceedings in this wise:

> x x x Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek reconsideration of the action or ruling complained of. (Citations omitted)

As can be gleaned from the factual backdrop of this case, petitioners complied with the requirements of administrative due process even prior to the actual institution of administrative proceedings against Enriquez. Foremost, while prompted by a news article, petitioners' initiative to conduct a formal investigation against Enriquez was based on its own initial investigation and not on mere allegations and blind news reports. More importantly, several notices were sent to Enriquez apprising him of the issues against him, and directing him to submit an explanation in writing. Enriquez, in turn, had actively responded to said notices, albeit he consistently questioned petitioners' authority. Enriquez was likewise informed of the formal charge, as well as the order of preventive suspension against him. He was again directed to answer the charge, to which Enriquez responded by denying the charges against him, but maintaining his objection to petitioners' authority to conduct investigations and order his preventive suspension.

Clearly, Enriquez could not dispute the observance of his right to due process by petitioners as herein set forth.

II.

The RTC erred in giving due course to the petition for *certiorari*, prohibition, and *mandamus*.

The RTC has no jurisdiction over the petition for certiorari, prohibition, and mandamus filed against the questioned acts of the DTI Secretary and the SIC.

The assailed RTC Decision, as well as the present petition, dealt with the issue of which between the RTC and the CA has jurisdiction over the petition for *certiorari*, prohibition, and *mandamus* filed against the DTI Secretary and the SIC under Section 4, Rule 65 of the Rules of Court. Said provision states:

SEC. 4. *When and where to file the petition.* — x x x

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

The RTC ruled that since decisions and actions of Department Secretaries and heads of agencies and instrumentalities are appealable to the CSC, not to the CA, it concluded that jurisdiction over a petition for *certiorari*, prohibition, and *mandamus* against said officers is with the RTC, not with the CA, pursuant to the first sentence of the provision above-cited. On the other hand, petitioners argue that jurisdiction over said petition against decisions and actions of a *quasi*-judicial agency performing *quasi*-judicial function, such as the DTI, is with the CA pursuant to the last sentence of the provision above-cited.

We agree with petitioners' assertion that the RTC erred in giving due course to Enriquez's petition for *certiorari*, prohibition, and *mandamus*, albeit for a different reason.

Petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court have long been used as remedies to keep lower courts within the confines of their granted jurisdictions. The 1987 Constitution, however, introduced the "expanded" scope of judicial power. Thus, Section 1, Article VIII thereof provides:

SEC. 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 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)

In *Francisco, Jr. v. The House of Representatives*,[60] the Court 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.'" Further distinctions between the traditional *certiorari* petitions under Rule 65 of the Rules of Court and that under the expanded jurisdiction were exhaustively discussed by the Court *En Banc* in the case of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. Department of Health*.[61]

One of the material distinctions is the cited ground. A *certiorari* petition under Rule 65 of the Rules of Court speaks of *lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction*, while the remedy under the court's expanded jurisdiction expressly mentions only *grave abuse of discretion amounting to lack or excess of*

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[60] 460 Phil. 830 (2003).

[61] 802 Phil. 116 (2016).

jurisdiction. The distinction is apparently not legally significant as to what remedy should be resorted to, traditional or expanded, when the case involves an action with grave abuse of discretion. When, however, lack of jurisdiction is involved, no consideration is made as to how the government entity exercised its function. Indeed, no discretion is allowed in areas outside of an agency's granted authority.[62]

Certainly, before a court could take cognizance of a case filed before it, it should primarily determine the ground on which its jurisdiction is being invoked. It is, thus, imperative to look into the ground upon which the petition is based. In this case, Enriquez alleged lack of jurisdiction on the part of the DTI Secretary and the SIC over him in filing the *certiorari* petition. Thus, the traditional *certiorari* mode under Rule 65 of the Rules of Court should be Enriquez's remedy.

However, another distinction between the traditional *certiorari* petition under Rule 65 of the Rules of Court and *certiorari* pursuant to the expanded jurisdiction under Section 1(2), Article VIII of the Constitution is equally relevant in this case. Aside from the cited ground, another critical question comes up and that is, under what capacity did the respondent-agency act?

In order that a special civil action for *certiorari* under Rule 65 may be invoked, the petition must be directed against any tribunal, board, or officer *exercising judicial or quasi-judicial functions*, which 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 plain, speedy, and adequate remedy in the ordinary course of law.[63]

Similarly, a petition for prohibition may be filed by an aggrieved person against a tribunal, corporation, board, officer or person, *exercising judicial, quasi-judicial, or ministerial functions*, which were done without or in excess of its or his jurisdiction,

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[62] *Id.* at 143.

[63] RULES OF COURT, Rule 65, Sec. 1.

or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is likewise no plain, speedy, and adequate remedy in the ordinary course of law, praying that judgment be rendered commanding the respondent to desist from further proceedings in the subject action or matter, or otherwise, for the grant of such incidental reliefs as law and justice may require.[64]

A petition for *mandamus*, on the other hand, is a remedy available only when a 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 plain, speedy and adequate remedy in the ordinary course of law.[65] The main objective of *mandamus* is to compel the performance of a ministerial duty on the part of the respondent.[66]

In other instances, the petition must be filed based on the court's expanded jurisdiction.[67]

It is important, thus, to determine the nature of the questioned act/s to determine the available and proper remedy under the law.

It bears stressing that what is being assailed in this case is the Department Secretary's exercise of his power to investigate a subordinate. The Department Secretary's limited disciplinary authority being assailed herein involves a function which is not judicial, *quasi*-judicial, nor ministerial in nature for his act to be the proper subject of *certiorari*, prohibition, or *mandamus*. He is not clothed with power to adjudicate and impose a penalty with regard to administrative disciplinary actions against

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[64] *Id.* at Sec. 2.

[65] *Id.* at Sec. 3.

[66] *Spouses Dacudao v. Secretary Gonzales*, 701 Phil. 96, 110 (2013).

[67] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. Department of Health, supra* note 61, at 142.

subordinates who are presidential appointees as above-discussed. His function is merely investigative and recommendatory, which is purely executive or administrative.

Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and, after such determination, to decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. In the performance of a *quasi*-judicial, and of course judicial, acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.

Neither is there a ministerial duty involved in this case which may be compelled to be done through *mandamus*. While Enriquez was temporarily excluded from his office pending investigation, the remedy of *mandamus* is not available to compel the investigating officer or committee to lift the order of preventive suspension as the same is authorized by law pending investigation, unless such suspension exceeded the period of 90 days for non-presidential employees, or the period of suspension for presidential employees became unreasonable as the circumstances of the case may warrant.[68]

Hence, the petition for *certiorari*, prohibition, and *mandamus* was not proper, whether it be filed before the RTC or the CA.

III.

This Petition is not rendered moot and academic by the termination of Enriquez's service.

Having established the DTI Secretary's investigative and recommendatory disciplinary authority over Enriquez, we cannot

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[68] *Baculi v. Office of the President, supra* note 44, at 71.

subscribe to the latter's argument that the petition should be dismissed for becoming moot and academic due to his separation from service.

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case.[69] The instant case is not mooted by Enriquez's separation from service considering that the administrative case against him before the DTI is not mooted by such cessation of service. It must be pointed out that prior to the termination of his term of office, a formal charge for Gross Insubordination, Gross Misconduct/ Gross Neglect of Duty, Grave Abuse of Authority, and Conduct Prejudicial to the Best Interest of the Service had already been filed after a determination of a *prima facie* case against him upon the conclusion of SIC's preliminary investigation. The disquisition of the Office of the President in Administrative Order (A.O.) No. 67, Series of 2003[70] is relevant to the issue and instructive:

While it is generally conceded that an administrative proceeding is predicated on the holding of an office or position in the government (*Dianalon vs. [Quintillan]*, Adm. Case No. 116, August 29, 1969, 29 SCRA 347), **the rule is qualified and, therefore, recognized to admit an exception**, as amplified by the Supreme Court, in this wise:

> "It was not the intent of the Court in the case of *Quintillan* to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other

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[69] *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169, 186 (2011), citing *Pagano v. Nazarro, Jr.*, 560 Phil. 96, 105 (2007).

[70] *Imposing the Penalty of Fine Equivalent to Six Months Salary on Atty. Fidel H. Borres, Jr., Provincial Agrarian Reform Adjudicator, Agusan del Norte.*

<http://www.officialgazette.gov.ph/2003/03/31/administrative-order-no-67-s-2003/> (visited June 1, 2020).

> words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or against any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation." (*People vs. Valenzuela*, 135 SCRA 712, citing *Perez vs. Abiera*, Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302)

Stated somewhat differently, **the severance of official ties with the government of a public official or employee constitutes a bar to the subsequent filing of an administrative case against him for an act or acts committed during his incumbency. A sesu contrario, once an administrative charge is initiated against such respondent, his compulsory or optional retirement, resignation or separation from the service during the pendency thereof does not nullify or moot the proceedings, which should continue to its logical conclusion. And if so closed or terminated for that reason alone, it may be reopened by the Office of the President on its own motion, if respondent is a presidential appointee, or at the instance of the department head concerned, if non-presidential appointee.** This is the pith and core of the clarificatory opinion of the Secretary of Justice (Opinion No. 30 dated Feb. 17, 1978) vis-à-vis the query of whether the retirement, resignation or separation from public office of an employee would divest the department head, or the head of any

concerned agency of the government, of jurisdiction to act upon an administrative case filed against the employee during his tenure of employment, to wit:

> The Department of Justice has taken the position, as early as 1962, that the attainment of the age of compulsory retirement by a respondent does not ipso facto close the pending administrative proceedings against him. Although the highest penalty in an administrative case is that of dismissal or separation from the service, which is already accomplished by the respondent's compulsory retirement, the proceedings may still continue for purposes of determining whether or not the respondent is guilty with the end in view of imposing penalties incident to dismissal for cause. The Department has even sustained the view, in the case of Undersecretary Tambokon, that the administrative case, if already closed or terminated, may be reopened by the Office of the President motu proprio or at the instance of the Department Secretary. (Emphases supplied, underscoring in the original)

As the administrative case against Enriquez survives the cessation of his tenure, this Court is still well-within its jurisdiction to resolve the legal issues raised before it.

Conclusion

Public office is a public trust and public officers and employees must, at all times, be accountable to the people.[71] Hence, the State must be vigilant to preserve the inviolability of public office. Every initiative to cleanse the roster of public employees and officials must be upheld so long as said efforts are exercised within the bounds of law. In this case, pursuant to the foregoing legal considerations, it is established that the Department Secretary's exercise of the power to investigate and to designate a committee or officer for such purpose, a subordinate, whether the latter be a non-presidential or presidential appointee, is well-founded in law and jurisprudence.

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[71] *Office of the Ombudsman and the Fact-Finding Investigation of the Bureau (FFIB), Office of the Ombudsman for the Military and other Law Enforcement Offices (MOLEO) v. PS/Supt. Espina*, 807 Phil. 529, 546 (2017).

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision of the Regional Trial Court of Quezon City, Branch 77, in Civil Case No. R-QZN-16-05101 is hereby **REVERSED and SET ASIDE**. Accordingly, the Department of Trade and Industry is **ORDERED** to proceed with dispatch with its investigation on Danilo B. Enriquez's administrative case. Thereafter, the Secretary of the Department of Trade and Industry may forward his findings and recommendations to the Office of the President for the imposition of the proper penalties, as may be warranted.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Inting, Lopez, and *Gaerlan, JJ.*, concur.

Perlas-Bernabe and *Zalameda, JJ.*, see separate concurring opinions.

Leonen, Caguioa, and *Lazaro-Javier, JJ.,* see separate concurring and dissenting opinions.

Delos Santos, J., on leave.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

Unless otherwise delegated, a Department Secretary cannot exercise complete and full disciplinary authority over a subordinate department official who is, at the time, a presidential appointee on the ground that he is an alter ego of the President. Barring due delegation, the Secretary's power is limited to investigation and recommendation, which findings he may forward to the President for his approval/disapproval and consequently, the imposition of the appropriate penalty.

To explain, while the Administrative Code authorizes Department Secretaries to "[e]xercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation,"[1] and provides that they shall have "jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction,"[2] these powers are circumscribed by the rule that: "**[p]residential appointees come under the direct disciplining authority of the President**. This proceeds from the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority on which the power to appoint is vested."[3]

However, it should be clarified that **the direct disciplinary authority of the President does not divest Department Secretaries of their power to conduct investigations, and incidental thereto, preventively suspend presidential appointees within their department**. In order to harmonize the priciples and provisions of law, Department Secretaries are only bereft of the power to impose penalties, but not the power to investigate. This has already been recognized by the Court in *Baculi v. Office of the President (Baculi)*,[4] as well as in *Department of Health v. Camposano* (*Dept. of Health*).[5]

In *Baculi*, therein petitioner Francisco T. Baculi (Baculi), a presidental appointee under the Department of Agrarian Reform

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[1] Paragraph 5, Section 7, Chapter 2, Book IV of Executive Order No. (EO) 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'" (July 25, 1987).

[2] Paragraph 2, Section 47, Chapter 7, Book V of EO 292.

[3] *Pichay, Jr. v. Office of the Deputy Executive Secretary for Legal Affairs-IAD*, 691 Phil. 624, 645 (2012). See also *Baculi v. Office of the President*, 807 Phil. 52, 73 (2017), *supra*; *Larin v. Executive Secretary*, 345 Phil. 962, 983 (1997); and *Office of the President v. Cataquiz*, 673 Phil. 318, 350 (2011).

[4] 807 Phil. 52 (2017).

[5] 496 Phil. 886 (2005).

(DAR), was investigated by the DAR Secretary through the Regional Investigating Committee (RIC) for certain irrefular contracts. Finding a *prima facie* case against Baculi based on the RIC reports, the DAR Secretary filed a formal charge against him before the DAR Legal Affairs Office. He was eventually found guilty and was dismissed from service. On appeal, the Court of Appeals nullified the order of dismissal for lack of authority, and instead, directed the DAR Secretary to forward his findings and recommendations to the President, who all the same ordered the dismissal of Baculi. Baculi questioned the validity of the dismissal as it was based on a void report given that the RIC had no jurisdiction to investigate a presidential appointee such as himself. However, the Court affirmed Baculi's dismissal by the President. It held that "Baculi, as a presidential appointee, came under the disciplinary jurisdiction of the President in line with the principle that the 'power to remove is inherent in the power to appoint.' As such, the DAR Secretary **held no disciplinary jurisdiction over him**." Nevertheless, it upheld the validity of the RIC report finding that "[i]**n the absence of a law or administrative issuance barring the DAR-RIC from conducting its own investigation** of Baculi even when there was no complaint being first filed against him, **the eventual report rendered after investigation was valid**."[6]

Meanwhile, in *Dept. of Health*, the Court held that:

> The Administrative Code of 1987 vests department secretaries with the authority to investigate and decide matters involving disciplinary actions for officers and employees under the former's jurisdiction. Thus, the health secretary had disciplinary authority over respondents.
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> Note that being a presidential appointee, Dr. Rosalinda Majarais was under the jurisdtion of the President, in line with the principle that the "power to remove is inherent in the power to appoint." While the Chief Executive directly dismissed her from the service, he nonetheless recognized the health secretary's disciplinary authority over respondents when he remanded the PCAGC's findings against them for the secretary's "appropriate action."

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[6] *Supra* note 4; emphases and underscoring supplied.

As a matter of adminstrative procedure, a department secretary may ulitize other officials to investigate and report the facts from which a decision may be based. In the present case, the secretary effectively delegated the power to investigate to the PCAGC.[7] (Emphasis supplied)

At this juncture, I find it apt to address respondent's argument that the case had already been rendered moot and academic by his cessation from office. The rule is that "jurisdiction at the time of the filing of the administrative complaint is not lost by the mere facgt that the respondent had ceased in office during the pendency of the case."[8] The rationale is that cessation from office "is not a way out to evade adminstrative liability when facing administrative sanction. [I]t does not preclude the finding of any adminstrative liability to which he or she shall still be answerable."[9]

Here, the DTI Secretary, through the Special Investigation Committee (SIC), had already commenced investigation proceedings against respondent as early as April 2016. In fact, respondent was already served with a "***Formal Charge with Preventive Suspension***" on May 20, 2016,[10] through which he was officially notified of the charges against him, placed in preventive suspension, and directed to file an answer, which he later did.[11] These incidents all occured before June 30, 2016, or the date when he ceased from office. In the Supreme Court, the rule is that the administrative complaint must first be docketed prior to the respondent's cessation from office; otherwise, jurisdiction is lost.[12] However, in this instance, a Formal

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[7] *Supra* note 5; emphasis supplied.

[8] *Office of the Court Administrator v. Hamoy*, 489 Phil. 296 (2005).

[9] *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169 (2011).

[10] See Formal Charge with Preventive Suspension dated May 19, 2016 (*rollo*, pp. 234-237) which was tendered to respondent in his office on 2:53 p.m. of May 20, 2016 (see *id*. at 252).

[11] "[A]n administrative proceeding may be commenced in one of two ways: (1) **upon a charge by the Department or Agency head**; or (2) upon a complaint filed by any other person." *Bueno v. Cordoba, Jr.*, G.R. No. L-23932, April 27, 1967, 126 Phil. 281, 285. (emphasis supplied)

[12] See *Office of the Court Administrator v. Andaya*, 712 Phil. 33 (2013).

Charge filed by the investigating committee signifies the institution of the complaint. In *Baculi*, the Court observed that the formal charge filed by the Department of Agrarian Reform — Regional Investigating Committee, which is similar to the SIC in this case, "became the administrative complaint contemplated by law."[13] Hence, based on the foregoing, the case has not been rendered moot and academic.

In fine, considering the limited power of a Department Secretary over a subordinate official within his department who is, at the same time, a presidential appointee as herein discussed, I vote to grant the petition but only in part, the reasons for which shall be discussed below.

To recount, records show that the Regional Trial Court (RTC), in a Decision[14] dated June 27, 2016: (*a*) nullified the formal charges agianst respondent; (*b*) enjoined the SIC from hearing and adjudicating the charges against respondent; and (*c*) ordered petitioners to restore respondent to his post. In so ruling, the RTC held that petitioner DTI Secretary Cristobal had no disciplinary authority over respondent, considering that, as a presidential appointee, the latter fell under the direct disciplinary authority of the President, who, at that time, had delegated the authority to investigate, hear, and decide administrative cases against all presidential appointees in the Executive Branch with at least a Salary Grade of "26" to the ODESLA-IAD.[15] Petitioners assailed the aforesaid RTC Decision, arguing that "[t]he exercise of administrative disciplinary authority throughout the Executive Branch is among the multifarious functions of the Chief Executive that may be performed by the Secretaries over their respective Departments in the regular course of business, which may be presumed as acts of the Chief Executive, unless disapproved or reprobated by him."[16] Further, the petition states that

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[13] *Baculi, supra* note 4.

[14] *Rollo*, pp. 175-201. Penned by Acting President Judge Cleto R. Villacorta III.

[15] *Id*. at 177-198.

[16] *Id*. at 143.

"Department Secretaries must have the power, as an alter ego of the President, to act upon erring officers and employees under them."[17] **In their petition, petitioners did not qualify or distinguish between the Department Secretary's power to investigate and recommend *vis-á-vis* the power to impose a penalty.** In fact, it appears tha petitioners argue for full and complete disciplinary authority of a Department Secretary over a subordinate department official albeit appointed by the President based on the alter ego doctrine. As explained in this Opinion, there is a crucial distinction between the power to investigate and recommend *vis-á-vis* the power to impose a penalty. This was not accounted for in the petition; hence, it should only be partly granted. Accordingly, the ultimate conclusion is that the RTC Decision must be reversed and set aside insofar as it failed to recognize the limited power of the Department Secretary to investigate and recommend. In this limited respect, the investigation against respondent is valid and hence, allowed to proceed. The resulting findings and recommendations may then be forwarded to the President through the Office of the President, who has the power to impose penalties against his appointees.

SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

Director Danilo B. Enriquez (Dir. Enriquez), a director of a line bureau and a presidential appointee, claims immunity from administrative disciplinary proceedings instituted against him by the Secretary of the Department of Trade and Industry (DTI Secretary), particularly the creation of a Special Investigation Committee (SIC) and the imposition of preventive suspension. Dir. Enriquez insists that the authority to institute disciplinary proceedings over presidential appointees is limited to: (1) the Office of the President through (a) the Office of the Deputy

[17] *Id.* at 144.

Executive Secretary of Legal Affairs (ODESLA)[1] or (b) the Presidential Anti-Corruption Commission (PACC);[2] and (2) the Office of the Ombudsman, based on the Constitution[3] and on Republic Act No. 6770 (RA 6770).

The arguments raised by Dir. Enriquez are misplaced. The *ponencia* correctly ruled that the DTI Secretary validly exercised disciplinary powers over Dir. Enriquez, albeit for different reasons, as herein discussed.

The disciplining authority of a Department Secretary does not emanate from the President's power of control

Contrary to the reasons put forward in the *ponencia*, a department secretary's disciplining authority over a subordinate who is a presidential appointee **finds its basis in law and is tempered by the limits set by the President's power to appoint**. It is not borne out of the President's power of control.

Authority to discipline is an agglomeration of powers which includes the power to remove from office, the power to impose additional penalties, the power to impose penalties short of removal, the power to impose preventive suspension, and the power to conduct an investigation. **While the President exercises the full extent of this authority, a department secretary's authority to discipline excludes the power to remove from office a subordinate who is a presidential appointee. The power to remove can only be exercised by the person with the power to appoint.** The President has the power to appoint and may, consequently, remove his

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[1] The bases for Dir. Enriquez's assertion are provided by: Executive Order No. 12 (EO 12) dated 16 April 2001; Executive Order No. 531 (EO 531) dated 31 May 2006; Executive Order No. 531-A (EO 531-A) dated 3 August 2006; Executive Order No. 531-B (EO 531-B) dated 13 December 2006; and Executive Order No. 13 (EO 13) dated 15 November 2010.

[2] Executive Order No. 43 (2017).

[3] CONSTITUTION, Art. XI, Secs. 12 and 13.

appointee. The department secretary has no such power to appoint and may thus only recommend to the President the removal of a subordinate who is a presidential appointee.

On the other hand, the President exercises the power of control expressed through the acceptance or rejection of the department secretary's recommendation to remove a subordinate who is a presidential appointee. The power of control refers to "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[4] **Under this definition, the President's power of control does not extend to the authority to discipline, the latter having been derived from the President's constitutional power to appoint.** And the 1987 Constitution supports this conclusion, separately articulating the President's power of control and power to appoint.

Section 17 of Article VII of the 1987 Constitution provides that "[t]he President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." The first sentence refers to the President's power of control, while the second sentence refers to the President's power of supervision.

During the deliberations of the 1986 Constitutional Commission on the proposed text brought about by the departure from the parliamentary form of government in the 1973 Constitution, it was suggested that the word "control" be replaced with the words "administer" or "supervise" in the provision on the President's powers of control and of supervision. This suggestion was rejected in light of the definitive usage of the word "control" in jurisprudence. A distinction was also made between the power of control and the power of general supervision, underscoring that the President's power of control refers to the exercise of discretion, and **not of discipline**.

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[4] *Mondano v. Silvosa*, G.R. No. L-7708, 30 May 1955; 97 Phil. 143, 150 (1955).

FR. BERNAS. Madam President, this [word "control"] is based on the principle that under a presidential form of government, there is only one executive and it is the President. And the power of control in jurisprudence is acquired very definitely. **It means the authority of a superior to substitute his judgment for the judgment of an inferior. It has reference only to the exercise of judgment. It has nothing to do with discipline but just the exercise of discretion. The discretion of the superior who has the power of control can always be substituted for that exercise of jurisdiction of the inferior**. This is to be distinguished from the power of general supervision which is nothing more than the power to see to it that the inferior follows the law. The power of general supervision does not allow the superior to substitute his judgment. x x x[5] (Emphasis supplied.)

The power to appoint, on the other hand, is articulated in Section 16, Article VII of the 1987 Constitution, which reads:

Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproved by the Commission on Appointments or until the next adjournment of the Congress.

The cases of *Ang-Angco v. Castillo*[6] *(Ang-Angco)* and *Villaluz v. Zaldivar*[7] *(Villaluz)* distinguished the President's

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[5] II Record, CONSTITUTIONAL COMMISSION 408 (29 July 1986).

[6] G.R. No. L-17169, 30 November 1963; 118 Phil. 1468, 1481 (1963).

[7] G.R. No. L-22754, 31 December 1965; 112 Phil. 1091, 1097 (1965).

power of control from the President's power to appoint. First, the President's power of control does not include the power to remove. Second, the President's power to remove is inherent in the power to appoint. Both *Ang-Angco* and *Villaluz* state that the removal of an inferior officer cannot be construed to come within the meaning of control over a specific policy of government. After all, the government is in the business of governing a country, and not the removal of its civil servants.

In the 1963 case of *Ang-Angco*, We declared that the power of control of the President applies to the acts, and not the person, of his subordinate. This empowers the President to set aside the judgment or action taken by a subordinate in the performance of his duties. Subsequently, the 1965 case of *Villaluz* adopted Our ruling in *Ang-Angco* in declaring that the President has the disciplining authority over presidential appointees in the civil service. Presidential appointees in the executive department are also referred to as civil service employees in the non-competitive or unclassified service of the government.

The disciplinary authority of a Department Secretary over presidential appointees is based in law

Given the principle in *Ang-Angco* and *Villaluz* that "the power to remove is inherent in the power to appoint," what then is the basis for the department secretary's disciplinary authority, or the authority to conduct an investigation and impose preventive suspension on a subordinate who is a presidential appointee?

The Administrative Code of 1987 enumerates the officials who are presidential appointees, which includes Directors and Assistant Directors of Bureaus, Regional and Assistant Regional Directors, Department Service Chiefs, and their Equivalents.[8] It also vests upon the President the power to appoint the head of a bureau, such as Dir. Enriquez, as in this case.

Under the same Code, a department secretary is given disciplinary powers over officers and employees in

[8] Executive Order No. 292 (1987), Book IV, Chapter 10, Sec. 47.

accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation.[9] Section 7(5) includes the power to investigate, and the power to designate a committee or officer to investigate, in the disciplining powers of a department secretary. Meanwhile, Section 7(7) explicitly states that the department secretary has the power to "[e]xercise jurisdiction over all bureaus, offices, agencies and corporations under the Department x x x."

Neither Section 7(5), which refers to disciplining powers, nor Section 7(7), which refers to the power of control, mentions or distinguishes between presidential appointees and non-presidential appointees. This means that a department secretary need not distinguish between presidential and non-presidential appointees in the exercise of disciplining powers, as well as the power of control. It is only in Section 7(6) of the Administrative Code of 1987, which pertains to the power to appoint, where a distinction between presidential appointees and non-presidential appointees finds support.

The scope of the disciplining authority of a department secretary should also be examined along with the disciplining authority of the Civil Service Commission (CSC). Sections 47, 48, and 51[10] of the Administrative Code of 1987 provide for the disciplining powers of a department secretary if the case falls under the disciplining jurisdiction of the CSC. Specifically, these provisions lay down a department secretary's powers to: investigate (Sec. 47); decide matters involving disciplinary action against officers and employees (Sec. 47); delegate the power to investigate to subordinates (Sec. 47); initiate administrative proceedings against subordinates through a sworn written complaint (Sec. 48); and to issue preventive suspension pending an investigation of a subordinate if the charges against the subordinate involves dishonesty, oppression or grave

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[9] Executive Order No. 292 (1987), Book IV, Chapter 2, Sec. 7(5).

[10] All under Book V, Title I (Constitutional Commission), Chapter 6 (Right to Self-Organization), Subtitle A (Civil Service Commission).

misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service (Sec. 51).

Concededly, the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[11] which were applicable during Dir. Enriquez's tenure, specifically enumerated the cases under the jurisdiction of the CSC. The RRACCS limited the CSC's jurisdiction to those specifically enumerated in the Rules[12] and

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[11] The RRACCS have since been superseded by the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) promulgated on 03 July 2017.

[12] Sections 7, 8, and 9 of the RRACCS provide:

Section 7. *Cases Cognizable by the Civil Service Commission*. — **The Civil Service Commission shall take cognizance of the following cases:**

A. **Disciplinary**

1. Decisions of Civil Service Commission Regional Offices brought before it on appeal or petition for review;

2. Decisions of heads of agencies imposing penalties exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary brought before it on appeal;

3. Complaints brought against Civil Service Commission personnel;

4. **Complaints against officials who are not presidential appointees;**

5. Decisions of heads of agencies imposing penalties not exceeding 30 days suspension or fine equivalent thereto but violating due process;

6. Requests for transfer of venue of hearing on cases being heard by Civil Service Commission Regional Offices;

7. Appeals from the order of preventive suspension; and

8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumeration.

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Section 8. *Cases Cognizable by Regional Offices*. — Except as otherwise directed by the Commission, the Civil Service Commission Regional Offices shall take cognizance of the following cases:

A. **Disciplinary**

1. Cases initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or omissions were

made a distinction between presidential and non-presidential appointees, whereas the Administrative Code of 1987 made no such distinction when it outlined a department secretary's authority to discipline. **Thus, the RRACCS should be harmonized and read in conjunction with the said Code.**

A Department Secretary's authority to discipline necessarily includes the power to investigate and to create an investigating committee, and the power to preventively suspend

Jurisprudence asserts that the disciplining authority of a department secretary includes the investigation of subordinates who are presidential appointees and the creation of a committee to undertake the same.

In *Department of Health v. Camposano, et al.*[13] *(Camposano)*, the Court explicitly recognized that the Administrative Code vested department secretaries with the power to investigate matters involving disciplinary actions involving officers, including presidential appointees.

Meanwhile, in *Office of the President v. Cataquiz*[14] *(Cataquiz)*, the Secretary of the Department of Environment

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committed within the jurisdiction of the Regional Office, including Civil Service examination anomalies or irregularities and/or the persons complained of are rank-and-file employees of agencies, local or national, within said geographical areas;

2. Complaints involving Civil Service Regional Office personnel who are appointees of said office; and

3. Petitions to place respondent under preventive suspension.

x x x x x x x x x

Section 9. *Jurisdiction of Heads of Agencies.* — The Secretaries and heads of agencies, and other instrumentalities, provinces, cities and municipalities shall have **original concurrent jurisdiction** with the Commission over their respective officers and employees. x x x (Emphases supplied).

[13] G.R. No. 157684, 27 April 2005; 496 Phil. 886, 903 (2005).

[14] G.R. No. 183445, 14 September 2011; 673 Phil. 318, 350 (2011).

and Natural Resources formed an investigating team to conduct an inquiry into the allegations against the general manager of the Laguna Lake Development Authority, who is a presidential appointee. The validity of the institution of the investigating team by the department secretary was not even raised as an issue in *Cataquiz*. Similarly, in *Dr. Melendres v. Presidential Anti-Graft Commission, et al.*[15] *(Melendres)*, the Secretary of the Department of Health ordered the creation of a fact-finding committee to look into the charges against the Executive Director of the Lung Center of the Philippines, who was a presidential appointee. The validity of the creation of the fact-finding committee by the department secretary was not also raised as an issue.

On the other hand, a demarcation must be made between the power to impose penalties and the power to impose preventive suspension. A department secretary can only recommend the imposition of penalties against presidential appointees to either the Office of the President[16] or the Office of the Ombudsman.[17] This, does not mean, however, that a department secretary is precluded from imposing preventive suspension against a presidential appointee under investigation. To emphasize, preventive suspension is not a penalty but a measure intended to enable the investigating authority to investigate the charges against the subordinate and to prevent the latter from intimidating, or in any way influencing, the witnesses.[18]

From all the foregoing, it is undeniable that the exercise by the DTI Secretary of his disciplining authority over his subordinate, Dir. Enriquez, a presidential appointee, is well-founded in both law and jurisprudence. Thus, I vote to grant the Petition.

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[15] G.R. No. 163859, 15 August 2012; 692 Phil. 546, 565 (2012).

[16] 1987 CONSTITUTION, Art. VII, Sec. 17. See also Executive Order No. 292 (1987), Book III, Title I, Chapter 1, Sec. 1.

[17] Republic Act No. 6770 (1989), Sec. 25.

[18] See *The Board of Trustees of the Government Service Insurance System, et al. v. Velasco, et al.*, 656 Phil. 385, 400-401 (2011).

Nonetheless, **I stand resolute that the DTI Secretary's authority to discipline, contrary to the reasons put forward in the *ponencia*, is not derived from the President's power of control. Rather, such authority springs from the law, the exercise thereof is limited and tempered by the President's power to appoint.**

SEPARATE CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur in the result. However, I dissent from the *ponencia*'s decision to limit a cabinet secretary's power over a presidentially appointed subordinate to investigation and recommendation. Doing so effectively removes the power to impose penalties from the president's alter-ego.

Presidential control over the executive branch is provided in Article VII, Section 17 of the Constitution, which states: "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

However, the president's numerous and varied functions call for the delegation of his or her powers of control to the cabinet secretaries, who are then deemed to act on the president's behalf under the doctrine of qualified political agency or the alter-ego doctrine.[1]

The doctrine of qualified political agency was introduced in *Villena v. The Secretary of Interior*,[2] where this Court explained:

> [A]ll executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments

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[1] *Villena v. The Secretary of Interior*, 67 Phil. 451, 463 (1939) [Per *J.* Laurel, *En Banc*].

[2] 67 Phil. 451 (1939) [Per *J.* Laurel, *En Banc*].

are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.[3] (Citations omitted)

Planas v. Gil[4] then emphasized that the official acts of cabinet secretaries, who are the "authorized assistants and agents in the performance of [the president's] executive duties,"[5] are presumed to be the president's own acts.

Nonetheless, the president's power to delegate authority to cabinet members is not absolute, and there are some powers that only the president may personally wield. In *Spouses Constantino, Jr. v. Cuisia*,[6] this Court clarified:

> Nevertheless, there are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or alter ego of the President. Justice Laurel, in his *ponencia* in *Villena*, makes this clear:
>
> > Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, in his power to suspend the writ of *habeas corpus*

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[3] *Id.* at 463.

[4] 67 Phil. 62 (1939) [Per *J.* Laurel, *En Banc*].

[5] *Id.* at 77.

[6] 509 Phil. 486 (2005) [Per *J.* Tinga, *En Banc*].

> and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, Sec. 11, *idem*).
>
> These distinctions hold true to this day. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import.[7] (Citation omitted)

The *ponencia* posits that "[f]or presidential appointees, the power to impose penalties resides with the President pursuant to his [or her] power of control under the Constitution and the Administrative Code."[8] It stresses that cabinet members can only investigate and recommend penalties on such appointees.[9]

I disagree.

The power to discipline a subordinate is not "of similar gravitas and exceptional import"[10] to declaring martial law and suspending the writ of *habeas corpus*, as exemplified in *Spouses Constantino, Jr.*, both of which understandably require the exclusive exercise of the president's power. Rather, the power to discipline a subordinate can be validly delegated to cabinet secretaries as part of their supervision and control over their respective departments under the Administrative Code.

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[7] *Id.* at 518.

[8] *Ponencia*, p. 12.

[9] *Id.* at 13.

[10] *Spouses Constantino, Jr. v. Cuisia*, 509 Phil. 486, 518 (2005) [Per *J.* Tinga, *En Banc*].

Book IV, Chapter 2, Section 7 of the Administrative Code enumerates a cabinet secretary's powers and functions:

SECTION 7. *Powers and Functions of the Secretary*. — The Secretary shall:

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) *Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;*

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, however, that where the Department is regionalized on a department-wide basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

(7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;

(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and

(9) Perform such other functions as may be provided by law. (Emphasis supplied)

A cabinet secretary's power to discipline a subordinate can be found in Section 7(5), which adds that this power includes investigation and the creation of a committee for such purpose. Section 7(5) does not distinguish between presidential appointees and non-presidential appointees when it comes to the secretary's power to discipline. Neither does Section 7(7), which refers to the power of control, make any distinction. In fact, the distinction only crops up in Section 7(6), which refers to the power to appoint. Hence, in exercising disciplinary and control powers, a cabinet secretary does not need to distinguish between presidential appointees and non-presidential appointees.

In declaring[11] that cabinet secretaries have no disciplinary power over presidential appointees, the *ponencia* relies on Section 38[12] of the Civil Service Decree and Book V, Title I-A, Chapter 7, Section 48[13] of the Administrative Code. However, these provisions, as Justice Amy Lazaro-Javier (Justice Lazaro-Javier) observes, do not provide a statutory basis to the *ponencia*'s declaration. They merely describe the procedure to be followed in administrative complaints against non-presidential appointees;

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[11] *Ponencia*, pp. 12-14.

[12] Presidential Decree No. 807 (1975), Sec. 38(a) provides:

SECTION 38. *Procedure in Administrative Cases Against Non-Presidential Appointees*. — (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs or agencies, or regional directors, or upon sworn, written complaint of any other persons.

[13] ADM. CODE, Book V, Title I-A, Ch. 7, Sec. 48 provides:

SECTION 48. *Procedure in Administrative Cases Against Non-Presidential Appointees*. — (1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

they do not define the jurisdiction of cabinet secretaries over subordinates who are presidential appointees.[14]

In 2001, Executive Order No. 12 created the Presidential Anti-Graft Commission[15] to investigate presidential appointees with Salary Grade 26 and higher, and then to submit a report and recommendation to the president.[16] Later, in 2010, Executive Order No. 13 abolished[17] the Presidential Anti-Graft Commission and transferred its functions to the Office of the Deputy Executive Secretary for Legal Affairs.[18]

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[14] *J.* Lazaro-Javier, Concurring and Dissenting Opinion, pp. 9-10.

[15] Executive Order No. 12 (2001), Sec. 1 provides:

SECTION 1. *Creation*. — The Presidential Anti-Graft Commission, hereinafter referred to as the "Commission," is hereby created under the Office of the President, pursuant to Article VII, Section 17 of the Constitution.

[16] See Executive Order No. 12 (2001), Sec. 40 (b) and (e) and Sec. 8.

[17] Executive Order No. 13 (2010), Sec. 3 provides:

SECTION 2. *Abolition of Presidential Anti-Graft Commission (PAGC)*. To enable the Office of the President (OP) to directly investigate graft and corrupt cases of the Presidential appointees in the Executive Department including heads of government-owned and controlled corporations, the Presidential Anti-Graft Commission (PAGC) is hereby abolished and their vital functions, particularly the investigative, adjudicatory and recommendatory functions and other and functions inherent or incidental thereto, transferred to the office of the Deputy Secretary for Legal Affairs (ODESLA), OP in accordance with the provisions of this Executive Order.

[18] Executive Order No. 13 (2010), Sec. 3 provides:

SECTION 3. *Reconstructuring of the Office of the Deputy Executive Secretary for Legal Affairs, OP*. In addition to the Legal and Legislative Divisions of the ODESLA, the Investigative and Adjudicatory Division shall be created.

The newly created Investigative and Adjudicatory Division shall perform the powers, functions and duties mentioned in Section 2 hereof, of PAGC.

The Deputy Executive Secretary for Legal Affairs (DESLA) will be the recommending authority to the President, thru the Executive Secretary, for approval, adoption or modification of the report and recommendations of the Investigative and Adjudicatory Division of ODESLA.

In 2017, Executive Order No. 43 created the Presidential Anti-Corruption Commission to hear and investigate administrative cases and complaints,[19] as well as conduct lifestyle checks,[20] against presidential appointees accused of graft and corruption. The investigative and recommendatory functions of the Office of the Deputy Executive Secretary for Legal Affairs were transferred to the Presidential Anti-Corruption Commission.[21]

Nothing in the wordings of Executive Order Nos. 12, 13, or 43 removed the cabinet secretary's delegated authority to investigate and discipline its erring presidentially appointed subordinates. While the executive orders uniformly provided for the repeal of "other issuances, orders, rules and regulations,"[22] they did not expressly repeal any portion of the Administrative Code. Further, it is canon that an executive order cannot repeal a law.

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[19] Executive Order No. 43 (2017), Sec. 1 provides:

SECTION 1. *Creation*. The Presidential Anti-Corruption Commission, hereinafter referred to as the "Commission," is hereby created under the Office of the President to directly assist the President in investigating and/or hearing administrative cases primarily involving graft and corruption against all presidential appointees, as defined in Section 5 hereof, and to perform such other similar duties as the President may direct.

[20] Executive Order No. 43 (2017), sixth Whereas clause.

[21] Executive Order No. 43 (2017), Sec. 12 provides:

SECTION 12. *Transfer of Power, Duties, and Functions*. Consistent with the provisions of this Order, the investigative, recommendatory, and other incidental functions of the defunct Presidential Anti-Graft Commission (PAGC), which were transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) by virtue of EO No. 13 (s. 2010) shall be transferred to the Commission; provided, that the ODESLA shall retain its functions of formulating national anti-corruption plans, policies, and strategies, implementing anti-corruption initiatives of the government, and monitoring compliance therewith, which include, but shall not be limited to: (1) the review and implementation of the Philippines' compliance with the United Nations Convention against Corruption (UNCAC) pursuant to EO No. 171 (s. 2014); (2) the implementation of the Integrity Management Program (IMP) pursuant to EO No. 176 (s. 2014); and (3) coordination with the Inter-Agency Anti-Graft Coordinating Council.

[22] Executive Order No. 12 (2001), Sec. 19. See also Executive Order No. 13 (2010), Sec. 6 and Executive Order No. 43 (2017), Sec. 17.

Thus, as it stands, the power to investigate presidential appointees can either be delegated, as in the case of cabinet secretaries exercising their power of control and supervision over their subordinates, or can be exercised by the president directly through the Presidential Anti-Corruption Commission for complaints involving presidential appointees with a salary grade of 26 or higher.

Contrary to the *ponencia*'s statement that cabinet secretaries have no power to discipline and impose penalties on presidential appointees,[23] they retain the power to discipline *both* presidential appointees and non-presidential appointees. They are, after all, the president's alter-egos, whose acts are presumed to be the president's—unless they are reversed or disapproved by the president. As Justice Lazaro-Javier puts it, it is best to leave the disciplining of a subordinate to the cabinet secretary as "he or she knows better how the presidential appointee has been performing or conducting himself or herself in the public service."[24] Ultimately, though, the final say still belongs with the president, as the cabinet secretary's decision "remains subject to the president's disapproval or reversal."[25]

Additionally, to subscribe to the *ponencia*'s train of thought that only the president may impose penalties, and his or her subordinates are limited to investigating and recommending penalties, would be to deny a respondent the remedy of an appeal. By withholding the power to discipline from cabinet secretaries, the president's disciplinary action will immediately become final without the possibility of an appeal.

The power of control contained in Article VII, Section 17 of the Constitution means that the president can "alter or modify

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[23] *Ponencia*, p. 14.

[24] *J.* Lazaro-Javier, Concurring and Dissenting Opinion, p. 13.

[25] *Philippine Institute for Development Studies v. Commission on Audit*, G.R. No. 212022, August 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612> [Per *J.* Leonen, *En Banc*].

or nullify or set aside"[26] a subordinate officer's action and substitute it with his or her own judgment. It gives the president the opportunity to correct the subordinate's actions.

Nonetheless, the issue raised before this Court is limited to petitioner Adrian Cristobal, Jr., the Department of Trade and Industry Secretary, on his exercise of the power to discipline in connection with an investigation against respondent Danilo B. Enriquez. The issue does not involve the legality of petitioner's exercise of the power to impose penalties against a presidential appointee.

Thus, I concur with the *ponencia* that petitioner-secretary, as the President's alter-ego, possessed the power to investigate, create a committee to investigate the complaints and allegations against respondent, and preventively suspend respondent during the course of the investigation.

ACCORDINGLY, I vote to **GRANT** the Petition.

CONCURRING AND DISSENTING OPINION

CAGUIOA, ***J.*:**

The petition should be dismissed for lack of merit. Though I do not agree with certain pronouncements of the lower court, it reached the correct decision consistent with the rule in *Baculi v. Office of the President*[1] *(Baculi)*.

Disciplinary authority over presidential appointees belongs concurrently to the Office of the President (OP) and the Office of the Ombudsman (OMB). Thus, the conduct of the formal investigation of a presidential appointee contemplated under Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of

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[26] *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955) [Per *J.* Padilla, First Division].

[1] 807 Phil. 52 (2017).

the Executive Order No. 292 or the Administrative Code of 1987 (Administrative Code), subsequent to the filing of a complaint or Formal Charge is exclusively within the jurisdiction of the OP and OMB.

However, there is no legal impediment to a preliminary investigation by the Secretary of a subordinate short of taking disciplinary action (*e.g.*, placing a presidential appointee under preventive suspension or filing a formal charge, as in this case). This is inherent to the power of supervision and control over a department that a Secretary is given by law.

Sections 6 and 7, Chapter 2, Book IV of the Administrative Code read:

SECTION 6. Authority and Responsibility of the Secretary. — The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have **supervision and control** of the Department.

SECTION 7. Powers and Functions of the Secretary. — The Secretary shall:

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) **Exercise disciplinary powers over officers and employees under the Secretary** in accordance with law, **including their investigation**

and the designation of a committee or officer to conduct such investigation;

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, However, that where the Department is regionalized on a department-wide basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

(7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;

(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and

(9) Perform such other functions as may be provided by law.[2]

Certainly, the Secretary has the power to investigate a subordinate for purposes of determining whether a complaint should be filed or referred to the proper disciplining authority, or to prevent the disruption of the operations of his office.

Without more, this appears to be the extent of the disposition of the court *a quo*.[3] This qualification is also confirmed by the

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[2] Approved on July 25, 1987; emphasis and underscoring supplied.

[3] The dispositive portion of the Regional Trial Court Decision reads:

WHEREFORE:

1. The **instant petition** is **granted in part**.

2. The *Formal Charge with Preventive Suspension dated May 19, 2016* is **nullified** and **set aside**.

3. The **Special Investigation Committee** is **prohibited** from **hearing and adjudicating** the *Formal Charge with Preventive Suspension dated May 19, 2016*.

4. The [petitioners] are **commanded** to **restore** [respondent Danilo V. Enriquez (respondent Enriquez)] to his post as **Director** of the **Fair Trade Enforcement Bureau** of the Department of Trade and Industry, *unless his term of office has already expired and he can no longer resume such post under the present Administration, rollo*, p. 38.

fact that the preliminary investigation is still nevertheless allowed to produce effect by the *ponencia* (*i.e.*, referral of findings of the Department of Trade and Industry (DTI) Secretary to the OP or OMB for the conduct of proper proceedings), similar to the case of *Baculi*.

A more precise rule, to my mind, is that the disciplinary jurisdiction of the OP and the OMB over presidential appointees does not negate the power of a Secretary of a department to conduct a preliminary investigation short of taking disciplinary action (*e.g.*, placing a presidential appointee under preventive suspension or filing a formal charge).

As applied to this case, the preliminary investigation conducted within the DTI was authorized by law but the proceedings subsequent to the Formal Charge not brought before the OP or OMB were susceptible to *certiorari* and were correctly nullified by the court *a quo*.

On the Secretary's limited disciplinary jurisdiction and the applicability of Sections 47 to 52 of the Administrative Code.

Section 38(a) of Presidential Decree No. 807 and Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Administrative Code speak only of the procedures in administrative cases against non-presidential employees. Sections 47 and 51[4] relating to the

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[4]

Book V
TITLE I
Constitutional Commissions
SUBTITLE A
Civil Service Commission
Chapter 7
Discipline

SECTION 47. Disciplinary Jurisdiction. — (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the

disciplinary jurisdiction of Secretaries do not appear operational as regards presidential appointees. By its own rules as contained in the 2017 Revised Rules on Administrative Cases in the Civil Service (2017 RRACS),[5] the Civil Service Commission (CSC)

Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

(3) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (4) of the following Section.

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

SECTION 51. Preventive Suspension. — The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

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Rule 2
JURISDICTION AND VENUE OF ACTIONS

Section 7. ***Cases Cognizable by the Commission.*** The Civil Service Commission shall take cognizance of the following cases:

recognizes that it does not have jurisdiction over presidential appointees. Section 9,[6] Rule 2 of the 2017 RRACS echoes the provisions of Section 47(2)[7] of the Administrative Code, also signaling inapplicability to presidential appointees.

In this regard, I believe that Sections 6 and 7(5), Chapter 2, Book IV of the Administrative Code are sufficient legal bases for the Secretary's exercise of the power to investigate and designate a committee or officer to conduct such investigation, without further reliance on the non-exclusive language of Section 47(2), Chapter 7, A, Subtitle A, Title I, Book V of the Administrative Code.

Insofar as presidential appointees coming under the direct disciplinary jurisdiction of the OP and OMB, the provisions of Sections 46 to 52 of the Administrative Code relating to the "disciplining authority" and "proper disciplining authority" must be read to pertain to the OP and OMB. Thus, for presidential appointees, the power to impose disciplinary penalties in Section 46,[8] resort

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A. **Disciplinary**

x x x x x x x x x

3. Complaints against officials who are not presidential appointees or elective officials;

[6] **Section 9.** ***Jurisdiction of Disciplining Authorities.*** The disciplining authorities of agencies and local government units shall have original concurrent jurisdiction with the Commission over their respective officials and employees. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary subject to Section 7(A) (5) of these Rules. In case the decision rendered by a bureau or office is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is dismissal from the service, in which case the same shall be executory only after confirmation by the Secretary concerned.

[7] See *supra* note 4.

[8] **SECTION 46.** Discipline: General Provisions. x x x

x x x x x x x x x

to summary proceedings under Section 50,[9] and placing the employee under preventive suspension under Section 51[10] do not pertain to the Department Secretary, but to the OP and OMB.

While I agree that preventive suspension is not a penalty, the power to impose it must be interpreted to pertain to the OP or OMB as proper disciplining authority — as necessitated by consistency.

That said, there is nothing that prevents the Secretary from imposing preventive suspension, conducting the investigation subsequent to the institution of a formal complaint, and imposing disciplinary penalties with the express conformity of or prior

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> (d) In meting out punishment, the same penalties shall be imposed for similar offenses and only one penalty shall be imposed in each case. The disciplining authority may impose the penalty of removal from the service, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months' salary, or reprimand.

[9] **SECTION 50.** Summary Proceedings.—No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

> (1) When the charge is serious and the evidence of guilt is strong;
>
> (2) When the respondent is a recidivist or has been repeatedly charged and there is reasonable ground to believe that he is guilty of the present charge; and
>
> (3) When the respondent is notoriously undesirable.
>
> Resort to summary proceedings by the disciplining authority shall be done with utmost objectivity and impartiality to the end that no injustice is committed: Provided, That removal or dismissal except those by the President, himself or upon his order, may be appealed to the Commission.

[10] **SECTION 51.** Preventive Suspension.—The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

approval from the OP. As between a unilateral exercise of full disciplinary jurisdiction over a presidential appointee that flies in the face of the President's direct disciplinary jurisdiction, obtaining the express conformity or prior approval of the OP prior to the taking of disciplinary action is not an unreasonable requirement for a Secretary who is an *alter ego*.

This limited disciplinary jurisdiction is the most reasonable interpretation that gives effect to the Secretary's power of supervision and control over his department while respecting the direct disciplinary jurisdiction of the President over his appointees. This is also consistent with *Baculi*.[11]

On the doctrine of qualified political agency.

Relatedly, while the doctrine of qualified political agency may justify a Secretary's exercise of disciplinary jurisdiction over a subordinate presidential appointee, this limited disciplinary jurisdiction must be short of taking disciplinary action (*i.e.*, the imposition of penalties). To my mind, this limitation is justified by:

Effect of subsequent executive issuances.

The doctrine of qualified political agency must be consistent with the President deciding to directly investigate and take cognizance of complaints and administrative cases against presidential appointees. For suspected graft and corrupt practices as is involved in this case, the OP had issued Executive Orders (EO) creating the Presidential Anti-Graft Commission,[12] transferring its powers, duties and functions to Office of the Deputy Executive Secretary for Legal Affairs,[13] and under the

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[11] Note that in *Baculi*, the petitioner did not question the Department of Agrarian Reform Secretary's act of placing him under preventive suspension; hence, no ruling was made relative thereto.

[12] EO No. 12 (2001), entitled CREATING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES AND FUNCTIONS, AND FOR OTHER PURPOSES.

[13] EO No. 13 (2010), entitled ABOLISHING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND TRANSFERRING ITS INVESTIGATIVE,

current administration, the Presidential Anti-Corruption Commission[14] for that specific purpose.

Viewed in this light, the holding in *Baculi* followed by the court *a quo* has sound basis. Executive issuances and those of other national government agencies affirm the contemporaneous construction that the direct disciplinary jurisdiction over presidential appointees belongs to the OP and OMB. Hence, only the investigation can be done by the Secretary. The procedure envisioned in Sections 47 to 52 of Chapter 7, Subtitle A, Title I, Book V of the Administrative Code, subsequent to the filing of a Formal Charge is within the jurisdiction of the OP and OMB.

These issuances, issued under the ordinance power of the President relating to constitutional or statutory powers (*i.e.*, the sharing of disciplinary jurisdiction with heads of

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ADJUDICATORY AND RECOMMENDATORY FUNCTIONS TO THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT.

[14] EO No. 43 (2017), entitled CREATING THE PRESIDENTIAL ANTI-CORRUPTION COMMISSION AND PROVIDING FOR ITS POWERS, DUTIES AND FUNCTIONS, AND FOR OTHER PURPOSES, as amended by EO No. 73 (2018). One of the amendments introduced by EO No. 73 reads:

SECTION 1. x x x

"Section 5. *Jurisdiction, Powers and Functions. —*

x x x x x x x x x

(f) x x x

x x x x x x x x x

The preceding paragraphs notwithstanding, nothing shall prevent the President, in the interest of the service, from directly investigating and/or hearing an administrative case against any presidential appointee or authorizing other offices under the Office of the President to do the same, as well as from assuming jurisdiction at any stage of the proceedings over cases being investigated by the Commission."

offices)[15] may be read as a continuing decision of the President to directly take cognizance of complaints and cases against presidential appointees, limiting the applicability of qualified political agency with respect to the exercise of disciplinary jurisdiction over presidential appointees. In this class of cases, EOs, while not repealing laws, may validly modify them.

Hence, the general proposition that an EO cannot repeal a law does not hold true in this case.

Baculi v. Office of the President.

In *Baculi*, the doctrine of qualified political agency for purposes of imposing disciplinary penalties (*i.e.*, dismissal) was accorded, not to the Department Secretary but to the Deputy Executive Secretary, thus:

> And, secondly, it was of no moment to the validity and efficacy of the dismissal that only Acting Deputy Executive Secretary for Legal Affairs Gaite had signed and issued the order of dismissal. In so doing, Acting Deputy Executive Secretary Gaite neither exceeded his authority, nor usurped the power of the President. Although the powers and functions of the Chief Executive have been expressly reposed by the Constitution in one person, the President of the Philippines, it would be unnatural to expect the President to personally exercise and discharge all such powers and functions. Somehow, the exercise and discharge of most of these powers and functions have been delegated to others, particularly to the members of the Cabinet, conformably to the doctrine of qualified political agency. Accordingly, we have expressly recognized the extensive range of authority vested

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BOOK III
Office of the President
TITLE I
Powers of the President
CHAPTER 2
Ordinance Power

SECTION 2. Executive Orders.— Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

in the Executive Secretary or the Deputy Executive Secretary as an official who ordinarily acts for and in behalf of the President. As such, the decisions or orders emanating from the Office of the Executive Secretary are attributable to the Executive Secretary even if they have been signed only by any of the Deputy Executive Secretaries.[16]

Need for a workable rule.

For the same reason above, the *alter ego* or qualified political agency doctrine must defer to the final action of the President with respect to disciplinary action (*i.e.*, imposition of penalties). It may indeed lead to unnecessary embarrassment to the Executive Department if the President is constrained to reinstate a presidential appointee removed or suspended by the Secretary in his capacity as *alter ego* in the face of the executive issuances already signaling the President's decision to directly exercise disciplinary jurisdiction over these persons he personally appointed. It is much more workable for the limited disciplinary jurisdiction to be recognized as in *Baculi* and for the Secretary to recommend and leave the taking of disciplinary action to the President as the appointing power.

On mootness and referral of findings to the OP.

The decision holds that the petition is not mooted by the expiration of respondent Enriquez's term upon the appointment of another person to his position. I recognize the merit of SAJ Perlas-Bernabe's position that the Formal Charge filed by the investigating committee signifies the institution of the complaint conformably with *Baculi*, and that cessation from office "is not a way out to evade administrative liability when facing administrative sanction. [It] does not preclude the finding of any administrative liability to which he or she shall still be answerable."[17]

While I agree that the issues raised in this case remain justiciable despite respondent Enriquez's separation, my position

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[16] *Supra* note 1, at 66-68.

[17] Separate Concurring Opinion of SAJ Perlas-Bernabe, p. 3.

is that for presidential appointees, administrative jurisdiction may only be had by the timely filing of a Formal Charge before the OP or the OMB during the incumbency of the said appointee. This is not inconsistent with the jurisprudence[18] dealing with either dismissed or resigned officials. The Formal Charge herein was not brought to the OP or OMB during the respondent's tenure; hence, no complaint was timely instituted before the proper disciplining authority. There is no valid pending or subsisting administrative complaint that could be the avenue to find administrative liability at this stage. This is in stark contrast with the fact pattern in *Baculi*: the Department of Agrarian Reform Secretary forwarded his findings and recommendations to the OP while the petitioner was still in office; the OP, in turn, dismissed the petitioner therein from the service.

Hence, I do not believe that there is basis to refer the SIC's findings to the OP for imposition of administrative penalties, if any.

Conclusion

In fine, I maintain that the extent of disciplinary jurisdiction of a Department Secretary over a subordinate-presidential appointee includes the power to investigate, and designate a committee or officer to conduct such investigation, BUT does not include the power to unilaterally place the presidential

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[18] *Office of the Court Administrator v. Judge Hamoy*, 489 Phil. 296, 301 (2005), deals with a judge who "was dismissed from service with forfeiture of retirement benefits except accrued leave credits after he was found guilty of gross inefficiency, dereliction of duty and violation of the Code of Judicial Conduct." The Court held that his dismissal did not preclude the imposition of fine charged against his accrued leave benefits.

On the other hand, in *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169 (2011), deals with "Andutan [who] was forced to resign more than a year before the Ombudsman filed the administrative case against him," *id.* at 185. The CA annulled and set aside the OMB decision, because, among other reasons, "the administrative case was filed after Andutan's forced resignation," *id.* at 175. On *certiorari*, the Court agreed with the CA, holding that "Andutan is no longer the proper subject of an administrative complaint," *id*. at 189.

appointee under preventive suspension and to unilaterally impose disciplinary penalties. Given the state of the law and executive issuances on the matter, there is no pressing need to deviate from or abandon *Baculi*.

Moreover, separate from the issue of whether the DTI Secretary has disciplinary jurisdiction over a subordinate presidential appointee, I believe that DTI's failure to bring the Formal Charge before the proper disciplining authority (*i.e.*, OP or OMB) prior to the respondent's separation from office means no disciplinary jurisdiction can be had over him at this stage. It also forecloses the continuation of proceedings with a view of finding administrative liability on the part of respondent Enriquez.

On the basis of the foregoing, I vote to dismiss the petition.

CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, ***J.*:**

I concur with the highly esteemed *Ponente* insofar as he upholds the power of Department Secretaries to investigate their subordinates for administrative offenses, but dissent insofar as he limits this power to preclude Department Secretaries from imposing penalties against presidential appointees.

True, the *ponencia* and the challenged rulings are consistent with precedents, one of which as cited is *Baculi v. Office of the President*,[1] but perhaps it is high time that the basis for their common holding be revisited.

If I may digress a bit, a bright light from the procedural history of the instant case is the trial court judge's adherence to the rule of precedent which is one of the cornerstones of the rule of law. Precedent is a doctrine that brings stability to the

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[1] G.R. No. 188681, March 8, 2017.

state of our law. But it is also the Court's function not only to ensure adherence to precedents, as the trial court judge has done, but to re-examine the continued validity and doctrinal value of precedents in the light of present day circumstances including the prevailing legal philosophies of the Court's current roster.

The bases for this opinion is twofold: (i) statutory provisions, and (ii) the doctrine of qualified political agency.

I.

The Administrative Code vests Department Secretaries with Disciplinary Jurisdiction over their Subordinates

I do **not** see any reason why we should continue to exclude the exercise of disciplinary jurisdiction over presidential appointees who are subordinates of the President's alter egos from the **statutory grant** of disciplinary jurisdiction to the President's alter egos over their subordinates.

The *ponencia* refers us to Section 38 of PD 807[2] and Section 47 of EO 292[3] to prove that heads of the Executive Departments have no disciplinary jurisdiction over presidential appointees even if the latter are the department heads' respective subordinates. *The reference to these statutory provisions to support the ponencia's proposition, with due respect, may not be accurate.*

For these statutory provisions deal ***ONLY*** with the ***procedure*** to be adopted with respect to the administrative cases against

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[2] Section 38. Procedure in Administrative Cases Against Non-Presidential Appointees. (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs or agencies, regional directors, or upon sworn, written complaint of any other persons.

[3] Section 48. Procedure in Administrative Cases Against Non-Presidential Appointees.— (1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

non-presidential appointees. These statutory provisions ***do not define***, by any stretch of interpretation, the disciplinary jurisdiction of the heads of the Executive Departments over their subordinates who are presidential appointees.

It is quite a leap to conclude that just because Section 38 of PD 807 and Section 47 of EO 292 provide the ***procedure*** that a Secretary ***may*** take and follow in an administrative case against a non-presidential appointee, the *provisions already limit* the Secretary's disciplinary jurisdiction to subordinates who are not presidential appointees. The language of the statutory provisions simply ***does not support*** this claim of the precedents relied upon by the *ponencia* and the trial judge. Besides the fact that Section 38 of PD 807 and Section 47 of EO 292 are couched in the **permissive sense**, as shown by the **use of the word "may,"** these provisions only talk about the **procedure** that may be followed in an administrative case against a non-presidential appointee.

Indeed, the **appropriate statutory provisions** which define the **disciplinary jurisdiction** of heads of the Executive Departments over their subordinates who are presidential appointees are Sections 6 and 7(5),[4] Chapter 2, Title III, Book IV; Section 47(2),[5] Chapter 7, Title I, Book V; and,

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[4] Section 6. Authority and Responsibility of the Secretary. — The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.

Section 7. Powers and Functions of the Secretary. — The Secretary shall . . . (5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation. . . .

[5] SECTION 47. Disciplinary Jurisdiction. — . . . (2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head

Section 51,[6] Chapter 4, Book V, all of EO 292. The **headings** or **head notes** or **epigraphs** of these statutory provisions are themselves **convenient indexes to their contents** — "Authority," "Responsibility," "Powers," "Functions" and "Disciplinary Jurisdiction."

More important, the language and wordings of the foregoing statutory provisions **clearly indicate** who are **subject to the Secretary's disciplinary jurisdiction** — the **Secretary's subordinates *WITHOUT DISTINCTION*** as to whether the public officer is a presidential appointee or a non-presidential appointee. The **procedure** involved in the administrative case may be different from one to the other, but the **disciplinary jurisdiction of the Secretary over both of them** is very clear from the aforementioned provisions. Sections 6 and 7(5) of Book IV, Section 47 (2) of Book V, and Section 51 of Book V, all of EO 292, could not have been made any clearer as to their meaning.

It bears emphasis that the *disciplinary jurisdiction of the Secretary over both presidential and non-presidential appointees* is **not exclusive** of the **disciplinary jurisdiction** that the President *may choose at any time to assume and exercise* over both types of appointees. Hence, **at any time**, the President **may assume and exercise disciplinary jurisdiction over an administrative case** involving either a presidential appointee or a non-presidential appointee **at any**

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is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

[6] SECTION 51. Preventive Suspension.— The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

stage of the administrative proceedings before the heads of the Executive Departments.

The **reason** for this ***reserved authority and power*** **of the President as Chief Executive** lies in the nature of our constitutional presidential system whereby all executive and administrative organizations are adjuncts of the Executive Department, and the heads of the various executive departments are mere assistants and agents of the President as Chief Executive. Except in cases where the Chief Executive is required by the *Constitution* or the law to act in person, or the exigencies of the situation demand that he or she act personally, the nature of the presidential bureaucracy involves the multifarious executive and administrative functions of the President as Chief Executive being performed by and through the executive departments, as his or her mere assistants and agents.

III.

The Doctrine of Qualified Political Agency

Assuming that Sections 6 and 7(5) of Book IV, Section 47(2) of Book V, and Section 51 of Book V, all of EO 292, are equivocal as to their meaning (an assumption that I cannot accept given the clarity of these provisions), the **disciplinary jurisdiction** of an executive department head over **presidential appointees** can be **implied necessarily** from the **doctrine of qualified political agency**.

Under this doctrine, **department secretaries are alter egos or assistants of the President and their acts are presumed to be those of the latter unless disapproved or reprobated by him**. According to former Chief Justice Lucas Bersamin in *Manalang-Demegillo v. Trade and Investment Development Corporation of the Philippines*,[7] this doctrine of qualified political agency:

> . . . also known as the alter ego doctrine, was introduced in the landmark case of *Villena v. The Secretary of Interior*. In said case,

[7] 705 Phil. 331 (2013).

the Department of Justice, upon the request of the Secretary of Interior, **investigated** Makati Mayor Jose D. Villena and found him guilty of bribery, extortion, and abuse of authority. The Secretary of Interior **then recommended to the President the suspension from office** of Mayor Villena. Upon **approval by the President of the recommendation**, the **Secretary of Interior suspended Mayor Villena**. Unyielding, **Mayor Villena challenged his suspension, asserting that the Secretary of Interior had no authority to suspend him from office** because **there was no specific law granting such power to the Secretary** of Interior; and that **it was the President alone who was empowered to suspend local government officials**. **The Court disagreed with Mayor Villena and upheld his suspension**, holding that **the doctrine of qualified political agency warranted the suspension by the Secretary** of Interior. Justice Laurel, writing for the Court, opined:

After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that **under the presidential type of government** which we have adopted and considering the departmental organization established and continued in force by paragraph 1, Section 12, Article VII, of our Constitution, **all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive**, and, **except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally**, the **multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments**, and the **acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive**. (*Runkle vs. United States* [1887], 122 U.S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also *U.S. vs. Eliason* [1839], 16 Pet., 291; 10 Law. ed., 968; *Jones vs. U.S.* [1890], 137 U.S., 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; *Wolsey vs. Chapman* [1880], 101 U.S., 755; 25 Law. ed., 915; *Wilcox vs. Jackson* [1836], 13 Pet., 498; 10 Law. ed., 264.)

Fear is expressed by more than one member of this court that **the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the President of the Philippines for acts of any member of his cabinet, however illegal, irregular or improper** may be these acts. The

implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established and operated. Familiarity with the essential background of the type of Government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation. With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. **The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence"** (7 Writings, Ford ed., 498), and in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." **Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President.** Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, **"each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority."** (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S. 52 at 133; 71 Law. Ed., 160). x x x.

The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, **the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts**. This doctrine is in recognition of the fact that in our presidential form of government, **all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments**. The **doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office**. *(emphasis added)*

Manalang-Demegillo identifies two instances where the doctrine does not apply: (i) where the public officer is not a presidential appointee; and (ii) where the action taken by the public officer is pursuant to a specific statutory mandate. Hence, **assuming** that there is no statute that grants disciplinary jurisdiction to a head of an executive department over presidential appointees *(an assumption that I strongly dispute because of the clear provisions of Sections 6 and 7(5) of Book IV, Section 47(2) of Book V, and Section 51 of Book V, all of EO 292)*, then ***the doctrine of qualified political agency fills in that perceived void***. The doctrine is **not ousted** by Section 38 of PD 807 and Section 47 of EO 292 because these statutory provisions **relate only to** the **procedure** involved in an administrative case against non-presidential appointees by a head of an executive department, **but not** the scope of public officers covered by the disciplinary jurisdiction of a head of an executive department.

Thus, **applying the doctrine of qualified political agency**, when a *Secretary*, such as the Secretary of the Department of Trade and Industry in the case at bar, *exercises disciplinary jurisdiction over a subordinate presidential appointee*, **the Secretary is doing so as the President's alter ego**. In resorting to the doctrine, *assuming there is no statutory authority granting the Secretary such power, which I strongly dispute*, the Secretary **does not need** an express and categorical mandate from the President to exercise disciplinary jurisdiction over the Secretary's subordinate presidential appointees, because **impliedly, the Secretary already has such mandate** as the President's alter ego. The Secretary's action *vis-à-vis* the subordinate presidential appointee is **deemed** to be the President's action — this **deeming rule** is the substance of the doctrine of qualified political agency — unless reprobated by the President himself.

It **goes without saying** that the doctrine of qualified political agency if resorted to by a head of an executive department **does not vest *exclusive*** disciplinary jurisdiction upon the latter *to the exclusion* of the President as Chief Executive. This is because, *consistent with the nature of a presidential system*

as stated above, and also with the nature of an agency relationship, the department heads are **the President's mere factotums** whom the President as Chief Executive can at any time *hire, fire, replace, or take over from* at any stage of the department heads' execution of their functions.

As a statement of our country's rule of law, *the doctrine of qualified political agency is well entrenched*. In practical terms, the doctrine is responsive to the multifarious concerns that the President has to attend to and the fact that there are just so many presidential appointees out there. **At the first instance**, it is *best to leave the disciplining to the President's alter ego* as **he or she knows better how the presidential appointee has been performing or conducting himself or herself** in the public service.

I do recognize that the doctrine of qualified political agency does not apply "in cases where the Chief Executive is required by Constitution or law to act in person or the exigencies of the situation demand that he act personally." But we have to ask ourselves, to what particular acts do we apply the exception?

Villena v. Secretary of Interior[8] has already intimated that not every power vested in the President falls within the exception. Thus:

> In the deliberation of this case it has also been suggested that, admitting that the President of the Philippines is invested with the authority to suspend the petitioner, and it appearing that he had verbally approved or at least acquiesced in the action taken by the Secretary of the Interior, **the suspension of the petitioner should be sustained on the principle of approval or ratification of the act of the Secretary of the Interior by the President of the Philippines. There is, to be sure, more weight in this argument** than in the suggested generalization of Section 37 of Act No. 4007. **Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain prerogative acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain**

[8] 67 Phil. 451 (1939).

constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and proclaim martial law (par. 3, Sec. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, Sec. 11, *idem*). Upon the other hand, doubt is entertained by some members of the court whether the statement made by the Secretary to the President in the latter's behalf and by his authority that the President had no objection to the suspension of the petitioner could be accepted as an affirmative exercise of the power of suspension in this case, or that the verbal approval by the President of the suspension alleged in a pleading presented in this case by the Solicitor-General could be considered as a sufficient ratification in law.

After serious reflection, **we have decided to sustain the contention of the government in this case on the broad proposition**, albeit not suggested, **that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, Section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive**, and, **except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive**. (*Runkle vs. United States* [1887], 122 U.S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also *U.S. vs. Eliason* [1839], 16 Pet., 291; 10 Law. ed., 968; *Jones vs. U.S.* [1890], 137 U.S., 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; *Wolsey vs. Chapman* [1880], 101 U.S., 755; 25 Law. ed., 915; *Wilcox vs. Jackson* [1836], 13 Pet., 498; 10 Law. ed., 264.)

We have thus long recognized that the President has powers that may or may not be delegated. This precept presupposes that the President *possesses those powers* as vested in him or her by the *Constitution* or by statute but may be exercised

by his or her Cabinet members. Hence, it *cannot* be proposed that *simply because* the President has been vested a power *means* that this power *can no longer* be exercised by his or her alter egos under the doctrine of qualified political agency. Otherwise, the doctrine would become a useless rule since the President is the single Chief Executive upon whom the faithful execution of the laws has been explicitly vested by the *Constitution*. As to which power falls within the exception really depends *not* on the fact that the power has been given to the President, *but* on the nature of the power thus accorded to the President and the gravity of the consequences of the use of such power.

Spouses Constantino v. Cuisia,[9] discussed the type of presidential powers that may be delegated — (i) those that may be considered to be within the expertise of the Cabinet member concerned, (ii) those that require focus on a welter of time-consuming detailed activities, which would unduly hamper the President's effectivity in running the government, those involving the formulation and execution of schemes pursuant to the policy publicly expressed by the President himself or herself, or (iii) though of vital public interest, those only akin to any contractual obligation undertaken by the sovereign arising not from any extraordinary incident but from the established functions of governance.

On the other hand, the exception includes "certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import." Thus:

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[9] 509 Phil. 486 (2005).

Second Issue: Delegation of Power

Petitioners stress that unlike other powers which may be validly delegated by the President, the power to incur foreign debts is expressly reserved by the Constitution in the person of the President. They argue that the gravity by which the exercise of the power will affect the Filipino nation requires that the President alone must exercise this power. They submit that the requirement of prior concurrence of an entity specifically named by the Constitution — the Monetary Board — reinforces the submission that not respondents but the President "alone and personally" can validly bind the country.

Petitioners' position is negated both by explicit constitutional and legal imprimaturs, as well as the doctrine of qualified political agency.

The evident exigency of having the Secretary of Finance implement the decision of the President to execute the debt-relief contracts is made manifest by the fact that the process of establishing and executing a strategy for managing the government's debt **is deep within the realm of the expertise of the Department of Finance, primed as it is to raise the required amount of funding, achieve its risk and cost objectives, and meet any other sovereign debt management goals**.

If, as petitioners would have it, the President were to personally exercise every aspect of the foreign borrowing power, he/she would have to pause from running the country long enough to focus on a welter of time-consuming detailed activities — the propriety of incurring/guaranteeing loans, studying and choosing among the many methods that may be taken toward this end, meeting countless times with creditor representatives to negotiate, obtaining the concurrence of the Monetary Board, explaining and defending the negotiated deal to the public, and more often than not, flying to the agreed place of execution to sign the documents. **This sort of constitutional interpretation would negate the very existence of cabinet positions and the respective expertise which the holders thereof are accorded and would unduly hamper the President's effectivity in running the government.**

Necessity thus gave birth to the doctrine of qualified political agency, later adopted in *Villena v. Secretary of the Interior* from American jurisprudence, *viz.*:

> With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority" (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S., 52 at 133; 71 Law. ed., 160).

As it was, the backdrop consisted of a major policy determination made by then President Aquino that sovereign debts have to be respected and the concomitant reality that the Philippines did not have enough funds to pay the debts. Inevitably, it fell upon the Secretary of Finance, as the alter ego of the President regarding "the sound and efficient management of the financial resources of the Government," **to formulate a scheme for the implementation of the policy publicly expressed by the President herself**.

Nevertheless, there are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or alter ego of the President. Justice Laurel, in his *ponencia* in Villena, makes this clear:

> Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the

> Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, in his power to suspend the writ of *habeas corpus* and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, Sec. 11, *idem*).

These distinctions hold true to this day. **There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government**. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but **there must be a showing that the executive power in question is of similar gravitas and exceptional import**.

We cannot conclude that the power of the President to contract or guarantee foreign debts falls within the same exceptional class. Indubitably, the decision to contract or guarantee foreign debts is **of vital public interest, but only akin to any contractual obligation undertaken by the sovereign, which arises not from any extraordinary incident, but from the established functions of governance**.

Another important qualification must be made. The Secretary of Finance or **any designated alter ego of the President is bound to secure the latter's prior consent to or subsequent ratification of his acts**. In the matter of contracting or guaranteeing foreign loans, the repudiation by the President of the very acts performed in this regard by the alter ego will definitely have binding effect. Had petitioners herein succeeded in demonstrating that **the President actually withheld approval and/or repudiated** the Financing Program, there could be a cause of action to nullify the acts of respondents. Notably though, petitioners do not assert that respondents pursued the Program without prior authorization of the President or that the terms of the contract were agreed upon without the President's authorization. Congruent with the avowed preference of then President Aquino to honor and restructure existing foreign debts, **the lack of showing that she countermanded the acts of respondents leads us to conclude that said acts carried presidential approval**. *(my emphasis)*

An example of a presidential power that falls outside the ambit of the doctrine of qualified political agency is found in *Resident Marine Mammals of the Protected Seascape of Tañon Strait v. Reyes*,[10] — the execution of a service contract for the exploration of petroleum under paragraph 4, Section 2, Article XII of the *Constitution*, which requires that the President himself or herself to enter into such contract.

Here, the power to remove a presidential appointee of respondent's rank and responsibilities is *not* of the type that engages the exception to the doctrine. It is *not* one that the Court has previously declared must be exercised personally by the President. It is *not* one that arises out of exceptional circumstances, or if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government.

On the contrary, it is *one of those* falling within any of the enumerated exceptions to the exception. The removal of a presidential appointee of the rank and responsibilities of respondent is within the expertise of the Cabinet member concerned; it requires focus on a welter of time-consuming detailed activities, which would unduly hamper the President's effectivity in running the government; it involves the execution of the President's publicly stated policy against misfits in government; and, it is an ordinary incident that is part and parcel of the established functions of governance. As a result, it *cannot be seriously argued* that the power involved falls within the exception to the application of the doctrine of qualified political agency.

I *also have to caution* that just because the removal is decided and implemented by the Cabinet member in the ordinary course of law does not mean that the President is by-passed and his or her power to discipline his or her appointees is diluted. This is far from it.

As mentioned, the designated alter ego of the President is bound to secure the latter's prior consent to or subsequent

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[10] 758 Phil. 724 (2015).

ratification of his or her acts. For the President's repudiation of the very acts performed by the alter ego in this regard will definitely have a binding effect. If it is demonstrated that the President actually withheld approval or repudiated the alter ego's action, which in this day and age is easy to accomplish, there could be a cause of action to nullify the latter's acts. It is only when there is utter lack of showing that the President countermanded the acts of his or her Cabinet member can we conclude that these acts carried presidential approval.

Recognizing the application of the doctrine of qualified political agency in the instant case is especially convincing during emergency times. It gives department secretaries the latitude in helping the President in his tasks without unnecessarily burdening him. This is because the department secretaries know the capacities and actual performance of their subordinates, be they presidential or non-presidential appointees, as it is often the case that these subordinates, even those appointed by the President, are so appointed only upon the respective recommendations of the department secretaries. More, these Presidential appointees are mostly career people who are recommended and appointed on the basis of fitness and merit: not because they enjoy the trust and confidence of the President. They enjoy security of tenure and may be removed only upon valid or just cause. They do not serve at the pleasure of the President. Hence, unless disapproved by the President, it behooves us in the Court to recognize the dynamics within each department which the secretary concerned has foremost knowledge of. In any event, these presidential appointees are not removed whimsically and immediately but must be based on cause as they were appointed on the basis of merit and fitness. This is the necessary check that what the department secretaries are doing as personnel movements within their respective turfs are easily monitored and principled.

ACCORDINGLY, I vote to grant the petition and to reverse the assailed Order dated June 27, 2016 of the learned trial judge. I vote to declare as **VALID** the entire administrative proceedings conducted by the Department of Trade and Industry against Respondent Danilo B. Enriquez pursuant to Department Order No. 16-34 dated April 22, 2016.

EN BANC

[G.R. No. 238671. June 2, 2020]

TAISEI SHIMIZU JOINT VENTURE, *petitioner, vs.* **COMMISSION ON AUDIT and THE DEPARTMENT OF TRANSPORTATION (formerly DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); JURISDICTION; COA'S PRIMARY JURISDICTION OVER MONEY CLAIMS DUE FROM OR OWING TO THE GOVERNMENT DOES NOT PRECLUDE THE EXERCISE OF JURISDICTION OVER THE SAME SUBJECT MATTER BY ANOTHER ADJUDICATORY BODY, TRIBUNAL, OR COURT; THE EXCLUSIVE JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) UNDER E.O. 1008 PREVAILS OVER COA'S GENERAL JURISDICTION OVER MONEY CLAIMS DUE OR OWING TO THE GOVERNMENT UNDER P.D. 1445. — [T]here is nothing in the Constitution, laws, or even the COA rules expressly granting the COA original *and exclusive* jurisdiction over money claims due from or owing to the government. For one, Batas Pambansa Blg. 129 as amended by RA 7691 vests jurisdiction over money claims in the first and second level courts[.] x x x Actions against the State are not excluded from the jurisdiction of courts. For although, as a rule, the State is immune from suit, it is settled that "a suit against the State is allowed when the State gives its consent, either expressly or impliedly. Express consent is given through a statute, while implied consent is given when the State enters into a contract or commences litigation." We recently held that although the COA exercises broad powers pertaining to audit matters, it is devoid of authority to determine the validity of contracts, lest it encroaches upon such judicial function. We further decreed that the COA's jurisdiction is limited to audit matters only. Hence, we set aside a ruling of the COA disapproving a deed of exchange between the City Government of Cebu and a private corporation. The

case clearly demonstrated why it was not unusual for the government and its instrumentalities to be sued in the regular courts even when the action involved government funds or property since such an action may entail resolution of issues falling within the jurisdiction of the courts. Other tribunals/ adjudicative bodies, too, may have concurrent jurisdiction with the COA over money claims against the government or in the audit of the funds of government agencies and instrumentalities. x x x Considering that TSJV and DOTr had voluntarily invoked CIAC's jurisdiction, the power to hear and decide the present case has thereby been solely vested in the CIAC to the exclusion of COA. Being a specific law, EO No. 1008 providing for CIAC's exclusive jurisdiction prevails over PD 1445, granting the COA the general jurisdiction over money claims due from or owing to the government. For this reason alone, the COA should have stayed its hands from modifying the CIAC's final arbitral award here, let alone from claiming exclusive jurisdiction over the case.

2. ID.; ID.; ID.; ID.; TWO TYPES OF MONEY CLAIMS WHICH MAY BE BROUGHT TO THE COA, DISTINGUISHED. – – There is merit to Chairperson Aguinaldo's opinion pertaining to the two (2) main types of money claims which the COA may be confronted with. The first type covers money claims originally filed with the COA. Jurisprudence specifies the nature of the money claims which may be brought to the COA at first instance. In ***Euro-Med Laboratories, Phil., Inc. v. Province of Batangas,*** we explicitly ordained that these cases are limited to liquidated claims[.] x x x We, too agree with Chairperson Aguinaldo that the second type of money claims refers to those which arise from a final and executory judgment of a court or arbitral body. He also correctly cited ***Uy***, reiterating our undeviating jurisprudence that final judgments may no longer be reviewed or, in any way be modified directly or indirectly by a higher court, not even by the Supreme Court, much less, by any other official, branch or department of government.

3. ID.; ID.; ID.; ID.; THE COURT LAYS DOWN A CONCEPTUAL FRAMEWORK FOR THE GUIDANCE OF THE COA, THE BENCH, AND THE BAR PERTAINING TO THE COA'S AUDIT POWER *VIS-À-VIS* MONEY CLAIMS THAT AROSE FROM A FINAL AND EXECUTORY JUDGMENT OF A COURT OR ARBITRAL BODY. — [W]e lay down a conceptual framework

for the guidance of the COA, the Bench, and the Bar pertaining to the COA's audit power *vis-a-vis* the second type of money claims which may be brought before it during the execution stage. x x x *A. Once a court or other adjudicative body validly acquires jurisdiction over a money claim against the government, it exercises and retains jurisdiction over the subject matter to the exclusion of all others, including the COA.* x x x [T]he COA's original jurisdiction is actually limited to liquidated claims and *quantum meruit* cases. It cannot interfere with the findings of a court or an adjudicative body that decided an unliquidated money claim involving issues requiring the exercise of judicial functions or specialized knowledge and expertise which the COA does not have in the first place. *B. The COA has no appellate review power over the decisions of any other court or tribunal.* Once judgment is rendered by a court or tribunal over a money claim involving the State, it may only be set aside or modified through the proper mode of appeal. It is elementary that the right to appeal is statutory. There is no constitutional nor statutory provision giving the COA review powers akin to an appellate body such as the power to modify or set aside a judgment of a court or other tribunal on errors of fact or law. C. *The COA is devoid of power to disregard the principle of immutability of final judgments.* When a court or tribunal having jurisdiction over an action renders judgment and the same becomes final and executory, *res judicata* sets in. x x x D. *The COA's exercise of discretion in approving or disapproving money claims that have been determined by final judgment is akin to the power of an execution court.* x x x [T]he COA's jurisdiction over final money judgments rendered by the courts pertains only to the execution stage. The COA's authority lies in ensuring that public funds are not diverted from their legally appropriated purpose to answer for such money judgments. And rightly so since the COA is tasked to guarantee that the enforcement of these final money judgments be in accord with auditing laws which it ought to implement. Indeed, a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. Succinctly, an execution court may no longer alter a final and executory judgment save under certain exceptions such as (i) the correction of clerical errors; (ii) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (iii) void judgments; and (iv)

whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. This is true even if the purpose of the modification or amendment is to correct perceived errors of law or fact. In relation to its audit review power, therefore, the COA here should have restricted itself to determining the source of public funds from which the final and executory arbitral award may be satisfied pursuant to the general auditing laws the COA is tasked to implement.

4. ID.; ID.; ID.; ID.; COA GRAVELY ABUSED ITS DISCRETION WHEN IT MODIFIED OR AMENDED THE CIAC'S FINAL AND EXECUTORY JUDGMENT; COA'S APPARENT OVERESTIMATION OF ITS AUDIT REVIEW POWER RELATING TO A FINAL MONEY CLAIM PROPERLY LITIGATED AND DETERMINED IN ANOTHER FORUM CONSTITUTES GRAVE ABUSE OF DISCRETION. — [T]he final and executory arbitral award in this case was validly issued by the CIAC in the exercise of its jurisdiction over the construction dispute between TSJV and the DOTr. These parties voluntarily submitted themselves to the arbitration proceedings below. In the end, both parties accepted the CIAC's modified final award and neither one nor the other sought a review thereof with the Court of Appeals or this Court. As it was, the CIAC's final award is conclusive and binding on all the factual and legal issues taken up therein and bars their re-litigation in any subsequent proceeding between the parties. To be sure, when the COA disallowed more than half of the arbitral award here, it did not raise any jurisdictional grounds nor invoke any of the exceptions to the doctrine of immutability of final judgments. What the COA did was reweigh the evidence on record and point out purported errors of fact and law in the arbitral award. This is certainly beyond the COA's constitutional mandate to audit and review the enforcement of money claims against the government. It is also contrary to jurisprudentially defined limitations to its audit powers. To accept the COA's theory that it has absolute discretion to disregard final and executory judgments rendered by courts and other adjudicative bodies in valid exercise of their jurisdiction would wreak havoc on the efficient and orderly administration of justice. The COA then becomes a super body over and above the rule of law. Grave abuse of discretion is committed when an act is: 1) **done contrary**

> **to the Constitution, the law or jurisprudence**, or 2) executed whimsically or arbitrarily 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. The COA's grave abuse of discretion here lies in its apparent overestimation of its audit review powers in connection with final money claims properly litigated and finally determined in another forum, leading it to transgress long standing legal principles and case doctrine. This, the Court simply cannot allow. It is well-settled that the jurisdiction to delimit constitutional boundaries has been given to this Court. We will not shirk our duty to rein in State actors or agents who overstep their authority.

APPEARANCES OF COUNSEL

Viovicente & Perez-Viovicente Law Office for petititoner.
The Solicitor General for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for *certiorari*[1] assails the Decision No. 2016-395 dated December 21, 2016[2] and Resolution No. 2018-047 dated January 22, 2018[3] of the Commission on Audit (COA) in COA C.P. Case No. 2015-622. The first partially disapproved the payment of the final and executory arbitral award rendered by the Construction Industry Arbitration Commission (CIAC) in favor of petitioner Taisei Shimizu Joint Venture[4] (TSJV); the second denied petitioner's motion for reconsideration.

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[1] Filed under Rule 65 in relation to Rule 64 of the Rules of Court, *rollo* (Vol. 1), pp. 3-54.

[2] *Id.* at 56-64.

[3] *Id.* at 99-114.

[4] TSJV is a joint venture comprised of two Japanese corporations, Taisei Corporation and Shimizu Corporation. It was formed solely for the purpose

Antecedents

Petitioner TSJV won the contract award for the construction of the New Iloilo Airport. As project proponent, respondent Department of Transportation[5] (DOTr) entered into a contract agreement with TSJV on March 15, 2004, pertaining to the construction. Following the project's completion and delivery, it turned out that some TSJV billings had been left unpaid.

After TSJV's initial effort to collect failed, it filed with the CIAC a Request for Arbitration and Complaint,[6] seeking payment of the following money claims:

Claim No.	Particulars	Amount Awarded
1	Compensation for unforeseen increase in the prices of structural steel and electrical cables which TSJV imported from Japan under Variation Order No. 5	JPY72,486,598.00
	- 12% interest as of September 12, 2014	JPY55,121,589.00
	- 12% VAT	Php 7,151,162.80
2	Currency conversion loss	Php 41,909,962.42
	- 12% interest as of September 12, 2014	Php 37,567,575.36
3	Interest on delayed payments	Php 246,888,166.94
	- 12% interest as of September 12, 2014	Php 213,476,677.61
4	Claim for adjustment of the peso component of Work Items under Annex K of the Document I-Invitation to Bid and Instruction to Bidders	Php 93,447,697.63
		Php 40,829,371.64
	- 12% interest per annum from June 17, 2008 on the first Php48,675,741.07 and computed from October 5, 2013 on the remaining Php44,771,956.56 as of September 12, 2014	Php 16,113,248.31
	- 12% VAT as of September 12, 2014	

of bidding on and, if successful, executing and completing the New Iloilo Airport Project.

[5] The original defendant impleaded in the proceedings below was the Department of Transportation and Communications (DOTC). On May 23, 2016, Republic Act No. 10844 created the Department of Information and Communications Technology as a separate entity from the DOTC which was then renamed the Department of Transportation (DOTr).

[6] Docketed as CIAC Case No. 26-2014.

5	Claim for compensation of costs incurred due to extension of time - 12% interest per annum computed from July 4, 2008 on the first Php77,145,933.94 and computed from October 5, 2013 on the remaining Php4,482,556.17 as of September 12, 2014 - 12% VAT	Php 81,628,490.11 Php 57,345,848.76 Php 16,676,920.66
6	Additional costs from performing embankment works - 12% interest as of September 12, 2014 - 12% VAT as of September 12, 2014	Php 142,383,393.00 Php108,273,793.32 Php 30,078,862.36
7	Damages for failure of DOTr to pay within a reasonable length of time the additional costs of aggregates - 12% interest as of September 12, 2014 - 12% VAT as of September 12, 2014	Php447,040,482.65 Php287,068,386.23 Php 88,093,064.27
8	Attorney's fees Litigation expenses	Php 7,225,221.89 Php 9,916,881.31
	Total	**Php2,316,687,603.03**[7]

In defense of the government, the DOTr responded to the Complaint and actively participated in the CIAC proceedings.

Under its Final Award[8] dated December 11, 2014, the CIAC granted Claim Nos. 1, 3, 4, 5, and 8, *viz*.:

Claim No.	Particulars	Amount Awarded
1	Compensation for unforeseen increase in the prices of structural steel and electrical cables which TSJV imported from Japan under Variation Order No. 5	Php 37,079,858.18
3	Interest on delayed payments	Php 68,393,583.40
4	Claim for adjustment of the peso component of Work Items under Annex K of the Document I-Invitation to Bid and Instruction to Bidders	Php 104,661,421.35
5	Claim for compensation of costs incurred due to extension of time Attorney's fees and costs of arbitration	Php 6,032,437.04
8	**Total**	Php 7,234,570.86
		Php 223,401,870.83

[7] *Rollo* (Vol. 2), pp. 432-433.

[8] *Id.* at 439-598.

The DOTr was likewise directed to pay six percent (6%) interest per annum on the total amount from the finality of the Final Award until full payment.[9]

Subsequently acting on the DOTr's motion for correction of the Final Award, the CIAC, by Order dated February 20, 2015,[10] reduced Claim No. 3. The CIAC cited TSJV's failure to include its claim for input value added tax (VAT) in the corresponding Terms of Reference (TOR). What TSJV did was belatedly pray for payment of its claim for input VAT in its memorandum. Following established jurisprudence, the CIAC held that it could not award an amount in excess of complainant's claim as indicated in the TOR even if the evidence may later show it was entitled to a higher amount. Consequently, the arbitral tribunal amended the Final Award, *viz.*:

Claim No.	Particulars	Amount Awarded
1	Compensation for unforeseen increase in the prices of structural steel and electrical cables which TSJV imported from Japan under Variation Order No. 5	Php 37,079,858.18
3	Interest on delayed payments	Php 61,065,699.46
4	Claim for adjustment of the peso component of Work Items under Annex K of the Document I-Invitation to Bid and Instruction to Bidders Claim for compensation of costs incurred due to extension of time	Php 104,661,421.35
5	Attorney's fees and costs of arbitration	Php 6,032,437.04
8	**Total**	Php 7,234,570.86
		Php216,073,986.89

Following the finality of the CIAC's Final Award, TSJV moved for its execution. The DOTr opposed on ground that the funds sought to be levied were public in character.[11] Under Resolution dated April 22, 2015, the CIAC granted the motion for execution and directed the Clerk of Court and the *Ex Officio*

[9] *Id.* at 598.

[10] *Id.* at 599-603.

[11] *Id.* at 604-605.

Sheriff of the Regional Trial Court, Makati City to implement the writ of execution.[12]

The *Ex Officio* Sheriff thereafter served a demand to satisfy the arbitral award on the DOTr and issued notices of garnishment to the Philippine National Bank (PNB), Philippine Veterans Bank (PVB), Land Bank of the Philippines (LBP), and Development Bank of the Philippines (DBP).[13] The DOTr later on advised TSJV in writing that the arbitral award should be referred to the COA as condition *sine qua non* for payment.[14] Meanwhile, the DBP, PVB, and PNB separately informed the Sheriff that they did not hold funds or properties in the DOTr's name.[15] On the other hand, the LBP advised that claimant TSJV must first seek the COA's approval for payment of the arbitral award.[16]

Again, after its initial effort to execute failed, TSJV subsequently filed with the COA a petition[17] for enforcement and payment of the arbitral award. To this, the DOTr, through the Office of the Solicitor General (OSG), responded, thus:

> 8. The allegations in paragraphs 16 and 17 of the Petition are ADMITTED, with the following manifestations:
>
> (a) The Arbitral Tribunal rendered the Final Award dated December 11, 2014 also after a consideration of the numerous submissions filed and pieces of evidence (documentary and testimonial) presented by both parties during the arbitration proceedings;
>
> (b) The original claim of Petitioner [TSJV] on its Claim Nos. 1-8, in the aggregate sum of TWO BILLION THREE HUNDRED SIXTEEN MILLION SIX HUNDRED EIGHTY-SEVEN

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[12] *Id.* at 627-628.

[13] *Id.* at 629-630.

[14] *Id.* at 642-643.

[15] *Id.* at 645-647.

[16] *Id.* at 671.

[17] *Rollo* (Vol. 1), pp. 115-124.

> THOUSAND SIX HUNDRED THREE PESOS AND THREE CENTAVOS **(Php2,316,687,603.03)** as provided in the Terms of Reference, was **substantially reduced** to TWO HUNDRED TWENTY-THREE MILLION FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY PESOS AND EIGHTY-THREE CENTAVOS **(Php223,401,870.83)** plus 6% per annum interest from December 11, 2014 until fully paid — when the Arbitral Tribunal, through the Final Award, completely denied Claim Nos. 2, 6, and 7, while reducing Claims Nos. 1, 3, 4, 5, and 8; and
>
> (c) On motion of Respondent [DOTr], the latter amount of Php223,401,870.83 was **further reduced** to TWO HUNDRED SIXTEEN MILLION SEVENTY-THREE THOUSAND NINE HUNDRED EIGHTY-SIX PESOS AND EIGHTY-NINE CENTAVOS **(Php216,073,986.89)** plus 6% per annum interest from December 11, 2014 until fully paid — when the Arbitral Tribunal, through the Order dated February 20, 2015, deleted the Value-Added Tax (VAT) component in respect of Claim No. 3.
>
> x x x x x x x x x
>
> 10. Finally, as relayed by Respondent's representatives to the undersigned counsel, Respondent has no further comments or objections to the Arbitral Tribunal's Final Award dated December 11, 201[4], as amended by the Order dated February 20, 2015.[18]

By Decision No. 2016-395 dated December 21, 2016,[19] the COA approved payment but only to the extent of **Php104,661,421.35** or less than half of the total award. Asserting its primary jurisdiction over money claims against government agencies and instrumentalities, the COA claimed to have reviewed the evidence, on the basis of which it found that only Claim No. 4 was in accord with law and the rules.

As for Claim No. 1 pertaining to compensation due to unforeseen price increases in structural steel and electrical cables imported from Japan, the COA held that it was covered by Section 61 of Republic Act No. 9184 (RA 9184 or The

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[18] *Rollo* (Vol. 2), pp. 673-674.

[19] *Supra* note 2.

Government Procurement Reform Act) and its Implementing Rules and Regulations (IRR).[20] There was allegedly no showing that the parties sought the required approval of the National Economic Development Authority (NEDA). Variation Order No. 5 was not approved by the head of the procuring agency. TSJV failed to refer to any treaty or international executive agreement exempting it from the application of the statute. More, there was no proof of the triggering unforeseen extraordinary cost increase indeed took place.[21]

On Claim Nos. 3 and 5 for interest and compensation for delay related costs, the COA denied payment as there was no

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[20] Section 61 of Republic Act No. 9184 provides:

SECTION 61. *Contract Prices*. — For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB [Government Procurement Policy Board].

For purposes of this Section, "extraordinary circumstances" shall refer to events that may be determined by the National Economic and Development Authority in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.

Section 61 of the IRR in turn pertinently reads:

SECTION 61. *Contract Prices*. —

61.1. For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB, x x x

61.3. Any request for price escalation under extraordinary circumstances shall be submitted by the concerned entity to the National Economic and Development Authority (NEDA) with the endorsement of the procuring entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentations.

For purposes of this Section, "extraordinary circumstances" shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.

[21] *Id.* at 60-61.

law purportedly authorizing payment of interest and costs due to extension of time (EOT). Too, allowing the claim of interest would allegedly permit payment of expenditures incurred on account of the negligence of the government's own officers.[22]

Lastly, on Claim No. 8 which involved payment of attorney's fees and costs of litigation, the COA ruled that the same violated Section 1, Rule 142 of the Rules of Court that "[n]o costs shall be allowed against the Republic of the Philippines unless otherwise provided by law."[23]

After receiving the approved award of Php104,661,421.35,[24] TSJV pursued its partial motion for reconsideration as regards the remaining amount of Php111,412,565.54.[25]

TSJV maintained that the COA's decision (a) contravened Section 19[26] of Executive Order (EO) No. 1008 (the Construction Industry Arbitration Law) in relation to the rule on immutability of final and executory judgments; (b) was contrary to the COA's own decision in "*Monolithic Construction and Concrete Products, Inc. v. Department of Transportation and Communication*,"[27] where it enforced the final and executory judgment in favor of a claimant as the same could no longer be modified in any respect; (c) ran counter to settled jurisprudence that RA 9184 cannot be applied retroactively; and (d) was inconsistent with the cases relied upon by the COA in resolving the arbitral award.

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[22] *Id.* at 61.

[23] *Id.* at 62.

[24] *Id.* at 7.

[25] *Id.* at 65-91.

[26] SECTION 19. *Finality of Awards.* — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

[27] COA Decision No. 2014-283 dated September 12, 2014, *rollo* (Vol. 2), pp. 665-669.

TSJV also cited Article 2208(5)[28] of the Civil Code and Section 16.5[29] of the CIAC's Revised Rules of Procedure to support the award of attorney's fees and costs of litigation in its favor.[30]

By its assailed Resolution dated January 22, 2018, the COA denied the motion for partial reconsideration. While it agreed that RA 9184 should not be retroactively applied to the contract in question, it maintained the disallowance of Claim No. 1 for alleged non-compliance with Section 8[31] of PD 1594 and Section 33[32] of EO 40, laying down the authorizations/approvals required for price adjustments in certain types of government contracts. It emphasized that the price adjustments under Claim

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[28] ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

x x x x x x x x x

[29] SECTION 16.5 Decision as to costs of arbitration — In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them.

[30] *Rollo* (Vol. 1), pp. 66-67.

[31] SECTION 8. Adjustment Contract Price. — Adjustment of contract price for construction projects may be authorized by the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, upon recommendation of the National Economic and Development Authority, if during the effectivity of the contract, the cost of labor, equipment, materials and supplies required for the construction should increase or decrease due to direct acts of the Government. The adjustments of the contract price shall be made using appropriate formulas established in accordance with the rules and regulations to be promulgated under Section 12 of this Decree.

[32] SECTION 33. *Price Adjustment*. — Price adjustments may be allowed under extraordinary circumstances, as defined in the IRR, and upon prior approval of the PPB (Procurement Policy Board).

No. 1 were not approved by the NEDA and the head of the procuring agency. The COA further maintained its ruling on Claim Nos. 3, 4, 5, and 8.

COA Chairperson Michael G. Aguinaldo dissented. He explained the two (2) types of money claims which may be brought before the COA, *viz*.:

> First, there are money claims pursued as an original action for collection of payment. This arises, for example, where a contractor has not been paid by a government agency and seeks collection of the amount due. By law, on the general principle that the State cannot be sued without its consent, the claim must be filed with the Commission on Audit. As a rule, COA's jurisdiction is limited to liquidated money claims.
>
> Then, there are those money claims that arise from a final and executory judgment of a court, or arbitral body such as the Construction Industry Arbitration Commission. These claims may result from a judicial decision on an unliquidated money claim, or the decision of an arbitral body where the contract contains an arbitration clause or the parties consented to arbitration, or even cases which should have been filed with the Commission under the doctrine of primary administrative jurisdiction but [were] filed with the courts without objection from any of the parties.[33]

Citing ***Uy v. COA***,[34] Chairperson Aguinaldo opined that the COA's jurisdiction over original actions for money claims refers to the "quasi-judicial aspect of government audit which includes the investigation, weighing of evidence and resolving whether items should or should not be included, or as applied to a claim, whether it should be allowed or disallowed in whole or in part." As for the second type of money claims, still citing ***Uy***, he stated that the COA may not set aside the final and executory decision of another tribunal even in the exercise of its broad power of audit. In this regard though, he recognized the COA's constitutional mandate to act as a dynamic, effective, efficient,

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[33] Chairperson Aguinaldo's Dissenting Opinion, *rollo* (Vol. 1), p. 111.

[34] 385 Phil. 324, 336-337 (2000).

and independent watchdog of the government,[35] but he cannot concur with his colleagues' view that "the principle of immutability of final judgments yields to the COA's primary and exclusive constitutional authority to examine, audit, and settle claims against government funds."[36]

The Present Petition

TSJV now seeks affirmative relief from the Court, charging the COA with grave abuse of discretion, amounting to excess or lack of jurisdiction in disturbing the immutable and final arbitral award in its favor.

The COA essentially counters: (a) it has primary jurisdiction over all money claims against the government; (b) even if a final and executory judgment had already validated a monetary claim against a government agency, its approval is still a condition *sine qua non* for payment; (c) in approving or disapproving the claim, the COA exercises a quasi-judicial function requiring it to rule on the propriety of the money claim based on the evidence presented before it; and (d) it could not be charged with grave abuse of discretion when its action was simply in accord with the law and the evidence.[37]

Issues

I.

Does the COA have exclusive jurisdiction over money claims due from or owing to the government?

II.

In the exercise of its audit power, may the COA disturb the final and executory decisions of courts, tribunals or other adjudicative bodies?

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[35] Citing *Caltex Philippines, Inc. v. Commission on Audit*, 284-A Phil. 233, 257 (1992).

[36] *Rollo* (Vol. 1), p. 114.

[37] *Rollo* (Vol. 2), pp. 704-735.

Ruling

I. The COA's primary jurisdiction over money claims due from or owing to the government does not preclude the exercise of jurisdiction over the same subject matter by another adjudicatory body, tribunal, or court.

The COA posits that it is clothed with primary jurisdiction over money claims due from or owing to the government pursuant to Article IX of the 1987 Constitution, *viz.*:

A. *Common Provisions*

SECTION 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

x x x x x x x x x

D. *The Commission on Audit*

SECTION 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners x x x.

SECTION 2. (1) The Commission on Audit **shall have the power, authority, and duty to** examine, audit, and **settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations** with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such

period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (Emphasis supplied.)

The COA further cites the following provisions relevant to its constitutional mandate, thus:

Presidential Decree No. 1445 (Government Auditing Code of the Philippines):

SECTION 26. *General Jurisdiction*. — The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and **settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities**. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the govenunent, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

The 2009 Revised Rules of Procedure of the Commission on Audit:

Section 1, Rule II:

SECTION 1. *General Jurisdiction*. — The Commission on Audit shall have the power, authority, and duty to examine, audit and settle all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to the Government x x x

x x x x x x x x x

Specifically, such jurisdiction shall extend over but not be limited to the following cases and matters:

a. Disallowance of expenditures or uses of government funds and properties found to be illegal, irregular, unnecessary, excessive, extravagant or unconscionable;

b. Money claims due from or owing to any government agency;

x x x x x x x x x

Section 1, Rule VIII:

SECTION 1. *Original Jurisdiction*.— The Commission Proper shall have original jurisdiction over: a) **money claim against the Government**; b) request for concurrence in the hiring of legal retainers by government agency; c) write off of unliquidated cash advances and dormant accounts receivable in amounts exceeding one million pesos (₱1,000,000.00); d) request for relief from accountability for loses due to acts of man, *i.e.*, theft, robbery, arson, etc., in amounts in excess of Five Million pesos (₱5,000,000.00). (Emphases supplied.)

First off, there is nothing in the Constitution, laws, or even the COA rules expressly granting the COA original *and exclusive* jurisdiction over money claims due from or owing to the government.

For one, Batas Pambansa Blg. 129 as amended by RA 7691 vests jurisdiction over money claims in the first and second level courts, thus:

Sec. 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds [three hundred thousand pesos (₱300,000.00)] or, in such other cases in Metro Manila, where the demand exclusive of the abovementioned items exceeds [four hundred thousand pesos (₱400,000.00)].

x x x x x x x x x

Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases*. —

Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

> (1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed [three hundred thousand pesos (₱300,000.00)] or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed [four hundred thousand pesos (₱400,000.00)], exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: *Provided*, That interest, damages of whatever kind, attorney's fees, litigation expenses, and costs shall be included in the determination of the filing fees: *Provided, further*, That where there are several claims or causes of actions between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions;

Actions against the State are not excluded from the jurisdiction of courts. For although, as a rule, the State is immune from suit,[38] it is settled that "a suit against the State is allowed when the State gives its consent, either expressly or impliedly. Express consent is given through a statute, while implied consent is given when the State enters into a contract or commences litigation."[39]

We recently held that although the COA exercises broad powers pertaining to audit matters, it is devoid of authority to determine the validity of contracts, lest it encroaches upon such judicial function.[40] We further decreed that the COA's jurisdiction

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[38] Art. XVI, Sec. 3 of the 1987 Constitution provides that "[t]he State may not be sued without its consent."

[39] *Republic v. Roque, Jr.*, 797 Phil. 33, 49 (2016).

[40] *Felix Gochan & Sons Realty Corp. v. Commission on Audit*, G.R. No. 223228, April 10, 2019.

is limited to audit matters only. Hence, we set aside a ruling of the COA disapproving a deed of exchange between the City Government of Cebu and a private corporation.[41] The case clearly demonstrated why it was not unusual for the government and its instrumentalities to be sued in the regular courts even when the action involved government funds or property since such an action may entail resolution of issues falling within the jurisdiction of the courts.

Other tribunals/adjudicative bodies, too, may have concurrent jurisdiction with the COA over money claims against the government or in the audit of the funds of government agencies and instrumentalities.

In ***Development Bank of the Philippines v. COA***,[42] we held that under existing laws, the COA does not have the sole and exclusive power to examine and audit government banks. The Central Bank has concurrent jurisdiction to examine and audit, or cause the examination and audit, of government banks. Neither was there any statutory obstacle for a government bank to hire a private external auditor to examine its accounts without prejudice to its being concurrently subject to a COA audit. The Court took into account, among others, the Constitutional Commission's deliberations showing that the framers of the Constitution downvoted a proposal to add the word "exclusive" to describe the powers of the COA under Article IX-D, Section 2(1) of the 1987 Constitution. It also cannot be said, therefore, that the COA's "power, authority, and duty to x x x settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government" is exclusive.

Further, ***Civil Service Commission (CSC) v. Pobre***[43] recognized a specific case over which the CSC and the COA

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[41] *Id.*

[42] 424 Phil. 411, 430, 434-439 (2002).

[43] 481 Phil. 676, 685 (2004).

each had a role in processing the leave benefits of public officers and employees, requiring the expenditure and use of funds, *thus*:

> While the determination of leave benefits is within the functions of the CSC as the central personnel agency of the government, the duty to examine accounts and expenditures relating to such benefits properly pertains to the COA. Where government expenditures or use of funds is involved, the CSC cannot claim exclusive jurisdiction simply because leave matters are involved. Thus, even as we recognize CSC's jurisdiction in this case, its power is not exclusive as it is shared with the COA.

There, the Court reversed the ruling of the Court of Appeals that the COA had sole jurisdiction over the matter of computing a government employee's terminal leave benefits.

Later, ***Pobre*** would be cited in ***De Jesus v. Civil Service Commission***[44] where we held that although the COA had primary jurisdiction to determine the legality and regularity of the grant of allowances and benefits to members of the boards of water districts designated by the Local Water Utilities Administration (LWUA), the CSC similarly had jurisdiction to pass upon the issue in relation to an administrative case against LWUA officers for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees.

In the recent case of ***Tourism Infrastructure and Enterprise Zone Authority (TIEZA) v. Global-V Builders Co.***,[45] the Court ruled that where TIEZA and the private contractor validly agreed to submit their construction dispute to arbitration, the CIAC properly exercised its jurisdiction over the case. Thus:

> ***II. Whether or not the Court of Appeals erred in ruling that COA had no primary jurisdiction over the money claim of Global-V.***

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[44] 508 Phil. 599, 608-610 (2005).

[45] G.R. No. 219708, October 3, 2018.

TIEZA contends that the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute notwithstanding the primary jurisdiction of COA over the money claim of Global-V. Global-V's demand for payment should have first been brought as a money claim before COA, which has primary jurisdiction over the matter. The matter of allowing or disallowing the requests for payment is within the primary power of COA to decide. If there is a refusal on the part of a government official to grant a money claim, the proper remedy is with COA.

The contention is unmeritorious.

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law. Section 4 of E.O. No. 1008 provides that the CIAC shall have *original* and *exclusive* jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration. In *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, the Court held that the text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. x x x

Considering that TSJV and DOTr had voluntarily invoked CIAC's jurisdiction, the power to hear and decide the present case has thereby been solely vested in the CIAC to the exclusion of COA. Being a specific law, EO No. 1008 providing for CIAC's exclusive jurisdiction prevails over PD 1445, granting the COA the general jurisdiction over money claims due from or owing to the government. For this reason alone, the COA should have stayed its hands from modifying the CIAC's final arbitral award here, let alone from claiming exclusive jurisdiction over the case.

II. The types of money claims brought before the COA must be distinguished.

There is merit to Chairperson Aguinaldo's opinion pertaining to the two (2) main types of money claims which the COA may be confronted with.

The first type covers money claims originally filed with the COA. Jurisprudence specifies the nature of the money claims which may be brought to the COA at first instance. In ***Euro-Med Laboratories, Phil., Inc. v. Province of Batangas***,[46] we explicitly ordained that these cases are limited to liquidated claims, *viz*.:

> The scope of the **COA's authority to take cognizance of claims is circumscribed, however, by an unbroken line of cases**[47] **holding statutes of similar import to mean only liquidated claims, or those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers**. Petitioner's claim was for a fixed amount and although respondent took issue with the accuracy of petitioner's summation of its accountabilities, the amount thereof was readily determinable from the receipts, invoices and other documents. Thus, the claim was well within the COA's jurisdiction under the Government Auditing Code of the Philippines. (Emphasis and underscoring supplied.)

We agree with Chairperson Aguinaldo that the following discussion in ***Uy*** involved the first type of money claims, *viz*.:

> SECOND. The case at bar brings to the fore the parameters of the power of the respondent COA to decide *administrative cases* involving expenditure of public funds. Undoubtedly, the exercise of this power involves the ***quasi-judicial aspect of government audit***. As statutorily envisioned, this pertains to the "examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities". The process of government audit is adjudicative in nature. The decisions of COA presuppose an adjudicatory process involving the determination and resolution of opposing claims. Its work as adjudicator of money claims for or against the government means the exercise of judicial discretion. It **includes the investigation,**

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[46] 527 Phil. 623, 628 (2006).

[47] The cases cited were: *Campañia General de Tabacos v. French and Unson*, 39 Phil. 34 (1918); *Philippine Operations, Inc. v. Auditor General*, 94 Phil. 868 (1954); *Insurance Company of North America v. Republic*, 128 Phil. 44 (1967); *Firemen's Fund Insurance Co. v. Republic*, 128 Phil. 494 (1967).

weighing of evidence, and resolving whether items should or should not be included, or as applied to claim, whether it should be allowed or disallowed in whole or in part. Its conclusions are not mere opinions but are decisions which may be elevated to the Supreme Court on *certiorari* by the aggrieved party.[48] (Emphasis supplied)

We, too agree with Chairperson Aguinaldo that the second type of money claims refers to those which arise from a final and executory judgment of a court or arbitral body. He also correctly cited ***Uy***, reiterating our undeviating jurisprudence that final judgments may no longer be reviewed or, in any way be modified directly or indirectly by a higher court, not even by the Supreme Court, much less, by any other official, branch or department of government.

On this score, we lay down a conceptual framework for the guidance of the COA, the Bench, and the Bar pertaining to the COA's audit power *vis-á-vis* the second type of money claims which may be brought before it during the execution stage.

III. The COA's audit review power over money claims already confirmed by final judgment of a court or other adjudicative body is necessarily limited.

A. Once a court or other adjudicative body validly acquires jurisdiction over a money claim against the government, it exercises and retains jurisdiction over the subject matter to the exclusion of all others. including the COA.

Even if we broadly interpret the COA's jurisdiction as including all kinds of money claims, it cannot take cognizance of factual and legal issues that have been raised or could have been raised in a court or other tribunal that had previously acquired jurisdiction

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[48] *Supra* note 34, at 336-337.

over the same. To repeat, the COA's original jurisdiction is actually limited to liquidated claims and *quantum meruit* cases. It cannot interfere with the findings of a court or an adjudicative body that decided an unliquidated money claim involving issues requiring the exercise of judicial functions or specialized knowledge and expertise which the COA does not have in the first place.

B. The COA has no appellate review power over the decisions of any other court or tribunal.

Once judgment is rendered by a court or tribunal over a money claim involving the State, it may only be set aside or modified through the proper mode of appeal. It is elementary that the right to appeal is statutory.[49] There is no constitutional nor statutory provision giving the COA review powers akin to an appellate body such as the power to modify or set aside a judgment of a court or other tribunal on errors of fact or law.

C. The COA is devoid of power to disregard the principle of immutability of final judgments.

When a court or tribunal having jurisdiction over an action renders judgment and the same becomes final and executory, *res judicata* sets in. *Norkis Trading Corp. v. Buenavista*[50] explains:

> x x x ***Res judicata*** **is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.** Under this doctrine, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.

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[49] *Layda v. Legazpi*, 39 Phil. 83, 85 (1918).

[50] *Norkis Trading Corp. v. Buenavista*, 697 Phil. 74, 98 (2012).

Res judicata has two aspects: bar by prior judgment and conclusiveness of judgment as provided under Section 47 (b) and (c), Rule 39, respectively, of the Rules of Court. **Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot be raised in any future case between the same parties, even if the latter suit may involve a different cause of action.** (Emphasis supplied.)

Res judicata and immutability of final judgments are closely intertwined. Jurisprudence teaches:

The settled and firmly established rule is that **a decision that has acquired finality becomes immutable and unalterable**. This quality of **immutability precludes the modification of the judgment, even if the modification is meant to correct erroneous conclusions of fact and law**. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to disputes once and for all. This is a fundamental principle in our justice system, without which no end to litigations will take place. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act that violates such principle must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of courts, but extends as well to those of all other tribunals exercising adjudicatory powers.[51] (Emphasis supplied.)

In ***Uy***, we enunciated that the COA did not have the power to modify the final and executory judgment of another adjudicative body, *viz*.:

THIRD. There is a further **impediment in the exercise of the audit power** of the respondent COA. The MSPB decision of January 29, 1993 became *final and executory when the Provincial Government of Agusan del Sur failed to appeal within the reglementary period*. To be sure, the decision has already been *partially executed* as the Acting Provincial Treasurer had paid petitioners some of their backwages. *Again, our undeviating jurisprudence is that* ***final judgments may no longer be reviewed or in any way modified directly***

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[51] *Argel v. Singson*, 757 Phil. 228, 236-237 (2015).

or indirectly by a higher court, not even by the Supreme Court, much less by any other official, branch or department of Government. **Administrative decisions must end sometime as public policy demands that finality be written on controversies.** *In the case at bar, the action taken by COA in disallowing the further payment by the Provincial Government of Agusan del Sur of backwages due the petitioners amended the final decision of the MSPB.* The jurisdiction of the MSPB to render said decision is unquestionable. *This decision cannot be categorized as void.* Thus, **we cannot allow the COA to set it aside in the exercise of its broad powers of audit**. The audit authority of COA is intended to prevent irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties. Payment of backwages to illegally dismissed government employees can hardly be described as irregular, unnecessary, excessive, extravagant or unconscionable. This is the reason why the Acting Provincial Treasurer, despite the pendency of his query with the COA, proceeded to release government funds in partial payment of the claims of petitioners.[52] (Emphasis supplied.)

True, jurisprudence recognizes certain exceptions to the rule on immutability of final judgments. In fact, ***Estalilla v. Commission on Audit***[53] contains an exhaustive list of these exceptions, *viz.*:

[T]he rule [on immutability of final judgments] bows to recognized exceptions, like: (1) the correction of clerical errors; (2) the making of so-called *nunc pro tunc* entries that cause no prejudice to any party; and (3) in case of void judgments. The Court has further allowed the relaxation of the rigid rule on the immutability of a final judgment in order to serve substantial justice in considering: (1) matters of life, liberty, honor or property; or (2) the existence of special or compelling circumstances; or (3) the merits of the case; or (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; or (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby.

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[52] *Supra* note 34, at 337-338.

[53] G.R. No. 217448, September 10, 2019.

Here, the COA refers to our decisions in ***University of the Philippines (UP) v. Dizon***,[54] ***Rallos v. Cebu City***,[55] ***Star Special Watchman v. Puerto Princesa City***,[56] ***Department of Environment and Natural Resources v. United Planners Consultants, Inc.***,[57] ***Binga Hydroelectric Plant, Inc. v. Commission on Audit***[58] and ***Province of Aklan v. Jody King Construction and Development Corp.***,[59] where we allegedly sustained its primary jurisdiction over final money judgments against the State.

We put these cases in context.

In ***UP***, we held that there could be no final and executory decision against UP because there was an invalid service of the trial court's decision when it was not effected on UP's counsel of record, but on someone else. We also ruled that both the trial court and the Court of Appeals erred in considering UP's appeal to have been belatedly filed. We then held that since UP's notice of appeal was timely filed, the trial court's decision against it cannot be deemed to have attained finality. More, the trial court's award of damages could not have attained finality since we noted that the assailed decision granting the same did not state the factual and legal bases therefor in violation of Section 14, Article VIII[60] of the 1987 Constitution and Section 1, Rule 36[61] of the Rules of Court. Verily, we concluded

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[54] 693 Phil. 226, 252 (2012).

[55] 716 Phil. 832, 854-855 (2013).

[56] 733 Phil. 62, 79 and 83 (2014).

[57] 754 Phil. 513, 533-534 (2015).

[58] G.R. No. 218721, July 10, 2018.

[59] 722 Phil. 315, 324-327 (2013).

[60] Section 14, Article VIII of the Constitution states "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based" and "[n]o petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor."

[61] Section 1, Rule 36 of the Rules of Court provides "[r]endition of judgments and final orders. — A judgment or final order determining the

that the trial court's decision against UP was rendered without due process. A decision rendered without due process is undeniably void[62] and an exception to the principle of immutability of final judgments. More important, the *UP* case did not even involve any COA decision or ruling which may have set aside a final and executory judgment of the court. In any event, as *obiter*, we stated that the COA still had jurisdiction **for the purpose of execution** of a money judgment that may have already been determined and liquidated by the courts. Thus, in *UP*, we referred to SC Administrative Circular No. 10-00, *viz.*:

> TO : *All Judges of Lower Courts*
>
> SUBJECT : *Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units*
>
> In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.
>
> Judges should bear in mind that in *Commissioner of Public Highways v. San Diego* (31 SCRA 617, 625 [1970]), this Court explicitly stated:
>
> > The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action **'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Court ends when the judgment is rendered, since government funds and properties may not be seized under writs**

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merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court."

[62] See, for example, *Office of the Ombudsman v. Conti*, 806 Phil. 384, 396 (2017); and *Apo Cement Corp. v. Mingson Mining Industries Corp.* (Resolution), 746 Phil. 1010, 1018 (2014).

> **of execution or garnishment to satisfy such judgments**, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. **The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.**

Moreover, it is settled jurisprudence that upon determination of State liability, **the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445**, otherwise known as the Government Auditing Code of the Philippines (*Department of Agriculture v. NLRC*, 227 SCRA 693, 701-02 [1993] citing *Republic vs. Villasor*, 54 SCRA 84 [1973]). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and in effect sue the State thereby (P.D. 1445, Sections 49-50).

However, notwithstanding the rule that government properties are not subject to levy and execution unless otherwise provided for by statute (*Republic v. Palacio*, 23 SCRA 899 [1968]; *Commissioner of Public Highways v. San Diego, supra*) or municipal ordinance (*Municipality of Makati v. Court of Appeals*, 190 SCRA 206 [1990]), the Court has, in various instances, distinguished between government funds and properties for public use and those not held for public use. Thus, *Viuda de Tan Toco v. Municipal Council of Iloilo* (49 Phil. 52 [1926]), the Court ruled that "[w]here property of a municipal or other public corporation is sought to be subjected to execution to satisfy judgments recovered against such corporation, the question as to whether such property is leviable or not is to be determined by the usage and purposes for which it is held." The following can be culled from *Viuda de Tan Toco v. Municipal Council of Iloilo*:

1. Properties held for public uses — and generally everything held for governmental purposes — are not subject to levy and sale under execution against such corporation. The same rule applies to funds in the hands of a public officer and taxes due to a municipal corporation.

2. Where a municipal corporation owns in its proprietary capacity, as distinguished from its public or governmental capacity, property not used or used for a public purpose

but for *quasi* private purposes, it is the general rule that such property may be seized and sold under execution against the corporation.

3. Property held for public purposes is not subject to execution merely because it is temporarily used for private purposes. If the public use is wholly abandoned, such property becomes subject to execution.

This Administrative Circular shall take effect immediately and the Court Administrator shall see to it that it is faithfully implemented.

Issued this 25th day of October 2000 in the City of Manila. (Emphasis supplied.)

Rallos v. Cebu City,[63] ***Star Special Watchman & Detective Agency Inc. v. Puerto Princesa City***[64] and ***Department of Environment and Natural Resources v. United Planners Consultants, Inc.***[65] decreed that although the award was final and executory, the COA still had to approve the same for payment. Nothing in these cases suggested that the COA may overturn a court's final and executory money judgment against the State.

In fact, in its own Decision No. 2014-283 dated September 12, 2014,[66] in *Re: Claim of Monolithic Construction and Concrete Products, Inc. [Monolithic] against the Department of Transportation and Communications, for payment of money judgment relative to the contract for the Masbate Airport Asphalt Overlay and Extension of Runway Project amounting to [Php]4,152,085.22, plus legal interest computed from the date of finality of the Supreme Court Resolution or on June 1, 2010, and Attorney's Fees amounting to [Php]150,000.00*, the COA itself **granted** Monolithic's claim and recognized that the final and executory judgment in the

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[63] *Supra* note 56, at 855.

[64] *Supra* note 57, at 83.

[65] *Supra* note 58, at 534.

[66] *Rollo* (Vol. 2), pp. 665-669.

latter's favor "could no longer be modified in any respect."[67] Notably, when TSJV confronted the COA with *Monolithic*, the COA was simply and conspicuously silent. It totally failed to justify why it did not apply *Monolithic* here even though Monolithic and TSJV were similarly situated insofar as the finality of the respective money judgments in their favor. If this is not unequal protection, what is?

We now proceed to ***Binga***.[68] It involved a void compromise agreement between a party and the government since the same did not bear the requisite recommendation of the COA and the President, nor the approval of Congress pursuant to EO No. 292. Such void compromise agreement cannot be ratified, much less, validated by approval of the Court of Appeals. For this reason, therefore, there was no final and executory judgment to speak of, as a result of which, the COA cannot be deemed to have lost jurisdiction to disapprove a disbursement based on a void compromise agreement.

Finally, in the ***Province of Aklan***,[69] we held that the COA should take cognizance of the case notwithstanding a final and executory decision of the trial court. On this score, we recognized the COA's competence over the action for money judgment, involving as it did a liquidated money claim over which the COA has original and primary jurisdiction.

D. The COA's exercise of discretion in approving or disapproving money claims that have been determined by final judgment is akin to the power of an execution court.

To recall, we stated in ***UP***[70] that the primary jurisdiction of the COA over unliquidated money claims litigated in regular

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[67] *Id.* at 668.

[68] *Supra* note 59.

[69] *Supra* note 60, at 326.

[70] *Supra* note 55, at 252-253.

courts referred to the **execution** of the court's final and executory decision. There, we cited SC Administrative Circular No. 10-00[71] and held that "the **settlement** of the monetary claim was still subject to the primary jurisdiction of the COA despite the final decision of the [trial court.]"[72] Thus, we invalidated the trial court-issued writ of execution in ***UP*** since garnishment of its funds to satisfy the judgment awards of actual and moral damages, including attorney's fees was invalid if there was no special appropriation by Congress to cover the liability.

To emphasize, the COA's jurisdiction over final money judgments rendered by the courts pertains only to the execution stage. The COA's authority lies in ensuring that public funds are not diverted from their legally appropriated purpose to answer for such money judgments. And rightly so since the COA is tasked to guarantee that the enforcement of these final money judgments be in accord with auditing laws which it ought to implement.

Indeed, a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it.[73] Succinctly, an execution court may no longer alter a final and executory judgment save under certain exceptions such as (i) the correction of clerical errors; (ii) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (iii) void judgments; and (iv) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. This is true even if the purpose of the modification or amendment is to correct perceived errors of law or fact.[74]

In relation to its audit review power, therefore, the COA here should have restricted itself to determining the source of public funds from which the final and executory arbitral award may be satisfied pursuant to the general auditing laws the COA is tasked to implement.

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[71] *Id.* at 253-255.

[72] *Id.* at 252.

[73] *De Guzman v. Chico*, 802 Phil. 515, 531 (2016).

[74] See *Mercury Drug Corp. v. Spouses Huang*, 817 Phil. 434, 445 (2017).

IV. In sum, the COA gravely abused its discretion when it modified or amended the CIAC's final and executory judgment.

To recapitulate, the final and executory arbitral award in this case was validly issued by the CIAC in the exercise of its jurisdiction over the construction dispute between TSJV and the DOTr. These parties voluntarily submitted themselves to the arbitration proceedings below. In the end, both parties accepted the CIAC's modified final award and neither one nor the other sought a review thereof with the Court of Appeals or this Court. As it was, the CIAC's final award is conclusive and binding on all the factual and legal issues taken up therein and bars their re-litigation in any subsequent proceeding between the parties.

To be sure, when the COA disallowed more than half of the arbitral award here, it did not raise any jurisdictional grounds nor invoke any of the exceptions to the doctrine of immutability of final judgments. What the COA did was reweigh the evidence on record and point out purported errors of fact and law in the arbitral award. This is certainly beyond the COA's constitutional mandate to audit and review the enforcement of money claims against the government. It is also contrary to jurisprudentially defined limitations to its audit powers. To accept the COA's theory that it has absolute discretion to disregard final and executory judgments rendered by courts and other adjudicative bodies in valid exercise of their jurisdiction would wreak havoc on the efficient and orderly administration of justice. The COA then becomes a super body over and above the rule of law.

Grave abuse of discretion is committed when an act is: 1) **done contrary to the Constitution, the law or jurisprudence**, or 2) executed whimsically or arbitrarily 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.[75]

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[75] *Philippine Sports Commission v. Dear John Services, Inc.*, 690 Phil. 287, 297-298 (2012).

The COA's grave abuse of discretion here lies in its apparent overestimation of its audit review powers in connection with final money claims properly litigated and finally determined in another forum, leading it to transgress long standing legal principles and case doctrine. This, the Court simply cannot allow. It is well-settled that the jurisdiction to delimit constitutional boundaries has been given to this Court.[76] We will not shirk our duty to rein in State actors or agents who overstep their authority.

While we rule that the COA may no longer modify the amount of the award, it is not within the Court's power to determine the manner for enforcement or satisfaction thereof as this should still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445 and other relevant laws. We cannot substitute our discretion for that of the COA in this matter. More so in view of the undisputed fact that the certificate of availability of funds to satisfy the arbitral award already expired on December 31, 2016.[77] We, therefore, resolve to remand this case to the COA for disposition of TSJV's petition for full payment of the balance of the final arbitral award in accordance with the guidelines established in this Decision.

ACCORDINGLY, the petition is **GRANTED**. The Decision No. 2016-395 dated December 21, 2016 and Resolution No. 2018-047 dated January 22, 2018 in COA C.P. Case No. 2015-622 are **REVERSED** and **SET ASIDE** insofar as the same disapproved payment of Claim Nos. 1, 3, 5, and 8. The case is **REMANDED** to the Commission on Audit for the expeditious payment of the balance of the arbitral award in the amount of Php111,412,565.54.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., on leave.

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[76] See *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301, 341 (2015).

[77] See Certification of the DOTr's Finance and Management Service, *rollo* (Vol. 2), p. 663.

SECOND DIVISION

[A.C. No. 12161. June 8, 2020]

GUILLERMO VILLANUEVA, representing UNITED COCONUT PLANTERS LIFE ASSURANCE CORPORATION (COCOLIFE), *complainant, vs.* **ATTY. BONIFACIO ALENTAJAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; TEST TO DETERMINE THE EXISTENCE OF FORUM SHOPPING, APPLIED; RESPONDENT COMMITTED FORUM SHOPPING IN CASE AT BAR. — Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (a) identity of parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of reliefs sought. Under this test, we find that Atty. Alentajan committed forum shopping when he filed Civil Case No. R-QZN-13-02119-CV despite the finality of the judgment in Civil Case No. Q-05-5629. x x x It is obvious that the reliefs sought by the heirs of Bienvenido O. Marquez, Jr. in both Civil Case No. Q-05-5629 and Civil Case No. R-QZN-13-02119-CV were the same such that a ruling in one case would have resulted in the resolution of the other, and *vice versa*. To illustrate, had the validity of the foreclosure of real estate mortgage and the sale of the subject real property be declared, there would be no need for another decision as to the ownership and title of the subject property. Conversely, had the ownership and title of the subject property be decided upon, a declaration of the validity of the sale and foreclosure proceedings in another case would have been unnecessary. The reliefs prayed for, the facts upon which both are based, and the parties are substantially similar in the two cases. Since the elements of *res judicata* are present, Atty. Alentajan committed forum shopping when he filed Civil Case

No. R-QZN-13-02119-CV without indicating that Civil Case No. Q-05-5629 had already become finaI and executory.

2. LEGAL ETHICS; ATTORNEYS; CANON OF PROFESSIONAL RESPONSIBILITY (CPR); BY ENGAGING IN FORUM SHOPPING, RESPONDENT COMMITTED SEVERAL VIOLATIONS OF THE CPR; RESPONDENT DID NOT OBSERVE THE LAW OR THE RULES OF PROCEDURE, DISREGARDED HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE, AND UNDULY DELAYED A CASE BY MISUSING COURT PROCESSES. — "Lawyers should be reminded that their primary duty is to assist the courts in the administration of justice. Any conduct [that] tends to delay, impede or obstruct the administration of justice contravenes [this obligation]." In fact, willful and deliberate forum shopping has been made punishable either as direct or indirect contempt of court in SC Administrative Circular No. 04-94 dated April 1, 1994. In engaging in forum shopping, Atty. Alentajan violated Canon 1 of the CPR which directs lawyers to obey the laws of the land and promote respect for the law and legal processes. He also disregarded his duty to assist in the speedy and efficient administration of justice, and the prohibition against unduly delaying a case by misusing court processes. Regardless of the fact that Atty. Alentajan did not act as counsel in Civil Case No. Q-05-5629, it would not exempt him from culpability. He knowingly filed another civil case despite the finality of the judgment in Civil Case No. Q-05-5629 which already resolved the issue of ownership and validity of foreclosure of mortgage of the subject property. In fact, aside from filing Civil Case No. R-QZN-13-02119-CV, Atty. Alentajan assisted his clients in filing various cases such as, criminal complaint for violation of Sections 1 and 36 of R.A. No. 7653 in relation to Sections 4 and 6 of R.A. No. 3765, criminal complaint for violation of Article 302 of the RPC or robbery in an uninhabited place or a private building and contempt against the officers of COCOLIFE which were all dismissed for lack of merit. Rule 10.3, Canon 10 of the CPR mandates lawyers to observe the rules of procedures and to not misuse them to defeat the ends of justice. A lawyer owes fidelity to the cause of his/her client, but not at the expense of the truth and the administration of justice. The filing of multiple cases constitutes abuse of the court's processes and improper conduct that tends

to impede, obstruct and degrade the administration of justice. The filing of another action concerning the same subject matter likewise runs contrary to Canon 1 and Rules 12.02 and 12.04 of Canon 12 of the CPR. Canon 1 of the CPR requires a lawyer to exert every effort and consider it his/her duty to assist in the speedy and efficient administration of justice. Rule 12.02 prohibits a lawyer from filing multiple cases arising from the same cause, and Rule 12.04 of Canon 12 prohibits the undue delay of a case by misusing court processes.

3. ID.; ID.; DISCIPLINARY PROCEEDINGS; AUTHORITY OF THE LAWYER WHO FILED THE DISBARMENT CASE AGAINST RESPONDENT IS IMMATERIAL IN DISCIPLINARY PROCEEDINGS AGAINST LAWYERS; DISBARMENT PROCEEDINGS ARE MATTERS OF PUBLIC INTEREST. — Atty. Alentajan argued that Villanueva had no authority to represent COCOLIFE in the disbarment case filed against him as Villanueva had no special power of attorney executed in his favor by COCOLIFE. The Resolution dated April 26, 2011 issued by COCOLIFE in favor of Villanueva referred to a different legal action and not to a disbarment case which was filed three years thereafter or on September 15, 2014 from the issuance of the said resolution. We emphasize that the Court may conduct its own investigation into charges against members of the bar, irrespective of the form of initiatory complaints brought before it. A complainant in a disbarment case is not a direct party to the case, but a witness who brought the matter to the attention of the Court. There is neither a plaintiff nor a prosecutor in disciplinary proceedings against lawyers. The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar. The procedural requirement observed in ordinary civil proceedings that only the real party-in-interest must initiate the suit does not apply in disbarment cases. In fact, the person who called the attention of the court to a lawyer's misconduct "is in no sense a party, and generally has no interest in the outcome." Hence, whether Villanueva is with or without authority from COCOLIFE to initiate the disbarment case is not material to the herein case. In *Heck v. Judge Santos*, the Court held that "[a]ny interested person or the court *motu proprio* may initiate disciplinary proceedings." The right to institute disbarment proceedings is not confined to clients nor is it

necessary that the person complaining suffered injury from the alleged wrongdoing. Disbarment proceedings are matters of public interest and the only basis for the judgment is the proof or failure of proof of the charges.

D E C I S I O N

HERNANDO, *J.*:

On September 6, 2005, Erlinda Marquez (Erlinda), in her personal capacity and as attorney-in-fact of Bienvenido O. Marquez IV (Bienenido IV), Anna Corina Gisela O. Marquez (Anna), and Paz Louella Erica Beatriz O. Marquez (Paz), filed a complaint[1] for annulment of foreclosure proceedings, certificate of sale, and transfer certificate of title against the United Coconut Planters Life Assurance Corporation (COCOLIFE), the Register of Deeds of Quezon City, and the *Ex-Officio* Sheriff of Quezon City which was docketed as Civil Case No. Q-05-5629. In an Order[2] dated January 28, 2008, the Regional Trial Court (RTC) of Quezon City, Branch 77, dismissed the complaint. The Court of Appeals affirmed the trial court in its November 6, 2009 Decision.[3] A petition for review was then filed with this Court which was denied in a Resolution[4] dated July 26, 2010. The said Resolution became final and executory on September 22, 2010 by virtue of Entry of Judgment[5] issued by the Supreme Court.

Despite the foregoing, on July 26, 2013, the heirs of Bienvenido O. Marquez, Jr., namely, Erlinda, Paz, Anna, and Bienvenido IV through the assistance of their lawyer, Atty. Bonifacio A.

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[1] *Rollo*, pp. 18-27.

[2] *Id*. at 277-279; penned by Presiding Judge Vivencio S. Baclig.

[3] *Id*. at 280-288; penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Jose L. Sabio, Jr. and Sixto C. Marella, Jr.

[4] *Id*. at 289-290.

[5] *Id*. at 26-27.

Alentajan (Atty. Alentajan), filed another complaint[6] before the RTC, Branch 90 of Quezon City for reconveyance and annulment of title with application for preliminary injunction and prayer for temporary restraining order (TRO) against COCOLIFE and the Register of Deeds of Quezon City with respect to the same property which was docketed as Civil Case No. R-QZN-13-02119-CV. The said complaint was dismissed by the RTC in its Order[7] dated November 12, 2013.

Thereafter, Erlinda, assisted by Atty. Alentajan, filed a criminal complaint[8] for violation of Sections 1 and 36 of Republic Act (R.A.) No. 7653, otherwise known as The New Central Bank Act in relation to Sections 4 and 6 of R.A. No. 3765 also known as the Truth in Lending Act against the officers of United Coconut Planters Life Insurance Corporation (COCOLIFE-Insurance), namely: President Atty. Alfredo C. Tumacder, Jr.; Chairman Atty. Juan Andres D. Bautista; Senior Vice-President-Finance Division Artemio A. Tanchoco, Jr.; Senior Vice-President-Individual Marketing Caesar T. Michelena; Senior Vice-President and Head of Operations Division Carina L. Corona; Senior Vice-President-Life and Sales Marketing Elmo A. Nobleza; Senior Vice-President-Technical Services Jocelyn C. Fadri; Senior Vice-President-Healthcare Loumel C. Maagma; and Senior Vice President-Human Resources and Administrative Services Teresita UB. Dela Vega. However, the said criminal complaint was dismissed by the Office of the City Prosecutor (OCP) of Makati City in its Resolution[9] dated July 2, 2014 for lack of merit. Erlinda's motion for reconsideration was likewise denied by the OCP in its Order[10] dated September 16, 2014.

Another criminal complaint[11] was filed by Erlinda through her lawyer, Atty. Alentajan, for violation of Article 302 of the

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[6] *Id*. at 28-43.

[7] *Id*. at 233-234; penned by Presiding Judge Reynaldo B. Daway.

[8] *Id*. at 82-90.

[9] *Id*. at 123-129.

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

[11] *Id*. at 130-136.

Revised Penal Code (RPC) or robbery in an uninhabited place or a private building against the officers of the COCOLIFE-Insurance. However, the OCP of Quezon City dismissed the said complaint due to insufficiency of evidence in its Resolution[12] dated January 17, 2014.

Lastly, the heirs of Bienvenido Marquez, Jr., represented by Erlinda through Atty. Alentajan, filed a Petition for Contempt[13] against the officers of COCOLIFE-Insurance. Nonetheless, the RTC, Branch 92 of Quezon City dismissed the said Petition in its Order[14] dated March 24, 2014 in view of the dismissal of its Complaint before the RTC, Branch 90 of Quezon City for reconveyance of title as well as the denial of its application for TRO.

Hence, on October 2, 2014, COCOLIFE represented by Guillermo Villanueva (Villanueva) filed a Complaint for Disbarment[15] against Atty. Alentajan before the Integrated Bar of the Philippines (IBP). It averred that Atty. Alentajan is guilty of forum shopping when the verification/certification of the complaint filed before the RTC, Branch 90 of Quezon City for reconveyance of title failed to state that Atty. Alentajan's client had already commenced an action for the same subject property between the same parties and the same issues. Despite the false certification filed before the RTC, Branch 90 of Quezon City, Atty. Alentajan's client through his assistance filed another false certification for their Petition for Contempt before the RTC, Branch 92 of Quezon City. From the foregoing, COCOLIFE argued that Atty. Alentajan, as counsel of Erlinda, filed multiple actions in different courts which is an unlawful conduct as an officer of the court. Atty. Alentajan likewise violated his oath, Canon 1 of the Code of Professional Responsibility (CPR), and Rule 7, Section 5 of the Rules of Court.

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[12] *Id*. at 308-311.

[13] *Id*. at 196-202.

[14] *Id*. at 230-232; penned by Presiding Judge Eleuterio L. Bathan.

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

In his Answer,[16] Atty. Alentajan averred that the sworn statement of Amado E. Tayag (Tayag) is absolutely falsified and fabricated because the Resolution dated April 26, 2011 of the board of directors of COCOLIFE never authorized Tayag nor Villanueva to file the instant disbarment case. The said resolution clearly referred to a different legal action then existing and not to the instant disbarment case which was brought upon only on or about September 15, 2014 which is a lapse of more than three years from the date of resolution.

Report and Recommendation of the IBP

In a Report and Recommendation[17] dated June 30, 2015, the Investigating Commissioner[18] found Atty. Alentajan guilty of violating Rule 10.03, Canon 10, and Rule 12.04, Canon 12 of the CPR and Section 5, Rule 7 of the Rules of Court and recommended that Atty. Alentajan be suspended from the practice of law for three months with a warning that a repetition of the same offense shall be dealt with more severely.[19]

In Resolution No. XXII-2017-1170 passed on June 17, 2017, the IBP- Board of Governors (IBP-BOG) adopted and approved the recommendation of the Investigating Commissioner. The IBP-BOG suspended Atty. Alentajan from the practice of law for three months.[20]

The IBP forwarded the present case to this Court as provided under Section 12(b), Rule 139-B of the Rules of Court.

Issues

The issues to be resolved in this case are the following:

1. Whether or not respondent Atty. Alentajan committed the acts charged in the complaint; and

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[16] *Id*. at 238-243.

[17] *Id*. at 402-405.

[18] Commissioner Honesto A. Villamor.

[19] *Id*. at 402-405.

[20] *Id*. at 400-401.

2. Whether or not complainant has the authority to file the disbarment case.

The Court's Ruling

We agree with the findings of the IBP.

Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.[21]

There is forum shopping when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (a) identity of parties, or at least such parties that represent the same interests in both actions, (b) identity of rights or causes of action, and (c) identity of reliefs sought.[22]

Under this test, we find that Atty. Alentajan committed forum shopping when he filed Civil Case No. R-QZN-13-02119-CV despite the finality of the judgment in Civil Case No. Q-05-5629.

First, an identity of parties exists in Civil Case No. Q-05-5629 and Civil Case No. R-QZN-13-02119-CV. In both cases, the initiating parties were the same, the heirs of Bienvenido O. Marquez Jr., namely, Erlinda, Paz, Anna, and Bienvenido IV. They represented the same interest in both cases wherein they claimed to be the legitimate heirs of Bienvenido O. Marquez, Jr. and co-owners of the real property covered by Transfer Certificate of Title (TCT) No. 79724 registered in the name of Bienvenido O. Marquez, Jr. and Erlinda O. Marquez.

Meanwhile, COCOLIFE is the sole private respondent in both Civil Case No. Q-05-5629 and Civil Case No. R-QZN-13-02119-CV. It espoused the same interest, as the transferee-owner of the real property allegedly still owned by the heirs of Bienvenido O. Marquez, Jr.

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[21] *Polanco v. Cruz*, 598 Phil. 952, 958 (2009).

[22] *Id*.

Second, the test of identity of causes of action does not depend on the form of an action taken, but on whether the same evidence would support and establish the former and the present causes of action.[23] The heirs of Bienvenido O. Marquez, Jr. cannot avoid the application of *res judicata* by simply varying the form of their action or by adopting a different method of presenting it.[24]

In Civil Case No. Q-05-5629, the trial court already ruled upon the issue of the validity of the foreclosure of real estate mortgage as well as the validity of the issuance of TCT in favor of COCOLIFE. The issue as to the ownership of the subject real property covered by TCT No. 79724 was already substantially passed upon and decided by the trial court in Civil Case No. Q-05-5629. The evidence necessary to prove their claim in Civil Case No. R-QZN-13-02119-CV had already been presented in the previous case, that is, Civil Case No. Q-05-5629. Therefore, the subsequent filing of Civil Case No. R-QZN-13-02119-CV of the same party against COCOLIFE in the form of a complaint for reconveyance of title cannot prosper. In fact, as per Order dated November 12, 2013 issued by the RTC, Branch 90 of Quezon City, Civil Case No. R-QZN-13-02119-CV was dismissed on the ground that the cause of action was barred by a prior judgment issued by the RTC, Branch 92 of Quezon City which became final and executory on September 22, 2010.

Third, in Civil Case No. Q-05-5629, the heirs of Bienvenido O. Marquez, Jr. prayed for the annulment of foreclosure proceedings, certificate of sale, and transfer certificate of title issued in the name of COCOLIFE.

On the other hand, in Civil Case No. R-QZN-13-02119-CV, the heirs of Bienvenido O. Marquez, Jr. asked for the

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[23] *Mendoza v. La Mallorca Bus Company*, 172 Phil. 237, 241 (1978).

[24] *Linzag v. Court of Appeals*, 353 Phil. 506, 518 (1998), citing *Filinvest Credit Corporation v. Intermediate Appellate Court*, 283 Phil. 864, 870 (1992); *Sangalang v. Caparas*, 235 Phil. 57, 63 (1987); and *Ibabao v. Intermediate Appellate Court*, 234 Phil. 79, 87 (1987).

reconveyance of the real property and annulment of title. They also prayed that the TCT issued in the name of COCOLIFE be declared null and void and that TCT No. 79724 be reconstituted.

It is obvious that the reliefs sought by the heirs of Bienvenido O. Marquez, Jr. in both Civil Case No. Q-05-5629 and Civil Case No. R-QZN-13-02119-CV were the same such that a ruling in one case would have resulted in the resolution of the other, and *vice versa*. To illustrate, had the validity of the foreclosure of real estate mortgage and the sale of the subject real property be declared, there would be no need for another decision as to the ownership and title of the subject property. Conversely, had the ownership and title of the subject property be decided upon, a declaration of the validity of the sale and foreclosure proceedings in another case would have been unnecessary. The reliefs prayed for, the facts upon which both are based, and the parties are substantially similar in the two cases. Since the elements of *res judicata* are present, Atty. Alentajan committed forum shopping when he filed Civil Case No. R-QZN-13-02119-CV without indicating that Civil Case No. Q-05-5629 had already become final and executory.

Furthermore, Atty. Alentajan argued that Villanueva had no authority to represent COCOLIFE in the disbarment case filed against him as Villanueva had no special power of attorney executed in his favor by COCOLIFE. The Resolution dated April 26, 2011 issued by COCOLIFE in favor of Villanueva referred to a different legal action and not to a disbarment case which was filed three years thereafter or on September 15, 2014.

"Lawyers should be reminded that their primary duty is to assist the courts in the administration of justice. Any conduct [that] tends to delay, impede or obstruct the administration of justice contravenes [this obligation]."[25] In fact, willful and

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[25] *Lim v. Montano*, 518 Phil. 361, 371 (2006), cited in *Teodoro III v. Gonzales*, 702 Phil. 422, 431 (2013).

deliberate forum shopping has been made punishable either as direct or indirect contempt of court in SC Administrative Circular No. 04-94 dated April 1, 1994.[26]

In engaging in forum shopping, Atty. Alentajan violated Canon 1 of the CPR which directs lawyers to obey the laws of the land and promote respect for the law and legal processes. He also disregarded his duty to assist in the speedy and efficient administration of justice,[27] and the prohibition against unduly delaying a case by misusing court processes.[28]

Regardless of the fact that Atty. Alentajan did not act as counsel in Civil Case No. Q-05-5629, it would not exempt him from culpability. He knowingly filed another civil case despite the finality of the judgment in Civil Case No. Q-05-5629 which already resolved the issue of ownership and validity of foreclosure of mortgage of the subject property. In fact, aside from filing Civil Case No. R-QZN-13-02119-CV, Atty. Alentajan assisted his clients in filing various cases such as, criminal complaint for violation of Sections 1 and 36 of R.A. No. 7653 in relation to Sections 4 and 6 of R.A. No. 3765, criminal complaint for violation of Article 302 of the RPC or robbery in an uninhabited place or a private building and contempt against the officers of COCOLIFE which were all dismissed for lack of merit.

Rule 10.3, Canon 10 of the CPR mandates lawyers to observe the rules of procedures and to not misuse them to defeat the ends of justice. A lawyer owes fidelity to the cause of his/her client, but not at the expense of the truth and the administration of justice. The filing of multiple cases constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the administration of justice. The filing of another action concerning the same subject matter likewise runs contrary to Canon 1 and Rules 12.02 and 12.04 of Canon 12 of the CPR. Canon 1 of the CPR requires a lawyer

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[26] *Teodoro III v. Gonzales, id.*

[27] Canon 12, Code of Professional Responsibility.

[28] Rule 12.04, Canon 12, Code of Professional Responsibility.

to exert every effort and consider it his/her duty to assist in the speedy and efficient administration of justice. Rule 12.02 prohibits a lawyer from filing multiple cases arising from the same cause, and Rule 12.04 of Canon 12 prohibits the undue delay of a case by misusing court processes.

Lastly, Atty. Alentajan argued that Villanueva had no authority to represent COCOLIFE in the disbarment case filed against him as Villanueva had no special power of attorney executed in his favor by COCOLIFE. The Resolution dated April 26, 2011 issued by COCOLIFE in favor of Villanueva referred to a different legal action and not to a disbarment case which was filed three years thereafter or on September 15, 2014 from the issuance of the said resolution.

We emphasize that the Court may conduct its own investigation into charges against members of the bar, irrespective of the form of initiatory complaints brought before it. A complainant in a disbarment case is not a direct party to the case, but a witness who brought the matter to the attention of the Court.[29] There is neither a plaintiff nor a prosecutor in disciplinary proceedings against lawyers. The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar.

The procedural requirement observed in ordinary civil proceedings that only the real party-in-interest must initiate the suit does not apply in disbarment cases. In fact, the person who called the attention of the court to a lawyer's misconduct "is in no sense a party, and generally has no interest in the outcome."[30]

Hence, whether Villanueva is with or without authority from COCOLIFE to initiate the disbarment case is not material to the herein case. In *Heck v. Judge Santos*,[31] the Court held

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[29] *Ylaya v. Gacott*, 702 Phil. 390, 406-407 (2013).

[30] *Figueras v. Jimenez*, 729 Phil. 101, 106 (2014).

[31] 467 Phil. 798, 822 (2004).

that "[a]ny interested person or the court *motu proprio* may initiate disciplinary proceedings." The right to institute disbarment proceedings is not confined to clients nor is it necessary that the person complaining suffered injury from the alleged wrongdoing. Disbarment proceedings are matters of public interest and the only basis for the judgment is the proof or failure of proof of the charges.

WHEREFORE, Atty. Bonifacio A. Alentajan is found **GUILTY** of violating Canon 1, Rule 10.3 of Canon 10, and Rules 12.02 and 12.04 of Canon 12 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) months effective upon receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Alentajan 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 a copy of this Decision be furnished the Office of the Bar Confidant to be entered in Atty. Alentajan's personal record as a member of the Philippine Bar. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them for their information and guidance.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Inting, Delos Santos,* and *Gaerlan,*[*] *JJ.*, concur.

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[*] Designated additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 204793. June 8, 2020]

IN THE MATTER OF THE PETITION FOR THE PROBATE OF THE WILL OF CONSUELO SANTIAGO GARCIA, CATALINO TANCHANCO and RONALDO TANCHANCO, *petitioners, vs.* **NATIVIDAD GARCIA SANTOS,** *respondent.*

SYLLABUS

1. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; TESTAMENTARY SUCCESSION; NO WILL SHALL PASS EITHER REAL OR PERSONAL PROPERTY UNLESS IT IS PROVED AND ALLOWED IN ACCORDANCE WITH THE RULES OF COURT. — It is settled that "the law favors testacy over intestacy" and hence, "the probate of the will cannot be dispensed with. Article 838 of the Civil Code provides that no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. Thus, unless the will is probated, the right of a person to dispose of his property may be rendered nugatory." In a similar way, "testate proceedings for the settlement of the estate of the decedent take precedence over intestate proceedings for the same purpose." x x x We agree with the CA that the court should respect the prerogative of the testator to name an executrix (in this case, Natividad) in her will absent any circumstance which would render the executrix as incompetent, or if she fails to give the bond requirement or refuses to execute the provisions of the will.

2. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; IN A PROBATE PROCEEDING, THE MAIN ISSUE IS THE DUE EXECUTION OF THE WILL AS MANDATED BY ARTICLES 805 AND 806 OF THE CIVIL CODE. — The main issue which the court must determine in a probate proceeding is the due execution or the extrinsic validity of the will as provided by Section 1, Rule 75 of the Rules of Court. The probate court cannot inquire into the intrinsic validity of the will or the disposition of the estate

by the testator. Thus, due execution is "whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law" as mandated by Articles 805 and 806 of the Civil Code, as follows: Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another. The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page. The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another. If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them. Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

3. ID.; ID.; ID.; ID.; INDICATING THE TOTAL NUMBER OF PAGES UPON WHICH THE WILL WAS WRITTEN; SUBSTANTIAL COMPLIANCE IN CASE AT BAR. — In the instant case, the attestation clause indisputably omitted to mention the number of pages comprising the will. Nevertheless, the acknowledgment portion of the will supplied the omission by stating that the will has five pages, to wit: " *Ang HULING HABILING ito ay binubuo ng lima (5) na dahon, kasama ang dahong kinaroroonan ng Pagpapatunay at Pagpapatotoong ito*." Undoubtedly, such substantially complied with Article 809 of the Civil Code. Mere reading and observation of the will, without resorting to other extrinsic evidence, yields the conclusion that there are actually five pages even if the said information was not provided in the attestation clause. In any case, the CA declared that there was substantial compliance with the directives

of Article 805 of the Civil Code. When the number of pages was provided in the acknowledgment portion instead of the attestation clause, "[t]he spirit behind the law was served though the letter was not. Although there should be strict compliance with the substantial requirements of the law in order to insure the authenticity of the will, the formal imperfections should be brushed aside when they do not affect its purpose and which, when taken into account, may only defeat the testator's will."

4. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; TESTAMENTARY SUCCESSION; WITNESSES TO A WILL; LAWYERS ARE NOT DISQUALIFIED FROM BEING WITNESSES TO THE EXECUTION OF A WILL. — Article 820 of the Civil Code provides that, "[a]ny person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code." Here, the attesting witnesses to the will in question are all lawyers equipped with the aforementioned qualifications. In addition, they are not disqualified from being witnesses under Article 821 of the Civil Code, even if they all worked at the same law firm at the time. x x x [P]etitioners did not present controverting proof to discredit them or to show that they were disqualified from being witnesses to Consuelo's will at the time of its execution. Since the will in this case is contested, Section 11, Rule 76 of the Rules of Court applies, to wit: **SEC. 11.** *Subscribing witnesses produced or accounted for where will contested.* — If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of such witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must be taken. x x x The lawyer-witnesses unanimously confirmed that the will was duly executed by Consuelo who was of sound mind and body at the time of signing. The Tanchancos failed to dispute the competency and credibility of these witnesses; thus, the Court is disposed to give credence to their testimonies that Consuelo executed the will in accordance with the formalities of the law and with full mental faculties and willingness to do so.

APPEARANCES OF COUNSEL

Kapunan Garcia and Castillo Law Offices for petitioners.
Quasha Ancheta Peña & Nolasco for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the June 25, 2012 Decision[2] and December 4, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 89593 which reversed the May 31, 2004 Decision[4] of Branch 115 of the Regional Trial Court (RTC) of Pasay City in Spec. Proc. Nos. 97-4243 and 97-4244 denying the probate of the last will and testament of the decedent, Consuelo Santiago Garcia (Consuelo).

The Antecedents

Consuelo was married to Anastacio Garcia (Anastacio) who passed away on August 14, 1985. They had two daughters, Remedios Garcia Tanchanco (Remedios) and Natividad Garcia Santos (Natividad). Remedios predeceased Consuelo in 1985 and left behind her children, which included Catalino Tanchanco (Catalino) and Ronaldo Tanchanco (Ronaldo, collectively Tanchancos).[5]

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[1] *Rollo*, pp. 9-51.

[2] *Id.* at 52-80; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a member of this Court).

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

[4] *Id.* at 342-344; penned by Presiding Judge Francisco G. Mendiola.

[5] *Id.* at 53.

On April 4, 1997, Consuelo, at 91 years old, passed away[6] leaving behind an estate consisting of several personal and real properties.[7]

On August 11, 1997, Catalino filed a petition[8] before the RTC of Pasay City to settle the intestate estate of Consuelo which was docketed as Spec. Proc. Case No. 97-4244 and raffled to Branch 113. Catalino alleged that the legal heirs of Consuelo are: Catalino, Ricardo, Ronaldo and Carmela, all surnamed Tanchanco (children of Remedios), and Melissa and Gerard Tanchanco (issues of Rodolfo Tanchanco, Remedios' son who predeceased her and Consuelo), and Natividad, the remaining living daughter of Consuelo. Catalino additionally alleged that Consuelo's properties are in the possession of Natividad and her son, Alberto G. Santos (Alberto), who have been dissipating and misappropriating the said properties. Withal, Catalino prayed (1) for his appointment as the special administrator of Consuelo's intestate estate and the issuance of letters of administration in his favor; (2) for a conduct of an inventory of the estate; (3) for Natividad and all other heirs who are in possession of the estate's properties to surrender the same and to account for the proceeds of all the sales of Consuelo's assets made during the last years of her life; (4) for all heirs and persons having control of Consuelo's properties be prohibited from disposing the same without the court's prior approval; (5) for Natividad to produce Consuelo's alleged will to determine its validity; (6) for Natividad to desist from disposing the properties of Consuelo's estate; and (7) for other reliefs and remedies.[9]

Natividad filed a Motion to Dismiss[10] stating that she already filed a petition[11] for the probate of the Last Will and Testament

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[6] *Id.* at 99.

[7] *Id.* at 54.

[8] *Id.* at 83-88, "In Re: Estate of Consuelo Santiago Garcia."

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

[10] *Id.* at 89-93.

[11] *Id.* at 94-98; "In the Matter of the Petition for the Probate of the Will of Consuelo Santiago Garcia."

of Consuelo before Branch 115 of the RTC of Pasay City which was docketed as Spec. Proc. Case No. 97-4243. Natividad asked that Consuelo's Last Will and Testament, entitled *Huling Habilin at Pagpapasiya ni Consuelo Santiago Garcia*,[12] be allowed and approved. Moreover, as the named executrix in the will, Natividad prayed that letters testamentary be issued in her favor.

The Tanchancos filed an Opposition[13] to Natividad's petition for probate alleging that the will's attestation clause did not state the number of pages and that the will was written in *Tagalog*, and not the English language usually used by Consuelo in most of her legal documents. They also pointed out that Consuelo could not have gone to Makati where the purported will was notarized considering her failing health and the distance of her residence in Pasay City. Moreover, they alleged that Consuelo's signature was forged. Thus, they prayed for the disallowance of probate and for the proceedings to be converted into an intestate one.

However, Natividad contended that there was substantial compliance with Article 805 of the Civil Code. Although the attestation clause did not state the number of pages comprising the will, the same was clearly indicated in the acknowledgment portion. Furthermore, the Tanchancos' allegations were not supported by proof.[14] Conversely, the Tanchancos rebutted that the number of pages should be found in the body of the will and not just in the acknowledgment portion.[15]

Eventually, the two cases (Spec. Proc. Case Nos. 97-4243 and 97-4244) were consolidated before Branch 115 of the RTC of Pasay City.[16] Hearings commenced.

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[12] *Id.* at 100-104.

[13] *Id.* at 105-111.

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

[15] *Id.* at 117.

[16] *Id.* at 55, 342.

The subject will was witnessed by Atty. Kenny H. Tantuico (Atty. Tantuico), Atty. Ma. Isabel C. Lallana (Atty. Lallana), and Atty. Aberico T. Paras (Atty. Paras) and notarized by Atty. Nunilo O. Marapao, Jr. (Atty. Marapao).

Atty. Marapao testified that he specifically remembered the will in question because it was his first time to notarize a will written in *Tagalog*. He was familiar with the other witnesses and their signatures because they were his colleagues at Quasha Ancheta Peña and Nolasco (Quasha Law Office) and because he was present during the signing of the will. He also identified Consuelo's signature as he was present when she signed the will.[17]

Atty. Marapao averred that he assisted Atty. Lallana in drafting the will. He described Consuelo as very alert and sane, and not suffering from any ailment at the time. The will was written in *Tagalog* at the request of Consuelo although she was conversant in English. Their usual practice during the execution of a will is to ask the testator some questions to determine whether he or she is of sound mind. If they find everything in order, they would sign the will and then let the testator sign the same. Subsequently, the will would be notarized.[18]

Atty. Paras identified the signatures of Atty. Lallana and Atty. Tantuico[19] as well as that of Atty. Marapao.[20] Likewise, he affirmed Consuelo's signature in the will as he saw her sign the will.[21] He additionally confirmed that the attesting witnesses asked Consuelo probing questions to determine her state of mind and whether she was executing the will voluntarily.[22] To prove her identity, Consuelo showed her residence certificate

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[17] TSN, May 19, 1999, pp. 7-11.

[18] *Id.* at 15-19.

[19] TSN, June 8, 1999, pp. 10-11, 14-20.

[20] *Id.* at 13.

[21] *Id.* at 12.

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

and passport.[23] Atty. Paras recalled that Consuelo was not accompanied by anyone in the conference room.[24]

Similarly, Atty. Tantuico affirmed his signature in the will as well as that of Atty. Paras' and Atty. Lallana's as attesting witnesses, together with the signatures of Consuelo[25] and Atty. Marapao.[26] He confirmed that they propounded questions to Consuelo to determine the soundness of her mind.[27] Consuelo produced her residence certificate and passport to prove her identity.[28] Consuelo's will was the first will that he encountered written in *Tagalog* and he ascertained if Consuelo was comfortable with the said dialect.[29]

Atty. Tantuico stated that Consuelo looked younger than her actual age at the time of the execution of the will and that she could speak English. Consuelo was alone in the conference room and understood the will that she signed. Likewise, none of Consuelo's relatives was made a witness to the will.[30]

In her Deposition Upon Written Interrogatories,[31] Atty. Lallana asserted that she was a friend of Consuelo's family. She confirmed that she drafted the will and was one of the witnesses to its execution. The will was signed and executed in the conference room of Quasha Law Office with all the witnesses present to observe each other sign the will. She likewise identified Consuelo's signature in the will as well as those of the other witnesses who were her co-workers at Quasha Law Office.

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[23] *Id.* at 29.

[24] *Id.* at 33.

[25] TSN, June 15, 1999, pp. 4-6.

[26] *Id.* at 9.

[27] *Id.* at 13-14.

[28] *Id.* at 14-15.

[29] *Id.* at 13-17.

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

[31] *Rollo*, pp. 203-209; Atty. Lallana was not residing in the Philippines at the time.

She had seen Consuelo's signatures in other occasions prior to the execution of the will.

Atty. Lallana narrated that she met Consuelo at the lobby of Quasha Law Office and accompanied her to the conference room. She asked Consuelo if the contents of the will reflected the latter's wishes, to which the latter replied in the affirmative. Afterwards, Atty. Lallana asked the other witnesses to join them in the conference room for the execution of the will. The witnesses then asked Consuelo about her state of mind and Atty. Marapao even joked with her regarding her personal circumstances. Atty. Lallana emphasized that the witnesses conversed with Consuelo in order to determine her mental capacity. Atty. Tantuico asked general questions regarding the will and after they were satisfied that Consuelo understood the import of the will, they signed the documents in each other's presence. After signing all the pages of the will, Atty. Marapao asked Consuelo to swear to the truth of the proceeding then notarized the document.

Atty. Lallana averred that Consuelo possessed full mental faculties during the drafting and execution of the will as shown by her responses to the questions propounded to her. She was in good physical condition appropriate for her age. Consuelo arrived at Quasha Law Office unaided and had the physical and mental stamina to sit through the review and execution of the will.

Atty. Lallana affirmed that the will is in *Tagalog*, the dialect which Consuelo used to communicate with her. They purposely used *Tagalog* to obviate any potential issues or questions regarding Consuelo's ability to understand the nature and the contents of the will. Atty. Lallana clarified that Consuelo informed her that she (Consuelo) had already distributed the bulk of her estate between her two daughters and that the properties subject of the will were the ones left in her control and possession.

In her cross-interrogatories,[32] Atty. Lallana clarified that she drafted the will upon the request of Consuelo whom she met several times at her (Consuelo's) residence in Pasay City. She

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[32] *Id.* at 210-217.

always met with Consuelo in private for the purpose of drafting the will even if there were other relatives present in the same house. Although Consuelo was accompanied by her maid/ companion (*alalay*) at the lobby of the Quasha Law Office, she was alone with the attesting witnesses and the notary public during the signing of the will. Consuelo wanted third parties to act as witnesses because she anticipated some of her grandchildren to oppose the will.

Atty. Lallana stated that Remedios already received her share in the inheritance prior to the execution of the will and before her demise in 1990. Thus, Atty. Lallana found no reason to collate Consuelo's properties. She emphasized that she discussed the rules of legitime to Consuelo and that preterition did not occur.

Atty. Lallana asked for the legal opinion of more senior lawyers in drafting the will. She concluded that Consuelo was very sharp and perceptive.

On the other hand, Ronaldo asserted that he had a close relationship with Consuelo before she was hospitalized[33] and insisted that Consuelo passed away without a will.[34] He contended that it was unusual for Consuelo to execute a will in *Tagalog* as she had always used the English language in her documents[35] although she spoke both English and *Tagalog*.[36] He alleged that Consuelo told him that there was no need to draft a will since the properties would just be divided between her two daughters.[37] He also mentioned other lawyers, such as Atty. Cornelio Hizon (Atty. Hizon), whom Consuelo previously transacted with but who were not affiliated with Quasha Law Office.[38]

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[33] TSN, June 20, 2001, p. 10.

[34] *Id.* at 18.

[35] *Id.* at 21-24.

[36] *Id.* at 30.

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

[38] *Id.* at 25-30.

During the second year of Consuelo's coma, Ronaldo met with Natividad, Alberto, Catalino, Atty. Hizon, and Lumen Santiago to ascertain if Consuelo executed a will. During the meeting, Natividad informed them that there was no will.[39] Moreover, he alleged that Consuelo cannot walk unaided as early as 10 years before the alleged execution of the will due to a previous accident.[40] Ronaldo stated that Consuelo was forgetful[41] and bad with directions and that she needed her security guard or driver and *alalay* to move around.[42] Consuelo was unhappy before her coma because Natividad sold her properties as well as questioned and restricted her actions.[43] Natividad, by a Special Power of Attorney, transferred properties before and during Consuelo's coma.[44] Consuelo's actions were very dependent on Natividad's approval as the latter supposedly intimidated the former.[45] Natividad only gave Consuelo an allowance and she (Natividad) controlled Consuelo's properties.[46]

Ronaldo asserted that the will was one-sided as most of the properties would be given to Natividad[47] and contrary to Consuelo's intention to equally distribute the properties between her two daughters. In drafting contracts, Consuelo is usually assisted by family lawyers or a close member of the family for guidance, and with the knowledge of the *alalay* or companions.[48]

Ronaldo conceded that Consuelo's signatures in the will were similar with those in the Deed of Absolute Sale[49] (which Ronaldo

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[39] *Id.* at 54-58.

[40] *Id.* at 82-84.

[41] *Id.* at 89.

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

[43] *Id.* at 70-73.

[44] *Id.* at 73-74, 77-79.

[45] *Id.* at 90-94.

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

[47] TSN, June 27, 2001, p. 4.

[48] *Id.* at 6-10.

[49] *Rollo*, pp. 331-332.

claimed is authentic).[50] Consuelo was well-versed in *Tagalog* than English since she was from Bulacan and only finished Grade 6.[51] Ronaldo knew that Consuelo travelled abroad on April 15, 1986, July 27, 1988, April 9, 1989 and March 9, 1991, or near the time the will was executed.[52] The signatures on Consuelo's passport and on the will were similar although the signature in the will was "signed brokenly" while in the passport, "straight."[53] Also, Ronaldo acknowledged that in a particular photo dated March 29, 1991, Consuelo was standing alone and without assistance.[54]

Ronaldo affirmed that a grandson of Consuelo, Jumby or Celso (one of Natividad's sons), was a friend of Atty. Lallana in college.[55] Also, he agreed that he could not have monitored every movement or transaction entered into by Consuelo and that it was possible that Consuelo did not mention the existence of the will to him.[56]

Ronaldo maintained that Consuelo would always procure her residence certificate from Pasay City.[57] He averred that Consuelo would constantly ask for an explanation for legal terms which she could not understand. He then admitted that the *Tagalog* translation for legal terms were provided in the will.[58]

Emilio Layug, Jr. (Layug), then security aide of Consuelo,[59] denied accompanying Consuelo to Quasha Law Office in Makati

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[50] TSN, July 3, 2001, pp. 10-11.

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

[52] TSN, July 3, 2001, pp. 34-36; July 4, 2001, p. 6.

[53] TSN, July 4, 2001, pp. 11-12.

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

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

[56] *Id.* at 39-42.

[57] TSN, July 6, 2001, pp. 10-11.

[58] *Id.* at 20, 23-24.

[59] TSN, September 11, 2001, p. 17.

City.[60] He averred that he would only accompany her on special occasions and whenever she decided to bring him along with her.[61] Consuelo could not leave the house without her companions, Nonita Legazpi and Anita Lozada,[62] and she could no longer walk alone and needed to use a wheelchair as she was weak.[63] He agreed that Natividad was Consuelo's favorite daughter. In 1987, Layug always accompanied Consuelo and her *alalay*.[64]

During the hearing for the appointment of a special administrator, Catalino alleged that he was Consuelo's favorite and that they had a close relationship.[65] He maintained that Consuelo told him that she did not execute a will since the inheritance will be divided between her two children.[66] He stated that the will was one-sided even when Consuelo had always been very fair.[67] Catalino questioned the signature of Consuelo in the will as it appeared to be "perfect" when it should be crooked since she was already 80 at the time.[68] He added that Consuelo's documents were all in English[69] and that she never engaged the services of Quasha Law Office before.[70] Consuelo did not leave the house on her own as she cannot walk alone[71] and was already very sickly in 1997 and needed an *alalay*.[72]

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[60] *Id.* at 23.

[61] *Id.* at 26, 46-47.

[62] *Id.* at 30.

[63] *Id.* at 26.

[64] TSN, September 18, 2001, pp. 17-18.

[65] TSN, October 9, 2001, pp. 40, 49.

[66] *Id.* at 58.

[67] *Id.* at 64.

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

[69] *Id.* at 69.

[70] *Id.* at 72.

[71] *Id.* at 75.

[72] *Id.* at 135.

Catalino alleged that Natividad, after the burial of Consuelo, looted the things of Consuelo and declared "war" against the Tanchancos.[73] During a family meeting attended by his nephew, Jet Tanchanco, and the children of Natividad, he discovered that Natividad supposedly found a will in Consuelo's dresser.[74]

Catalino conceded that the signature in the will is similar to Consuelo's signature.[75] He likewise agreed that the signature in the passport was not crooked just like in the purported will, even when he claimed that by that age, Consuelo's signature should be crooked already.[76] In any case, during his cross-examination, Catalino was confronted with the inconsistency of the grounds they raised in their opposition to the probate of the will, as they alleged forgery with respect to Consuelo's signature in the will but at the same time alleged that undue duress was employed upon Consuelo to execute the will.[77]

Meanwhile, Natividad confirmed that she was in-charge of Consuelo's businesses during the latter's confinement in the hospital.[78] She had an "and/or" account with Consuelo and she administered Consuelo's properties.[79] In 1987, Consuelo was always accompanied by her *alalay* and she already needed assistance because she could not stand on her own.[80] Consuelo was friends with Atty. Lallana who prepared Consuelo's will sometime in 1987.[81]

Alberto, Natividad's son, testified that Ronaldo knew about the status of the shares of stocks which formed part of the

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[73] *Id.* at 99-102.

[74] *Id.* at 130, 133.

[75] TSN, October 26, 2001, p. 74.

[76] *Id.* at 80.

[77] TSN, October 22, 2002, pp. 40-41.

[78] TSN, January 16, 2002, p. 38.

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

[80] TSN, April 30, 2002, pp. 6-9.

[81] *Rollo*, p. 356.

estate as he was privy to the documents.[82] Moreover, he asserted that Consuelo, in 1987 or the same year the purported will was executed, travelled to the United States.[83] The purported will was found in the belongings of Consuelo.[84]

In an Order[85] dated May 31, 2002, the RTC appointed Catalino as the special administrator and set the bond at ₱1 Million. Natividad asked for a reconsideration[86] but it was denied by the RTC in an Order[87] dated February 17, 2003. Hence, on June 5, 2002, Letters of Administration were issued in favor of Catalino.[88]

The Ruling of the Regional Trial Court

In a May 31, 2004 Decision,[89] Branch 115 of the RTC of Pasay City found the purported will replete with aberrations. It noted that two attesting witnesses to the will and the notary public were all associates of a Makati-based law firm which is the counsel of Natividad in the instant case. Nobody among Consuelo's relatives witnessed the execution of the alleged will. Except for Natividad and her lawyers, no one knew that Consuelo ever executed a will during her lifetime. Layug testified that they never went to a law office in Makati City. The trial court found it unusual that an 81-year old sickly woman would go without her bodyguard or *alalay* to Makati City considering that she could no longer walk unaided and had to use a wheelchair.

Moreover, the RTC noted that the will's acknowledgment clause showed that Consuelo's residence was in Makati City

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[82] TSN, May 7, 2002, p. 40.

[83] TSN, May 9, 2002, p. 28.

[84] *Id.* at 41.

[85] *Rollo*, pp. 278-279.

[86] *Id.* at 280-288.

[87] *Id.* at 317-319.

[88] *Id.* at 56.

[89] *Supra*, note 4.

and not in Pasay City where she actually resided most of her life. It found it preposterous that Consuelo would change her residence from Pasay City to Makati City just for the purpose of drafting a will, and then return to Pasay City after its execution.[90]

The RTC gave credence to Ronaldo's testimony that Consuelo declared that she had no will and that her properties would be equally divided between her two children. The RTC deemed it irregular when the purported will was suddenly produced only after Consuelo's death and not years earlier especially since it was allegedly executed 10 years before her death. Moreover, the will unconscionably favored Natividad as she was named as the executrix of the will and most of the properties were disposed in her favor. The trial court ruled that, taken as a whole, the will is dubious and should not be allowed probate.[91]

Aggrieved, Natividad appealed[92] to the CA.

The Ruling of the Court of Appeals

The CA, in its assailed June 25, 2012 Decision,[93] held that Article 960 of the Civil Code preferred testacy over intestacy. Also, according to Section 20, Rule 132 of the Rules of Court, the due execution and authenticity of a private document such as a will must be proved either by anyone who saw the document executed or written or by evidence of the genuineness of the signature or handwriting of the maker. Additionally, Section 11, Rule 76 provides that if the will is contested, all the subscribing witnesses and the notary, if present in the Philippines and not insane, must be produced and examined during the probate of the will. Deposition must be taken if all or some of the witnesses are not in the Philippines. Natividad complied with the foregoing by presenting the testimonies of two attesting witnesses, Atty.

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[90] *Id.* at 343-344.

[91] *Id.* at 344.

[92] *Id.* at 345-382; *see also:* CA *rollo*, pp. 56-57.

[93] *Supra*, note 2.

Tantuico and Atty. Paras, as well as that of Atty. Marapao who notarized the will. Deposition upon written interrogatories and cross-interrogatories on the written questions propounded by the Tanchancos' counsel were made upon Atty. Lallana as the third witness to the will.

The said witnesses admitted signing the will in the presence of each other and Consuelo in a conference room of Quasha Law Office in Makati City. Atty. Marapao averred that at the time of the execution of the will, Consuelo was very alert and sane and was not suffering from any physical ailment. Atty. Tantuico asserted that Consuelo was intelligent enough to read and understand the will that she executed. Atty. Lallana, through her deposition, identified the signatures on each and every page of Consuelo's will since she was familiar with the signatures of her former associates and that of Consuelo's given that she was present when the will was signed. Additionally, Atty. Lallana stated that during the execution of the will, Consuelo possessed full mental faculties, consistently responded to the questions of the witnesses regarding her personal circumstances, and was of sound mind and body.[94]

The appellate court held that the positive testimonies of the witnesses established the due execution and authenticity of the will especially when the Tanchancos could not present proof that the said witnesses are not credible or competent. It added that the witnesses are all lawyers who are not disqualified from being witnesses under the law except in cases relating to privileged communication arising from attorney-client relationship.[95]

It noted that in the probate of the will, the authority of the court is limited to ascertaining the extrinsic validity of the will in that the testator, of sound mind, freely executed the will in accordance with the formalities prescribed by law. It found nothing extraordinary in Natividad's act of submitting the will for probate 10 years from its execution and after Consuelo's

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

[95] *Id.* at 64-65.

death especially since there is no law which obliges a testator to file a petition for probate of his or her will during his or her lifetime.[96]

The CA further found that while Consuelo figured in an accident which limited her mobility years before the execution of the contested will, the Tanchancos failed to substantiate their claim that it was impossible for Consuelo to move around outside her residence. Moreover, it noted that Consuelo travelled to the United States on two occasions more than a year before and then seven months after the contested will was executed. Thus, it was not impossible for Consuelo to travel from her residence in Pasay City to the law office in Makati City.[97]

Moreover, the appellate court held that a comparison of Consuelo's signatures in her 1986, 1988 and 1989 residence certificates and the contested will did not compellingly show that forgery was committed. It ruled that the Tanchancos failed to establish that Consuelo's signature was forged, considering that they only advanced their self-serving allegation of fraud.[98] Also, that non-relatives witnessed the execution of the will did not affect its due execution. It held that "the ruling of the court *a quo* that a perusal of the will even shows that it unconscionably favors [Natividad] when the decedent [Consuelo] not only named [Natividad] as executrix of the will but practically disposes of all the personal properties in her favor including, if not all, the remaining real properties, already involve [an] inquiry on the will's intrinsic validity which need not be inquired upon by the probate court."[99] Ergo, the CA held that it is not a rule that an extrinsically valid will is always intrinsically valid and that the trial court had prematurely ruled that Consuelo's will is also intrinsically invalid.[100]

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

[97] *Id.* at 68-69.

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

[99] *Id.* at 71.

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

The CA found that the Tanchancos failed to prove that Consuelo was of unsound mind when she executed the contested will. Likewise, they only presented self-serving allegations without presenting an expert witness that an 81-year-old woman does not have the legal testamentary capacity to distribute her properties to her heirs upon her death. Additionally, it held that no law requires the testator to execute the will in the presence of his or her heirs and relatives. It similarly ruled that the Tanchancos did not present proof that Consuelo could not understand *Tagalog*.[101]

The appellate court noted that while the attestation clause did not state the number of pages comprising the will, still, it is verifiable by examining the will itself, as the pages were duly numbered and signed by Consuelo and the instrumental witnesses. Moreover, the acknowledgment portion of the contested will states that "*Ang HULING HABILING ito ay binubuo ng lima (5) na dahon, kasama ang dahong kinaroroonan ng Pagpapatunay at Pagpapatotoong ito. SAKSI ang aking lagda at panatak pangnotaryo*."[102] In fine, the appellate court found that there was substantial compliance with the requirements of Article 805 of the Civil Code. It held that since Consuelo named Natividad as the executrix of the will, such should be respected unless the appointed executor is incompetent, refuses the trust, or fails to give bond in which case the court may appoint another person to administer the estate.[103]

The CA declared that the will should be allowed probate. The dispositive portion of the appellate court's assailed Decision reads:

WHEREFORE, premises considered, the 31 May 2004 Decision of the Regional Trial Court, Branch 115, Pasay City, is hereby **REVERSED** and **SET ASIDE** and a new one rendered allowing the probate of the *Huling Habilin at Pagpapasiya* ni Consuelo Santiago

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[101] *Id.* at 72-75.

[102] *Id.* at 104.

[103] *Id.* at 75-79.

Garcia. Petitioner-appellant [Respondent] Natividad Garcia Santos is hereby appointed executor of the estate pursuant to the *Huling Habilin at Pagpapasiya* of the decedent.

Let the records of the instant case be remanded to the trial court of origin for the issuance of letters testamentary to the petitioner [respondent] Natividad Garcia Santos to serve as executor without bond.

SO ORDERED.[104]

The Tanchancos filed a motion for reconsideration[105] which was denied by the CA in a Resolution[106] dated December 4, 2012. Discontented, the Tanchancos elevated[107] this case before Us and raised the following grounds:

A.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT ALLOWED THE PROBATE OF THE DECEDENT'S WILL DESPITE THE FINDINGS OF THE PROBATE COURT THAT THE WILL WAS A TOTAL FABRICATION BASED ON THE FOLLOWING CIRCUMSTANCES:

1. DECEDENT WAS PHYSICALLY INCAPABLE OF EXECUTING THE WILL AT THE ALLEGED DATE AND PLACE OF EXECUTION THEREOF;

2. THE SIGNATURE OF THE DECEDENT IN THE WILL IS A FORGERY; AND

3. THE PURPORTED WILL IS REPLETE WITH FEATURES WHICH LEAD TO AN INDISPUTABLE CONCLUSION THAT THE WILL IS SIMULATED.

B.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT ALLOWED THE PROBATE OF THE DECEDENT'S WILL DESPITE

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[104] *Id.* at 79.

[105] *Id.* at 445-463.

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

[107] *Rollo*, pp. 9-51.

THE FACT THAT THE WILL DOES NOT CONFORM TO THE FORMALITIES REQUIRED BY LAW UNDER ARTICLE 805 OF THE CIVIL CODE.

C.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT ALLOWED THE PROBATE OF THE DECEDENT'S WILL DESPITE CIRCUMSTANCES ALLEGED BY THE PETITIONERS [TANCHANCOS] THAT INDICATE BAD FAITH, FORGERY OR FRAUD, OR UNDUE AND IMPROPER PRESSURE AND INFLUENCE x x x ATTENDED THE EXECUTION OF THE WILL, RENDERING THE SUBSTANTIAL COMPLIANCE RULE UNDER ART. 809 OF THE CIVIL CODE INAPPLICABLE.

D.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE PRINCIPLE THAT FINDINGS OF FACTS AND LAW OF THE TRIAL COURT, AS A TRIER OF FACTS, MUST BE GIVEN WEIGHT.

E.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT APPOINTED MRS. SANTOS [NATIVIDAD] AS EXECUTRIX, EVEN THOUGH MRS. SANTOS [NATIVIDAD] IS CLEARLY NOT FIT TO ACT AS EXECUTRIX OF THE ESTATE.[108]

Thus, the main issue in this Petition is whether or not the will should be allowed probate.

The Ruling of the Court

The Petition is unmeritorious.

The Tanchancos argue that the will was a total fabrication given that Consuelo was incapable of executing a will at the alleged date and place of execution. Consuelo resided in Pasay City and not in Makati City, and her old age and prior accident limited her mobility and disabled her in that she needed assistance most of the time. Moreover, Consuelo's bodyguard who was

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[108] *Id.* at 23-25.

always with her since 1987 averred that she never went to Quasha Law Office. They question Atty. Lallana's assertion that Consuelo was accompanied at the lobby of Quasha Law Office by a maid at the time the will was executed since the said companion was never identified or presented as a witness. They additionally claim that Consuelo's signatures in the will were forged as the signatures therein were suspiciously neat and inconsistent with a "crooked" signature attributable to imperfections and tremors which are usually experienced by an 80-year-old.[109]

The Tanchancos add that the will was simulated because they harbored doubts with the law firm that drafted the will, which is the same counsel of Natividad in the instant case. Moreover, they aver that none of Consuelo's relatives witnessed the execution of the will. They assert that Consuelo's personal legal counsel was Atty. Deogracias (and then Atty. Hizon after Atty. Deogracias' death) and not Atty. Lallana, and that Consuelo never engaged the services of Quasha Law Office during her lifetime. Apart from this, they claim that Consuelo never executed any legal document in *Tagalog* and that she had always used the English language. Also, they maintain that Consuelo secured her residence certificates from Pasay City every calendar year. Yet, in 1987, as can be gleaned from the acknowledgment portion of the will, her residence certificate was issued in Makati City where she was not a resident. They then contend that Natividad did not produce Consuelo's residence certificate for 1987.[110]

The petitioners claim that during her lifetime, Consuelo consistently told her grandchildren that she did not have a will and that if she decides to make one, she will inform Mr. Ciano Neguidula or her lawyer, Atty. Hizon. In light of this, while Consuelo was in a coma in 1997, Natividad, the Tanchancos, Atty. Hizon, and Lumen Santiago met to discuss if Consuelo executed a will and they agreed that she did not. Nonetheless, Natividad suddenly produced the will which was allegedly

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[109] *Id.* at 25-29.

[110] *Id.* at 28-30.

executed by Consuelo on November 18, 1987. They contend that the will favored Natividad which was not in line with Consuelo's character as she had always treated her daughters fairly and equally.[111]

Significantly, the Tanchancos argue that the will is fatally defective because it did not conform to the formalities required under Article 805 of the Civil Code and the attestation clause failed to state the number of pages upon which the will is written. They add that a statement in the acknowledgment clause about the number of pages cannot be raised to the level of an attestation clause. Thus, the will is null and void. They contend that substantial compliance as contemplated under Article 809 of the Civil Code is not applicable in this case because the attendant circumstances indicated bad faith, forgery, or fraud, or undue and improper pressure and influence in the execution of the will.[112]

The Tanchancos enumerated the following circumstances demonstrating the alleged fraud in the execution of the will:

> 5.43.1. It is highly questionable that Decedent, who already has a trusted lawyer, would require the services of another. More suspicious is the fact that the alleged attesting witnesses were all members of the Quasha Law Offices who now represent Mrs. Santos [Natividad] in this case. Such testimonies, although not prohibited by law, are self-serving.
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> 5.43.2. It is also highly questionable, that a *Huling Habilin* prepared by the Quasha Law Office, would have the infirmity of lacking the number of pages in the attestation clause as required by law.
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> 5.43.3. It is also highly questionable that Decedent, who was frail and advanced in years would travel all the way from her home in Pasay City to Makati to execute her last will and testament given that she has always retained the services of her own attorney, Atty. Hizon in this case, who could have easily prepared the Will and Decedent could have had the Will acknowledged by a notary public in Pasay City.

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

[112] *Id.* at 32-37.

5.43.4. It is also highly questionable that the Decedent, given that her signatures found in the residence certificates issued in the years just before and after the alleged execution of the will were all crooked, suddenly would have a perfect smooth signature inconsistent with her other recent signatures. Petitioners, who have personal knowledge of the Decedent's signature, immediately recognized the signature appearing in the purported Will as a forgery, which fact was correctly noted by the Trial Court.

5.43.5. It is also highly questionable that Decedent who acquired residence certificates from Pasay City in the years before and after the execution of her final will would acquire a residence certificate in Makati just for the purpose of executing her will. It should be noted that the 1987 Makati residence certificate was conveniently not presented in Court by Mrs. Santos [Natividad]. Furthermore, it should be considered that Decedent was a resident of Pasay and not of Makati at the time of the execution of the will.

5.43.6. It is also highly unlikely that the Decedent, executing documents in English all her life, would suddenly resort to having her last will executed in Pilipino. Although the use of the national language is highly commended, the language and form of wills are so technical and precise that it would only be logical for parties comfortable and knowledgeable in the use of English language to resort to using it.

5.43.7. It is also highly unlikely that during the time the Decedent was in a coma, when Mrs. Santos [Natividad], Petitioners, Atty. Hizon and Ms. Lumen Santiago met to discuss whether a Will was executed by the Decedent, Mrs. Santos [Natividad] did not bring up the fact that there indeed was a Will executed by the Decedent, considering Mrs. Santos [Natividad] was present at the execution of the will, only to produce the questioned Will after the death of the Decedent. This is proof of evident bad faith on the part of Mrs. Santos [Natividad], who is bent on receiving more than her just share in the estate of the Decedent.[113]

The Tanchancos insist that the ruling of the trial court should be given weight since it was in the best position to evaluate the evidence and the witnesses presented before it by both parties. They maintain that Natividad is not fit to act as executrix given

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[113] *Id.* at 37-39.

that she dissipated the properties of the estate; is not physically present most of the time in the Philippines as she stays in San Francisco, California; and is almost 90 years old. Moreover, they aver that the appointment of the administrator of the estate should be resolved through a full-blown hearing.[114]

Natividad counters that the CA's ruling had legal and factual basis and that the will was executed in accordance with the required formalities and solemnities, *viz.*:

(1) The last will and testament was written in *Tagalog*, a language known to and understood by decedent. Decedent was born and raised in the province of Bulacan where the dialect is *Tagalog*. More importantly, there was no evidence presented to show that Decedent could not understand *Tagalog* at the time of the execution of the will;

(2) The last will and testament was subscribed at the end thereof by Decedent;

(3) The last will and testament was attested and subscribed by three (3) lawyers of Quasha Law Office in the presence of Decedent and of one another;

(4) Each and every page of [the] last will and testament was signed by Decedent and three (3) lawyers on the left margin;

(5) All pages of the last will and testament of Decedent were numbered correlatively on the upper part of each page;

(6) The last will and testament of Decedent contains an attestation clause;

(7) And finally, the last will and testament of Decedent was acknowledged before a notary public.[115]

Natividad avers that the testimonies of the Tanchancos' witnesses who discounted the possibility of Consuelo travelling to Makati City could not outweigh the positive testimonies of the attesting witnesses to the execution of the will. She points

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[114] *Id.* at 39-41.

[115] *Id.* at 567.

out that Consuelo even travelled abroad before and after the will was executed. Additionally, the lawyer-witnesses have no personal interest in the execution of the will; thus, there is no reason for them to fabricate the same.[116]

Natividad asserts that the Tanchancos failed to prove forgery. She maintains that it is not required that a witness to the will be a relative of the testator; it was not impossible for Consuelo to engage the services of another lawyer in the execution of the will; it was not prohibited for the will to be in *Tagalog*, a dialect known by Consuelo and which she was comfortable with; it is not entirely impossible that Consuelo obtained a residence certificate from Makati City for the purpose of executing her will; it was not proved that Consuelo mentioned during her lifetime that she did not execute any will; the Tanchancos' claim that Consuelo intended to equally divide her properties between her two children was without merit; and, that the provisions of the will favored Natividad did not affect its due execution and even bordered on the question of the intrinsic validity of the will which is not within the purview of the probate court.[117]

Natividad insists that the will conforms to the formalities required under Article 805 of the Civil Code since the trial court and the CA held that the attestation clause substantially complied with the directive of the aforementioned provision. The acknowledgment portion specifically mentioned that the necessary signatures were affixed on every page of the will and referred to the number of pages the will was written. She avers that the execution of the will was not attended by bad faith, forgery or fraud, or undue influence and improper pressure. Furthermore, she asserts that the CA is not precluded from reviewing the factual findings of the trial court especially when there was a misapprehension of facts and the findings were without factual basis and grounded on pure speculations. Lastly,

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[116] *Id.* at 567-569.

[117] *Id.* at 570-578.

she maintains that her appointment as executrix should be followed as specified in the will.[118]

We now resolve.

Undoubtedly, the RTC and the CA had conflicting findings which would merit the Court's review of the factual and legal circumstances surrounding the case and serve as an exception to the rule that the Court can only rule on questions of law in petitions for review on *certiorari*.[119]

We are inclined to affirm the findings and ruling of the CA as these were based on a careful consideration of the evidence and supported by prevailing law and jurisprudence. The Court concurs with the CA in holding that the trial court erred in lending credence to the allegations of the Tanchancos which are bereft of substantiation that Consuelo's signature was forged or that undue duress was employed in the execution of the will in question.

It is settled that "the law favors testacy over intestacy"[120] and hence, "the probate of the will cannot be dispensed with.

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[118] *Id.* at 579-586.

[119] *Heirs of Juan Dinglasan v. Ayala Corp.*, G.R. No. 204378, August 5, 2019, citing *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016).

As to the rule that the Court is generally limited to reviewing only errors of law in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the exceptions are: (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.

[120] *Dy Yieng Seangio v. Reyes*, 538 Phil. 40, 51 (2006).

Article 838 of the Civil Code provides that no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. Thus, unless the will is probated, the right of a person to dispose of his property may be rendered nugatory."[121] In a similar way, "testate proceedings for the settlement of the estate of the decedent take precedence over intestate proceedings for the same purpose."[122]

The will faithfully complied with the formalities required by law

The main issue which the court must determine in a probate proceeding is the due execution or the extrinsic validity of the will[123] as provided by Section 1, Rule 75[124] of the Rules of Court. The probate court cannot inquire into the intrinsic validity of the will or the disposition of the estate by the testator. Thus, due execution is "whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law"[125] as mandated by Articles 805 and 806 of the Civil Code, as follows:

> Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

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[121] *Id.*, citing *Maninang v. Court of Appeals*, 199 Phil. 640 (1982).

[122] *Id.* at 51-52, citing *Cuenco v. Court of Appeals*, 153 Phil. 115 (1973).

[123] *Baltazar v. Laxa*, 685 Phil. 484, 497 (2012), citing *Pastor, Jr. v. Court of Appeals*, 207 Phil. 758, 766 (1983).

[124] **SECTION 1.** *Allowance necessary. Conclusive as to execution.* — No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.

[125] *Baltazar v. Laxa, supra* at 498, citing *Pastor, Jr. v. Court of Appeals*, 207 Phil. 758, 766 (1983).

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

An examination of Consuelo's will shows that it complied with the formalities required by the law,[126] except that the attestation clause failed to indicate the total number of pages upon which the will was written. To address this concern, Natividad enumerated the following attributes of the attestation clause and the will itself, which the Court affirms:

a. The pages are completely and correlatively numbered using the same typewriting font on all the pages of the will;

b. All indications point to the fact that the will was typewritten using the same typewriter;

c. There are no erasures or alterations in the will;

d. The notarial acknowledgment states unequivocally or with clarity that the will consists of five (5) pages including the attestation clause (*i.e.*[,] the "*pagpapatunay*") and the notarial acknowledgment itself (*i.e.*[,] the "*pagpapatotoong ito*");

e. All of the pages of the entire will were properly signed on the appropriate portions by the testator and the instrumental witnesses;

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[126] *Baltazar v. Laxa, id.* at 497.

f. All of the signatures of the testator and the instrumental witnesses on all the pages of the will are genuine if only for the fact that they are identical/similar throughout;

g. The oppositors have not adduced, and in fact waived the presentation of, any kind of evidence to impugn the authenticity of any of the signatures appearing in the will;

[h]. The oppositors have not adduced, and in fact waived the presentation of, any kind of evidence tending to show that the will was allegedly executed by undue influence or any fraudulent or improper/unlawful means[.][127]

Notably, the case of *Caneda v. Court of Appeals*[128] explained that:

x x x [U]nder Article 809, the defects or imperfections must only be with respect to the form of the attestation or the language employed therein. Such defects or imperfections would not render a will invalid should it be proved that the will was really executed and attested in compliance with Article 805. In this regard, however, the manner of proving the due execution and attestation has been held to be limited to merely an examination of the will itself without resorting to evidence *aliunde*, whether oral or written.

The foregoing considerations do not apply where the attestation clause *totally* omits the fact that the attesting witnesses signed each and every page of the will in the presence of the testator and of each other. In such a situation, the defect is not only in the form or the language of the attestation clause but the total absence of a specific element required by Article 805 to be specifically stated in the attestation clause of a will. x x x

Furthermore, the rule on substantial compliance in Article 809 x x x presupposes that the defects in the attestation clause can be cured or supplied by the text of the will or a consideration of matters apparent therefrom which would provide the data not expressed in the attestation clause or from which it may necessarily be gleaned or clearly inferred that the acts not stated in the omitted textual requirements were actually complied with in the execution of the will.

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[127] *Rollo*, pp. 153-154.

[128] 294 Phil. 801 (1993).

In other words, the defects must be remedied by intrinsic evidence supplied by the will itself.

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The so-called liberal rule, the Court said in *Gil v. Murciano*, 'does not offer any puzzle or difficulty, nor does it open the door to serious consequences. The later decisions do tell us when and where to stop; they draw the dividing line with precision. They do not allow evidence *aliunde* to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration into its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. This clear, sharp limitation eliminates uncertainty and ought to banish any fear of dire results.'

It may thus be stated that the rule, as it now stands, is that omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and correspondingly, would not obstruct the allowance to probate of the will being assailed. However, those omissions which cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause and ultimately, of the will itself.[129] (Citations Omitted)

Moreover, *Mitra v. Sablan-Guevarra*[130] instructs, *viz*.:

As to whether the failure to state the number of pages of the will in the attestation clause renders such will defective, the CA, citing *Uy Coque vs. Naves Sioca* and *In re: Will of Andrada*, perceived such omission as a fatal flaw. In *Uy Coque*, one of the defects in the will that led to its disallowance is the failure to declare the number of its pages in the attestation clause. The Court elucidated that the purpose of requiring the number of pages to be stated in the attestation clause is to make the falsification of a will more difficult. In *In re: Will of Andrada*, the Court deemed the failure to state the number of pages in the attestation clause, fatal. Both pronouncements

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[129] *Id.* at 817-824.

[130] G.R. No. 213994, April 18, 2018, citing *Uy Coque v. Naves Sioca*, 43 Phil. 405, 407 (1922) and *In re: Will of Andrada*, 42 Phil. 180, 181 (1921).

were, however, made prior to the effectivity of the Civil Code on August 30, 1950.

Subsequently, in *Singson vs. Florentino*, the Court adopted a more liberal approach and allowed probate, even if the number of pages of the will was mentioned in the last part of the body of the will and not in the attestation clause. This is to prevent the will of the testator from being defeated by purely technical considerations.

The substantial compliance rule is embodied in the Civil Code as Article 809 thereof, which provides that:

> **Article 809.** In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

Thus, in *Taboada vs. Hon. Rosal*, the Court allowed the probate of a will notwithstanding that the number of pages was stated not in the attestation clause, but in the Acknowledgment. In *Azuela vs. CA*, the Court ruled that there is substantial compliance with the requirement, if it is stated elsewhere in the will how many pages it is comprised of.

What is imperative for the allowance of a will despite the existence of omissions is that such omissions must be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence. "However, those omissions which cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause and ultimately, of the will itself." (Citations omitted).

In the instant case, the attestation clause indisputably omitted to mention the number of pages comprising the will. Nevertheless, the acknowledgment portion of the will supplied the omission by stating that the will has five pages, to wit: "*Ang HULING HABILING ito ay binubuo ng lima (5) na dahon, kasama ang dahong kinaroroonan ng Pagpapatunay at Pagpapatotoong ito*."[131] Undoubtedly, such substantially complied with Article

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[131] *Rollo*, p. 104.

809 of the Civil Code. Mere reading and observation of the will, without resorting to other extrinsic evidence, yields the conclusion that there are actually five pages even if the said information was not provided in the attestation clause. In any case, the CA declared that there was substantial compliance with the directives of Article 805 of the Civil Code.

When the number of pages was provided in the acknowledgment portion instead of the attestation clause, "[t]he spirit behind the law was served though the letter was not. Although there should be strict compliance with the substantial requirements of the law in order to insure the authenticity of the will, the formal imperfections should be brushed aside when they do not affect its purpose and which, when taken into account, may only defeat the testator's will."[132]

Lawyers are not disqualified from being witnesses to a will; the subscribing witnesses testified to the due execution of the will

Article 820 of the Civil Code provides that, "[a]ny person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code." Here, the attesting witnesses to the will in question are all lawyers equipped with the aforementioned qualifications. In addition, they are not disqualified from being witnesses under Article 821[133] of the Civil Code, even if they all worked at the same law firm at the time. As pointed out by Natividad, these lawyers would

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[132] *In the Matter of the Probate of the Last Will and Testament of the Deceased Brigido, Alvarado v. Gaviola, Jr.*, 297 Phil. 384, 392-393 (1993), citing *Rodriguez v. Yap*, 68 Phil. 126, 128 (1939).

[133] Article 821. The following are disqualified from being witnesses to a will:

(1) Any person not domiciled in the Philippines;

(2) Those who have been convicted of falsification of a document, perjury or false testimony.

not risk their professional licenses by knowingly signing a document which they knew was forged or executed under duress; moreover, they did not have anything to gain from the estate when they signed as witnesses. All the same, petitioners did not present controverting proof to discredit them or to show that they were disqualified from being witnesses to Consuelo's will at the time of its execution.

Since the will in this case is contested, Section 11, Rule 76 of the Rules of Court applies, to wit:

> **SEC. 11.** *Subscribing witnesses produced or accounted for where will contested.* — If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of such witnesses are present in the Philippines but outside the province where the will has been filed, their deposition must be taken. x x x

The lawyer-witnesses unanimously confirmed that the will was duly executed by Consuelo who was of sound mind and body at the time of signing. The Tanchancos failed to dispute the competency and credibility of these witnesses; thus, the Court is disposed to give credence to their testimonies that Consuelo executed the will in accordance with the formalities of the law and with full mental faculties and willingness to do so.

The burden of proof is upon the Tanchancos to show that Consuelo could not have executed the will or that her signature was forged

It is beyond cavil that Consuelo understood both *Tagalog* and English. In fact, the Tanchancos failed to disprove that Consuelo was more comfortable to use the *Tagalog* dialect in writing the will, given that she was born and raised in Bulacan where the main dialect is *Tagalog*. Notably, although wholly written in *Tagalog*, the will contained the English equivalent for the other terms which relate to wills and succession.

The Tanchancos, despite their allegation that Consuelo should have employed the services of Atty. Hizon, failed to present him in court to validate their claim that he was Consuelo's personal legal counsel and bolster their position that Consuelo could not have engaged the services of Quasha Law Office at all since she purportedly never had any prior dealings with the said firm. The Tanchancos likewise failed to refute that Atty. Lallana was actually a family friend. Atty. Lallana stated in her deposition that Consuelo personally discussed the matters concerning the will with her alone and in private. Atty. Lallana even added that Consuelo knew that the Tanchancos would oppose the will. This may explain why Consuelo chose another counsel to handle the execution of her will so that the heirs would not be able object to it or interfere with her choices.

Likewise, the CA found that Consuelo travelled abroad barely months before and after the will was executed. By inference, such finding demonstrated that she still had the mental and physical capacity to execute a will even if the law firm is in Makati City. The photographs presented during the hearings showed that Consuelo can still stand on her own after the will was executed.

About the claim of forgery, the same remains unsubstantiated because the Tanchancos merely surmised that there were discrepancies in Consuelo's signatures in the Residence Certificates and in the will, and insisted that the said signatures should not be "perfectly written" and instead should be "crooked" due to Consuelo's age.

Based on the Court's assessment, the signatures in Consuelo's Residence Certificates[134] were similar with her signature in the contested will. As found by the CA, "[a] close scrutiny of the signatures appearing in the 1986, 1988 and 1989 residence certificates of the decedent and comparing them with the signatures of the testatrix in the contested Will failed to disclose a convincing, definitive and conclusive showing of forgery. The

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[134] *Rollo*, pp. 314-316.

appealed decision of the court *a quo* [RTC] likewise failed to discuss how it came to its conclusion that the will contains forged signatures of Consuelo which is one of the reasons it was denied probate. Other than the self-serving allegations of the oppositors-appellees, no evidence was ever presented in court that would indubitably establish forgery of the decedent's signature in the contested will."[135]

Bare allegations without corroborating proof that Consuelo was under duress in executing the will cannot be considered

As similarly found by the CA, the Tanchancos did not adduce evidence to corroborate their allegation that Consuelo declared that she would not execute a last will and testament, other than their self-interested statements.[136] In addition, they failed to portray that Consuelo did not have the testamentary capacity to execute the will or that she was suffering from a condition which could have definitively prevented her from doing so.

The Tanchancos did not explain how Consuelo could have been forced into executing the will, as they merely focused on her alleged physical inability to go to the Quasha Law Office in Makati City. They did not present witnesses who could prove that she was forced into making the will, or that she signed it against her own wishes and volition.

The Tanchancos insisted that Consuelo intended to divide her properties equally between her two daughters, Natividad and Remedios. Yet, based on the testimony of Natividad and the deposition of Atty. Lallana, Consuelo, during her lifetime, already apportioned the prime properties to her two daughters and retained some properties for her own use and support. Hence, what properties she had left, Consuelo could dispose of in any way she desired, as long as the rules on legitime and preterition are observed.

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[135] *Id.* at 70-71.

[136] *Baltazar v. Laxa, supra* note 123 at 501.

In any case, as earlier stated, inquiring into the intrinsic validity of the will or the manner in which the properties were apportioned is not within the purview of the probate court. "The court's area of inquiry is limited to an examination of, and resolution on, the *extrinsic* validity of the will. The due execution thereof, the testatrix's testamentary capacity, and the compliance with the requisites or solemnities by law prescribed, are the questions *solely* to be presented, and to be acted upon, by the court. Said court — at this stage of the proceedings — is not called upon to rule on the *intrinsic* validity or efficacy of the provisions of the will, the legality of any devise or legacy therein."[137]

The will should be allowed probate

Considering the foregoing, the will of Consuelo should be allowed probate as it complied with the formalities required by the law. The Tanchancos failed to prove that the same was executed through force or under duress, or that the signature of the testator was procured through fraud as provided under Article 839[138] of the Civil Code and Rule 76, Section 9[139] of the Rules of Court.

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[137] *Nuguid v. Nuguid*, 123 Phil. 1305, 1308 (1966), citing *Castañeda v. Alemany*, 3 Phil. 426, 428 (1904); *Pimentel v. Palanca*, 5 Phil. 436, 440-441 (1905); *Limjuco v. Ganara*, 11 Phil. 393, 394-395 (1908); *Montañano v. Suesa*, 14 Phil. 676, 679 (1909); *Riera v. Palmaroli*, 40 Phil. 105, 116 (1919); *In re: Estate of Johnson*, 39 Phil. 156, 174 (1918); *Palacios v. Palacios*, 106 Phil. 739 (1959); *Teotico v. del Val*, 121 Phil. 392-402 (1965).

[138] Article 839. The will shall be disallowed in any of the following cases:

(1) If the formalities required by law have not been complied with;
(2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
(3) If it was executed through force or under duress, or the influence of fear, or threats;
(4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
(5) If the signature of the testator was procured by fraud;
(6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

[139] **SEC. 9.** *Grounds for disallowing will.* — The will shall be disallowed in any of the following cases:

We agree with the CA that the court should respect the prerogative of the testator to name an executrix (in this case, Natividad) in her will absent any circumstance which would render the executrix as incompetent, or if she fails to give the bond requirement or refuses to execute the provisions of the will.[140]

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED.** The assailed June 25, 2012 Decision and December 4, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 89593 are **AFFIRMED.**

SO ORDERED.

Gesmundo,[*] *Inting, Delos Santos,* and *Gaerlan,*[**] *JJ.*, concur.

(a) If not executed and attested as required by law;

(b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;

(c) If it was executed under duress, or the influence of fear, or threats;

(d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;

(e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

[140] See RULES OF COURT, Rule 75, § 3; Rule 76, § 1; Rule 78, § 1; and Rule 81, § 1.

[*] Designated as additional member vice Senior Associate Justice Estela M. Perlas-Bernabe who recused due to prior action in the Court of Appeals per Raffle dated February 19, 2020.

[**] Designated Additional Member of the Second Division per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 214898. June 8, 2020]

EDISON PRIETO and FEDERICO RONDAL, JR., *petitioners, vs.* **ERLINDA CAJIMAT,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE SUPREME COURT IS NOT A TRIER OF FACTS, AND IT IS NOT ITS FUNCTION TO EXAMINE, REVIEW, OR EVALUATE THE EVIDENCE ALL OVER AGAIN. —** Petitioners are raising a question of fact, that is, whether there were indeed headlights and blinkers in deceased Cajimat III's motorcycle which would allegedly make him negligent in driving his motorcycle in the national highway during nighttime and thus absolve the petitioners from any liability on the injury caused to the deceased. The issue raised by petitioners is clearly a question of fact which requires a review of the evidence presented. It is well-settled that this Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence all over again. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts.

2. **ID.; ID.; ID.; ID.; A PETITION FOR REVIEW ON *CERTIORARI* SHOULD COVER ONLY QUESTIONS OF LAW; EXCEPTIONS; NOT PRESENT. —** A petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law x x x. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must solely depend on what the law provides on the given set of circumstances. Once it is obvious that the issue invites a review of the evidence presented, the question posed is one of fact. However, the rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmises, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is

based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record. Petitioners failed to show that this case falls under any of the exceptions. Hence, this Court finds no justifiable reason to deviate from the findings of the RTC and the CA that no sufficient evidence was presented by petitioners to prove that indeed Cajimat III's motorcycle had no headlight and blinkers during the mishap.

3. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PARTY WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT; THE BURDEN OF PROOF RESTS UPON THE PETITIONERS, WHO ARE REQUIRED TO ESTABLISH THEIR CASE BY A PREPONDERANCE OF EVIDENCE. — In fact, even the report prepared by SPO4 Calaycay which stated that the motorcycle of the deceased had no headlights and blinkers on its front and rear portions was belied and uncorroborated by the testimony of the investigating officer, SPO1 Villa x x x. Contrary to the contention of the petitioners, there is nothing in the x x x testimony of SPO1 Villa, the investigating officer who responded to the subject vehicular accident, to show that he confirmed that indeed the deceased's motorcycle had no headlights during the incident. Simply put, 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/her claim or defense, or any fact in issue by the amount of evidence required by law. In this case, the burden of proof rests upon the petitioners, who are required to establish their case by a preponderance of evidence. However, aside from petitioners' allegations, no other evidence was presented to prove that indeed the deceased was negligent in driving his motorcycle.

4. ID.; ID.; CREDIBILITY; ABSENT ANY CLEAR SHOWING OF ABUSE, ARBITRARINESS, OR CAPRICIOUSNESS COMMITTED ON THE PART OF THE LOWER COURT, ITS FINDINGS OF FACTS ARE BINDING AND CONCLUSIVE UPON THE COURT. — The findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of

abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court.

5. CIVIL LAW; DAMAGES; AWARD OF DAMAGES, MODIFIED. — The monetary awards of (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱25,000.00 as attorney's fees; and (d) ₱2,700.00 as cost of suit are correct and in accord with recent jurisprudence. However, We deem it necessary to delete the actual damages in the amount of ₱29,000.00 and award ₱50,000.00 as temperate damages in lieu thereof in conformity with prevailing jurisprudence that when the actual damages is less than the sum allowed by the Court as temperate damages, now pegged at ₱50,000.00, the award of temperate damages is justified in lieu of actual damages. We likewise modify the award of exemplary damages into ₱50,000.00 to recognize the reckless and imprudent manner in which petitioners Prieto and Rondal, Jr. acted during the incident. These monetary awards shall earn interest at the rate of six percent (6%) per *annum* from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Firm of Manuel, Nicolas and Perera for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition for Review[1] is the Decision[2] dated March 20, 2014 and Resolution[3] dated September 23, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 97048, which

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[1] *Rollo*, pp. 11-29.

[2] *Id.* at 31-40; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Rebecca De Guia-Salvador and Ramon R. Garcia.

[3] *Id.* at 42-43.

affirmed the Decision[4] dated February 18, 2011 of the Regional Trial Court (RTC), Branch 18 of Batac, Ilocos Norte, in Civil Case No. 4256-18, ordering petitioners Edison Prieto (Prieto) and Federico Rondal, Jr. (Rondal, Jr.) to pay jointly and solidarily respondent Erlinda Cajimat (Erlinda) the following: (a) ₱29,000.00 as actual expenses; (b) ₱50,000.00 as civil indemnity; (c) ₱50,000.00 as moral damages; (d) ₱30,000.00 as exemplary damages; (e) ₱25,000.00 as attorney's fees; and (f) ₱2,700.00 as cost of suit.

The Antecedents

On January 14, 2003, at around 7:40 in the evening, petitioner Rondal, Jr. was driving a red Yamaha tricycle with plate number BT 9799 along the southbound lane of the national highway of Barangay 2 Garreta, Badoc, Ilocos Norte. Thereafter, petitioner Rondal, Jr. overtook two tricycles in front of him and occupied the northbound lane which resulted in a head-on collision with a black Yamaha "chop-chop" motorcycle which was driven by Narciso Cajimat III (Cajimat III). As a result, Cajimat III suffered a fractured skull which caused his instantaneous death.

A criminal case for Reckless Imprudence resulting in Homicide was filed against petitioner Rondal, Jr. before the Municipal Circuit Trial Court (MCTC) of Badoc-Pinili, Badoc, Ilocos Norte docketed as Criminal Case No. 2730-B. Meanwhile, the mother of deceased Cajimat III, respondent Erlinda, filed a separate civil action for damages before the RTC against petitioners Rondal, Jr. and Prieto, the registered owner of the red Yamaha tricycle.

Respondent Erlinda posited that at the time of the incident, petitioner Rondal, Jr. did not have a driver's license and was intoxicated. She pointed out that the direct, immediate, and proximate cause of the collision was petitioner Rondal, Jr.'s gross negligence in managing, driving, and operating the red Yamaha tricycle. Thus, respondent Erlinda prayed for the pay ment of the burial and miscellaneous expenses she incurred in

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[4] *Id.* at 82-100; penned by Judge Isidoro T. Pobre.

the total amount of ₱200,000.00, attorney's fees, moral damages, and exemplary damages.

On the other hand, petitioners opined that petitioner Rondal, Jr. had been careful and prudent while driving the red Yamaha tricycle at a moderate speed. They further alleged that petitioner Rondal, Jr. took and drove the said tricycle without petitioner Prieto's consent and authority. They likewise contended that the collision was caused by deceased Cajimat III's own negligence, recklessness, and imprudence by driving an unregistered and unlighted "chop-chop" motorcycle at full speed.

After pre-trial, trial on the merits ensued. Respondent Erlinda presented the testimony of Senior Police Officer 1 Proceso Villa (SPO1 Villa), the responding officer who investigated the vehicular collision. On the other hand, petitioners presented their testimonies as evidence.

Meanwhile, on May 21, 2008, the MCTC rendered a Decision[5] finding petitioner Rondal, Jr. guilty beyond reasonable doubt of Reckless Imprudence resulting in Homicide, which fact was admitted by both parties.[6]

Ruling of the RTC

Thereafter, on February 18, 2011, the RTC, applying the principle of *res ipsa loquitur*, rendered a Decision[7] finding petitioners Rondal, Jr. and Prieto negligent and are therefore civilly liable. In addition, the RTC reasoned that deceased Cajimat III cannot be considered contributorily negligent in the vehicular mishap as there was no evidentiary proof that his motorcycle did not have a headlight at the time of the collision.

As to petitioner Prieto's civil liability under Article 2176 in relation to Article 2180 of the Civil Code, the RTC ruled that as owner of a public utility vehicle, he is solidarily liable as an

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[5] Records, pp. 153-168; penned by Judge Ligaya V. Sulicipan.

[6] CA *rollo*, p. 87.

[7] *Rollo*, pp. 82-100.

employer of petitioner Rondal, Jr. Petitioner Prieto's allegations that petitioner Rondal, Jr. was not his employee nor did he ask consent to drive the red Yamaha tricycle were not sufficiently substantiated and therefore, self-serving.

Thus, the RTC ordered petitioners to jointly and solidarily pay respondent Erlinda the following: (a) ₱29,000.00 as actual expenses; (b) ₱50,000.00 as civil indemnity; (c) ₱50,000.00 as moral damages; (d) ₱30,000.00 as exemplary damages; (e) ₱25,000.00 as attorney's fees; and (f) ₱2,700.00 as cost of suit.[8]

Ruling of the CA

Hence, petitioners filed an appeal before the CA. On March 20, 2014, the CA rendered its Decision[9] affirming *in toto* the RTC's Decision dated February 18, 2011. It ruled that there is no cogent reason to assume that the deceased Cajimat III's motorcycle had no headlights nor blinkers at the time of the collision. In fact, a disinterested eyewitness testified in Criminal Case No. 2730-B that the motorcycle had its headlights on. Also, considering the impact of the collision, the front portion of the motorcycle was totally damaged. In addition, the fact that the motorcycle was unregistered does not negate petitioners' liability.

As to petitioner Prieto's liability, the CA held that the registered owner of the motor vehicle is considered as the employer of the tortfeasor-driver and is made primarily liable for the tort committed by the latter under Article 2176, in relation to Article 2180, of the Civil Code. Thus, insofar as third persons are concerned, the registered owner of the motor vehicle is the employer of the negligent driver, and the actual employer is considered merely as an agent of such owner.

The CA further ruled that petitioner Prieto's vicarious liability is grounded on his failure to exercise due diligence of a good

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[8] *Id.* at 100.

[9] *Id.* at 31-40.

father of a family to prevent damage and in the selection of his employee.

A motion for reconsideration was filed by petitioners which was subsequently denied by the CA in its Resolution dated September 23, 2014.[10]

Hence, petitioners filed a Petition for Review on *Certiorari* under Rule 45 before the Supreme Court.

Issue

The lone issue presented by petitioners for resolution by this Court is whether or not the proximate cause of Cajimat III's demise is due to his own negligence.

Petitioners argue that the absence of a license plate, headlight, and blinkers sufficiently proves Cajimat III's negligence in driving his "chop-chop" motorcycle which was clearly stated in the report prepared by SPO4 Wilson Calaycay (SPO4 Calaycay) and strengthened by the testimonies of respondent Erlinda and SPO1 Villa. They emphasized that the deceased should not be driving an unlighted motorcycle and without blinkers to the detriment of other people especially during nighttime. Thus, respondent Erlinda has no right to recover damages when the deceased's own negligence was the immediate and proximate cause of his injury.

The Court's Ruling

We find the Petition without merit.

Petitioners are raising a question of fact, that is, whether there were indeed headlights and blinkers in deceased Cajimat III's motorcycle which would allegedly make him negligent in driving his motorcycle in the national highway during nighttime and thus absolve the petitioners from any liability on the injury caused to the deceased. The issue raised by petitioners is clearly a question of fact which requires a review of the evidence presented. It is well-settled that this Court is not a trier of

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

facts, and it is not its function to examine, review, or evaluate the evidence all over again. As a matter of sound practice and procedure, the Court defers and accords finality to the factual findings of trial courts.

A petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law, 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 Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** (Emphasis ours)

For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must solely depend on what the law provides on the given set of circumstances. Once it is obvious that the issue invites a review of the evidence presented, the question posed is one of fact.[11]

However, the rule admits of exceptions, which includes, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmises, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record.[12] Petitioners failed to show that this case falls under any of the exceptions. Hence, this Court finds no justifiable reason to deviate from the findings of the RTC and the CA that no sufficient evidence was presented by petitioners to prove that indeed Cajimat III's motorcycle had no headlight and blinkers during the mishap.

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[11] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 586 (2013).

[12] *Uyboco v. People*, 749 Phil. 987, 992 (2014).

In fact, even the report prepared by SPO4 Calaycay which stated that the motorcycle of the deceased had no headlights and blinkers on its front and rear portions was belied and uncorroborated by the testimony of the investigating officer, SPO1 Villa, who testified that:

> Q: x x x And you have inspected that there is no head light, isn't it?
>
> A: I am not sure, sir because as I said it was in a sliding position and when Federico Rondal [Jr.] surfaced, I immediately took Federico Rondal [Jr.] to the police station and we immediately proceeded to the Corpuz Clinic to check the condition of the victim, sir.[13]

Contrary to the contention of the petitioners, there is nothing in the above-quoted testimony of SPO1 Villa, the investigating officer who responded to the subject vehicular accident, to show that he confirmed that indeed the deceased's motorcycle had no headlights during the incident.

Simply put, 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/her claim or defense, or any fact in issue by the amount of evidence required by law. In this case, the burden of proof rests upon the petitioners, who are required to establish their case by a preponderance of evidence. However, aside from petitioners' allegations, no other evidence was presented to prove that indeed the deceased was negligent in driving his motorcycle.

Finally, the findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court.[14]

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[13] TSN, October 4, 2006, p. 11.

[14] *Uyboco v. People*, *supra* at 992.

The monetary awards of (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱25,000.00 as attorney's fees; and (d) ₱2,700.00 as cost of suit are correct and in accord with recent jurisprudence.[15] However, We deem it necessary to delete the actual damages in the amount of ₱29,000.00 and award ₱50,000.00 as temperate damages in lieu thereof in conformity with prevailing jurisprudence[16] that when the actual damages is less than the sum allowed by the Court as temperate damages, now pegged at ₱50,000.00, the award of temperate damages is justified in lieu of actual damages. We likewise modify the award of exemplary damages into ₱50,000.00 to recognize the reckless and imprudent manner in which petitioners Prieto and Rondal, Jr. acted during the incident. These monetary awards shall earn interest at the rate of six percent (6%) per *annum* from date of finality of this judgment until fully paid.

WHEREFORE, there being no reversible error on the part of the Court of Appeals, the Petition is **DENIED**. Accordingly, the Decision dated March 20, 2014 and Resolution dated September 23, 2014, rendered by the Court of Appeals in CA-G.R. CV No. 97048, are hereby **AFFIRMED** with the following **MODIFICATIONS**: (a) the amount of ₱29,000.00 as actual damages is deleted; and (b) the amounts of ₱50,000.00 as temperate damages in lieu of actual damages and ₱50,000.00 as exemplary damages are awarded to respondent Erlinda Cajimat. All monetary award shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Inting, Delos Santos,* and *Gaerlan,*[*] *JJ.,* concur.

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[15] *People v. Jugueta*, 783 Phil. 806 (2016).

[16] *People v. Racal*, 817 Phil. 665, 685-686 (2017).

[*] Designated Additional Member of the Second Division per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 214939. June 8, 2020]

BPI FAMILY SAVINGS BANK, INC., *petitioner, vs.* **SPOUSES JACINTO SERVO SORIANO and ROSITA FERNANDEZ SORIANO as represented by their Attorney-in-fact, GLORIA SORIANO CRUZ,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; *TORRENS SYSTEM* OF LAND REGISTRATION, FUNCTION OF; BANKS AND FINANCIAL INSTITUTIONS ARE CHARGED WITH THE OBSERVANCE OF ELEVATED STANDARDS OF DILIGENCE IN DEALING WITH REAL PROPERTIES. — The primary function of the *Torrens* system of land registration is essentially the establishment of a means by which land ownership may be incontrovertibly proven, with the anticipated effect of facilitating the ease, reliability, and enforceability of real estate transactions. Consequently, it has been held that "every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property." The rule applies to both buyers and mortgagees of real property. A further refinement of the rule with respect to mortgages is stated in *Ruiz v. Dimailig*: Such doctrine of mortgagee in good faith presupposes "that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the said title." In short, the doctrine of mortgagee in good faith assumes that the title to the subject property had already been transferred or registered in the name of the impostor who thereafter transacts with a mortgagee who acted in good faith. However, banks and financial institutions are charged with the observance of elevated standards of diligence in dealing with real properties in the course of their business; and are consequently expected to go beyond the statements in the *Torrens* title.

2. ID.; ID.; ID.; ID.; PETITIONER IS NOT A MORTGAGEE IN GOOD FAITH; IT FAILED TO EXERCISE THE REQUIRED DILIGENCE IMPOSED UPON IT BY LAW. — BPI Family could have discovered all these circumstances had it simply contacted the spouses Soriano or their attorney-in-fact Cruz, which it never did. The fact that Hufana initially presented the fraudulently reconstituted copy of TCT No. T-14466 which was still in the name of the spouses when she first approached BPI Family should have alerted the bank to at least contact the spouses. Given the heightened standard of diligence imposed upon it by law, BPI Family should not have presumed, as it admits to presuming, that "it was natural and regular that the TCT and other documents of ownership still indicated the spouses Soriano as owners of the property," just because "Hufana was taking out a loan in her own name for the purposes of buying said lot from the spouses Soriano." At the very least, they should have contacted the spouses Soriano and confirmed if Hufana was really buying the land from them. Given the foregoing circumstances, the CA's finding must be sustained: BPI Family was not a mortgagee in good faith.

3. ID.; DAMAGES; ACTUAL DAMAGES, DEFINED; WHERE THE LEGAL BASIS FOR THE AWARD OF ACTUAL DAMAGES NO LONGER EXISTS, AWARD THEREOF MUST BE DELETED. — Actual damages are "compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement." Stated differently, actual damages are compensation for sustained pecuniary loss. Thus, they may only be awarded when the pecuniary loss suffered by the claiming party was duly proven. In the case at bar, the trial court held that the spouses Soriano cannot recover the properties in dispute. Hence, the award of actual damages was grounded on the loss inflicted upon the spouses Soriano by the non-recovery of their real properties. Consequently, the amount awarded was based on the pecuniary benefit that the defendants were able to derive from the land. However, the CA as affirmed by this Court, reversed the RTC and ruled that the spouses Soriano are entitled to recover the properties. Verily, there is no longer any legal basis for the award of actual damages to the spouses Soriano, as they will no longer suffer the loss or injury supposed to be compensated thereby.

4. ID.; ID.; MORAL AND EXEMPLARY DAMAGES; AMOUNTS AWARDED BY THE COURT OF APPEALS, REDUCED. — As regards moral and exemplary damages, it has been held that damages of such nature may be recovered even if a bank's negligence may not have been attended with malice or bad faith. Here, it was established that BPI Family was negligent in failing to fully ascertain the ownership status of the lot mortgaged to it. However, the record is bereft of any proof of BPI Family's malice or bad faith; or that it participated in the fraud perpetrated by Viado, Jose, and Hufana. AS such, the CA did not err in holding BPI Family liable for moral damages, exemplary damages and attorney's fees. However, following Our ruling in *Cavite Development Bank v. Spouses Lim*, the amounts awarded by the CA must be reduced. Accordingly, BPI Family must pay the spouses Soriano PhP50,000.00 as moral damages, PhP30,000.00 as exemplary damages, and PhP20,000.00 as attorney's fees, with interest at the legal rate of six percent (6%) per annum, in accordance with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Agranzamendez Liceralde Gallardo & Associates for petitioner.

Moly CR Abiog for respondents.

D E C I S I O N

GAERLAN, *J.*:

This is a Petition for Review on *Certiorari* assailing the January 28, 2014 Decision[1] and September 17, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 100039, which modified the decision of the Regional Trial Court (RTC) of Baguio City in a case for annulment of sale and reconveyance of certificate of title.

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[1] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Rebecca de Guia-Salvador and Michael P. Elbinias. *Rollo*, pp. 32-46.

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

The facts, as summarized by the appellate court, are as follows:

Jacinto Servo Soriano and Rosita Fernandez Soriano (the spouses Soriano) owned two parcels of land in Chapis Village, Baguio City.[3] One parcel is one thousand four hundred and ninety-two square meters in area with a fair market value of Six Hundred Twenty-Six Thousand Six Hundred Forty Pesos (₱626,640.00) and covered by TCT No. 85840 (previously TCT No. T-14467); while the other parcel is one thousand twenty one square meters, more or less, with a fair market value of Four Hundred Twenty-Eight Thousand Eight Hundred Twenty Pesos (₱428,820.00); and covered by TCT No. 87113 (previously TCT No. T-14466).[4]

On April 21, 2004, Rey Viado (Viado) caused the execution of an Affidavit of Loss purportedly by the spouses Soriano, forged their signatures and caused the annotation of the said Affidavit on TCT Nos. T-14466 and T-14467.[5] Still using forged signatures of the spouses Soriano, Viado then caused the execution of a Special Power of Attorney, paving the way for the filing of a petition seeking a re-issuance of Owner's Duplicate Copies of Transfer Certificates of Title Nos. T-14466 and T-14467 before the Baguio City RTC, which granted the petition.[6] The Baguio City RTC declared the Owner's Duplicate Copies of TCT Nos. T-14466 and T-14467 to be legally lost and of no force and effect and ordered the Register of Deeds of Baguio City to issue new titles in lieu of the lost ones.[7]

Essentially, Viado, together with several other persons, used the re-issued TCTs to secure loans from one Maria Luzviminda Patimo (Patimo) and petitioner BPI Family Bank (BPI Family). A more detailed account of the events is presented in the RTC Decision as follows:

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[3] *Id.* at 33.

[4] *Id.*

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

[6] *Id.*

[7] *Id.*

In Civil Case No. 6210-R, plaintiffs alleged in their Amended Complaint that defendant Jessica Jose in confabulation with Viado executed a deed of conveyance entitled 'Acknowledgment of Trust', making it appear that the plaintiffs executed the same and that the land covered by TCT No. T-14467 was acquired by the plaintiffs through the funds of Jose and the same way was only held in trust by them in favor of Jose as the legal owner. On March 22, 2005, TCT No. T-14467 was transferred and registered in the name of Jose under TCT No. T-85840 of the Register of Deeds in Baguio City. On March 31, 2005, Jose filed a petition with the Register of Deeds cancelling the liabilities imposed by Section 4, Rule 74 of the Rules of Court. On January 11, 2006, Attorney-in-fact, Gloria Cruz went to pay the realty taxes of TCT No. T-14467, but to her surprise she was informed that the said property has been transferred to Jose, now covered by TCT No. T-85840. At the time of the filing of the original complaint on January 24, 2006, there was no annotation on TCT No. T-85840 involving the mortgage lien in favor of Maria Luzviminda Patimo, which was annotated only on March 21, 2006, and the Sheriff's Certificate of Sale was annotated only on September 11, 2006. Hence, plaintiffs filed an amended complaint impleading Maria Luzviminda Patimo as additional defendant in Civil Case No. 6210-R. In this case, plaintiffs prayed that the abovementioned Acknowledgment of Trust be declared void and that the Court order the reconveyance of TCT No. T-85840 in the name of plaintiffs and award damages, attorney's fees and costs of litigation.

In Civil Case No. 6211-R, plaintiffs asserted that on July 20, 2005, defendant Vanessa P. Hufana secured a loan with defendant BPI Family Savings Bank, Inc. in the amount of Two Million Pesos. BPI through the negligence of its loan officer, failed to make a thorough background investigation of the person of its client, Hufana and the documents used by the latter as collateral to the loan extended by the bank, and further allowed the use of a forged deed of conveyance resulting to the fraudulent registration of TCT No. 87113 in the name of its client, Hufana. This is especially made obvious by the fact that a forged Special Power of Attorney was used in the Deed of Absolute Sale to convey the said property to Hufana after the issuance of a reconstituted title through a series of calculated fraudulent acts perpetuated by Viado and Hufana without so much ascertaining to the truth with respect to the identity of the persons of the immediate transferors of the property subject of loan with mortgage. On July 21, 2006, through a forged Deed of Absolute Sale, TCT No. T-14466

was conveyed to Hufana. On January 2006, Attorney-in-Fact Gloria Cruz went to pay the realty taxes of TCT No. T-14466 but to her surprise she was informed that the taxes of the said property has been duly paid and that the said property was transferred to Hufana and is now under TCT No. 87113. Gloria Cruz immediately went to verify the records at the Register of Deeds of Baguio City and upon confirming the fraudulent transfer; she hired the services of counsel and caused the annotation of an Adverse Claim dated January 13, 2006 on TCT No. 87113 and filed the instant case to vindicate and protect plaintiff's rights.

Defendant Viado filed his Answer in the above-entitled cases. In both cases he admits the fact relating to the filing of the Petition for the Issuance of new owner's copies of TCT Nos. T-14466 and 14467, but denies having caused the execution of a special power of attorney for and in behalf of the owners. He asserted that it was Marilou Soriano who handed to him a prepared petition with annexes thereon for him to sign and thereafter for her retained counsel to file in court. This arrangement was explained by Marilou Soriano and Viado has agreed only when Marilou Soriano presented to him plaintiff Jacinto Soriano, then on a wheel chair, whom she introduced as his father. Likewise Viado agreed to help in reconstituting the missing titles for a fee of ₱80,000.00. Viado claims that he was just named in the Special Power of Attorney which was already notarized and attached to the Petition. x x x.

After summons by publication, defendants Jose in Civil Case No. 6210-R and Hufana in Civil Case No. 6211-R failed to file their respective answers. Upon motion by plaintiffs, Jose and Hufana were declared in default on January 21, 2008.

In its Answer in Civil Case No. 6211-R, duly filed on time, BPI admits paragraphs 1 and 8 of the Complaint and denies the rest of the material allegations in the Complaint. Paragraph 7, pertains to the plaintiff's assertion that the Petition for the issuance of new owner's duplicate copy of TCT Nos. T-14466 and T-14467 has been granted and that an Order was issued declaring that the owner's copy of the foregoing titles have been lost and no force and effect. Paragraph 8 refers to the asseveration that Hufana secured a loan of TCT No. 14466 with BPI in the amount of Two Million Pesos. By way of affirmative defenses, BPI states that it has dealt with Hufana in full good faith, and as such, it is a mortgagee in good faith entitled to the protection under the law. Further, it states that it is not required

to go beyond the four corners of Hufana's title, which on its face shows no defect. The loan documents are notarized documents which, under the law, are entitled to strong presumption of regularity and validity.

x x x x x x x x x

Upon motion of plaintiffs duly granted by the court, an Amended Complaint was filed by the plaintiffs impleading Maria Luzviminda Patimo as defendant in Civil Case No. 6210-R.

In its Answer to the Amended Complaint, defendant Patimo denies the material allegations in the Amended Complaint. As Special and Affirmative Defenses, Patimo alleged that as early as September 2005, she was approached by defendant Jose who asked for a loan and offered as collateral TCT No. 85840. Before entering the said loan application of Jose, Patimo went to verify and check the above-stated title with the Register of Deeds of Baguio City. Satisfied that there no encumbrance or other liens on the title offered by Jose, Patimo granted the loan applied for by Jose in the amount of One Million Peso. The said loan was secured by a real estate mortgage over the TCT No. 85840.[8]

After due proceedings, the Branch 60 of the Baguio City RTC rendered a Decision on July 19, 2011,[9] which disposed of the case as follows:

WHEREFORE, all premises duly considered, the court renders judgment as follows:

In Civil Case No. 6210-R, the case is hereby dismissed as to defendant Patimo for lack of merit. As of defendants Jose and Viado, they are hereby ordered to solidarily pay the plaintiffs the amount of one million pesos as and by way of actual damages; three hundred thousand pesos by way of moral damages; two hundred thousand pesos as and by way of exemplary damages; and twenty five [*sic*] thousand pesos as attorney's fees and to pay the cost of the suit.

In Civil Case No. 6211-R, the court hereby dismisses the case as to defendant BPI Family Bank for lack of merit. Defendants Viado

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[8] *Id.* at 51-53.

[9] Penned by Judge Edilberto T. Claravall. *Id.* at 50-64.

and Hufana are hereby ordered to solidarily pay the plaintiffs the amount of two million pesos as and by way of actual damages; three hundred thousand pesos by way of moral damages; two hundred thousand pesos as exemplary damages; twenty five [*sic*] thousand pesos as attorney's fees and to pay the cost of the suit. In addition, both Civil Case Nos. 6210-R and 6211-R, defendants Jose, Viado and Hufana are ordered to solidarily pay the plaintiffs the amount of Php164,911.69, as by way of actual damages.

SO ORDERED. [10]

The RTC found that the signatures of the spouses Soriano in the Special Power of Attorney and Affidavit of Loss used by Viado in obtaining reconstitution of TCT Nos. T-14466 and T-14467, as well as those in the Acknowledgment of Trust and in the Deed of Absolute Sale used by Viado and Hufana in causing the transfer of TCT Nos. T-14466 and T-14467 and the issuance of new TCTs in their names were all forgeries.[11] Consequently, the RTC held that such subsequent TCTs, including the one presented by Hufana to BPI Family, are null and void as well. Nevertheless, the RTC held that Patimo and BPI Family dealt with the fraudulently acquired properties in good faith.[12]

The spouses Soriano moved for reconsideration of the RTC Decision insofar as it dismissed the cases against Patimo and BPI Family, which the trial court denied in an Order dated April 20, 2012. The spouses Soriano appealed to the CA.

Resolving the question of whether Patimo and BPI Family were mortgagees in good faith, the CA partially reversed the RTC Decision and reinstated the spouses Soriano's copy of TCT No. T-14466. The appellate court disposed thus:

WHEREFORE, in view of the foregoing premises, the appeal filed in this case by plaintiffs-appellants Spouses Jacinto Servo Soriano and Rosita Fernandez Soriano, as represented by their attorney-in-

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[10] *Id.* at 64.

[11] *Id.* at 60.

[12] *Id.*

fact, Gloria Soriano Cruz, is hereby **PARTIALLY GRANTED** by modifying the July 19, 2011 Decision of the Regional Trial Court, Branch 60, Baguio City in Civil Case No. 6211-R as to defendant-appellee BPI Family Savings Bank in that the Transfer Certificate of Title No. T-87113 of the Registry of Deeds for the City of Baguio and Mortgage Loan Agreement with BPI Family Savings Bank dated July 25, 2005 are hereby declared null and void. The Register of Deeds in Baguio City is hereby **DIRECTED** to cancel all liens and encumbrances annotated on the original copy of TCT No. T-14466 and **REINSTATE** the Owner's Duplicate Copy of TCT No. T-14466. Likewise, the defendant-appellee BPI Family Savings Bank is hereby ordered to solidarily pay to the plaintiffs-appellants in accordance with the July 19, 2011 Decision of the Regional Trial Court. The Decision of the Regional Trial Court, Branch 60, in Baguio City, in Civil Cases Nos. 6210-R and 6211-R as to other defendants-appellees are hereby **AFFIRMED**.

SO ORDERED. [13]

The appellate court, on one hand, found Patimo a mortgagee in good faith as she exercised the proper diligence required of her as an experienced financier. Moreover, she verified the TCT presented to her with the Baguio City Register of Deeds and conducted an ocular inspection of the land covered thereby. On the other hand, BPI Family was not considered a mortgagee in good faith because it failed to exercise the proper diligence expected from a banking institution, on the basis of the following findings:

x x x Notably, when [Hufana] applied for a loan with BPI [Family], she presented TCT No. 14466 which was then under the name of the plaintiffs-appellants. Since the person applying for the loan is other than the registered owner of the real property being mortgaged, BPI should have already raised a red flag and which should have induced it to make inquiries into and confirm Hufana's' authority to mortgage the said x x x purported property [of hers]. However, instead of conducting further investigation, [BPI Family] simply required Hufana to transfer the title to the latter's name to avail of the loan. A person who deliberately ignores a significant fact that could create

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[13] *Id.* at 45.

suspicion in an otherwise reasonable person is not an innocent purchaser for value. Indeed, [BPI Family] should not have simply relied on the face of the documents submitted by Hufana, as its undertaking to lend a considerable amount of money required of it a greater degree of diligence. x x x

x x x x x x x x x

[BPI Family] asserted that, when Hufana secured the loan application, she presented TCT No. T-14466. The bank admitted that it did not inquire anymore as to the status of the subject lot because, according to [BPI Family], it is the responsibility of the borrower to verify the same. Accordingly, the loan of defendant-appellee was approved on July 18, 2005 and the proceeds thereof were released to Hufana on July 28, 2005, purportedly after the latter had already presented TCT No. T-87113, which was already under Hufana's name.

Verily, it is worthy to note that TCT No. T-87113 was issued only on July 25, 2005, while the loan application of Hufana and the Mortgage Agreement were executed on July 20, 2005. Notably, prior to the approval of the loan and the execution of the Mortgage Agreement between [BPI Family] and Hufana, TCT No. T-87113 was not yet in existence. It appeared that the loan was completely processed while the collateral was still in the name of the plaintiffs-appellants.[14]

BPI Family filed a motion for reconsideration, which the appellate court denied via the assailed resolution. Hence, this petition which claims that the CA erred in: 1) reversing the RTC's finding that BPI Family is a mortgagee in good faith; 2) holding BPI Family solidarily liable for damages to the spouses Soriano; and 3) affirming the RTC's award of moral and exemplary damages.

The petition is partly meritorious. While the CA correctly held that BPI Family was not a mortgagee in good faith, it erred in holding BPI Family solidarily liable for actual damages.

BPI Family not a mortgagee in good faith

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[14] *Id.* at 42-43.

The question of whether BPI Family is a mortgagee in good faith is a question of fact[15] which generally cannot be considered in a Rule 45 petition.[16] One of the exceptions to this rule, however, applies to the case at bar, as the rulings of the courts *a quo* on the issue were conflicting.[17]

BPI Family argues that its conduct in approving Hufana's loan measured up to the diligence required of it by law and jurisprudence. According to the bank, it required the transfer of the title in Hufana's name as a pre-condition to the approval of the loan. As this pre-condition had been met by Hufana, BPI Family argues, it need no longer inquire into whether the previous owners had authorized the loan, as the bank can now rely upon the face of the TCT, which declares Hufana to be the owner.[18] The jurisprudence requiring banks and financial institutions dealing with real property investigate the circumstances of the lots they are dealing with is inapplicable to the case at bar as the lot mortgaged by Hufana was vacant and not in the possession of third persons. Finally, BPI Family asserts that CA erred in giving great significance to the fact that the spouses Soriano's names were still on the TCT when Hufana presented it to the bank, as Hufana was taking out a loan in her own name for the purposes of buying said lot from the spouses Soriano. It was therefore, natural and regular, according to BPI Family, that the TCT and other documents of ownership still indicated the spouses Soriano as owners of the property.

The primary function of the *Torrens* system of land registration is essentially the establishment of a means by which land ownership may be incontrovertibly proven, with the anticipated effect of facilitating the ease, reliability, and enforceability of

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[15] *Land Bank of the Philippines v. Poblete*, 704 Phil. 610, 621 (2013).

[16] *Philippine National Bank v. Gregorio*, 818 Phil. 321 (2017); *Cabang, et al. v. Spouses Basay*, 601 Phil. 167 (2009).

[17] *Gatan, et al. v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 611; *Pascual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

[18] Petition, pp. 8-9. *Rollo*, pp. 15-16.

real estate transactions. Consequently, it has been held that "every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property."[19] The rule applies to both buyers and mortgagees of real property.[20] A further refinement of the rule with respect to mortgages is stated in *Ruiz v. Dimailig*:[21]

> Such doctrine of mortgagee in good faith presupposes "that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the said title." In short, the doctrine of mortgagee in good faith assumes that the title to the subject property had already been transferred or registered in the name of the impostor who thereafter transacts with a mortgagee who acted in good faith.[22]

However, banks and financial institutions are charged with the observance of elevated standards of diligence in dealing with real properties in the course of their business; and are consequently expected to go beyond the statements in the *Torrens* title. The rule and its rationale are stated in *Arguelles, et al. v. Malarayat Rural Bank, Inc.*,[23] thus:

> Moreover, in a long line of cases, we have consistently enjoined banks to exert a higher degree of diligence, care, and prudence than individuals in handling real estate transactions.
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> In *Cruz v. Bancom Finance Corporation*, we declared:
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> > Respondent, however, is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is

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[19] *Locsin v. Hizon*, 743 Phil. 420 (2014).

[20] *Philippine National Bank v. Spouses Angel and Buenvenida Anay and Spouses Francisco and Dolores Lee*, G.R. No. 197831, July 9, 2018.

[21] 799 Phil. 273 (2016).

[22] *Id.* at 282. Underlining in the original.

[23] 730 Phil. 226 (2014).

> expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.

In *Ursal v. Court of Appeals*, we held that where the mortgagee is a bank, it cannot rely merely on the certificate of title offered by the mortgagor in ascertaining the status of mortgaged properties. Since its business is impressed with public interest, the mortgagee-bank is duty-bound to be more cautious even in dealing with registered lands. Indeed, the rule that person dealing with registered lands can rely solely on the certificate of title does not apply to banks. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owners thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.

In *Metropolitan Bank and Trust Co. v. Cabilzo*, we explained the socio-economic role of banks and the reason for bestowing public interest on the banking system:

> We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence.[24]

Crucially, the case at bar involves a situation where a party fraudulently obtained a reconstituted TCT by falsifying affidavits of loss and powers of attorney without the knowledge and consent

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[24] *Id.* at 236-238.

of the original owners. In *Ereña v. Querrer-Kauffman*,[25] this Court held:

> Indeed, case law is that a Torrens title is generally conclusive evidence of ownership of the land referred to therein. While it serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein x x x, when the instrument presented for registration is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee or the mortgagee, for that matter, acquire any right or title to the property. In such a case, the transferee or the mortgagee, based on a forged instrument, is not even a purchaser or a mortgagee for value protected by law.[26]

With the foregoing legal principles in mind, the Court recapitulates the material facts leading up to the submission by Hufana of TCT No. 87113 to BPI Family as a pre-condition for the approval of her loan. TCT No. 87113 was issued in Hufana's name after she presented a forged Deed of Absolute Sale in favor of Viado, by virtue of which Viado conveyed the fraudulently reconstituted copy of TCT No. T-14466 to Hufana. As found by the trial court, this was discovered by the spouses Soriano's attorney-in-fact Gloria Cruz (Cruz) when she went to pay the realty taxes of TCT No. T-14466, but was surprised to learn that the tax on said property has been duly paid and that the lot had been transferred to Hufana under TCT No. 87113. Cruz immediately went to verify the records at the Register of Deeds of Baguio City; and upon confirming the fraudulent transfer, she hired the services of counsel and caused the annotation of an Adverse Claim dated January 13, 2006 on TCT No. 87113, and filed the instant case to vindicate and protect her principals' rights.[27]

It is therefore clear that Hufana acquired title to the land covered by TCT No. T-14466 through the affidavit of loss,

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[25] 525 Phil. 381 (2006).

[26] *Id.* at 399-400. Citations omitted.

[27] *Rollo*, pp. 4-5.

special power of attorney, and Deed of Sale, all of which were forged by Viado and his associates. Her title having been acquired through forged instruments, Hufana acquired no right to the property in question; and the spouses Soriano never lost their title to the land.[28]

BPI Family could have discovered all these circumstances had it simply contacted the spouses Soriano or their attorney-in-fact Cruz, which it never did. The fact that Hufana initially presented the fraudulently reconstituted copy of TCT No. T-14466 which was still in the name of the spouses when she first approached BPI Family should have alerted the bank to at least contact the spouses. Given the heightened standard of diligence imposed upon it by law, BPI Family should not have presumed, as it admits to presuming, that "it was natural and regular that the TCT and other documents of ownership still indicated the spouses Soriano as owners of the property," just because "Hufana was taking out a loan in her own name for the purposes of buying said lot from the spouses Soriano." At the very least, they should have contacted the spouses Soriano and confirmed if Hufana was really buying the land from them. Given the foregoing circumstances, the CA's finding must be sustained: BPI Family was not a mortgagee in good faith.[29]

Award of damages

The CA held BPI Family solidarily liable with Viado and Hufana for the following amounts: PhP2,000,000.00 in actual damages, PhP300,000.00 in moral damages, PhP200,000.00 in exemplary damages, PhP25,000.00 in attorney's fees, and an additional PhP164,911.69 in actual damages.

BPI Family argues that the CA erred in holding it solidarily liable for actual damages, there being no basis for such, as the spouses Soriano were able to recover title to their land. As regards moral and exemplary damages, BPI Family insists that it is not liable therefor because there was no proof of either

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

[29] *Id.* at 17, 42.

the compensable suffering borne by the Soriano spouses or of BPI Family's bad faith or fraudulent intent in contracting with Hufana.

In awarding actual damages to the spouses Soriano, the trial court explained:

> Being the authors of the forgeries, defendants Jose, Viado, and Hufana must bear the brunt of the damages caused to the plaintiffs. Considering that the properties subject matter of these cases may no longer be reconveyed to the plaintiffs, they must be indemnified with the value thereof. In Civil Case No. 6210-R, as alleged in the Complaint, the fair market value of TCT No. 14467, from which TCT No. T-85840 was derived, is Php626,640.00. However, the undeniable facts would show that defendant Jose was able to obtain a loan in the amount of One (1) Million using TCT No T-85840 as collateral. At the foreclosure sale of the aforementioned property, the same property was sold to defendant Patimo in the amount of One Million pesos. The court surmises that had the plaintiffs themselves sold the property, it could have fetched a much higher value. Sadly, no evidence was presented to establish a much higher valuation of the property. Absent any evidence on record showing a higher valuation of the subject property, the Court has no recourse but to limit the actual damages in the amount of One Million Pesos, the amount by which defendants unduly profited from mortgaging the property and by which amount the property was sold at the foreclosure sale. The said amount of damages shall be borne solidarity by defendants Viado and Jose.
>
> In Civil Case No. 6211-R, the fair market value of the property covered by TCT No. T-14466 from which TCT No. T-87113 was derived is Php428,820.00. As earlier discussed, the plaintiffs failed to present evidence showing a higher valuation of the property covered by TCT No. T-87113. However the record shows that defendant Hufana was able to obtain a loan in the amount of 2 Million Pesos using TCT No. 87113 as collateral. As in Civil Case No. 6210-R, the Court has no recourse but to limit the amount of actual damages to be awarded to the plaintiffs in the amount of 2 Million Pesos, which must be solidarity borne by defendants Viado and Hufana. Additionally, Plaintiffs were able to establish that they actually spent the amount of Php164,911.69, (Exhibits "J" and series) as actual expenses in the

prosecution of these two cases for which they must be indemnified solidarity by defendants Viado, Jose and Hufana. x x x[30]

Notably, the CA did not explain its reasons for holding BPI Family solidarily liable with Viado, Jose, and Hufana.

Actual damages are "compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement."[31] Stated differently, actual damages are compensation for sustained pecuniary loss. Thus, they may only be awarded when the pecuniary loss suffered by the claiming party was duly proven.[32] In the case at bar, the trial court held that the spouses Soriano cannot recover the properties in dispute. Hence, the award of actual damages was grounded on the loss inflicted upon the spouses Soriano by the non-recovery of their real properties. Consequently, the amount awarded was based on the pecuniary benefit that the defendants were able to derive from the land. However, the CA, as affirmed by this Court, reversed the RTC and ruled that the spouses Soriano are entitled to recover the properties. Verily, there is no longer any legal basis for the award of actual damages to the spouses Soriano, as they will no longer suffer the loss or injury supposed to be compensated thereby. Nevertheless, only BPI Family can benefit from this finding, as the other defendants did not appeal the RTC Decision and are not parties to this petition.

As regards moral and exemplary damages, it has been held that damages of such nature may be recovered even if a bank's negligence may not have been attended with malice or bad faith.[33]

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[30] *Id.* at 63.

[31] *International Container Terminal Services, Inc. v. Chua*, 730 Phil. 475, 489 (2014).

[32] *Michael Guy v. Raffy Tulfo, Allen Macasaet, Nicolas V. Quijano, Jr., Janet Bay, Jesus P. Galang, Randy Hagos, Jeany Lacorte and Venus Tandoc*, G.R. No. 213023, April 10, 2019.

[33] *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 371-372 (2000), citing *Tan v. Court of Appeals*, 309 Phil. 295 (1994).

Here, it was established that BPI Family was negligent in failing to fully ascertain the ownership status of the lot mortgaged to it. However, the record is bereft of any proof of BPI Family's malice or bad faith; or that it participated in the fraud perpetrated by Viado, Jose, and Hufana. As such, the CA did not err in holding BPI Family liable for moral damages, exemplary damages and attorney's fees. However, following Our ruling in *Cavite Development Bank v. Spouses Lim*,[34] the amounts awarded by the CA must be reduced. Accordingly, BPI Family must pay the spouses Soriano PhP50,000.00 as moral damages, PhP30,000.00 as exemplary damages, and PhP20,000.00 as attorney's fees, with interest at the legal rate of six percent (6%) per annum, in accordance with prevailing jurisprudence.[35]

IN VIEW OF THE FOREGOING PREMISES, the present petition is hereby **PARTIALLY GRANTED**. The January 28, 2014 Decision in CA-G.R. CV No. 100039 is hereby **MODIFIED** to read as follows:

WHEREFORE, in view of the foregoing premises, the appeal filed in this case by plaintiffs-appellants Spouses Jacinto Servo Soriano and Rosita Fernandez Soriano, as represented by their attorney-in-fact, Gloria Soriano Cruz, is hereby **PARTIALLY GRANTED** by modifying the July 19, 2011 Decision of the Regional Trial Court, Branch 60, Baguio City in Civil Case No. 6211-R as to defendant-appellee BPI Family Savings Bank in that the Transfer Certificate of Title No. T-87113 of the Registry of Deeds for the City of Baguio and Mortgage Loan Agreement with BPI Family Savings Bank dated July 25, 2005 are hereby declared null and void. The Register of Deeds in Baguio City is hereby **DIRECTED** to cancel all liens and encumbrances annotated on the original copy of TCT No. T-14466 and **REINSTATE** the Owner's Duplicate Copy of TCT No. T-14466. Defendant-appellee BPI Family Savings Bank is hereby ordered to pay the plaintiffs-appellants PhP50,000.00 as moral damages, PhP30,000.00 as exemplary damages, and PhP20,000.00 as attorney's

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[34] *Id.* at 361.

[35] *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, August 28, 2019; *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

fees. The Decision of the Regional Trial Court, Branch 60, in Baguio City, in Civil Cases Nos. 6210-R and 6211-R as to other defendants-appellees are hereby **AFFIRMED**.

Interest at the legal rate of six percent (6%) per *annum* shall also be imposed on the total judgment award computed from the finality of this decision until its actual payment.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda, JJ.*, concur.

FIRST DIVISION

[G.R. No. 222289. June 8, 2020]

EAST CAM TECH CORPORATION, *petitioner, vs.* **BAMBIE T. FERNANDEZ, YOLANDA DELOS SANTOS, LEONORA TRINIDAD, and CHARITO S. MANALANSAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION THERETO, APPLIED; IN VIEW OF THE CONTRARY FINDINGS OF THE TRIBUNALS BELOW, THE COURT ENTERTAINS THE INSTANT PETITION, WHICH INVOLVES A RE-ASSESSMENT OF THE EVIDENCE PRESENTED. — The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic v. Heirs of Santiago,* the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the ELA, the NLRC and the CA, the Court

shall entertain this petition, which involves a re-assessment of the evidence presented.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYEES' FAILURE TO MEET THE PRODUCTION QUOTA, WHICH IS ANALOGOUS TO GROSS AND HABITUAL NEGLECT OF DUTY, NOT PROVEN; RESPONDENTS FAILED TO MEET THEIR QUOTAS NOT BECAUSE THEY ARE NEGLIGENT BUT SIMPLY BECAUSE THE QUOTAS ARE NOT ATTAINABLE. — East Cam avers that the respondents committed gross and habitual neglect of duty when they all failed to meet their production quotas as sewers. The Court finds that there is substantial evidence to the contrary. East Cam did not dispute that the respondents were reinstated after they were illegally dismissed. They were reassigned from the production line to the sample line. And yet, they were required to perform tasks for the production line. Such transfer is suspicious because the respondents appear to be singled out for having previously won an illegal dismissal case against East Cam. All of them were transferred as a team and were assigned the same production tasks and quotas. The Court further observes that before they were transferred, the respondents had no previous record of negligence in their eight years of tenure with East Cam. But as East Cam asserts, the respondents became habitually negligent after they were assigned to do work for the production line, because they all failed to meet the production quotas and the quality standards in accordance with East Cam's TMS and company requirements. However, it appears that the production quotas based on the TMS are unattainable. Even East Cam recognized this when they assigned another sewer to help the respondents meet the quota for the second job order. As the respondents claim, they are singled out by East Cam when they were given quotas based on the TMS, which is not East Cam's previous practice. Notably, based on the TMS for both job orders, the respondents must produce a definite quota per day to attain the required production quota. But why is it that the respondents' supervisor did not call their attention after one or more days of failing to meet their daily production quota considering that they were all previously warned of being negligent for failing to meet the quota for the first job order? Surely, if East Cam was interested in the efficiency of the

respondents in meeting their production quotas, it would be prudent for the management to monitor their daily production *vis-á-vis* the required daily quota under the TMS. Based on the foregoing, there is substantial evidence that respondents failed to meet their quotas under the TMS not because they are negligent but simply because the quotas are not attainable. Hence, the CA correctly overturned the NLRC's Decision.

3. ID.; ID.; ID.; ID.; WHILE PETITIONER HAS A RIGHT TO IMPOSE A PRODUCTION QUOTA, IT, HOWEVER, FAILED TO PROVE THAT IT ACTED IN GOOD FAITH. — [T]he Court recognized management prerogative to fix a quota for its employees, and failure to meet the quota constitutes gross negligence, provided that such quota was imposed in good faith. x x x Here, East Cam, as the employer, has the right to impose production quotas in its production line based on its TMS for job orders one and two. However, East Cam failed to prove that it acted in good faith when it did not adduce any evidence that its TMS were attainable based on the quantity it wanted to produce for a given time, quality of the product to be produced, the machines they have, and the skill sets of their employees. Further, East Cam failed to rebut the respondents' allegations that: (1) the machines assigned to them were old and worn out, (2) they were stationed at a place far from the sample room where all the special machines are located, and (3) they were the only ones required to meet a production quota and to submit hourly reports. The Court only upholds management prerogative as long as it is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the employees' rights under special laws and valid agreements.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Rodolfo M. Capoquian Law Offices for respondents.

D E C I S I O N

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

The Case

This petition for review on *certiorari* under Rule 45 assails the May 29, 2015 Court of Appeals (CA) Decision[1] and December 11, 2015 Resolution[2] in CA-G.R. SP No. 123946, which nullified the October 11, 2011 National Labor Relations Commission (NLRC) Decision[3] and ordered the reinstatement of respondents Bambie T. Fernandez (Fernandez), Yolanda Delos Santos (Delos Santos), Leonora Trinidad (Trinidad), and Charito S. Manalansan (Manalansan) with payment of backwages and other money claims.

The Facts

Petitioner East Cam Tech Corporation (East Cam) is a company engaged in the manufacture of bags. It hired respondents Fernandez, Delos Santos, Trinidad, and Manalansan as sewers in May 2002. Respondents previously filed an illegal dismissal complaint against East Cam, which resulted in their reinstatement. Upon returning to East Cam, they were reassigned to the sewing line of the sample department. They noticed that the machines assigned to them were old and worn out. They were stationed at a place far from the sample room where all the special machines were located. They felt singled out in terms of work because they were the only ones required to meet a production quota and to submit hourly reports. They alleged that the Department of Labor and Employment (DOLE) did not approve the

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor Punzalan Castillo and Florito S. Macalino, concurring; *rollo*, pp. 354-362.

[2] *Id.* at 393-394.

[3] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioner Perlita B. Velasco, concurring; *id.* at 230-239.

unreasonable quota. They also averred that the company officers required them to work outside their assigned tasks.[4]

On January 12, 2010, East Cam charged them of negligence of duty for failure to comply with the production quota. Their supervisor told them that there was no need to answer the charge and that he would solve the problem. On February 27, 2010, they were dismissed from the service for failure to answer the charge.[5] This prompted the filing of a new complaint against East Cam, its president In Soo Jung, plant manager Sang Yong Kim, and Human Resources Department head Corazon Bustamante for illegal dismissal with prayer for reinstatement, backwages, other money claims, damages, and attorney's fees.[6]

For their part, East Cam explained that it adopted a Time and Motion Study (TMS) for each product to achieve productivity and efficiency. The study aimed to reduce the number of motions in performing a certain task. The employees must comply with the study so that East Cam would not incur unnecessary costs resulting in operational damage.[7]

East Cam further asserted that in their Management and Employee Handbook, failure of an employee to meet the prescribed quantity and quality standards is considered as negligence of duty punishable by a written warning for the first offense, and dismissal from the service for the second offense.[8]

East Cam claimed that on December 16, 2009, the respondents were assigned to do a job order for 280 pieces of bags. Based on the TMS, four sewers can finish the job in three days with a target rate of 100 pieces per day or 25 pieces per sewer per day. East Cam maintained that the respondents were informed that the job order was a production line, which is a line that

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[4] *Id.* at 355.

[5] *Id.*

[6] *Id.* at 180, 231.

[7] *Id.* at 355-356.

[8] *Id.* at 356.

mass produces items and not a sample line or a specialized line producing samples. East Cam insisted that the respondents failed to meet the target output and the prescribed quality standards. As a result, respondents were given a written warning that repetition of the same offense would result to dismissal from the service.[9]

On another date, the respondents were assigned a second job order for 315 pieces of bags. The target rate was 100 pieces per day to be done by four sewers. The rate was later reduced to 88 pieces per day. Despite the reduced rate, the respondents were unable to meet the production quota as it took them seven days to finish the job order with one additional sewer. The respondents were asked to explain their failure to complete the quota, but were unable to do so. On February 27, 2010, they were dismissed from service for violation of the company rules. Their omission constituted gross and habitual neglect of duty under Article 282 of the Labor Code of the Philippines.[10]

The Labor Tribunals' Decisions

In its April 21, 2011 Decision,[11] Executive Labor Arbiter (ELA) Lita V. Aglibut dismissed the complaint for lack of merit. The LA upheld the management prerogative of East Cam to regulate all aspects of employment, such as work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off, and discipline of workers. East Cam had the right to assign the respondents in any sewing post in the exigency of service. There was no showing that the rules on production quota were designed to discriminate them. The fact that they were assigned a production work affirmed the management's trust and confidence over their kind of work. Further, East Cam had the prerogative to discipline its employees and to impose appropriate penalties for erring workers pursuant to company rules. The respondents'

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 180-191.

failure to meet the production quota and the quality standards twice resulted to operational damage. This constitutes as negligence of duty, which is punishable by dismissal from the service when committed for the second time.[12]

Aggrieved, the respondents appealed to the NLRC, which dismissed the same and affirmed the ELA's Decision in its October 11, 2011 Decision.[13] The NLRC held that there was habituality in the neglect of duty where the commission of the same act occurs more than once. Here, the respondents failed to meet the production quota twice. Thus, they are guilty of habitual neglect of duty and calls for an affirmance of the ELA's Decision. The respondents moved for reconsideration, which the NLRC denied in its January 16, 2012 Resolution.[14]

Unconvinced, the respondents filed a petition for *certiorari* under Rule 65 before the CA alleging that the NLRC committed grave abuse of discretion in finding them guilty of habitual neglect of duty and that they were validly dismissed.

The Court of Appeals Decision

In its May 29, 2015 Decision, the CA granted the petition and nullified the NLRC Decision. The CA determined that the respondents were not guilty of gross and habitual neglect of duty that would justify their termination from employment. The respondents had been employed for eight years in East Cam, and they had no record of neglect of duty prior to the imposition of quota. In fact, East Cam gave them a commendation for exemplary performance, which was the basis for their transfer to the sewing line of the sample department.[15]

The CA pointed out that in the second job order, the respondents asked for help from another sewer, which was an

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[12] *Id.* at 190-191.

[13] *Id.* at 230-238.

[14] *Id.* at 246-247.

[15] *Id.* at 359.

indication that they were not remiss in their duties and tried to comply with an unachievable quota. The CA concluded that their failure to meet the quota did not justify the charge of gross and habitual neglect of duty that led to their dismissal.[16]

Moreover, the CA explained that the management's prerogative to fix the production quota must be exercised in good faith. The duty to prove good faith rests with the employer as part of its burden to show that the dismissal was for a just or valid cause. The CA ascertained that East Cam failed to show that the imposition of production quota was done in good faith and not tainted with malice, unfairness, and oppression. The CA opined that the imposition of production quota was a desperate attempt to provide a semblance of validity to the respondents' dismissal. The CA observed that: (1) East Cam singled them out because they were given a quota while the rest of the employees were not; (2) since the TMS was used for the first time, the production output could not be reasonably quantified yet; and (3) the respondents were assigned to the production line of mass producing items, which was a task different from what they were accustomed to do in the sample line. As such, they could not be expected to instantly adapt in the production line and meet the quota. The CA concluded that it was unjust to dismiss the respondents for failure to meet a new quota requirement when the efficacy of which has yet to be proven. The CA held that the NLRC committed grave abuse of discretion in finding that the respondents were guilty of habitual neglect of duty when the records were bereft of any evidence.[17]

The CA ordered the reinstatement of the respondents without loss of seniority rights and other privileges, payment of full backwages including allowances and other benefits, or their monetary equivalent from the time compensation was withheld up to actual reinstatement. Attorney's fees equivalent to 10%

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[16] *Id.*

[17] *Id.* at 360.

of the total monetary award was given since the respondents were forced to litigate their complaint.[18]

East Cam moved for reconsideration, which the CA denied in its December 11, 2015 Resolution. Dissatisfied, East Cam elevated the case before the Court through a petition for review on *certiorari* under Rule 45.

The Issue Presented

Whether or not the CA erred in reversing the NLRC's Decision and ruling that the respondents were illegally dismissed.

The Court's Ruling

The petition is denied.

The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic v. Heirs of Santiago*,[19] the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the ELA, the NLRC and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented.

In its petition, East Cam argues that: (1) the CA deviated from the established rule that factual findings of the *quasi*-judicial bodies like the NLRC are accorded respect and finality, particularly when they coincide with those of the ELA and if supported by substantial evidence; and (2) the CA misappreciated the factual backdrop of *Aliling vs. Feliciano*[20] and misapplied the ruling to this case.

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[18] *Id.* at 360-361.

[19] *Republic v. Heirs of Santiago*, G.R. No. 193828, March 27, 2017.

[20] G.R. No. 185829, 686 Phil. 889 (2012).

I.

East Cam argues that both the ELA and NLRC's factual findings should not be disregarded, but instead be accorded respect and finality. The Court stresses that such rule is with a caveat that the findings must be supported by substantial evidence.

Here, East Cam avers that the respondents committed gross and habitual neglect of duty when they all failed to meet their production quotas as sewers. The Court finds that there is substantial evidence to the contrary. East Cam did not dispute that the respondents were reinstated after they were illegally dismissed. They were reassigned from the production line to the sample line. And yet, they were required to perform tasks for the production line. Such transfer is suspicious because the respondents appear to be singled out for having previously won an illegal dismissal case against East Cam. All of them were transferred as a team and were assigned the same production tasks and quotas.

The Court further observes that before they were transferred, the respondents had no previous record of negligence in their eight years of tenure with East Cam. But as East Cam asserts, the respondents became habitually negligent after they were assigned to do work for the production line, because they all failed to meet the production quotas and the quality standards in accordance with East Cam's TMS and company requirements. However, it appears that the production quotas based on the TMS are unattainable. Even East Cam recognized this when they assigned another sewer to help the respondents meet the quota for the second job order. As the respondents claim, they are singled out by East Cam when they were given quotas based on the TMS, which is not East Cam's previous practice.

Notably, based on the TMS for both job orders, the respondents must produce a definite quota per day to attain the required production quota. But why is it that the respondents' supervisor did not call their attention after one or more days of failing to meet their daily production quota considering that they were all previously warned of being negligent for failing to meet the quota for the first job order? Surely, if East Cam was interested

in the efficiency of the respondents in meeting their production quotas, it would be prudent for the management to monitor their daily production *vis-á-vis* the required daily quota under the TMS. Based on the foregoing, there is substantial evidence that respondents failed to meet their quotas under the TMS not because they are negligent but simply because the quotas are not attainable. Hence, the CA correctly overturned the NLRC's Decision.

II.

East Cam contends that the CA misappreciated the factual backdrop of *Aliling* and misapplied the ruling to this case.

The Court disagrees.

First, East Cam claims that in *Aliling*, it was shown that the petitioner therein was tasked to handle a new product. Here, the respondents are given an old task – the production line – something they had done before.[21] It appears that the respondents had some experience working in the production line. However, as sewers they are tasked to produce different products from time to time. And here, there is no evidence on record that they were previously assigned to produce the products under job orders one and two. Thus, although they were previously assigned in the production line, the products under job orders one and two appear to be new to them. Consequently, they cannot be expected to gain mastery or efficiency in the production requirement for these products.

In fact, as respondents claim, they are singled out when East Cam gave them production quotas based on the TMS. In their joint written explanation, the respondents air the following sentiments:

ANG PAG-KAKA ALAM PO [KASI NAMIN] NOONG BINABAAN NYO KAMI NG MEMO NA LILIPAT KAMI SA SAMPLE PARA GUMAWA AT MANAHI NG SAMPLE BAG'S (sic) AT SINABI NYO MAM/SIR NA PURO SAMPLE BAG's (sic) LANG ANG GAGAWIN NAMIN AT NGAUN PINAG-GAGAWA NYO KAMI NG PRODUCTION BAG'S (sic). SUMUNOD PO KAMI SA LAHAT NG

[21] *Rollo,* p. 54.

PINAGAGAWA NYO, SA TINGIN KO PO MAM/SIR BAKIT KAMI LANG APAT ANG PINAGAGAWA NYO NG REPORT SA LAHAT PO NG SAMPLE SEWER KAMI LANG. BAKIT NGA BA MAM/SIR KAMI LANG, BAKIT KAYA. DI PO BA NYO NAISIP NA SAMPLE SEWER KAMI, ANG PAGKAKA-ALAM KO PO ANG SAMPLE SEWER AY WALANG HOURLY REPORT PRODUCTION SANA TOO (sic) MAM/SIR, BASAHIN NYO PO ANG MEMO NA BINABA NYO LAST NOV. 19, 2009 AT SINABI NYO SA AMIN MAM/SIR CORAZON BUSTAMANTE NA PURO SAMPLE BAG'S (sic) LANG ANG AMING GAGAWIN, BAKIT PO HINDI YATA PANTAY PANTAY ANG TINGIN NYO SA AMING MGA SAMPLE SEWER BAKIT PO NGA BA HINDI PANTAY.[22]

Second, East Cam argues that the employer in *Aliling* was shown to have predetermined the dismissal of the petitioner therein, unlike in this case.[23] To reiterate, the respondents were reassigned from the production line to the sample line after they were reinstated. Then, they were required to do products under the production line. The transfer is suspicious because the respondents appear to be singled out as they previously won an illegal dismissal case against East Cam. The respondents were transferred as a group and were assigned the same production tasks and quotas, which were again simply unattainable. Their transfer impresses upon the Court that it is a step leading to the termination of their employment. Hence, similar to *Aliling*, there is also a predetermined plan to dismiss the respondents.

In *Aliling*, the Court recognized management prerogative to fix a quota for its employees, and failure to meet the quota constitutes gross negligence, provided that such quota was imposed in good faith. In *Aliling*, the Court held:

> In fine, an employee's failure to meet sales or work quotas falls under the concept of gross inefficiency, which in turn is analogous to gross neglect of duty that is a just cause for dismissal under Article 282 of the Code. However, in order for the quota imposed to be considered a valid productivity standard and thereby validate a

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[22] *Id.* at 25.

[23] *Id.*

dismissal, management's prerogative of fixing the quota must be exercised in good faith for the advancement of its interest. The duty to prove good faith, however, rests with WWWEC as part of its burden to show that the dismissal was for a just cause. WWWEC must show that such quota was imposed in good faith. This WWWEC failed to do, perceptibly because it could not. The fact of the matter is that the alleged imposition of the quota was a desperate attempt to lend a semblance of validity to Aliling's illegal dismissal. x x x[24]

Here, East Cam, as the employer, has the right to impose production quotas in its production line based on its TMS for job orders one and two. However, East Cam failed to prove that it acted in good faith when it did not adduce any evidence that its TMS were attainable based on the quantity it wanted to produce for a given time, quality of the product to be produced, the machines they have, and the skill sets of their employees. Further, East Cam failed to rebut the respondents' allegations that: (1) the machines assigned to them were old and worn out, (2) they were stationed at a place far from the sample room where all the special machines are located, and (3) they were the only ones required to meet a production quota and to submit hourly reports.

The Court only upholds management prerogative as long as it is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the employees' rights under special laws and valid agreements.[25]

WHEREFORE, the petition is **DENIED**. The Court of Appeals Decision dated May 29, 2015 and Resolution dated December 11, 2015 in CA-G.R. SP No. 123946 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

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[24] *Aliling v. Feliciano, supra* note 20, at 911.

[25] *Id.* at 358.

THIRD DIVISION

[G.R. No. 222387. June 8, 2020]

RICARDO NACARIO *y* MENDEZ, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL FROM THE RULING OF THE COURT OF APPEALS WHICH IMPOSES THE PENALTY OF *RECLUSION PERPETUA*, LIFE IMPRISONMENT OR A LESSER PENALTY SHALL BE MADE THROUGH THE FILING OF A NOTICE OF APPEAL BEFORE THE COURT OF APPEALS. — Pursuant to Rule 124, Section 3(c) of the Revised Rule on Criminal Procedure, an appeal from the ruling of the CA which imposes the penalty of "*reclusion perpetua*, life imprisonment, or a lesser penalty," shall be made through the filing of a notice of appeal before the CA. In this case, the petitioner clearly availed of the wrong mode of appeal when it filed the instant petition for review on *certiorari*. The Court could treat the instant appeal as an ordinary appeal and require the parties to file their respective briefs as demanded by the rules on procedure, nonetheless, records reveal that as early as August 17, 2016, the respondent has been required by the Court to file a comment. Subsequently, in a Resolution dated June 7, 2017, the petitioner was required to file a reply. With the submission of these pleadings, and the requirements of due process accordingly met, the Court, in the greater interest of substantial justice, proceeds to resolve the substantive issue at hand. x x x Treated as notice of appeal, which opens the entire case wide open for review, the Court, evaluating the factual issues raised and examining the records of the case, finds that the evidence presented by the prosecution supports the conviction of the petitioner.

2. ID.; ID.; PETITION FOR REVIEW FOR *CERTIORARI*; ISSUES FACTUAL IN NATURE, NOT ALLOWED. — Viewed as a petition for review for *certiorari*, it is clear that the issues raised are factual in nature and is beyond the ambit of this mode of appeal. As well, the errors assigned herein pertain to uniform

factual findings of the RTC and the CA. These, as a rule, are "accorded the highest respect and are generally not disturbed on appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted." None of these exceptions obtains in the case at bar.

3. CRIMINAL LAW; RAPE; ELEMENTS. — Article 266-A (1) in relation to Article 266-B of the RPC provides the elements of the crime of rape, *viz*.: "(1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation."

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY; TESTIMONY OF A MINOR RAPE VICTIM, UPHELD. — The testimony of a minor who is a victim of rape is given full weight and credit, particularly in the absence of evidence showing that in making such statement, such minor is actuated by ill motive to falsely testify against the accused. It is an oft-repeated doctrine that when a female minor alleges rape, she says in effect all that is necessary to mean that she has been raped. x x x Further, the testimony of a single eyewitness, when credible, convincing, and consistent with human nature and the normal course of things, is sufficient to support a conviction, as rape is essentially an offense of secrecy. Nonetheless, the Court must still scrutinize with great caution the testimony of the complainant, in line with the principle that the evidence for the prosecution must rise or fall on its own merits without regard to the weakness of the defense. The testimony of AAA was found by both the RTC and the CA as credible, straightforward and consistent, she was firm in identifying the petitioner as the perpetrator of the offense. AAA was then still a minor at the time she testified; nonetheless, she did not waver in narrating the details of her ordeal, she was firm even when subjected during the grueling cross examination. Likewise, no ill motive can be attributed upon AAA. In fact, AAA had a lot to lose by implicating the petitioner, as she stands to lose the only person who provided her with education, relief, and shelter, *i.e.*, Ledelma, the petitioner's wife. By identifying the petitioner as the perpetrator of the offense, AAA, then a minor at the time the offense was committed, must submit herself back to the system for referral to another agency to aid her.

5. CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; INTIMIDATION IS SUBJECTIVE; SUFFICIENCY, DISCUSSED. — Jurisprudence instructs that the element of force and intimidation is present when it renders the victim defenseless, such that the element of voluntariness is absolutely lacking. Force need not be irresistible, but it must be sufficient to consummate the accused's purpose. Similarly, intimidation need not be in a particular form or gravity; it is enough that it produces fear on the part of the victim that something bad would happen to her if she does not yield to the demands of the accused. Intimidation need not be actual or verbal when the accused wields moral influence or ascendancy over the victim. The element of "force and intimidation" is peculiar in this case. AAA avers that she did not resist the sexual advances as she was afraid that the petitioner would do what her uncle did to her. According to AAA, she recalled that her uncle, armed with a dagger, threatened her and almost killed her as he raped her. x x x Intimidation is a state of mind, which cannot, with absolutely certainty, be discerned. Whether a person has been intimidated can only be inferred from the simultaneous or subsequent acts of the person subjected thereto. To conclude that intimidation is employed as a means of committing rape, it is sufficient that the accused, through his acts, causes the victim to feel fear that is strong enough to wield her into complete submission to his will. The inherent predisposition of the victim is beside the point, inasmuch as the workings of the human mind, based on the product of one's experiences and genetic predisposition, naturally varies from person to person. In the prosecution of rape cases, emphasis must be placed on the acts of the accused and on whether these acts tend to cause the victim to surrender to his will, taking into consideration the victim's personal circumstances. Intimidation is subjective. As such, it should be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. In the prosecution of rape cases, it is sufficient that the victim is cowed to submission as a result thereof.

6. ID.; ID.; VICTIM'S SEEMING INSENSIBILITY DURING THE RAPE DOES NOT NECESSARILY AMOUNT TO CONSENT. — In the same way, AAA's seeming insensibility during the occurrence of rape does not necessarily amount to consent. People react differently when placed under emotional stress – some may resist violently, others may faint or be shocked into

insensibility, and there may be a few who may openly welcome the intrusion. In this case, AAA manifested her objection to the sexual acts committed when she cried after the first two incidents of sexual intercourse. During the last incident, while AAA remained stoic all throughout the ordeal and proceeded with her usual household chores immediately thereafter, the Court agrees with the RTC that the absence of consent is clearly manifest by AAA's subsequent acts[.]

7. REMEDIAL LAW; EVIDENCE; ALIBI; THE ACCUSED MUST ADDUCE CLEAR AND CONVINCING EVIDENCE THAT HE WAS IN A PLACE OTHER THAN THE *SITUS CRIMINIS* AT THE TIME OF THE CRIME. — For alibi to prosper, the accused "must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, which renders him impossible to have been in the scene of the crime when it was committed." In this case, the defense admits that the petitioner was in the house with AAA at the date and time the crime was committed. In fact, the petitioner was sleeping in the living room, barely a short distance from AAA's room where the crime occurred. Therefore, the petitioner's alibi cannot be considered exculpatory.

8. CRIMINAL LAW; RAPE; PENALTY AND DAMAGES. — [U]nder Article 266-B, when rape is committed through force, threat, or intimidation, the penalty shall be *reclusion perpetua*. The penalty shall be imposed for each count. The RTC and the CA was therefore correct on this score. However, in view of *People v. Jugueta*, the amount of damages should be modified. For every count of rape, the amount of civil indemnity, moral damages, and exemplary damages should be increased to ₱75,000.00 each. In addition, the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Trimor & Associates Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

GAERLAN, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 24, 2015 of the Court of Appeals (CA) Cagayan de Oro City Station in CA-G.R. CR-HC No. 01042-MIN, and its Resolution[3] dated November 9, 2015 denying the motion for reconsideration thereof. The assailed decision dismissed the appeal and affirmed the Decision[4] dated August 3, 2011 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 37 in Criminal Case Nos. 2005-081, 2005-082, and 2005-083, which found the petitioner guilty beyond reasonable doubt of the crime of rape in all three (3) cases.

The Antecedents

Petitioner Ricardo Nacario *y* Mendez (petitioner) was charged with three (3) counts of rape, allegedly committed as follows:

Criminal Case No. 2005-081

That more or less at 11:00 o'clock in the evening of September 9, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA,[5]

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[1] *Rollo*, pp. 27-50.

[2] Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring; *id*. at 153-158.

[3] Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting (now a Member of this Court), concurring; *id*. at 166-170.

[4] Rendered by Judge Jose L. Escobido; *id*. at 51-65.

[5] The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), the name, address,

a minor, 14 years old, against her will and without her consent, to her damage and prejudice.

Criminal Case No. 2005-082

That at 1:00 o'clock dawn of September 10, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA, a minor, 14 years old, against her will and without her consent, to her damage and prejudice.

Criminal Case No. 2005-083

That at 4:00 o'clock dawn of September 10, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA, a minor, 14 years old, against her will and without her consent, to her damage and prejudice.[6]

Upon arraignment, the petitioner, assisted by counsel, entered a plea of not guilty to each charge. During pre-trial, the parties stipulated on the identities of the parties, that AAA was previously molested by her maternal uncle but no case had been filed in relation thereto, and that from February 2004 to September 2004 AAA was staying in the house of the petitioner.[7]

During trial, the prosecution presented as witnesses AAA, SPO4 Remos S. Lagonera of the Claveria Police Station, Department of Social Welfare and Development (DSWD) Employee Belen Razalo (Razalo), and Dr. Sittienor M. Gumaos-Casip (Dr. Gumaos-Casip).[8]

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and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

[6] *Id.* at 51-52.

[7] *Id.* at 52.

[8] *Id.*

The evidence for the prosecution tends to establish that AAA is a minor having been born on September 30, 1989. Sometime in February 2004, AAA, who was then 15 years old, stayed in the house of the petitioner and his wife Ledelma Nario at Poblacion, Claveria, Misamis Oriental. AAA helped in the household chores, and in return, the petitioner shouldered her school expenses.[9]

On September 9, 2004, at around 11:00 p.m., AAA was sleeping alone in her room when she was awakened as she felt someone touching her breasts. She then saw the petitioner who told her "that he would be the one to break her vagina, and told her not to tell his wife about it."[10] At this point, AAA felt helpless and terrified, being reminded of the time when she was previously sexually assaulted by her maternal uncle who threatened to kill her with a dagger. The petitioner proceeded to suck AAA's breast and to kiss her lips. He then removed her pants and underwear, licked her vagina, and then inserted his penis into her vagina. Afterward, the petitioner undressed her, while AAA lay down crying.[11] Two hours later, the petitioner again approached AAA, undressed her and proceeded to ravish her. When the petitioner was done he told AAA not to go out. AAA was left crying and shivering until she fell asleep. The petitioner again had carnal knowledge with AAA at around 4:00 a.m. of September 10, 2004. He began by touching her breast and chest, then he sucked her mouth, removed her undergarments and had sexual intercourse with AAA who no longer showed any reaction throughout the ordeal. Thereafter, petitioner told her that he would again have sexual intercourse with her whenever his wife was not around. Petitioner then instructed AAA to get up and cook rice. AAA then performed her usual household chores. When she was done, she went to school. When AAA returned home, she asked permission from the petitioner to go out.[12]

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[9] *Id*. at 53, 154.

[10] *Id*. at 53.

[11] *Id*.

[12] *Id*. at 53-54.

AAA then went to her friend's house, and recounted to her and the latter's mother what happened. They helped AAA by relating the matter to Razalo, a social worker of DSWD Claveria, Misamis Oriental. AAA was brought to the Claveria Police Station on September 11, 2004, to give her statement. That same day, AAA was medically examined at the Northern Mindanao Medical Center (NMMC) by Dr. Gumaos-Casip.[13]

Based on the "Living Case Report"[14] issued by Dr. Gumaos-Casip, AAA's genitalia sustained the following:

> Introitus. — Hymen healed lacerations, 3 & 9 o'clock positions. Spec exam Cx — Closed, smooth, with mucoid discharge, minimal. B P E CX — closed, firm, non tender, U — not enlarged, A - no mass/non tender.[15]

The defense for its part presented as witnesses the petitioner's wife, Ledelma Nacario (Ledelma), their minor son, Renz Daren Nacario (Renz), and Maria Belen Racines (Racines), an employee of the Women and Children's protection unit of NMMC.[16]

Renz was 11 years of age in September 2004. He testified that on September 9, 2004, he was in the living room of their house doing his school project from 9:00 p.m. to around 4:00 a.m. of the following day. He stated that all the while he was with the petitioner who was sleeping in the living room, and that he noticed nothing unusual the entire time.[17]

Ledelma testified that she first knew AAA when the latter was brought to the Municipal Social Service and Development Office (MSSDO) of Claveria, Misamis, Oriental. Ledelma is an employee of the MSSDO. Ledelma related that AAA ran away from home because of maltreatment and abuse from her

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

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

[15] *Id*. at 56.

[16] *Id*. at 52.

[17] *Id*. at 56.

uncle. However, agencies refused to admit AAA, and as a result, Ledelma was forced to bring AAA to her own home. She claims that she last saw AAA in the morning of September 9, 2004.[18]

Finally, defense witness Racines narrated that she was the one who attended to AAA and her companion at around 11:00 a.m. on September 10, 2004, at the women's desk of the NMMC, and also facilitated the medical examination of AAA.[19]

After trial, the RTC rendered its Decision[20] on August 3, 2011. The dispositive portion reads:

> WHEREFORE, premises considered, this court finds accused Ricardo Nacario guilty beyond reasonable doubt of the crime of rape against the minor offended party in Criminal Case No. 2005-081, and in Criminal Case No. 2005-082, in Criminal Case No. 2005-083, and, accordingly, said accused is hereby sentenced to suffer the penalty of *reclusion perpetua* in each of the three cases. Moreover, said accused is sentenced to pay the minor offended party the sum of Fifty Thousand Pesos (₱50,000.00) for civil indemnity, Fifty Thousand Pesos (₱50,000.00), for moral damages, and Twenty Five Thousand Pesos (₱25,000.00) for exemplary damages in each of the three cases.
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> SO ORDERED.[21]

His Motion for Reconsideration of the Decision having been denied by the RTC in its Order dated November 25, 2011, the petitioner elevated the matter to the CA.[22]

Acting on the appeal filed by the petitioner, the CA rendered the herein assailed Decision[23] affirming the RTC's judgment of conviction, *viz.*:

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[18] *Id.* at 57.

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

[20] *Id.* at 51-65.

[21] *Id.* at 64-65.

[22] *Id.* at 153.

[23] *Id.* at 153-158.

WHEREFORE, premises considered, the appealed decision dated August 3, 2011, and the Order dated November 25, 2011, are affirmed *in toto*.

SO ORDERED. [24]

In so ruling, the CA agreed with the RTC in holding that the testimony of AAA is credible in itself to sustain the petitioner's conviction. In addition, the CA refused to give credence to the testimony of Renz stating that "[i]t taxes credulity that a 10-year old child could stay awake the entire time he worked overnight on his school project."[25]

The petitioner sought reconsideration of the Decision but the CA denied it in its Resolution[26] dated November 9, 2015.

In the instant petition, the petitioner submits the following issues for the Court's resolution:

I.

WHETHER THE OPEN COURT TESTIMONY OF THE PRIVATE COMPLAINANT/VICTIM EXPRESSLY NARRATING THAT NO FORCE OR INTIMIDATION WAS EMPLOYED BY THE ACCUSED AGAINST HER WHEN THE ALLEGED COPULATON WAS CONSUMMATED IS TANTAMOUNT TO JUDICIAL ADMISSION WHICH DOES NOT REQUIRE ANY PROOF;

II.

WHETHER THE CRIME OF RAPE WILL PROSPER EVEN IF THE ELEMENT OF FORCE OR INTIMIDATION IS WANTING; AND

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING *IN TOTO* THE GUILTY VERDICT OF THREE (3) COUNTS OF RAPE AGAINST HEREIN PETITIONER/ACCUSED WHEN THE PROSECUTION FAILED MISERABLY TO PROVE

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[24] *Id*. at 158.

[25] *Id*. at 157.

[26] *Id*. at 166-170.

BEYOND REASONABLE DOUBT THE SECOND ELEMENT OF THE CRIME.[27]

Simply, the issue presented in this appeal is whether or not the elements of the crime of rape have been established beyond reasonable doubt.

Ruling of the Court

The petition is **not** meritorious. The Court affirms the petitioner's conviction for three (3) counts of rape.

Preliminarily, the Court notes that the mode of appeal taken by the petitioner is erroneous. Pursuant to Rule 124, Section 3(c) of the Revised Rule on Criminal Procedure, an appeal from the ruling of the CA which imposes the penalty of "*reclusion perpetua*, life imprisonment, or a lesser penalty," shall be made through the filing of a notice of appeal before the CA. In this case, the petitioner clearly availed of the wrong mode of appeal when it filed the instant petition for review on *certiorari*. The Court could treat the instant appeal as an ordinary appeal and require the parties to file their respective briefs as demanded by the rules on procedure, nonetheless, records reveal that as early as August 17, 2016, the respondent has been required by the Court to file a comment.[28] Subsequently, in a Resolution[29] dated June 7, 2017, the petitioner was required to file a reply. With the submission of these pleadings,[30] and the requirements of due process accordingly met, the Court, in the greater interest of substantial justice, proceeds to resolve the substantive issue at hand.[31]

Notably, whether "or not" viewed as an ordinary appeal, the conclusion remains the same, that is, the petitioner is guilty beyond reasonable doubt of three (3) counts of rape.

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[27] *Id*. at 36.

[28] *Id*. at 194-195.

[29] *Id*. at 231-232.

[30] *Id*. at 201-217, 241-246.

[31] *Ramos, et al. v. People*, 803 Phil. 775, 783 (2017).

Viewed as a petition for review for *certiorari*, it is clear that the issues raised are factual in nature and is beyond the ambit of this mode of appeal. As well, the errors assigned herein pertain to uniform factual findings of the RTC and the CA. These, as a rule, are "accorded the highest respect and are generally not disturbed on appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted."[32] None of these exceptions obtains in the case at bar.

Treated as notice of appeal, which opens the entire case wide open for review, the Court, evaluating the factual issues raised and examining the records of the case,[33] finds that the evidence presented by the prosecution supports the conviction of the petitioner.

Article 266-A (1) in relation to Article 266-B of the RPC provides the elements of the crime of rape, *viz.*: "(1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation."

Here, the Court is convinced that the petitioner, on three (3) occasions, had sexual intercourse with AAA, which he had accomplished through intimidation, that is against the latter's will.

The fact of sexual intercourse is established by the testimony of AAA and corroborated by the medico-legal report that she sustained lacerations in her vagina.[34]

The testimony of a minor who is a victim of rape is given full weight and credit, particularly in the absence of evidence showing that in making such statement, such minor is actuated

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[32] *People v. Paraiso*, 402 Phil. 372, 388-389 (2001).

[33] *Ramos v. People*, *supra* note 31.

[34] See *People v. Prodenciado*, 749 Phil. 746, 765 (2014).

by ill motive to falsely testify against the accused.[35] It is an oft-repeated doctrine that when a female minor alleges rape, she says in effect all that is necessary to mean that she has been raped."[36] As the Court enunciated in *People v. Menaling*:[37]

> x x x No young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[38]

Further, the testimony of a single eyewitness, when credible, convincing, and consistent with human nature and the normal course of things, is sufficient to support a conviction,[39] as rape is essentially an offense of secrecy.[40] Nonetheless, the Court must still scrutinize with great caution the testimony of the complainant, in line with the principle that the evidence for the prosecution must rise or fall on its own merits without regard to the weakness of the defense.[41]

The testimony of AAA was found by both the RTC and the CA as credible, straightforward and consistent, she was firm in identifying the petitioner as the perpetrator of the offense. AAA was then still a minor at the time she testified; nonetheless, she did not waver in narrating the details of her ordeal, she was firm even when subjected during the grueling cross examination.

Likewise, no ill motive can be attributed upon AAA. In fact, AAA had a lot to lose by implicating the petitioner, as she stands to lose the only person who provided her with education,

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[35] *People v. Taguilid*, 685 Phil. 571, 581-582 (2012).

[36] *People v. Fernandez*, 403 Phil. 803, 816 (2001).

[37] 784 Phil. 592 (2016).

[38] *Id.* at 605.

[39] *People v. Pareja*, 724 Phil. 759, 776 (2014).

[40] *People v. Manalili*, 716 Phil. 762, 771 (2013).

[41] *Id.* at 771-772.

relief, and shelter, *i.e.*, Ledelma, the petitioner's wife. By identifying the petitioner as the perpetrator of the offense, AAA, then a minor at the time the offense was committed, must submit herself back to the system for referral to another agency to aid her.

Anent the element of force and intimidation, the Court likewise finds the present case at bar.

Jurisprudence instructs that the element of force and intimidation is present when it renders the victim defenseless, such that the element of voluntariness is absolutely lacking. Force need not be irresistible, but it must be sufficient to consummate the accused's purpose. Similarly, intimidation need not be in a particular form or gravity; it is enough that it produces fear on the part of the victim that something bad would happen to her if she does not yield to the demands of the accused.[42] Intimidation need not be actual or verbal when the accused wields moral influence or ascendancy over the victim.[43]

The element of "force and intimidation" is peculiar in this case. AAA avers that she did not resist the sexual advances as she was afraid that the petitioner would do what her uncle did to her. According to AAA, she recalled that her uncle, armed with a dagger, threatened her and almost killed her as he raped her.[44]

While the fear was ingrained by the thought of an act performed by a person other than the petitioner, it is undeniable that it is the petitioner's sexual acts toward AAA that triggered the fear that led her to submitting to his lewd desires. Overpowered by the memory and the fear, this rendered AAA defenseless to offer any resistance to the petitioner's advances; all AAA could do was to stay still as the petitioner undressed her as the petitioner performed the lewd acts and cry afterwards.

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[42] *People v. Bayani*, 331 Phil. 169, 193 (1996).

[43] *People v. Servano*, 454 Phil. 257, 280 (2003) citing *People v. Miranda*, 435 Phil. 806, 817-818 (2002).

[44] *Rollo*, p. 62.

Intimidation is a state of mind, which cannot, with absolutely certainty, be discerned. Whether a person has been intimidated can only be inferred from the simultaneous or subsequent acts of the person subjected thereto. To conclude that intimidation is employed as a means of committing rape, it is sufficient that the accused, through his acts, causes the victim to feel fear that is strong enough to wield her into complete submission to his will. The inherent predisposition of the victim is beside the point, inasmuch as the workings of the human mind, based on the product of one's experiences and genetic predisposition, naturally varies from person to person. In the prosecution of rape cases, emphasis must be placed on the acts of the accused and on whether these acts tend to cause the victim to surrender to his will, taking into consideration the victim's personal circumstances.

Intimidation is subjective. As such, it should be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. In the prosecution of rape cases, it is sufficient that the victim is cowed to submission as a result thereof.[45]

In the same way, AAA's seeming insensibility during the occurrence of rape does not necessarily amount to consent. People react differently when placed under emotional stress — some may resist violently, others may faint or be shocked into insensibility, and there may be a few who may openly welcome the intrusion.[46] In this case, AAA manifested her objection to the sexual acts committed when she cried after the first two incidents of sexual intercourse. During the last incident, while AAA remained stoic all throughout the ordeal and proceeded with her usual household chores immediately thereafter, the Court agrees with the RTC that the absence of consent is clearly manifest by AAA's subsequent acts, *viz.*:

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[45] *People v. Bayani*, *supra* note 37.

[46] *People v. Taguilid*, *supra* note 30 at 581.

That the minor offended party did not consent to the sexual intercourse perpetrated by the accused on three occasions was shown by the fact that on the very day that she was sexually assaulted, the minor left and [fled] the house of the accused and went to her classmate, and started telling other persons of the incident.[47]

With these, the element of intimidation is clearly attendant in this case.

Among the petitioner's defenses during trial is that it was impossible for him to have committed the offense since he was asleep in the living room, where his son, Renz, was working on his project. Petitioner claims that he could not have left without his son noticing. Renz testified that he was awake from 9:00 p.m. to 4:00 a.m., and attested that he did not notice anything unusual during this time.[48]

The testimony of the petitioner's son does not negate that rape could have been committed as AAA alleged. For alibi to prosper, the accused "must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, which renders him impossible to have been in the scene of the crime when it was committed."[49] In this case, the defense admits that the petitioner was in the house with AAA at the date and time the crime was committed. In fact, the petitioner was sleeping in the living room, barely a short distance from AAA's room where the crime occurred. Therefore, the petitioner's alibi cannot be considered exculpatory.

Furthermore, the Court is unprepared to deviate from the RTC and the CA's determination that the testimony of the petitioner's son, Renz, is not credible.[50] The trial court's determination proceeds from its unique position to assess the

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[47] *Rollo*, p. 62.

[48] *Id.* at 56.

[49] *People v. Amoc*, 810 Phil. 257, 261 (2017).

[50] *Rollo*, pp. 63, 157.

credibility of the witnesses while on the stand and to appreciate their truthfulness, honesty, and candor.[51]

The Court finds that Renz, in testifying in favor of his father, herein petitioner, is biased. The Court's ruling in *Tarapen v. People*[52] is instructive:

> x x x A witness is said to be biased when his relation to the cause or to the party is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or pervert the truth, or state what is false. To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony **was inherently improbable** or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely.[53] (Emphasis supplied)

The relationship between the petitioner and Renz *per se* does not impair the latter's credibility. However, when evaluated on the basis of its intrinsic merits, the testimony must be excluded as it is inconsistent with human nature, as ruled by the RTC:

> This court is not prepared to accept his testimony that he has been awake from 9:00 p.m. of September 9, 2004 up to 4:00 a.m. of September 10, 2004 doing his school project. In other words, he did not sleep during the entire night of September 9, 2004 and September 10, 2004. The witness was eleven years old during that time. And his testimony that he had been awake the entire night, which was a Friday night, is unpersuasive even if the was doing a school project. He did not even specifically mention what the school project was, and why it should be done on a Friday night when the following days was a Saturday and a Sunday.[54]

Finally, under Article 266-B, when rape is committed through force, threat, or intimidation, the penalty shall be *reclusion*

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[51] *Jamaca v. People*, 764 Phil. 683, 693-694 (2015).

[52] 585 Phil. 568 (2008).

[53] *Id.* at 585-586.

[54] *Rollo*, p. 64.

perpetua. The penalty shall be imposed for each count. The RTC and the CA was therefore correct on this score.

However, in view of *People v. Jugueta*,[55] the amount of damages should be modified. For every count of rape, the amount of civil indemnity, moral damages, and exemplary damages should be increased to ₱75,000.00 each. In addition, the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[56]

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **DENIED**. However, to conform with recent jurisprudence, the Decision dated April 24, 2015 and Resolution dated November 9, 2015 of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-HC No. 01042-MIN, convicting the petitioner Ricardo Nacario *y* Mendez of the crime of rape under Article 266-A(1) in relation to Article 266-B of the Revised Penal Code, are hereby **AFFIRMED WITH MODIFICATION**. Accordingly, petitioner is hereby sentenced to suffer the penalty of *reclusion perpetua*, for each count of rape. Furthermore, for every count of rape, the award of civil indemnity, moral damages, and exemplary damages are increased to ₱75,000.00, each. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda, JJ.*, concur.

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[55] 783 Phil. 806 (2016).

[56] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

FIRST DIVISION

[G.R. No. 223602, June 8, 2020]

HEIRS OF DOMINGO REYES, represented by HENRY DOMINGO A. REYES, JR., *petitioners, vs.* **THE DIRECTOR OF LANDS and DIRECTOR OF FORESTRY,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY OF JUDGMENTS; THE FINALITY OF A JUDGMENT BECOMES A FACT UPON THE LAPSE OF THE REGLEMENTARY PERIOD OF APPEAL IF NO APPEAL IS PERFECTED OR NO MOTION FOR RECONSIDERATION OR NEW TRIAL IS FILED. — Judgments or orders become final and executory by operation of law, and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. Hence, the determination of the period of filing an appeal is crucial. x x x [T]he Court notes the dearth of documents accompanying this case. Based on what is accessible to the Court, it must be highlighted that the appeal filed by petitioners on the denial of the motion for execution **and** the appeal filed by the **OSG**, given due course as a petition for review, ***bore the same docket number***, that is CA-G.R. CV No. 100227. This similarity becomes pertinent when petitioners subsequently withdrew their appeal, which was granted by the CA. In fact, an Entry of Judgment in CA-G.R. CV No. 100227 was issued by the CA on July 16, 2015. At this juncture, it is expected that the effect of the dismissal of CA-G.R. CV No. 100227 is to foreclose *both* proceedings on the appeal filed by petitioners on the motion for execution case *and* the petition for review filed by the Solicitor General as both cases have similar docket numbers. However, based on the x x x factual circumstances, the termination of the case should extend only to the appeal filed by the petitioners insofar as the denial of the motion for execution is concerned. Hence, to avoid confusion and to put an order to the proceedings in the court *a quo*, it is necessary

to proceed with the petition for review filed by the Solicitor General. However, in doing so, the Entry of Judgment dated July 16, 2015, must first be recalled **insofar as the dismissal of petitioners' appeal is concerned**, which was withdrawn through a motion dated June 29, 2015. The ineffable delay suffered by the parties in this case is indeed deplorable. The instant case reached the Court twice, only to be boomeranged. While the Court understands the sentiments of the parties, trapped within the judicial niceties, there is nothing left to do but to apply the rule of law. The Court therefore, **strongly** calls for expediency on the resolution of the case which has been pending for over 50 years.

APPEARANCES OF COUNSEL

Agcaoili Law Offices for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

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

Surpassing half a century is a land registration dispute subject of this Petition for Review on *Certiorari*,[1] assailing the Orders dated October 22, 2015[2] and March 18, 2016[3] of the Regional Trial Court of Lucena City, Branch 53 (RTC).

As an offshoot of the 1995 case of G.R. No. L-41968 entitled *"The Director of Lands and the Director of Forest Development v. Judge Medina and Domingo Reyes"*[4] a summary of factual and procedural antecedents are as follows:

Domingo Reyes (Domingo) filed an application for land registration of eight parcels of land in the barrios of Vigo, Catidang,

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[1] *Rollo*, pp. 14-37.

[2] Penned by Presiding Judge Dennis Galahad C. Orendain; *id.* at 39-42.

[3] *Id.* at 43-44.

[4] G.R. No. L-41968, February 15, 1995; *id.* at 67-80.

and Tala in San Narciso (now San Andres) in Quezon, before the then Court of First Instance of Quezon, Branch 1 (CFI), sitting as a land registration court.[5]

The Director of Lands, through the Solicitor General opposed the application, as did several private individuals.[6]

During the hearings of the case, the Provincial Fiscal of Quezon (Provincial Fiscal) appeared as counsel for both the Director of Lands and then Director of Forestry. Although the latter did not enter his appearance, the CFI allowed him, through the Provincial Fiscal, to introduce evidence in support of the fact that 176 hectares of the area sought to be registered fell within the forest classification.[7]

In a Decision[8] dated July 31, 1974, the CFI adjudicated four parcels of land in favor of Domingo and ordered their registration in his name. The *fallo* thereof reads:

> WHEREFORE, confirming the order of general default issued in this case, this Court hereby adjudicates and orders the registration of titles to Lots 2, 3, 5 and 6, particularly described in plan Psu-223084 Amended (Exhibits D, D-1) and its technical descriptions (Exhibits F to F-6), with the improvements thereon, in the name of the applicant, DOMINGO REYES, of legal age, married to Lourdes Abustan, Filipino citizen, and resident of San Narciso, Quezon, free from all liens and encumbrances. When this Decision has become final, let the corresponding decrees and certificates of title be issued accordingly.
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> The opposition of Cornelia Manalo de Ramos, Dominga, Rolando, Edgardo, Rodrigo, Rosalia and Maria, all surnamed de Ramos, is hereby dismissed, for lack of evidence.
>
> SO ORDERED.[9]

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[5] *Id.* at 67.

[6] *Id.*

[7] *Id.* at 68.

[8] Penned by Judge Delia P. Medina; *id.* at 45-66.

[9] *Id.* at 65-66.

The Provincial Fiscal received the copy of the decision on August 8, 1974 while the OSG received the same on November 13, 1974.[10]

Within the 30-day period then required for interposing an appeal (under the 1964 Rules of Court), the Solicitor General filed for the Directors of Lands and Forestry, a notice of appeal and an urgent motion for extension of time to file a record on appeal, which the Provincial Fiscal filed on January 2, 1975.[11]

To these, counsel for Domingo filed an opposition, contending that since it was the Provincial Fiscal who represented both the Directors of Lands and Forestry and who received the copy of the July 31, 1974 Decision on August 8, 1974, the notice of appeal as well as the motion for extension of time filed by the Solicitor General were out of time. Hence, the decision became final and executory.[12]

In response, the Solicitor General insisted that he should have been served all pleadings and processes in the case considering that he was the counsel of record and principal counsel. Thus, the receipt of all such pleadings and court processes by the Provincial Fiscal, who appeared as the Solicitor General's representative was not equivalent to the latter's receipt thereof inasmuch as the representation did not divest him of control over the case.[13]

Domingo reiterated that the Solicitor General did not provide any justification for his claim that he was the principal counsel for the oppositors as other lawyers appeared for and in behalf of both the private and public oppositors.[14]

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[10] *Id.* at 68.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 69.

[14] *Id.*

The Solicitor General, in his rejoinder, asserted his authority as the government's representative in land registration cases by virtue of Presidential Decree (P.D.) No. 478; and his authority to deputize the Provincial Fiscal, in the performance of his duties, did not divest him of control over the case. More so did it empower the Provincial Fiscal to receive pleadings and court processes.[15]

In an Order dated March 31, 1975, the CFI ruled that the period to file an appeal should be counted from the receipt of the Decision by the Solicitor General considering that the Provincial Fiscal appeared as counsel of record with personality distinct and separate from that of the Solicitor General's in so far as the Director of Lands is concerned. However, as to the Director of Forestry, the CFI opined that the period lapsed considering the failure of the Provincial Fiscal to interpose for him a timely appeal. Thus, the CFI dismissed the appeal of the Director of Forestry, gave due course to the appeal of the Director of Lands, and directed the Solicitor General to amend the notice of appeal and record on appeal within 10 days from notice.[16]

In behalf of the Director of Forestry, the Solicitor General filed a motion for partial reconsideration based on P.D. No. 478, vesting upon him the exclusive authority to represent the government and its officers. As such, the service of the Decision upon the Provincial Fiscal who had no legal personality to appear by himself for the Director of Forestry produced no legal effect.[17]

The motion was denied by the CFI for lack of merit in an Order dated June 17, 1975. On July 22, 1975, the Solicitor General filed a motion for a 30-day extension within which to submit an amended record on appeal. Domingo opposed the motion.[18]

On July 31, 1975, the CFI dismissed the Solicitor General's appeal for failure to amend the notice of appeal and record on

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[15] *Id.*

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

[17] *Id.* at 71.

[18] *Id.*

appeal as required by the March 31, 1975 Order, resulting in the lapse of more than three months.[19]

However, it turned out that the motion for extension had in fact been filed by the Solicitor General because the CFI issued an Order dated August 1, 1975, holding that such motion had been rendered moot and academic by its July 31, 1975 Order dismissing the appeal interposed by the Solicitor General.[20]

Nevertheless, the Director of Lands, through the Solicitor General, filed an amended notice of appeal before the CA. On August 22, 1975, a special counsel filed a motion and manifestation stating that upon the instruction of the Provincial Fiscal, he was submitting a motion for reconsideration signed by the Assistant Solicitor General and an amended record on appeal incorporating relevant pleadings and orders. He manifested that the Office of the Provincial Fiscal was not able to immediately comply with the wire-request dated July 22, 1975 sent by the Office of the Solicitor General, requesting the filing of an amended record on appeal pursuant to the March 31, 1975 Order for the reason that said wire-request was received only on July 30, 1975, aside from the fact that the records of the Office of Provincial Fiscal had all been forwarded to the Solicitor General.[21]

To this motion, the Solicitor General attached the amended record on appeal.[22]

In an Order dated November 12, 1975, the CFI denied the two motions.[23]

Thus, the Solicitor General filed a petition for *certiorari* and *mandamus* in behalf of the Directors of Lands and Forestry docketed as G.R. No. L-41968 before this Court.[24]

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[19] *Id.*

[20] *Id.* at 72.

[21] *Id.*

[22] *Id.* at 73.

[23] *Id.*

[24] *Id.*

In a Decision dated February 15, 1995 in *The Director of Lands and the Director of Forest Development v. Judge Medina and Domingo Reyes* docketed as G.R. No. L-41968, the Court expounded on the duty of the Solicitor General to represent the government under the Magna Carta of the Office of Solicitor General and particularly in defending the interest of the government under the Revised Administrative Code and P.D. No. 478 in land registration cases. As such, his act of deputizing the Provincial Fiscal to appear during hearings as counsel for the Directors of Lands and Forestry was considered as sufficient representation. More so when the CFI allowed the Provincial Fiscal to adduce evidence without Domingo registering any opposition thereto.[25]

Corollary, the Solicitor General timely filed an appeal in behalf of both the Directors of Lands and Forestry after entering his appearance thereto and deputizing the Provincial Fiscal, respectively. The Court maintained that notices are binding upon the Solicitor General upon actual receipt by him. Hence, service of decisions on the Solicitor General was the proper basis for computing the reglementary period for filing appeals and for determining whether a decision had attained finality.

The Court thus, set aside the dismissal of the appeal and ordered the Solicitor General to file the proper petition for review:

> WHEREFORE, the instant petition for *certiorari* and *mandamus* is hereby GRANTED and the questioned orders of the lower court dismissing the appeal interposed by the Solicitor General in behalf of the government are SET ASIDE. The Solicitor General is directed to file the proper petition for review before the Court of Appeals which shall resolve with dispatch the instant land registration case which has been pending for some twenty years.
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> SO ORDERED.[26]

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[25] *Id.* at 75-78.

[26] *Id.* at 79.

In compliance with the Court's directive, the Solicitor General filed a Manifestation and Motion dated March 15, 1995, praying that his earlier appeal which was adjudged to be timely filed in G.R. No. L-41968, be treated as a petition for review.[27]

On April 14, 2011, the Heirs of Domingo Reyes filed a Motion for Execution, alleging that the Solicitor General failed to comply with the Court's directive in G.R. No. L-41968, before the RTC.[28]

In a Resolution[29] dated May 22, 2012, the RTC resolved *both* the Motion for Execution filed by petitioners and the Manifestation and Motion filed by the Solicitor General. In settling the issues of both parties, the RTC determination of the case. In effect, the RTC denied the Motion for Execution and granted the Manifestation and Motion filed by the Solicitor General:

> To resolve the problem, procedural laws on the matter teaches us that since the essence of due process is always an opportunity to be heard and that a party should as far as practicable must be given his day in Court and the case decided on the [merits], it behooves upon this Court, considering that none between the parties is to be blamed, but perhaps the Court for its inaction, and if only to give effect to the directive of the Supreme Court *supra* for the parties to lay their cards on the table, the Court allows the elevation of the entire records of this case to the Court of Appeals, Manila, as prayed for, in the highest interest of justice, so that unsettled matter concerning this case will finally be laid to rest.[30]

The *fallo* thereof reads:

> **WHEREFORE, of the foregoing, petitioner's prayer for issuance of a writ of execution and the private oppositor's motion to consider the appeal** of the public oppositor Director of Lands and Forest Development abandoned and to issue a decree in favor of all the heirs of deceased Domingo Reyes are all denied as it is hereby denied.

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[27] *Id.* at 137.

[28] *Id.* at 146.

[29] *Id.* at 146-148.

[30] *Id.* at 147.

Instead, the entire original records of this case, as prayed for, is elevated to the Court of Appeals, Manila, on a petition for review, in compliance with that order of the Honorable Supreme Court in G.R. No. L-41968 dated February 15, 1995.

For this purpose, the officer-in-charge, this branch of the Court, is directed to facilitate the transfer of the records of this case to the appellate Court *supra* via a petition for review.

SO ORDERED.[31]

In an Indorsement[32] dated February 21, 2013, the Clerk of Court of the RTC forwarded the records of the case to the CA *sans* 12 Exhibits.

Docketed as *CA-G.R. CV No. 100227*, a Resolution[33] dated October 16, 2013, was issued by the CA. The parties were ordered to submit their copies of the lacking exhibits, if they have any. If none, the parties were suggested to take steps which would lead to the completion of records.

On the denial of their Motion for Execution, petitioners thereafter filed a Notice of Appeal before the CA. The case was likewise docketed as *CA G.R. CV No. 100227*.[34]

In a Resolution[35] dated October 14, 2014, the CA remanded the entire records of the case to the trial court for the proper reconstitution of the missing exhibits and Transcript of Stenographic Notes.

However, despite earnest efforts of the trial court, the missing documents were not found.[36]

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[31] *Id.* at 148.

[32] *Id.* at 149-155.

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

[34] *Id.* at 40.

[35] *Id.* at 158-159.

[36] *Id.* at 41.

Consequently, petitioners filed a Motion to Withdraw Appeal[37] as they deemed it proper to file instead, a motion for the issuance of certificate of finality of judgment before the RTC. Said withdrawal of appeal was granted in a Resolution[38] dated July 16, 2015:

> The "Motion to Withdraw Appeal" filed by counsel for petitioner-appellant is **GRANTED** and the instant appeal is now considered **CLOSED** and **TERMINATED**. The Division Clerk of Court is accordingly directed to issue the corresponding Entry of Judgment in this case.[39]

Thus, an Entry of Judgment[40] dated July 16, 2015 was issued.

On the motion for the issuance of certificate of finality, the RTC issued the assailed Order[41] dated October 22, 2015. Maintaining that the reconstitution of the records was necessary to prove that petitioners complied with the requirements of the Land Registration Act for the confirmation of their title, the RTC ruled that the issuance of a certificate of finality would be baseless and premature.

To this, petitioners filed a motion for reconsideration, which was denied in an Order[42] dated March 18, 2016.

Hence, this petition.

Ultimately, the issue in this case is whether or not the denial of the motion for issuance of a certificate of finality is proper.

The Court resolves.

Judgments or orders become final and executory by operation of law, and not by judicial declaration. The finality of a judgment

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[37] *Id.* at 88-93.

[38] *Id.* at 94.

[39] *Id.*

[40] *Id.* at 95.

[41] *Supra* note 2.

[42] *supra* note 3.

becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed.[43]

Hence, the determination of the period of filing an appeal is crucial.

To recall, the Court ordered the OSG to file a petition for review before the CA. Insisting that the appeal, which was ruled as timely filed in G.R. No. L-41968 is substantially compliant with this Court's directive, the Solicitor General filed a Manifestation and Motion before the RTC. In said manifestation, the OSG prayed that the appeal taken be treated as a petition for review and consequently requested for the transmittal of the entire records from the RTC to the CA.

While said Manifestation was unacted upon, petitioners filed a Motion for Execution on the ground of the Solicitor General's failure to file a petition for review, on April 14, 2011.

After a lapse of 16 years or on May 22, 2012, the RTC resolved both the motion for execution filed by petitioners *and* the Manifestation and Motion filed by the Solicitor General. In its *fallo*, the Resolution explicitly stated that the appeal was considered as a petition for review and accordingly ordered the elevation of the records of the case to the CA for disposition.

Evidently, the Solicitor General's appeal was given due course. Hence, in view of the pendency of the Solicitor General's petition for review, the July 31, 1975 CFI Order has not become final and executory.

Without the decision attaining finality, the RTC correctly denied petitioners' motion for the issuance of certificate thereof.

At this point, the Court notes the dearth of documents accompanying this case. Based on what is accessible to the Court, it must be highlighted that the appeal filed by petitioners on the denial of the motion for execution **and** the appeal filed

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[43] *Barrio Fiesta Restaurant v. Beronia,* 789 Phil. 520, 539 (2016).

by the OSG, given due course as a petition for review, ***bore the same docket number***, that is CA-G.R. CV No. 100227. This similarity becomes pertinent when petitioners subsequently withdrew their appeal, which was granted by the CA. In fact, an Entry of Judgment[44] in CA-G.R. CV No. 100227 was issued by the CA on July 16, 2015.

At this juncture, it is expected that the effect of the dismissal of CA-G.R. CV No. 100227 is to foreclose *both* proceedings on the appeal filed by petitioners on the motion for execution case *and* the petition for review filed by the Solicitor General as both cases have similar docket numbers.

However, based on the foregoing factual circumstances, the termination of the case should extend only to the appeal filed by the petitioners insofar as the denial of the motion for execution is concerned.

Hence, to avoid confusion and to put an order to the proceedings in the court *a quo*, it is necessary to proceed with the petition for review filed by the Solicitor General. However, in doing so, the Entry of Judgment dated July 16, 2015, must first be recalled **insofar as the dismissal of petitioners' appeal is concerned**, which was withdrawn through a motion[45] dated June 29, 2015.

The ineffable delay suffered by the parties in this case is indeed deplorable. The instant case reached the Court twice, only to be boomeranged. While the Court understands the sentiments of the parties, trapped within the judicial niceties, there is nothing left to do but to apply the rule of law. The Court therefore, **strongly** calls for expediency on the resolution of the case which has been pending for over 50 years.

WHEREFORE, premises considered, the petition is hereby **DENIED**. Accordingly, the Orders dated October 22, 2015 and dated March 18, 2016 of the Regional Trial Court of Lucena City, Branch 53 are **AFFIRMED.**

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[44] *Rollo*, p. 95.

[45] *Supra* note 37.

The Entry of Judgment dated July 16, 2015 is **RECALLED** only insofar as the appeal filed by the petitioners is concerned. The petition for review filed by the Office of the Solicitor General is hereby **REINSTATED**. The Court of Appeals is **DIRECTED** to proceed to dispose the case with deliberate dispatch.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 232147. June 8, 2020]

ARTURO SULLANO *y* SANTIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ANY ALLEGED DEFECT IN A WARRANTLESS ARREST WAS DEEMED WAIVED WHERE THE ACCUSED ALREADY ENTERED HIS PLEA AND ACTIVELY PARTICIPATED IN THE TRIAL. — Arturo questions the legality of his warrantless arrest to dispel the jurisdiction of the court over his person. Notably, Arturo entered his plea during arraignment and actively participated in the trial. He did not move to quash the information on the ground of the illegality of his arrest. Consequently, the trial court obtained jurisdiction over him, and any supposed defect in his arrest was deemed waived. It is then too late for Arturo to question the legality of his warrantless arrest at this point. The Court has consistently held that any objection by an accused to an arrest without a warrant must be made before he enters his plea, otherwise, the objection is deemed waived.

An accused may be estopped from assailing the illegality of his arrest if he fails to challenge the information against him before his arraignment. And, since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court.

2. **CRIMINAL LAW; OMNIBUS ELECTION CODE (B.P. 881) AS AMENDED BY R.A. NO. 7166; INSPECTION OF A PASSENGER BUS PURSUANT TO A COMELEC GUN BAN DURING THE ELECTION PERIOD IS VALID. —** The checkpoint conducted by the Malay Police was pursuant to the gun ban enforced by the COMELEC. Checkpoints, which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists, are allowed since the COMELEC would be hard put to implement the ban if its deputized agents are limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during election period, would know that they only need a car to be able to easily perpetrate their malicious designs. Specifically for the inspection of passenger buses[.] x x x In this case, the checkpoint was conducted on the Ceres passenger bus on February 11, 2010, within the election period, that is 120 days before the election and 30 days after the May 10, 2010 elections, or from January 9 to June 9, 2010.

3. **REMEDIAL LAW; EVIDENCE; PLAIN VIEW DOCTRINE, EXPLAINED; REQUISITES FOR THE DOCTRINE TO APPLY, PRESENT IN THIS CASE. —** During the conduct of the checkpoint, PSI Tarazona saw in plain view a firearm protruding from Arturo's belt bag. Under the plain view doctrine, objects falling in the plain view of an officer who has the right to be in the position to have the view are subject to seizure and may be presented in evidence. The doctrine requires that: (a) the law enforcement officer in search of the evidence has prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (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. These requisites are present in this case. The police officers of the

Malay Police Station, after receiving a report that a person was in possession of a gun, conducted a checkpoint in coordination with the municipal election officer. Upon contact with the subject Ceres bus, the police asked permission from the driver to board the bus. On board the bus, PSI Tarazona came across the firearm, when in plain view, he saw the firearm protruding from Arturo's half open belt bag. Thus, the police officers had the duty to arrest him and confiscate the contraband in his possession. At the time of the arrest, Arturo was committing an offense by being in possession of a firearm during an election gun ban.

4. CRIMINAL LAW; B.P. 881 AS AMENDED *VIS-À-VIS* COMELEC RESOLUTION NO. 8714; PETITIONER WAS VALIDLY CHARGED WITH ILLEGAL POSSESSION OF FIREARM DURING AN ELECTION GUN BAN AND THERE WAS NO VIOLATION OF HIS RIGHT TO BE INFORMED OF THE NATURE OF THE ACCUSATION AGAINST HIM. — Under Section 261 (q) of BP Blg. 881, any person, even if holding a permit to carry firearms, is prohibited to carry firearms or other deadly weapons outside his residence or place of business during an election period, unless authorized in writing by the COMELEC. Sections 32 and 33 of Republic Act (RA) No. 7166, which amended BP Blg. 881, clarified who may bear firearms and who may avail of or engage the services of security personnel and bodyguards[.] x x x To implement these laws, the COMELEC - being the constitutional body possessing special knowledge and expertise on election matters and with the objective of ensuring the holding of free, orderly, honest, peaceful, and credible elections - was granted the power to issue implementing rules and regulations. Accordingly, COMELEC Resolution No. 8714 was promulgated setting forth the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," in connection with the conduct of the May 10, 2010 national and local elections[.] x x x Arturo was accused of violating COMELEC Resolution No. 8714. The charge against him is in relation to BP Blg. 881 and the amendatory law, RA No. 7166. It is well-settled that it is the recital of facts of the commission of the offense in the information, not the nomenclature of the offense that determines the crime charged against the accused. The designation of the offense, given by the prosecutor, is merely

an opinion and not binding on the court. Differently stated, the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the factual allegations in the complaint or information. The facts pleaded in the information constitute the offense of carrying firearms outside residence or place of business under Section 261(q) of BP Blg. 881. Thus, Arturo was duly apprised of the charge against him; there is no violation of his constitutional right to be informed of the nature of the accusation against him.

5. ID.; ID.; CONVICTION OF PETITIONER FOR ILLEGAL POSSESSION OF FIREARM DURING A GUN BAN, AFFIRMED. — The prosecution was able to establish the elements of the crime – the existence of a firearm, and the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same. The burden to adduce evidence that the accused is exempt from the COMELEC Gun Ban lies with the accused. We reiterate that, Arturo was arrested in a public place, on board a passenger bus *en route* to Caticlan on February 11, 2010, within the election period for the 2010 national and local elections. He was positively identified by prosecution witness PSI Tarazona as the person from whom a loaded caliber .45 pistol, and two magazines with live ammunition were seized. Arturo failed to show a COMELEC-issued authority to carry the confiscated items. Given the overwhelming evidence of the prosecution, Arturo counters only with the defense of denial; thus, his self-serving assertions, unsupported by any plausible proof, cannot prevaiI over the positive testimonies of the prosecution witnesses. x x x All told, we affirm the conviction of petitioner Arturo Sullano *y* Santia for violation of BP Blg. 881, or the Omnibus Election Code of the Philippines.

APPEARANCES OF COUNSEL

Dangal Z. Nadua for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LOPEZ, *J.*:

Petitioner Arturo Sullano *y* Santia is charged with violation of the gun ban during the 2010 election period pursuant to Batas Pambansa Bilang (BP Blg.) 881,[1] in relation to Commission on Elections (COMELEC) Resolution No. 8714[2] under the following information:

> That on or about the 11th day of February, 2010, in the morning, on board of a [*sic*] Ceres Bus, at Prado St., Poblacion, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, within the election period, without authority of law nor the requisite exemption from the Committee on Firearms did then and there willfully, unlawfully and feloniously have, possess and carry one (1) COLT M1911A1 Caliber Pistol, Serial Number 604182, three (3) pistol magazines and fifteen (15) live ammunition were confiscated from the custody and control of the accused by the police authorities of Malay, Aklan.
>
> CONTRARY TO LAW.[3]

When arraigned, Arturo pleaded "Not Guilty." Trial then ensued.

The Prosecution, through the testimonies of Police Senior Inspector (PSI) Lory Tarazona,[4] Police Officer 3 (PO3) Ben

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[1] The Omnibus Election Code of the Philippines, as amended by Republic Act (RA) No. 7166 entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefore, and for Other Purposes."

[2] Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or Other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, during the Elections Period for the May 10, 2010 National and Local Elections.

[3] *Rollo*, pp. 6-7.

[4] *Id.* at 7-15.

Estuya,[5] Malay Municipal Election Officer Elma Cahilig,[6] and Police Officer 2 (PO2) Glenn F. Magbanua[7] established that, on February 11, 2020, PSI Tarazona, and PO3 Estuya received a text message from an anonymous informant saying that a passenger, wearing camouflage shorts, was carrying a firearm on board a Ceres bus coming from Buruanga and bound for Caticlan. The Malay Police Station coordinated with Cahilig for the conduct of a checkpoint in front of the municipal plaza to verify the tip.

The police officers flagged down a Ceres bus and asked the driver for permission to embark. On board, PSI Tarazona saw the man described in the tip. PSI Tarazona approached the man and saw the handle of a pistol protruding from his half-open belt bag. PSI Tarazona then asked the man to alight from the bus to avoid commotion from the other passengers. After inquiry, the police team identified the man as Arturo Sullano, a security officer of the Municipality of Buruanga. Arturo, however, failed to show his authority to possess the firearm. Consequently, a search on the person of Arturo was conducted, which yielded a loaded caliber .45 pistol, and two magazines with live ammunition. Arturo was informed of his constitutional rights, arrested, and was brought to the police station. There, Arturo, and the seized items were turned over for investigation to PO3 Estuya, who made an inventory of the items.

Arturo denied the charges against him. He admitted having boarded a Ceres bus from Buruanga headed to Caticlan on February 11, 2010. *En route*, the bus stopped by the Malay Town Hall to unload a passenger. When police officers boarded the bus, Arturo saw one of them appear to be looking for something. The policeman, whom Arturo later on identified as PSI Tarazona, approached him, accosted him for wearing camouflage pants, and asked him to go down the bus. Arturo

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[5] *Id.* at 17-20.

[6] *Id.* at 15-17.

[7] *Id.* at 26-27.

was frisked, but the police found nothing. Meanwhile, another police officer alighted from the bus claiming that he found a bag. Thereafter, Arturo was brought to the police station and, there, the bag was opened showing a firearm inside. Arturo was detained at the police station and was threatened by PSI Tarazona by pointing a gun at him. When Arturo asked what his offense was, the police answered that the firearm recovered belonged to him. Arturo denied possession and ownership of the bag and its contents. Arturo also raised that the checkpoint was improperly done since no signage was put up.[8]

Ruling of the Regional Trial Court

In its Judgment[9] dated January 21, 2014, the trial court convicted Arturo and sentenced him as follows:

> IN VIEW OF THE FOREGOING, the Court finds the accused ARTURO SULLANO *y* SANTIA GUILTY beyond reasonable doubt of violating [the] Omnibus Election Code (BP [Blg.] 881) as amended by Republic Act [No.] 7166 in relation to Comelec Resolution No. 8714 (Gun Ban).
>
> Accordingly, the accused is hereby sentenced to suffer an imprisonment of two (2) years without probation as provided by law. In addition, he shall be disqualified to hold public office and deprived of the right of suffrage during his term of service pursuant to Section 264, Batas Pambansa [Blg.] 881 in relation to Article 43 of the Revised Penal Code.
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> x x x x x x x x x
>
> SO ORDERED.[10]

Ruling of the Court of Appeals

On appeal, the Court of Appeals (CA) affirmed Arturo's conviction, with modification in that the penalty should be an

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[8] *Id.* at 22-25.

[9] Penned by Presiding Judge Domingo L. Casiple, Jr. of the Regional Trial Court of Kalibo, Aklan; *id.* at 61-70.

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

indeterminate prison term of one year, as minimum, to two years, as maximum, without probation.[11] The CA expounded that Arturo failed to show that he has written authority from the COMELEC to possess a firearm, or that he belongs to the class of persons authorized to possess a firearm during the 2010 election period. The CA gave no weight to Arturo's claim that there was no checkpoint because the testimonies of the prosecution witnesses clearly demonstrated that one was conducted pursuant to the gun ban enforced by the COMELEC. Arturo was arrested *in flagrante delicto*, when PSI Tarazona saw, in plain view, the handle of the gun. Thus, evidence obtained from Arturo during his arrest is admissible.[12] Arturo moved to reconsider the CA Decision, but was denied.[13]

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[11] *Id*. at 49-60. The Decision in CA-G.R. CEB-CR No. 02424 dated November 17, 2016, was penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DENIED**. The Judgment dated January 21[,] 2014 of Branch 7 of the Regional Trial Court of Kalibo, Aklan in Crim. Case No. 9235 is **AFFIRMED** with **MODIFICATION** with regard to the penalty of imprisonment. Accused-appellant is sentenced to suffer an indeterminate prison term of one (1) year, as minimum, to two (2) years as maximum, without probation. The penalties of disqualification to hold public office and deprivation of the right of suffrage is **RETAINED**.

SO ORDERED.

[12] *Id.* at 56-59.

[13] *Id.* at 71-72. The CA in its Resolution dated April 28, 2017, penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, resolved Arturo's motion for reconsideration as follows:

A perusal of the allegations contained in the instant *Motion for Reconsideration* reveals that the issues raised therein have been discussed and squarely ruled upon by this Court in the assailed 17 November 2016 Decision. The issues propounded by accused-appellant are mere reiterations of the arguments in his appeal. As such, We find no cogent reason to overturn the Decision sought to be reconsidered.

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

SO ORDERED.

Arguments of the Parties

Aggrieved, Arturo filed the present petition[14] seeking his acquittal. Arturo contends that he cannot be held criminally liable under COMELEC Resolution No. 8714 since the issuance is an administrative resolution, which cannot be a source of penal liability. The accused's right to be informed of the accusation against him was violated when he was convicted of a crime that was not charged under the information. Arturo maintains that the conduct of the checkpoint was illegal, and that it was irregularly done because the police officers failed to put up the necessary signage and warning to the public. Consequently, Arturo's arrest was illegal and the items seized from him are inadmissible as evidence against him.

On the other hand, the Office of the Solicitor General (OSG) argues that Arturo's guilt was sufficiently proven. The findings of the trial court, affirmed by the CA, should be accorded great respect. There is no question that, at the time Arturo was found in possession of a firearm, a gun ban was enforced pursuant to COMELEC Resolution No. 8714. The facts attested to by the prosecution witnesses enjoy the presumption of regularity in the performance of official duties. Thus, Arturo is estopped from assailing any irregularity with regard to his arrest since he failed to raise them before his arraignment. Lastly, Arturo's defense of denial does not deserve credit against the testimony

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[14] Filed under Rule 45 of the Rules of Court; *id.* at 3-45. Arturo submits the following grounds for the allowance of his petition:

I

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN LAW IN AFFIRMING THE DECISION OF THE HONORABLE COURT *A QUO* FINDING THE PETITIONER GUILTY OF VIOLATION OF COMELEC RESOLUTION NO. 8714.

II

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT AFFIRMED THE JUDGMENT OF THE HONORABLE COURT *A QUO* IN RULING IN FAVOR OF ADMISSION OF EVIDENCE PRESENTED AGAINST THE PETITIONER DESPITE BEING INADMISSIBLE UNDER THE LAW; *id.* at 129.

of the prosecution witnesses, especially, when the witnesses were not actuated by ill motive.[15]

Ruling of the Court

The petition is bereft of merit.

At the outset, Arturo questions the legality of his warrantless arrest to dispel the jurisdiction of the court over his person. Notably, Arturo entered his plea during arraignment and actively participated in the trial.[16] He did not move to quash the information on the ground of the illegality of his arrest. Consequently, the trial court obtained jurisdiction over him, and any supposed defect in his arrest was deemed waived.[17] It is then too late for Arturo to question the legality of his warrantless arrest at this point. The Court has consistently held that any objection by an accused to an arrest without a warrant must be made before he enters his plea, otherwise, the objection is deemed waived.[18] An accused may be estopped from assailing the illegality of his arrest if he fails to challenge the information against him before his arraignment.[19] And, since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court.[20]

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[15] *Id.* at 153-155.

[16] *Lapi y Mahipus v. People*, G.R. No. 210731, February 13, 2019, citing *People v. Alunday*, 586 Phil. 120 (2008); *People v. Tidula*, 354 Phil. 609, 624 (1998); *People v. Montilla*, 349 Phil. 640, 661 (1998); *People v. Cabiles*, 348 Phil. 220 (1998); *People v. Mahusay*, 346 Phil. 762, 769 (1997); *People v. Rivera*, 315 Phil. 454, 465 (1995); *People v. Lopez, Jr.*, 315 Phil. 59, 71-72 (1995); *People v. Hernandez*, 347 Phil. 56, 74-75 (1997); *People v. Navarro*, 357 Phil. 1010, 1032-1033 (1998).

[17] *Dolera v. People*, 614 Phil. 655, 666 (2009), citing *People v. Timon* 346 Phil. 572 (1997); *People v. Nazareno, supra*.

[18] *People v. Vallejo*, 461 Phil. 672, 686 (2003), citing *People v. Ereño*, 383 Phil. 1 (2000), citing *People v. Lopez, Jr.*, 315 Phil. 59 (1995); *People v. Montilla*, 349 Phil. 640 (1998); *People v. Tidula*, 354 Phil. 609 (1998).

[19] *Id.*, citing *People v. Hernandez*, 347 Phil. 56 (1997).

[20] *Id.*, citing *People v. Nazareno*, 329 Phil. 16 (1996).

The checkpoint conducted by the Malay Police Officers was valid.

The checkpoint conducted by the Malay Police was pursuant to the gun ban enforced by the COMELEC. Checkpoints, which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists, are allowed since the COMELEC would be hard put to implement the ban if its deputized agents are limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during election period, would know that they only need a car to be able to easily perpetrate their malicious designs.[21] Specifically for the inspection of passenger buses, *Saluday v. People*[22] is instructive, thus:

> [I]n the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and [luggage] can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and [luggage] for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.
>
> **While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First,* upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects**. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because

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[21] *Abenes v. Court of Appeals*, 544 Phil. 614, 628 (2007).

[22] G.R. No. 215305, April 3, 2018, 860 SCRA 231.

unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third,* **a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.**

In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.

Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a reasonable search. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2. Article III of the Constitution.[23] (Emphases supplied.)

In this case, the checkpoint was conducted on the Ceres passenger bus on February 11, 2010, within the election period,

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[23] *Id.* at 255-257.

that is 120 days before the election and 30 days after the May 10, 2010 elections, or from January 9 to June 9, 2010.

The evidence against the petitioner was caught in plain view and is admissible.

During the conduct of the checkpoint, PSI Tarazona saw in plain view a firearm protruding from Arturo's belt bag. Under the plain view doctrine, objects falling in the plain view of an officer who has the right to be in the position to have the view are subject to seizure and may be presented in evidence.[24] The doctrine requires that: (a) the law enforcement officer in search of the evidence has prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (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.[25] These requisites are present in this case. The police officers of the Malay Police Station, after receiving a report that a person was in possession of a gun, conducted a checkpoint in coordination with the municipal election officer. Upon contact with the subject Ceres bus, the police asked permission from the driver to board the bus. On board the bus, PSI Tarazona came across the firearm, when in plain view, he saw the firearm protruding from Arturo's half open belt bag. Thus, the police officers had the duty to arrest him and confiscate the contraband in his possession. At the time of the arrest, Arturo was committing an offense by being in possession of a firearm during an election gun ban.

The petitioner was validly charged with illegal possession of firearm during a gun ban.

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[24] *Supra* note 21.

[25] *Id.* at 629.

Under Section 261 (q) of BP Blg. 881,[26] any person, even if holding a permit to carry firearms, is prohibited to carry firearms or other deadly weapons outside his residence or place of business during an election period, unless authorized in writing by the COMELEC. Sections 32 and 33 of Republic Act (RA) No. 7166, which amended BP Blg. 881, clarified who may bear firearms and who may avail of or engage the services of security personnel and bodyguards, to wit:

SECTION 32. *Who May Bear Firearms*. — During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

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[26] ARTICLE XXII— *Election Offenses*, Section 261. *Prohibited Acts*.— The following shall be guilty of an election offense:

x x x x x x x x x

(q) *Carrying firearms outside residence or place of business*. — Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided*, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof. (*Par. (1), Id.*)

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

SECTION 33. *Security Personnel and Bodyguards*. — During the election period, no candidate for public office, including incumbent public officers seeking election to any public office, shall employ, avail himself of or engage the services of security personnel or bodyguards, whether or not such bodyguards are regular members or officers of the Philippine National Police, the Armed Forces of the Philippines or other law enforcement agency of the Government: *Provided*, That, when circumstances warrant, including but not limited to threats to life and security of a candidate, he may be assigned by the Commission, upon due application, regular members of the Philippine National Police, the Armed Forces of the Philippines or other law enforcement agency who shall provide him security for the duration of the election period. The officers assigned for security duty to a candidate shall be subject to the same requirement as to wearing of uniforms prescribed in the immediately preceding section unless exempted in writing by the Commission.

If at any time during the election period, the ground for which the authority to engage the services of security personnel has been granted shall cease to exist or for any other valid cause, the Commission shall revoke the said authority.

To implement these laws, the COMELEC — being the constitutional body possessing special knowledge and expertise on election matters and with the objective of ensuring the holding of free, orderly, honest, peaceful, and credible elections — was granted the power to issue implementing rules and regulations.[27] Accordingly, COMELEC Resolution No. 8714 was promulgated setting forth the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," in connection with the conduct of the May 10, 2010 national and local elections,[28] *viz*.:

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[27] RA No. 7166, Section 35, which provides:

Rules and Regulations. — The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

[28] *Atty. Orceo v. Commission on Elections*, 630 Phil. 670 (2010), as cited in *Philippine Association of Detective and Protective Agency Operations (PADPAO), Region 7 Chapter, Inc. v. COMELEC, et al.*, G.R. No. 223505, 819 Phil. 204, 226-229 (2017).

SEC. 4. *Who May Bear Firearms*. — Only the following persons who are in the regular plantilla of the PNP or AFP or other law enforcement agencies are authorized to bear, carry or transport firearms or other deadly weapons during the election period:

(a) Regular member or officer of the PNP, the AFP and other law enforcement agencies of the Government, provided that when in the possession of firearm, he is: (1) in the regular plantilla of the said agencies and is receiving regular compensation for the services rendered in said agencies; and (2) in the agency-prescribed uniform showing clearly and legibly his name, rank and serial number or, in case rank and serial number are inapplicable, his agency-issued identification card showing clearly his name and position, which identification card shall remain visible at all times; (3) duly licensed to possess firearm and to carry the same outside of residence by means of a valid mission order or letter order; and (4) in the actual performance of official law enforcement duty, or in going to or returning from his residence/barracks or official station.

Other law enforcement agencies of the government shall refer to:

1. Guards of the National Bureau of Prisons, Provincial, and City Jails;
2. Members of the Bureau of Jail Management and Penology;
3. Members of the Custom Enforcement and Security and Customs Intelligence and Investigation Service of the Bureau of Customs;
4. Port Police Department, Philippine Port Authority;
5. Philippine Economic Zone Authority Police Force;
6. Government guard forces;
7. Law Enforcement Agents and Investigation Agents of the Bureau of Immigration;
8. Members of the Manila International Airport Authority (MIAA); Police Force;
9. Members of the Mactan-Cebu International Airport Authority (MCIAA) Police Force;

10. Personnel of the Law Enforcement Service of the Land Transportation Office (LTO);
11. Members of the Philippine Coast Guard, Department of Transportation and Communication;
12. Members of the Cebu Port Authority (CPA) Police Force;
13. Agents of ISOG of the Witness Protection Program;
14. Members of the Videogram Regulatory Board performing law enforcement functions;
15. Members of the Security Investigation and Transport Department (SITD), Cash Department (CD), including members of the Office of Special Investigation (OSI), Branch Operations and Department of General Services of the Bangko Sentral ng Pilipinas;
16. Personnel of the Office of the Sergeant-At-Arms (OSAA) of the Senate or the House of Representatives and the OSAA-certified designated senators/ congressmen's security escorts;
17. Postal Inspectors, Investigators, Intelligence Officers and Members of the Inspection Service of the Philippine Postal Corporation;
18. Election Officers, Provincial Election Supervisors, Regional Attorneys, Assistant Regional Election Directors, Regional Election Directors, Directors III and IV, Lawyers in the Main Office of the Commission on Elections and the Members of the Commission;
19. Members of the Law Enforcement Section of the Bureau of Fisheries and Aquatic Resources;
20. Members of the Tourist Security Division of the Department of Tourism;
21. Personnel of the Intelligence Division of the Central Management Information Office, Department of Finance;
22. Personnel of the Inspection and Monitoring Service of the National Police Commission;

23. Personnel of the Special Action and Investigation Division, Forest Officers defined under PD 705 and Department of Environment and Natural Resources (DENR) DAO No. 1997-32, Forest/Park Rangers, Wildlife Officers and all forest protection and law-enforcement officers of the DENR;

24. Personnel of the intelligence and Security, Office of the Secretary, Department of Foreign Affairs;

25. Personnel of the Philippine Drug Enforcement Agency;

26. Personnel of the Philippine Center for Transnational Crime (PCTC);

27. Personnel of the National Intelligence Coordinating Agency;

28. Personnel of the National Bureau of Investigation;

29. Personnel of the Presidential Anti-Smuggling Group (PASG); and

30. Field officers of the Fertilizer and Pesticide Authority, Department of Agriculture.

(b) Member of privately owned or operated security, investigative, protective or intelligence agencies duly authorized by the PNP, provided that when in the possession of firearm, he is: (1) in the agency-prescribed uniform with his agency-issued identification card prominently displayed and visible at all times, showing clearly his name and position; and (2) in the actual performance of duty at his specified place/area of duty.

The heads of other law enforcement agencies and Protective Agents of Private Detective Agencies enumerated above shall, not later than 29 December 2009, submit a colored 4" x 5" picture, with description, of the authorized uniform of the office, to the Committee on the Ban on Firearms and Security Personnel (CBFSP) herein established.[29]

Arturo, however, insists that he was deprived of his right to be apprised of the accusations against him since the information categorized his offense as a violation of COMELEC Resolution

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[29] *Id.* at 681.

No. 8714, which is not a penal law. A perusal of the information, however, reveals that Arturo was charged with the election offense of carrying a firearm during an election gun ban. This is clear from the allegations in the information, which reads:

> That on or about the 11th day of February, 2010, in the morning, on board of (*sic*) Ceres Bus, at Prado St., Poblacion. Municipality of Malay, province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **within the election period, without authority of law nor the requisite exemption from the Committee on Firearms** did then and there willfully, unlawfully and feloniously have, **possess and carry one (1) COLT M1911A1 Caliber pistol, Serial Number 604182, three (3) pistol magazines and Fifteen (15) live ammunition of Caliber 45 pistol**, which firearm and ammunitions were confiscated from the custody and control of the accused by the police authorities of Malay, Aklan.
>
> CONTRARY TO LAW.[30] (Emphasis supplied.)

Verily, Arturo was accused of violating COMELEC Resolution No. 8714. The charge against him is in relation to BP Blg. 881 and the amendatory law, RA No. 7166. It is well-settled that it is the recital of facts of the commission of the offense in the information, not the nomenclature of the offense that determines the crime charged against the accused. The designation of the offense, given by the prosecutor, is merely an opinion and not binding on the court.[31] Differently stated, the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the factual allegations in the complaint or information.[32] The facts pleaded in the information constitute the offense of carrying firearms outside residence or place of business under Section 261 (q) of BP Blg. 881. Thus, Arturo

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[30] *Rollo*, pp. 49-50.

[31] *Pielago v. People*, 706 Phil. 460, 469 (2013), citing *Malto v. People*, 560 Phil. 119 (2007); *People v. Ramos, Sr.*, 702 Phil. 672 (2013).

[32] *Id.*

was duly apprised of the charge against him; there is no violation of his constitutional right to be informed of the nature of the accusation against him.

The petitioner is liable for illegal possession of firearm during a gun ban.

The prosecution was able to establish the elements of the crime — the existence of a firearm, and the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same.[33] The burden to adduce evidence that the accused is exempt from the COMELEC Gun Ban lies with the accused.[34] We reiterate that, Arturo was arrested in a public place, on board a passenger bus *en route* to Caticlan on February 11, 2010, within the election period for the 2010 national and local elections. He was positively identified by prosecution witness PSI Tarazona as the person from whom a loaded caliber .45 pistol, and two magazines with live ammunition were seized. Arturo failed to show a COMELEC-issued authority to carry the confiscated items.

Given the overwhelming evidence of the prosecution, Arturo counters only with the defense of denial; thus, his self-serving assertions, unsupported by any plausible proof, cannot prevail over the positive testimonies of the prosecution witnesses.[35] The defense of denial is inherently weak because it can easily be fabricated.[36] Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies.[37] All told, we affirm the conviction of petitioner Arturo Sullano y Santia for violation of BP Blg. 881, or the Omnibus Election Code of the Philippines.

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[33] *Supra* note 21 at 630.

[34] *Supra* note 21.

[35] See *People v. Soriano*, 549 Phil. 250 (2007).

[36] *People v. Gaborne*, G.R. No. 210710, July 27, 2016, 798 SCRA 657.

[37] *Supra* note 18 at 694.

FOR THESE REASONS, the petition for review on *certiorari* is **DENIED**. The Decision dated November 17, 2016 and Resolution dated April 28, 2017 of the Court of Appeals in CA-G.R. CEB-CR No. 02424, finding Arturo S. Sullano guilty beyond reasonable doubt for violating the Omnibus Election Code or the Batas Pambansa Bilang 881, as amended by Republic Act No. 7166, in relation to Commission on Elections Resolution No. 8714, are **AFFIRMED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

FIRST DIVISION

[G.R. No. 232677. June 8, 2020]

MENANDRO A. SOSMEÑA, *petitioner, vs.* **BENIGNO M. BONAFE, JIMMY A. ESCOBAR, JOEL M. GOMEZ, and HECTOR B. PANGILINAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHALL RAISE ONLY QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — For purposes of resolving this petition for review on *certiorari*, we have to be mindful of the facts established below. This is because under Section 1, Rule 45, petitions of this kind shall raise only questions of law. The factual findings are binding upon us and only questions of law, and only from the Court of Appeals' disposition, may be litigated once again. The Court is not obliged to weigh the evidence once again. While jurisprudence has laid down

exceptions to this rule, any of these exceptions must be alleged, substantiated, and proved by the parties so the Court may in its discretion evaluate and review the facts of the case. Here, petitioner does not invoke any of the exceptions. We therefore resolve this petition in accordance with the general rule. x x x There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. The answer to the issue is a conclusion of law, that is, a legal inference made as a result of a factual showing where no further evidence is required.

2. ID.; ID.; CIVIL ACTIONS; RECOVERY OF DAMAGES FOR MALICIOUS PROSECUTION; ELEMENTS; MALICIOUS PROSECUTION DOES NOT ONLY PERTAIN TO CRIMINAL PROSECUTIONS BUT ALSO TO ANY OTHER LEGAL PROCEEDING SUCH AS A PRELIMINARY INVESTIGATION. — *Magbanua v. Junsay* explains the cause of action of malicious prosecution: In this jurisdiction, the term "malicious prosecution" has been defined as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein." While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause. x x x This Court has drawn **the four elements** that must be shown to concur to recover damages for **malicious prosecution.** Therefore, **for a malicious prosecution suit to prosper, the plaintiff must prove the following: (1) the prosecution did occur, and the defendant was himself the prosecutor or that he instigated its commencement; (2) the criminal action finally ended with an acquittal; (3) in bringing the action, the prosecutor acted without probable cause; and (4) the prosecution was impelled by legal malice — an improper or a sinister motive.** The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the **knowledge that the charges were false and groundless**. Malicious prosecution does not only pertain to criminal

prosecutions but also to any other legal proceeding such as a preliminary investigation.

3. ID.; ID.; ID.; ID.; ID.; MALICE; ESTABLISHED WHEN THERE IS DELIBERATE INITIATION AND KNOWLEDGE OF FALSITY OR GROUNDLESSNESS OF THE CHARGES AND THE BURDEN IS UPON THE PLAINTIFF TO PROVE MALICE UPON THE STANDARD OF PROOF OF PREPONDERANCE OF EVIDENCE. — [T]here is malice where a criminal complaint was initiated deliberately by a complainant knowing that his charges were false and groundless. So there must be deliberate initiation and knowledge of falsity or groundlessness of the charges. Concededly, x x x the mere act of submitting a case to the authorities for prosecution whether upon the correct or wrong provision of law does not make one liable for malicious prosecution. The burden is upon respondents to prove malice upon the standard of proof of preponderance of evidence x x x. The trial court and the Court of Appeals ruled that respondents have discharged their burden of proof. This Court agrees. x x x The common denominator of the facts, as the trial court and the Court of Appeals ruled, is petitioner's ill will and bad blood towards respondents. That he was probably motivated by ill will and bad blood to complain against them is established. Petitioner delayed in initiating the criminal complaints at the Office of the City Prosecutor and challenging the investigating prosecutor's findings. The delay probably points to petitioner's lack of genuine complaints against respondents — otherwise he would not have delayed and would have had acted promptly as any reasonable person would have expectedly done. Both the trial court and the Court of Appeals found petitioner's evidence purportedly to establish probable cause for malicious mischief and theft to be contrived and lacking in credibility. We cannot weigh again the evidence; we are bound by the trial court and the Court of Appeals' weighing thereof. To any reasonable person, such assessments are more likely than not true and reliable. x x x [I]n all probability, petitioner was motivated by ill will and bad blood against respondents in the initiation of the criminal complaints at the Office of the City Prosecutor. More likely than not, he had no legitimate grievances that had spurred him to so act. Finally, his evidence probably does not confirm probable cause for the crimes he ascribed to respondents. These legal conclusions flow more

likely than not from the facts validated by the investigating prosecutor, the trial court, and the Court of Appeals.

APPEARANCES OF COUNSEL

Benito C. Torralba for petitioner.
Public Attorney's Office for respondent B. Bonafe.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review assails the Decision[1] dated June 30, 2017 of the Court of Appeals in CA-G.R. CV No. 104210 entitled *"Benigno M. Bonafe, et al. v. Menandro A. Sosmeña,"* affirming the Decision dated April 22, 2014 of the Regional Trial Court, Branch 22, Manila, in Civil Case No. 02-104536 ordering petitioner Menandro Sosmeña to pay respondents Benigno Bonafe, Jimmy Escobar, Joel Gomez and Hector Pangilinan ₱200,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱25,000.00 as attorney's fees, for malicious prosecution.

Proceedings before the Trial Court

Respondents sued[2] petitioner for malicious prosecution seeking the payment of damages.

The facts established after trial are as follows:

Petitioner is the managing director of Expo Logistics Philippines, Inc. ("Expo Logistics"), a freight forwarding company doing business in the Philippines. It is the local partner of Plettac Roeder Asia Pte Ltd. ("Plettac"), a Singaporean company

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[1] Penned by Associate Justice Samuel H. Gaerlan (now a member of this Court) with the concurrence of Associate Justices Normandie B. Pizarro and Jhosep Y. Lopez, all members of the Twelfth Division, *rollo*, pp. 27-28.

[2] Complaint dated August 28, 2002, *rollo*, pp. 60-64.

engaged in providing pavilion hall tents for holding exhibitions and other events in the Philippines.[3]

Respondent Benigno Bonafe ("Benigno") was engaged by petitioner as Air Conditioning Assistant sometime in January 2001. His services were required for installing and maintaining air conditioning units for the pavilion hall tents provided by Expo Logistics and Plettac.

Respondents Jimmy Escobar ("Jimmy") and Joel Gomez ("Joel") were hired as petitioner's assistants and respondent Hector Pangilinan ("Hector") was the lead carpenter, all at Expo Logistics. Pangilinan resigned in April 2001.[4]

Respondents lived in the same area and were almost always together at work. They developed a camaraderie that made them close to each other.

Meantime, petitioner's foreign business partner, a certain Abdul Majid Sattar ("Abdul"), became suspicious of petitioner. Abdul thought that petitioner had been erecting tent pavilion halls in local markets without reporting the transactions to him. Abdul approached Benigno and asked him to spy for him against petitioner. Benigno agreed and accepted Abdul's proposal.[5]

Not long after, petitioner discovered that he was being surveilled by Benigno. They had a falling out. The relationship between petitioner and Jimmy and Joel also got strained. Petitioner maneuvered to ruin Benigno's efficiency and camaraderie with Jimmy and Joel. Petitioner blamed Benigno for problems arising at the work place.[6]

Benigno resigned from Expo Logistics in September 2001. He felt that his working conditions had become hostile. Jimmy and Joel followed suit in October 2001.

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[3] *Id*. at 60-61.

[4] *Id*.

[5] *Id*.

[6] *Id*.

On February 4, 2002, petitioner filed criminal cases against Benigno, Jimmy, Joel and Hector with the Office of the City Prosecutor in Pasay City. He accused them of conspiring with one another to commit malicious mischief when they allegedly cut-off the cable wires of five (5) air conditioning units in the evening of October 8, 2001, and thereafter, deliberately concealing them to damage petitioner's business to the tune of ₱30 million, which however did not happen as the cables were located in time for the event. These air-conditioning units were installed at a tent pavilion hall for an exhibit by the Philippine government.

Petitioner also charged Benigno separately for allegedly absconding with ₱29,000.00 cash, and Jimmy and Joel with theft of materials of an undetermined value and ₱2,000.00 cash.[7]

On May 10, 2002, 3rd Assistant City Prosecutor Manuel Ortega dismissed the complaints for insufficiency of evidence. He also concluded that the charges were motivated by petitioner's grudge with each of respondents and that he filed the complaints just to prejudice them.[8]

In their civil complaint for malicious prosecution, respondents claimed that petitioner's initiation of the criminal complaints caused them to suffer damages as they were forced to hire lawyers and plead with a witness to testify on their behalf. They allegedly suffered anguish, mental torture and public ridicule. For one, Benigno received the subpoena at his work place which led his employer to halt his employment so he could attend to the complaints against him. He demanded ₱400,000.00 as moral damages. Respondents also assailed petitioner for violating Article 19 of the Civil Code,[9] and demanded that he pay

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[7] *Id*. at 62.

[8] *Id*.

[9] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

exemplary damages of not less than ₱100,000.00 and ₱100,000.00 as attorney's fees.[10]

Petitioner defended himself by claiming good faith when he filed the criminal complaints against respondents.[11] He said he did not appeal the dismissal of the criminal complaints as he was then busy with his business engagements. He prayed for attorney's fees against respondents.

Ruling of the Trial Court

In its assailed Decision,[12] the trial court found petitioner to have violated Article 19 of the Civil Code and awarded respondents moral damages, exemplary damages, and attorney's fees. It ruled:

> **The plaintiffs, on the other hand, were able to establish that it could not have been possible for them to commit the imputed crimes, both during the investigation by the Prosecutor and during the trial of this case**. No hint of inconsistency was ever found in their statements and testimonies. They have been consistent in their respective stories to the letter. **This only leads to one conclusion, that is, that they are telling the truth.**
>
> Defendant, and his witnesses, presented testimonies which are contrary to each other. Defendant Sosmeña testified that the Plaintiffs are the employees of Plettac Roeder, not Expo Logistics, while Majid Sattar testified that the Plaintiffs are employees of Defendant in Expo Logistics. The Defendant testified that he was frustrated with the recommendation of the police as to the crime that can be charged, yet **it took him almost four months to file the cases against Plaintiffs with additional charges at that.** He also testified that **he knew that Resolutions of dismissal by the Prosecutors are not final and that it may be re-filed at another time**, as one of the reasons, for failure to take recourse against the adverse Resolution, the other being that he was too busy to take care of it. **Yet, to date, no such re-filing was ever made by the said Defendant against the Plaintiffs**. The

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[10] *Rollo*, pp. 63-64.

[11] Answer with Counterclaim dated November 12, 2002, *id*. at 66-69.

[12] Penned by Judge Marino M. dela Cruz, Jr., *id*. at 34-59.

inconsistencies found in the different testimonies, if considered individually, are unsubstantial, but taken collectively show a pattern, that is of lies and fabrication. Fact is **he had his opportunity to prove his charges against the Plaintiffs with the Pasay Prosecutor's Office, but he blew it there**. Now he is trying to prove those very same charges in the present case. His explanation that the case was tried long after the occurrence of the incident because he was too busy at that time is simply unacceptable. He also used this excuse in failing to file a reply or even to re-file the case as he allegedly intended to do. He even alleged that **he consulted a lawyer prior to filing the case against the Plaintiffs, yet he did not make it credible enough to provide the name of the lawyer whom he consulted.**

The Court finds from the evidence that indeed, malice attended the filing of the criminal case against the Plaintiffs. This constitutes a violation of one of the most basic precepts of civil law. Article 19 of the Civil Code provides that "Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith." It was also said that the "Statutory basis for an action for moral damages, due to malicious prosecution can be found in Articles 19, 2176 and 2219 of the Civil Code" **Madera vs. Heirs of Salvador Lopez*, G.R. No. 37105, February 10, 1981). Indeed, the malicious prosecution gives right to an action for moral damages, herein Plaintiffs having established that the filing of the case was attended by bad faith on the part of the Defendant. Since the Plaintiffs were able to establish that they are entitled to Moral Damages, Article 2234 justifies the award of exemplary damages. The award of attorney's fees is also proper under the circumstances pursuant to Article 2208 (1) tempered pursuant to the principle of *quantum meruit*.[13] (Emphasis supplied)

The dispositive portion of the trial court's Decision read:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant ordering the latter to pay:
>
> 1. Moral Damages in the amount of TWO HUNDRED THOUSAND PESOS (₱200,000.00);
>
> 2. Exemplary damages in the amount of FIFTY THOUSAND PESOS (₱50,000.00);

[13] *Id*. at 56-59.

3. Attorney's Fees in the amount of TWENTY-FIVE THOUSAND PESOS (₱25,000.00).

SO ORDERED.[14]

Proceedings before the Court of Appeals

On appeal, petitioner argued he could not be guilty of malicious prosecution because the element that *"the criminal action ended in plaintiff's acquittal"* is missing. Since the criminal complaints were dismissed during the preliminary investigation stage, there was no acquittal to speak of. He argued that the mere act of submitting a criminal complaint to the authorities does not make a person automatically liable for malicious prosecution. Resort to judicial processes is not itself evidence of ill will.[15] He insisted that there was probable cause for malicious mischief and theft against respondents.

Benigno countered that all the elements of malicious prosecution were present. Petitioner had instigated a criminal complaint against respondents. The subsequent dismissal of the complaints sufficiently satisfied the element of "*the criminal action ended in plaintiff's acquittal*." He echoed the prosecutor's finding of absence of probable cause for malicious mischief and theft. He stressed that petitioner had been prompted by a sinister design to vex and humiliate him and the other respondents.[16]

The Court of Appeals dismissed the appeal and affirmed the assailed trial court Decision. The Court of Appeals Decision held that there was sufficient evidence to show that petitioner was motivated by malice in initiating the complaints below against respondents, thus:

There is no question that the resolution of the case hinges on the question of whether Menandro is guilty of malice and bad faith in instituting the malicious mischief case, if it is not so, then there

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[14] *Id*. at 58-59.

[15] *Id*. at 96-111.

[16] *Id*. at 114-123.

is no ground to hold it liable for malicious prosecution. It is evident in this case that bad faith attended the filing of the malicious mischief case against the plaintiffs. **Jesus Limbo, the security guard in charge of the [of] PTC Grounds who was presented by Menandro as witness, attested that the alleged incident that led to Menandro's filing of malicious mischief case indeed took place and the plaintiffs were in fact the ones responsible for the acts. Suspiciously, however, the disturbance was not recorded in the Security Guard's Log Book raising doubt on the credibility of the witness**.

What **further militates against the claim of Menandro** that his action was not motivated by sinister design to vex plaintiffs, but only by a well-founded anxiety to protect his rights, was the uncontroverted fact that **it took him three months before initiating the action. If in fact the acts committed by plaintiffs, if not timely averted, would have caused damage to the company amounting to millions of pesos, logic dictates that Menandro, as the Managing Director, would have lost no time in prosecuting the action** to vindicate its rights and to prevent similar occurrence in the future. Unfortunately, however, he dragged the filing of the case which was suggestive of the existence of legal malice.[17] (Emphasis supplied)

The Present Petition

Petitioner now invokes this Court's discretionary review jurisdiction to reverse and set aside the Court of Appeals' dispositions. He reiterates his arguments that he is not guilty of malicious prosecution because there was probable cause that respondents committed the crime of malicious mischief and Benigno perpetrated theft, and he was not motivated by malice or bad faith when he initiated the criminal complaints against respondents.[18]

Benigno ripostes that petitioner was unable to establish probable cause to support the charge of malicious mischief and theft against him and the other respondents. The Court of Appeals' assessment of credibility of the witnesses should be

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[17] *Id*. at 31-32.

[18] *Id*. at 10-23.

respected and its factual findings should be affirmed as they are supported by the trial record.[19]

Issue

Upon the facts established in the case at bar, did petitioner act without probable cause and was he motivated by malice and bad faith in initiating the criminal complaints against respondents, and therefore, is guilty of malicious prosecution?

Ruling

For purposes of resolving this petition for review on *certiorari*, we have to be mindful of the facts established below. This is because under Section 1, Rule 45, petitions of this kind shall raise only questions of law.[20] The factual findings are binding upon us and only questions of law, and only from the Court of Appeals' disposition,[21] may be litigated once again.[22] The Court is not obliged to weigh the evidence once again.[23] While jurisprudence has laid down exceptions to this rule, any of these exceptions must be alleged, substantiated, and proved by the parties so the Court may in its discretion evaluate and review the facts of the case.[24]

Here, petitioner does not invoke any of the exceptions. We therefore resolve this petition in accordance with the general rule.

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[19] *Id*. at 175-183.

[20] See *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

[21] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017.

[22] *Supra* note 20.

[23] *Supra* note 20: "Only questions of law may be raised in a petition for review on *certiorari*. The factual findings of the Court of Appeals 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 Court of Appeals."

[24] *Id*.

The investigating prosecutor, the trial court, and the Court of Appeals have similarly arrived at the following facts:

1. Petitioner always blamed Benigno for the crash of air conditioners at the tent pavilions after petitioner had found out that Benigno was spying against petitioner on behalf of Abdul.
2. Benigno was eventually forced to resign from Expo Logistics in September 2001.
3. Petitioner's nephew once berated Hector and his co-workers for stopping work when it was raining. Hector and his co-workers went home and never reported back for work.
4. Petitioner called Jimmy's attention about his and his co-workers' slow work, which came to a head on October 7, 2001 when he cursed them. He and his co-workers refused to return to work thereafter
5. Petitioner threatened to have respondents arrested;
6. Joel corroborated the occurrence of the foregoing events.
7. Respondents memorialized petitioner's harsh treatment of them in their respective affidavits.
8. Petitioner took four months to file the criminal complaints for malicious mischief and theft against respondents.[25]

The Office of the City Prosecutor found no probable cause to indict respondents for malicious mischief and theft because petitioner was only motivated by ill will in filing the criminal complaints against them. The trial court and the Court of Appeals shared this assessment of petitioner's evidence and further rejected his evidence for lacking credibility.

The foregoing factual findings are binding upon the Court. We cannot weigh the evidence again but must use the established

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[25] *Rollo*, pp. 37-41.

facts to resolve the issue posed above and determine if the Court of Appeals erred in its dispositions.

Notably, the issue presented before the Court is a question of law — what are the legal consequences of the facts above-mentioned? There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. The answer to the issue is a conclusion of law, that is, a legal inference made as a result of a factual showing where no further evidence is required.

Magbanua v. Junsay[26] explains the cause of action of malicious prosecution:

> In this jurisdiction, the term "malicious prosecution" has been defined as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein." While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause.
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> This Court, in *Drilon v. Court of Appeals*, elucidated, *viz.*:
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> > The term malicious prosecution has been defined in various ways. In American jurisdiction, it is defined as:
> >
> > "One begun in malice without probable cause to believe the charges can be sustained (*Eustace v. Dechter*, 28 Cal. App. 2d. 706, 83 P. 2d. 525). Instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted. For this injury an action on the case lies, called the action of malicious prosecution (*Hicks v. Brantley*, 29 S.E. 459, 102 Ga. 264; *Eggett v. Allen*, 96 N.W. 803, 119 Wis. 625)."

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[26] 544 Phil. 349, 364 (2007).

In Philippine jurisdiction, it has been defined as:

> "An action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. The gist of the action is the putting of legal process in force, regularly, for the mere purpose of vexation or injury (*Cabasaan v. Anota*, 14169-R, November 19, 1956)."
>
> The statutory basis for a civil action for damages for malicious prosecution are found in the provisions of the New Civil Code on Human Relations and on damages particularly Articles 19, 20, 21 , 26, 29, 32, 33, 35, 2217 and 2219 (8). To constitute malicious prosecution, however, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.

This Court has drawn **the four elements** that must be shown to concur to recover damages for **malicious prosecution**. Therefore, **for a malicious prosecution suit to prosper, the plaintiff must prove the following: (1) the prosecution did occur, and the defendant was himself the prosecutor or that he instigated its commencement; (2) the criminal action finally ended with an acquittal; (3) in bringing the action, the prosecutor acted without probable cause; and (4) the prosecution was impelled by legal malice -- an improper or a sinister motive**. The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the **knowledge that the charges were false and groundless**.(Emphasis supplied)

Malicious prosecution does not only pertain to criminal prosecutions but also to any other legal proceeding such as a preliminary investigation.[27]

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[27] *Yasoña v. De Ramos*, 483 Phil. 162, 168 (2004): "The principal question to be resolved is whether the filing of the criminal complaint for

Here, there should be no question that the first two elements of this cause of action are present with necessary modifications: (1) the preliminary investigation did occur, and petitioner himself instigated its commencement; (2) the preliminary investigation finally ended with a dismissal of the complaints.

The issues are whether the last two elements are present: in bringing the action, petitioner acted without probable cause, and petitioner was impelled by legal malice, an improper or a sinister motive in bringing the criminal complaints.

As above-quoted, there is malice where a criminal complaint was initiated deliberately by a complainant knowing that his charges were false and groundless. So there must be deliberate initiation and knowledge of falsity or groundlessness of the charges. Concededly, as stated above, the mere act of submitting a case to the authorities for prosecution whether upon the correct or wrong provision of law does not make one liable for malicious prosecution.

The burden is upon respondents to prove malice upon the standard of proof of preponderance of evidence[28] — is it more

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estafa by petitioners against respondents constituted malicious prosecution. In this jurisdiction, the term 'malicious prosecution' has been defined as 'an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein.' To constitute 'malicious prosecution,' there must be proof that the prosecution was prompted by a sinister design to vex or humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution."

[28] Rule 133, Section 1. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest

likely than not or probably true that petitioner knew that his charges against respondents were false and groundless and yet deliberately initiated the criminal complaints against them at the Office of the City Prosecutor in Pasay City?

The trial court and the Court of Appeals ruled that respondents have discharged their burden of proof. This Court agrees. We examine the established facts one by one to show that the trial court and the Court of Appeals correctly deduced therefrom the last two elements of malicious prosecution.

The common denominator of the facts, as the trial court and the Court of Appeals ruled, is petitioner's ill will and bad blood towards respondents. That he was probably motivated by ill will and bad blood to complain against them is established.

Petitioner delayed in initiating the criminal complaints at the Office of the City Prosecutor and challenging the investigating prosecutor's findings. The delay probably points to petitioner's lack of genuine complaints against respondents — otherwise he would not have delayed and would have had acted promptly as any reasonable person would have expectedly done.

Both the trial court and the Court of Appeals found petitioner's evidence purportedly to establish probable cause for malicious mischief and theft to be contrived and lacking in credibility. We cannot weigh again the evidence; we are bound by the trial court and the Court of Appeals' weighing thereof. To any reasonable person, such assessments are more likely than not true and reliable.

To illustrate, petitioner's witness, a security guard, identified Benigno as the criminal only in his supplemental affidavit that was executed months after serving his first affidavit. The identification of Benigno is more likely than not an after-thought. Petitioner's witness did not even have any document

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or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

contemporaneous with his alleged discovery of the crime, such as an incident report, to prove that he had early on made such allegation against Benigno. More likely than not, his statement against Benigno was meant only to serve petitioner's interest.

To sum up, in all probability, petitioner was motivated by ill will and bad blood against respondents in the initiation of the criminal complaints at the Office of the City Prosecutor. More likely than not, he had no legitimate grievances that had spurred him to so act. Finally, his evidence probably does not confirm probable cause for the crimes he ascribed to respondents. These legal conclusions flow more likely than not from the facts validated by the investigating prosecutor, the trial court, and the Court of Appeals.

Finally, as to respondents' relief, we reduce the amounts awarded as damages pursuant to jurisprudence. In ***Meyr Enterprises Corporation v. Cordero***,[29] we awarded ₱50,000.00 as moral damages and ₱20,000.00 as attorney's fees; no exemplary damages was given. In ***Coca Cola Bottlers Philippines Inc. v. Roque***,[30] the Court granted ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱50,000.00 as attorney's fees and the costs of suit. In ***Spouses Kapoe v. Masa***,[31] we awarded an aggregate amount of ₱29,000.00 for 11 plaintiffs representing both moral and exemplary damages, ₱2,200.00 for exemplary damages for all of them, and ₱3,000.00 attorney's fees also for all the 11 plaintiffs. In ***Tiongco v. Deguma***,[32] we ruled:

> While we commiserate with the mental and emotional tribulations suffered by private respondents Atty. Deguma and Atty. Pagtanac as a result of TIONGCO's unfounded accusations, we find that the amount of moral and exemplary damages granted them, though not enriching, still excessive. Moral damages must be understood to be

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[29] 742 Phil. 320 (2014).

[30] 367 Phil. 493, 504 (1999).

[31] G.R. No. 50473, January 21, 1985.

[32] 375 Phil. 978, 994-995 (1999).

in concepts of grants which are not punitive or corrective in nature calculated to compensate the claimant for injury suffered. Exemplary damages, for their part, serve as deterrent against or as a negative incentive to curb socially deleterious actions. Both are in the category of an award designed to compensate claimants for actual injury and are not meant to enrich complainant at the expense of defendants. Further, in instances where no actual damages are adjudicated, the Supreme Court may reduce moral and exemplary damages.

Using these case law as guideline, the amount of ₱300,000 moral damages and ₱100,000 exemplary damages granted to Atty. Deguma should be reduced to ₱100,000 and ₱50,000, respectively. The award of ₱100,000 moral damages and ₱50,000 exemplary damages granted to Atty. Pagtanac should likewise be reduced to ₱50,000 and ₱10,000, respectively. We observe however, as equitable under the circumstances, the amounts of moral and exemplary damages granted to private respondents Major Carmelo and Yared.

We therefore reduce the amounts of damages awarded jointly to respondents. The award of moral damages is reduced to ₱30,000.00, exemplary damages to ₱20,000.00, and attorney's fees to ₱10,000.00.

ACCORDINGLY, the petition is **DENIED**. The Decision dated June 30, 2017 of the Court of Appeals in CA-G.R. CV No. 104210 and the Decision dated April 22, 2014 of the Regional Trial Court, Branch 22, Manila, in Civil Case No. 02-104536 are **AFFIRMED with MODIFICATION** as follows: Petitioner Menandro Sosmeña is **ordered to pay** each of respondents Benigno Bonafe, Jimmy Escobar, Joel Gomez and Hector Pangilinan **₱30,000.00 as moral damages, ₱20,000.00 as exemplary damages,** and **₱10,000.00 as attorney's fees**, for malicious prosecution.

All monetary awards are subject to six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 235483. June 8, 2020]

IN THE MATTER OF THE PETITION FOR WRIT OF *HABEAS CORPUS* OF BOY FRANCO *y* MANGAOANG, joined by his wife WILFREDA R. FRANCO, *petitioners, vs.* **THE DIRECTOR OF PRISONS or REPRESENTATIVES,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 10592 (AN ACT AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF THE REVISED PENAL CODE); PRIVILEGES OF A COLONIST; THE PRIVILEGE OF AN AUTOMATIC REDUCTION OF SENTENCE REQUIRES AN EXECUTIVE APPROVAL BEFORE SUCH KIND OF BENEFIT MAY BE ALLOWED BECAUSE THE PRESIDENT IS CONSTITUTIONALLY VESTED WITH THE EXCLUSIVE PREROGATIVE TO GRANT ACTS OF CLEMENCY AND THE REDUCTION OF A PRISONER'S SENTENCE IS A FORM OF PARTIAL PARDON. — Colonist is a prisoner who is: (1) at least a first class inmate; (2) has served one year immediately preceding the completion of the period specified in the x x x qualifications; and (3) has served imprisonment with good conduct for a period equivalent to one-fifth of the maximum term of his prison sentence, or seven years in the case of a life sentence. The classification of a prisoner as a colonist lies within the sound discretion of the Director of Prisons, upon recommendation of the Classification Board. Provided that the colonist retains his status as such, he is entitled to the x x x benefits x x x. Section 7(b) provides for the privilege of an automatic reduction of sentence. However, the word "automatic" does not imply that the reduction of sentence occurs as a natural consequence by the mere conferral of a "colonist" status. Act No. 2489 specifically requires an executive approval before such kind of benefit may be allowed x x x. In the case of *Tiu v. Dizon*, the Court expounded on such requirement, which is posterior to the act of classifying a prisoner as a colonist x x x. The indispensability of an executive

approval is further highlighted by the 1987 Constitution, expressly vesting upon the President the exclusive prerogative to grant acts of clemency. In *Tiu*, the Court elucidated that the reduction of a prisoner's sentence is a form of partial pardon, which entails the exercise of the President's constitutionally-vested authority. Contrary to petitioner's assertion, the Constitution requires the President to act on such matter *personally*; thus, he may not delegate the same in the guise of doctrine of qualified political agency. In this case, nowhere in the records does it show that the President signified his approval to the release of petitioner in view of his status as a colonist. Thus, at this point, there is no reason to allow the release of petitioner based on such ground.

2. ID.; ID.; ID.; THE TRIAL COURTS ARE COMPETENT TO ASCERTAIN BOTH FINDINGS OF FACT AND LAW SUCH AS THE ACTUAL LENGTH OF TIME THAT THE CONVICT HAS ACTUALLY BEEN IN CONFINEMENT AND THE CONSIDERATION OF TIME ALLOWANCE FOR GOOD CONDUCT IN DETERMINING THE PROPRIETY OF HIS IMMEDIATE RELEASE FROM CONFINEMENT ON ACCOUNT OF FULL SERVICE OF THE RECOMPUTED SENTENCE, AND MATTERS RELATING THERETO MUST BE REFERRED TO THE TRIAL COURTS AS THEY ARE RELATIVELY MORE EQUIPPED TO ACT ON SUCH MATTERS. — [P]etitioner's entitlement to the benefits of R.A. No. 10592, which has been given retroactive effect in the case of *Inmates of the New Bilibid Prison, Muntinlupa City*, must be examined in view of the attendant factual circumstances. Among the amendments introduced by R.A. No. 10592 are the increase in the number of days which may be credited for GCTA; expansion of the application of GCTA for prisoners even during preventive imprisonment; and deduction of 15 days for each month of study, teaching, or mentoring service. Section 3, Rule V and Section 1, Rule VIII of the Implementing Rules and Regulations of R.A. No. 10592 reposed upon the Director of Prisons, the Chief of the Bureau of Jail Management and Penology and the wardens the grant of allowances for good conduct to deserving prisoners, upon recommendation of the Management, Screening and Evaluation Committee. The Director, the Chief, or the warden may either approve or disapprove the recommendation or order the return of the same for correction. Relevantly, Sections 3

and 4, Rule V of the same law mandates the Bureau of Corrections to assess and compute the time allowance due to the prisoners x x x. In fact, Section 5, Rule V of said law requires the use of computer-generated template, capable of incorporating time allowances that may be granted to detainees and prisoners alike, to monitor their progress. Based on petitioner's Prison Records, it appears that he earned regular GCTA; time allowance for study, teaching and mentoring; and credit for preventive imprisonment under R.A. No. 6127. Moreover, based on respondent's Comment, petitioner's time served with GCTA in prison is 32 years, 10 months, and 7 days. However, these were all computed prior the promulgation of the *Inmates of the New Bilibid Prison, Muntinlupa City* case. The determination of the legality of petitioner's confinement based on R.A. No. 10592 necessitates the recomputation of the time allowances due for petitioner. In the case of *In Re: Correction/Adjustment of Penalty Pursuant to [R.A.] No. 10951, in relation to Hernan v. Sandiganbayan*, the Court recognized the competency of trial courts to ascertain both findings of fact and law such as the actual length of time that the convict has actually been in confinement and whether time allowance for good conduct in determining the propriety of his immediate release from confinement on account of full service of the recomputed sentence. Hence, matters relating thereto must be referred to the trial courts as they are relatively more equipped to act on such matters.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

R E S O L U T I O N

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

In this petition for the issuance of a writ of *habeas corpus* filed directly before the Court, Boy Franco *y* Mangaoang (petitioner), who is detained at the National Bilibid Prison, is seeking his immediate release from prison on the basis of the automatic reduction of his sentence in view of the colonist status

grant by the Director of Prisons and the retroactive application of Republic Act (R.A.) No. 10592.[1]

Petitioner was sentenced to suffer the penalty of *reclusion perpetua* following his conviction for the crime of kidnapping with ransom by the Regional Trial Court of Makati City, Branch 66.[2]

Petitioner alleged that he had been under detention since July 17, 1993[3] until his commitment to the National Bilibid Prison on October 12, 1995 to commence the service of his sentence.[4]

On April 21, 2009, petitioner was granted the status as a colonist.[5] Among the privileges granted upon a colonist are the automatic reduction of the life sentence imposed on the colonist to a sentence of 30 years and the credit of an additional Good Conduct Time Allowance (GCTA) of 10 days for each calendar month while retaining said classification.[6]

Allegedly, petitioner served 34 years, 11 months, and 18 days of his sentence of *reclusion perpetua*, as well as his credit for preventive imprisonment of eight years more or less. Thus, applying the privileges of a colonist and the ruling of the Court in *Cruz III v. Go*,[7] petitioner insists that he should be released from confinement.[8]

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[1] AN ACT AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE.

[2] *Rollo*, p. 11.

[3] *Id.* at 12.

[4] *Supra* note 2.

[5] *Id.* at 4.

[6] Bureau of Corrections Operating Manual, Book 1, Part II, Chapter 3, Sec. 7.

[7] G.R. No. 223446, November 28, 2016 (Minute Resolution).

[8] *Rollo*, p. 6.

In his Comment,[9] the Director of Prisons (respondent) counters that the application of the privileges of a colonist necessitates an executive approval under Section 5[10] of Act No. 2489 and Section 19, Article VII[11] of the 1987 Constitution. Verily, these laws provide that only the President can commute the service of sentences of convicted persons. Moreover, the respondent asserts that the ruling of the Court in *Cruz III* is not a binding precedent as it was not a decision, but a mere resolution.

Said Comment was adopted by the Office of the Solicitor General in its manifestation.[12]

In his Reply,[13] petitioner insists that the executive approval for the reduction of sentence of a colonist may be delegated by the President to his alter egos since the Act No. 2489 requires only an "Executive" approval, and not the approval of the "Chief Executive."

In his Manifestation, petitioner seeks the retroactive application of R.A. No. 10592 as discussed in the case of *Inmates of the New Bilibid Prison, Muntinlupa City v. Secretary De Lima*.[14]

The Court resolves.

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[9] *Id.* at 28-32.

[10] Sec. 5. Prisoners serving sentences of life imprisonment receiving and retaining the classification of penal colonists or trusties will automatically have the sentence of life imprisonment modified to a sentence of thirty years when receiving the executive approval for this classification upon which the regular credit now authorized by law and special credit authorized in the preceding paragraph, for good conduct, may be made.

[11] Sec. 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment.

[12] *Rollo*, pp. 19-21.

[13] *Id.* at 36-39.

[14] G.R. No. 212719, June 25, 2019.

Colonist is a prisoner who is: (1) at least a first class inmate;[15] (2) has served one year immediately preceding the completion of the period specified in the following qualifications; and (3) has served imprisonment with good conduct for a period equivalent to one-fifth of the maximum term of his prison sentence, or seven years in the case of a life sentence.[16]

The classification of a prisoner as a colonist lies within the sound discretion of the Director of Prisons, upon recommendation of the Classification Board.[17]

Provided that the colonist retains his status as such, he is entitled to the following benefits:

SEC. 7. *Privileges of a Colonist*. — A colonist shall have the following privileges:

a. credit of an additional GCTA of five (5) days for each calendar month while he retains said classification aside from the regular GCTA authorized under Article 97 of the Revised Penal Code;

b. automatic reduction of the life sentence imposed on the colonist to a sentence of thirty (30) years;

c. subject to the approval of the Director, to have his wife and children, or the woman he desires to marry, live with him in the prison and penal farm. Transportation expenses of the family going to and the discharge of the colonist from the prison and penal farm shall be for the account of the government. The family may avail of all prison facilities such as hospital, church and school free of charge. All the members

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[15] Bureau of Corrections Operating Manual, Book 1, Part II, Chapter 3, Section 5, provides:

Sec. 5. x x x x x x x x x

d) First Class Inmate — one whose known character and credit for work while in detention earned assignment to this class upon commencement of sentence; or one who has been promoted from the second class.

[16] *Id.* at Sec. 6.

[17] *Id.*

of the family of a colonist shall be subject to the rules governing the prison and penal farm;

d. as a special reward to a deserving colonist, the issuance of a reasonable amount of clothing and ordinarily household supplies from the government commissary in addition to free subsistence; and

e. to wear civilian clothes on such special occasions as may be designated by the Superintendent.

Section 7(b) provides for the privilege of an automatic reduction of sentence. However, the word "automatic" does not imply that the reduction of sentence occurs as a natural consequence by the mere conferral of a "colonist" status. Act No. 2489[18] specifically requires an executive approval before such kind of benefit may be allowed:

SEC. 5. Prisoners serving sentences of life imprisonment receiving and retaining the classification of penal colonists or trusties will automatically have the sentence of life imprisonment modified to a sentence of thirty years when receiving the **executive approval** for this classification upon which the regular credit now authorized by law and special credit authorized in the preceding paragraph, for good conduct, may be made. (Emphasis supplied)

In the case of *Tiu v. Dizon*,[19] the Court expounded on such requirement, which is posterior to the act of classifying a prisoner as a colonist:

The wording of the law is such that the act of classification as a penal colonist or trustie is separate from and necessarily precedes the act of approval by the Executive. Under Section 6, Chapter 3, Part II, Book I of the BuCor-OM quoted earlier, the Director of Corrections may, upon the recommendation of the Classification the Bureau of

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[18] AN ACT AUTHORIZING SPECIAL COMPENSATION, CREDITS, AND MODIFICATION IN THE SENTENCE OF PRISONERS AS A REWARD FOR EXCEPTIONAL CONDUCT AND WORKMANSHIP, AND FOR OTHER PURPOSES.

[19] 787 Phil. 427, 438-439 (2016).

Corrections, classify an inmate as a colonist. It is crucial, however, that the prisoner not only receives, but retains such classification, because the grant of a colonist status may, for cause, be revoked at any time by the Superintendent with the approval of the Director of Corrections pursuant to Section 946 of the same Chapter. It is the classification of the penal colonist and trustie of the Director of Corrections which subsequently receives executive approval. (Emphasis and underscoring in the original)

The indispensability of an executive approval is further highlighted by the 1987 Constitution, expressly vesting upon the President the exclusive prerogative to grant acts of clemency.

In *Tiu*, the Court elucidated that the reduction of a prisoner's sentence is a form of partial pardon, which entails the exercise of the President's constitutionally-vested authority. Contrary to petitioner's assertion, the Constitution requires the President to act on such matter *personally*; thus, he may not delegate the same in the guise of doctrine of qualified political agency.

In this case, nowhere in the records does it show that the President signified his approval to the release of petitioner in view of his status as a colonist. Thus, at this point, there is no reason to allow the release of petitioner based on such ground.

Moreover, petitioner's reliance in the case of *Cruz III*[20] does not hold water. As explained by the Court, Go was released from prison not because of the automatic reduction privilege as a colonist, but because of the application of the provisions of Articles 70[21] and 97[22] of the Revised Penal Code, which

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[20] *Supra* note 7.

[21] Art. 70. *Successive Service of Sentences; Exception.* — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, said penalties shall be executed successively, following the order of their respective severity, which shall be determined in accordance with the following scale:

1. Death
2. *Reclusion perpetua*
3. *Reclusion temporal*
4. *Prision mayor*

allow the reduction or commutation of sentences based on the computation of GCTA.

Nevertheless, petitioner's entitlement to the benefits of R.A. No. 10592, which has been given retroactive effect in the case of *Inmates of the New Bilibid Prison, Muntinlupa City*, must be examined in view of the attendant factual circumstances.

Among the amendments introduced by R.A. No. 10592 are the increase in the number of days which may be credited for GCTA; expansion of the application of GCTA for prisoners even during preventive imprisonment; and deduction of 15 days for each month of study, teaching, or mentoring service.

Section 3, Rule V and Section 1, Rule VIII of the Implementing Rules and Regulations of R.A. No. 10592 reposed upon the Director of Prisons, the Chief of the Bureau of Jail Management and Penology and the wardens the grant of allowances for good conduct to deserving prisoners, upon recommendation of the Management, Screening and Evaluation Committee. The Director, the Chief, or the warden may either approve or

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5. *Prision correccional*

6. *Arresto mayor*

7. *Arresto menor*

A person sentenced to *destierro* who is also sentenced to the penalty of *prisión* or *arresto* shall be required to serve these latter penalties before serving the penalty of *destierro*.

[22] Art. 97. *Allowance for Good Conduct*. — The good conduct of any prisoner in any penal institution shall entitle him to the following deductions from the period of his sentence:

1. During the first two years of his imprisonment, he shall be allowed a deduction of five days for each month of good behavior;

2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of eight days for each month of good behavior;

3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of ten days for each month of good behavior; and

4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of fifteen days for each month of good behavior.

disapprove the recommendation or order the return of the same for correction.

Relevantly, Sections 3 and 4, Rule V of the same law mandates the Bureau of Corrections to assess and compute the time allowance due to the prisoners:

> SEC. 3. Management, Screening and Evaluation Committee (MSEC). — a. The Director of the BUCOR, Chief of the BJMP and Wardens of various provinces, cities, districts and municipalities are mandated to assess, evaluate and grant time deduction to a deserving prisoner, whether detained or convicted by final judgment, in the form of GCTA, STAL and TASTM as prescribed by these Rules through the creation of the MSEC.
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> x x x x x x x x x
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> SEC. 4. Procedures for the Grant of Good Conduct Time Allowance.— The following procedures shall be followed in the grant of GCTA:
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> x x x x x x x x x
>
> e. The appropriate official concerned shall ensure that GCTAs are processed each month and that there is proper recording of a prisoner's good behavior in the jail or prison records.

In fact, Section 5, Rule V of said law requires the use of computer-generated template, capable of incorporating time allowances that may be granted to detainees and prisoners alike, to monitor their progress.

Based on petitioner's Prison Records,[23] it appears that he earned regular GCTA; time allowance for study, teaching and mentoring; and credit for preventive imprisonment under R.A. No. 6127. Moreover, based on respondent's Comment, petitioner's time served with GCTA in prison is 32 years, 10 months, and 7 days. However, these were all computed prior the promulgation of the *Inmates of the New Bilibid Prison, Muntinlupa City* case.

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[23] *Rollo*, pp. 11 and 33.

The determination of the legality of petitioner's confinement based on R.A. No. 10592 necessitates the recomputation of the time allowances due for petitioner.

In the case of *In Re: Correction/Adjustment of Penalty Pursuant to [R.A.] No. 10951, in relation to Hernan v. Sandiganbayan*[24] the Court recognized the competency of trial courts to ascertain both findings of fact and law such as the actual length of time that the convict has actually been in confinement and whether time allowance for good conduct in determining the propriety of his immediate release from confinement on account of full service of the recomputed sentence. Hence, matters relating thereto must be referred to the trial courts as they are relatively more equipped to act on such matters.

WHEREFORE, premises considered, the petition for the issuance of a writ of *habeas corpus* is **PARTLY GRANTED**. The case is referred to the Regional Trial Court of Muntinlupa for the receipt of records for the determination of: (1) the length of time that petitioner Boy Franco *y* Mangaoang has been in actual confinement; (2) his earned Good Conduct Time Allowance and other privileges granted to him under Republic Act No. 10592 and their computation; and (3) whether he is entitled to immediate release from confinement on account of the full service of his sentence based on the recomputed sentence, as modified.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

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[24] G.R. No. 237721, July 31, 2018.

THIRD DIVISION

[G.R. No. 235787. June 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORENDA MANZANILLA *y* DE ASIS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO REASON TO DISTURB THE EVALUATION OF THE TRIAL COURT AS IT HAS THE UNIQUE OPPORTUNITY TO OBSERVE THE WITNESSES ON THE STAND. — The records are bereft of any allegation, much more proof, that Mac-Mac and Ajie harbored any ill motive to implicate the accused-appellant in the crime. They, for one, were not familiar with any of the accused even prior to the crime. Thus, the Court sees no reason not to accord the testimonies of the prosecution witnesses the same faith and credit which the RTC and the CA have given them. Deference to the trial court is inevitable when the circumstances present no cogent reason to disturb its evaluation, as it has the unique opportunity to see the witnesses on the stand and determine, on the basis of their demeanor, the truthfulness of their testimony.

2. CRIMINAL LAW; PARRICIDE; PRINCIPAL BY INDUCEMENT; TWO MODES BY WHICH THE CRIME MAY BE COMMITTED; TWO WAYS OF COMMITTING EACH MODE, ENUMERATED; ACCUSED-APPELLANT EXERTED GREAT DOMINANCE AND INFLUENCE OVER THE DECEASED CO-ACCUSED SUCH THAT HER WORDS CONSTITUTED AN EFFICACIOUS AND POWERFUL COERCION FOR THE LATTER TO COMMIT THE CRIME. — Under Article 17 of the RPC, a principal by inducement either: a) directly forces, or b) directly induces another to commit the crime. There are equally two ways of committing each mode. Directly forcing another to commit a crime may be accomplished by: (i) using irresistible force, or (ii) causing uncontrollable fear; whereas, directly inducing the commission of a crime may be: (i) by giving a price, reward, or promise, or (ii) by using words of command. The

Court adopts with approval the CA's determination that the attendant facts and circumstances established that the accused-appellant exerted great dominance and influence over Roberto, such that her words constituted an efficacious and powerful coercion for the latter to commit the crime[.] The words "*yariin na*" is unequivocal. Literally translated in English, it means to "finish off"; in tagalog slang, it means "to kill." The words are neither thoughtless nor spontaneous as they were uttered in a situation specifically sought for the purpose of killing the victim. Further, the accused-appellant's dominance over Roberto is evident from the fact that immediately after the words of command were uttered, Roberto was moved into action by approaching the victim and then bringing him to a dark place and there, shooting him.

3. **ID.; ID.; RELATIVE PARTICIPATION OF THE ACCUSED-APPELLANT IS IMMATERIAL IN VIEW OF THE PRESENCE OF AN IMPLIED CONSPIRACY TO KILL THE VICTIM. —**[T]he relative participation of the accused-appellant is immaterial in this case as the Court finds that she, together with Roberto, and one unidentified male, acted in conspiracy to kill the victim. The records established that the three waited for the victim to arrive. After the accused-appellant identified the victim, Roberto approached him, brought him to a dark place and fired a shot in his head, all of which happened while the accused-appellant and their unidentified male companion were in their places acting as lookouts. Afterwards, Roberto escaped with the accused-appellant. These overt acts prove that accused-appellant and her companions acted in an implied conspiracy to kill the victim[.] x x x In a conspiracy, a person is guilty as co-principal when he or she performs an overt act, that is, either "by actively participating in the actual commission of the crime, by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy." In this case, the intent and character of the participation of each accused are irrelevant. It need not be identified who inflicted the fatal blow; all the conspirators are equally liable as the act of one is the act of all.

4. **ID.; ID.; PENALTY AND CIVIL LIABILITY. —** On the issue of penalty, Article 246 of the RPC provides that the crime of parricide shall be punished by the penalty of *reclusion perpetua*

to death. Pursuant to Article 63(2) when the law prescribed a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances, as in the case at bar, the lesser penalty shall be applied. Consequently, the penalty of *reclusion perpetua* was properly imposed. In line with *People v. Jugueta*, the amount of civil indemnity, moral damages, and exemplary damages shall be at ₱75,000.00 each. In addition, there being no documentary evidence of burial or funeral expenses presented in court, the award of ₱50,000.00 as temperate damages is in order in view of the victim's death.

5. REMEDIAL LAW; EVIDENCE; ACCUSED-APPELLANT'S DEFENSE OF DENIAL CANNOT STAND AS AGAINST THE STRAIGHTFORWARD AND DETAILED TESTIMONIES OF THE PROSECUTION WITNESSES. —– In this case, the collective testimonies of the prosecution witnesses, corroborated by the autopsy report which details the injuries sustained by the victim, prevail over the accused-appellant's denial. The accused-appellant's defense of alibi does not stand as she failed to prove that she was in a place other than the *situs criminis* such that it was physically impossible for her to be at the scene of the crime when it was committed. Here, the accused-appellant failed to present evidence to support her claim that she was in the store at the time the crime was being committed. Noting that she was supposedly in there with her son, Angelo, it is interesting that she did not present him to affirm such fact. Instead, she merely relied on her bare testimony, which is easy enough to fabricate. In contrast, the testimonies of the prosecution witnesses are simple, straightforward, and riddled with details of the incident which could not have been merely fabricated. The testimonies of Mac-Mac and Ajie were consistent on pertinent points and the identity of the persons involved therein. Without a doubt, the prosecution's evidence should prevail over the accused-appellant's denial.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GAERLAN, *J.*:

Before us is an appeal pursuant to Section 13(c), Rule 124 of the Rules of Court as amended, assailing the Decision[1] dated August 17, 2017, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08336.

Florenda Manzanilla *y* De Asis (accused-appellant) and one Roberto Gacuma *y* Cabreana (Roberto) were charged with the crime of Parricide by virtue of an Information, the accusatory portion of which reads:

> That on or about the 15th day of April 2007, in the City of Antipolo, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring and confederating with an unidentified male person whose true name, identity and present whereabouts [are] still unknown and all of them mutually helping and aiding with one another, with the intent to kill, with the inducement of Florenda Manzanilla *y* De Asis and with the direct participation of Robert O. Gacuma, did then and there, willfully, unlawfully, and feloniously shot Angel Manzanilla *y* Saporma, husband of the former, hitting on the head, thereby inflicting upon the latter gunshot wound which directly caused his death.
>
> Contrary to law.[2]

Accused-appellant and co-accused Roberto were arraigned on May 12, 2012, and both entered a plea of not guilty. After pre-trial, trial on the merits ensued.[3]

During the scheduled hearing on April 10, 2012, the RTC was informed that Roberto died on November 18, 2010.[4]

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[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Apolinario D. Bruselas, Jr. and Henri Jean Paul B. Inting (now a Member of this Court), concurring, *rollo*, pp. 2-19.

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

[3] CA *rollo*, p. 55.

[4] *Rollo*, p. 8, CA *rollo*, p. 60.

Version of the Prosecution

The prosecution presented as witnesses: Hermie Manzanilla (Hermie), brother of the victim; eyewitnesses to the crime — Mark Lawrence Sarmenta (Mac-Mac) and Ajie Bryle Balandres (Ajie); and Dr. Jose Arnel Marquez (Dr. Marquez), medico-legal officer of the Rizal Provincial Crime Laboratory.[5]

Their testimonies tend to establish that at around 9:30 in the evening of April 15, 2007, Mac-Mac, Ajie, and one Eugene were at Aqualand Sitio San Luis, Puting Bato, Antipolo City. The three earned a living by scooping out small amounts of cement *(magbuburiki)*.[6] While on a well-lighted, grassy area waiting for the trucks to arrive, they saw from about 4 to 7 meters away two men and one woman who seemed to be waiting for someone. In the course of the group's conversation, Mac-Mac allegedly heard accused-appellant tell Roberto that her husband's name is Angel, and utter the words: "*pagbabalakan patayin*" and "*bilis-bilisan baka may makakita*."[7] Ajie, for his part, testified he heard the accused-appellant say: "*yariin na*,"[8] in Ajie's words: "*tirahin na daw po baka kasi may makakita pa*."[9]

After thirty (30) minutes had passed, the victim Angel Manzanilla arrived and alighted from a passenger jeepney plying the Marikina-Paenaan route. Roberto approached the victim, held him by his shoulders, introduced himself and uttered: "*kilala mo ba ako? Ako iyong kabit ng asawa mo*."[10] Accused-appellant was with their unidentified male companion 5 to 6 meters away.[11]

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[5] CA *rollo*, pp. 56-63. Sarmenta is "Sarmienta" in other parts of the *rollo*.

[6] *Id.* at 61.

[7] *Rollo*, p. 5, CA *rollo*, pp. 58-59.

[8] CA *rollo*, p. 59.

[9] *Id.* at 62.

[10] *Rollo*, pp. 4-5, CA *rollo*, p. 58.

[11] CA *rollo*, *id.*

Roberto, who was carrying a gun, then walked together with the victim towards a dark area at the upper portion of the road leading towards Solid Cement. A few moments later, Mac-Mac, Ajie, and Eugene heard a gunshot from the same direction, causing them to panic and hide under the grassy area. Roberto then came running down the hill towards accused-appellant. The two then boarded a motorcycle and proceeded towards the direction of *Puting Bato* while their unidentified male companion walked towards the opposite direction going to Cogeo. As the police arrived shortly thereafter, the three eyewitnesses ran out of fear that they would be involved in the crime. They then passed by the victim sprawled on the ground with his head tilted to the right.[12]

Mac-Mac and Ajie identified accused Roberto and the accused-appellant as the persons they last saw with the victim. Mac-Mac claimed that accused-appellant pleaded him not to implicate her.[13]

Hermie was in Marinduque when he received a telephone call from accused-appellant informing him that his brother Roberto, the victim, was found dead. Three days thereafter, he went to Cogeo to see his brother. Hermie then went to the police station where he was informed that there were witnesses to the shooting of his brother.[14] Sometime in May, he searched for these witnesses, who happened to be Mac-Mac and Ajie, and pleaded with them to testify.[15]

Dr. Marquez conducted an autopsy on the body of the victim. He testified that the victim sustained a fatal gunshot wound which entered the right mandibular region and exited the left lateral neck region. This injury resulted in the victim's instantaneous death.[16]

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[12] *Rollo*, p. 5, CA *rollo*, pp. 58-59, 61-62.

[13] CA *rollo*, pp. 58-59.

[14] *Id.* at 56.

[15] *Id.* at 56, 60, 62.

[16] *Id.* at 63.

Further, Dr. Marquez explained that based on the injury sustained by the victim, the assailant was more likely at the front right side of the victim, while the muzzle of the gun must be 6 to 12 inches from the victim's right jaw.[17]

Version of the Defense

The accused-appellant testified in her defense. She stated that she and the victim have been married for 22 years with two children — Jinky and Angelo, aged 28 and 24, respectively.[18]

Accused-appellant claimed that on the night of the incident, she was in their house at Sto. Niño, Sta. Cruz, Antipolo, attending to her store with her son, Angelo and to some children who were playing video games.[19]

Accused-appellant narrated that the victim came home at around 9:00 p.m. after selling mangoes. The victim, nonetheless, left shortly thereafter to remit the sales to a certain Coco, who lives nearby. Accused-appellant closed the store at around 11:00 p.m. but the victim had not yet returned. Since it was a Sunday, accused-appellant just assumed that the victim went to have a drink with his friends.[20] The next day, after noticing that the victim still had not returned, she began asking around for his whereabouts. That afternoon, after receiving information that someone had been killed, accused-appellant proceeded to the police station at Cogeo Gate II.[21] There, she was referred to the Tandog Funeraria where she identified the cadaver as that of her husband and proceeded to inform the latter's relatives.[22]

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[17] *Id.*

[18] *Rollo*, p. 7.

[19] *Id.*

[20] *Id.* at 7-8.

[21] *Id.* at 8.

[22] *Id.*; CA *rollo*, pp. 63-64.

Accused-appellant denied having any participation in her husband's death. Likewise, she claimed that she does not know Roberto.[23]

The Trial Court's Ruling

On November 10, 2015, the Regional Trial Court (RTC) of Antipolo City, Branch 72 rendered its Decision[24] finding accused-appellant guilty of Parricide, *viz.*:

> WHEREFORE, finding the accused FLORENDA MANZANILLA *y* DE ASIS **GUILTY** beyond reasonable doubt of the crime of Parricide as a Principal by inducement, she is hereby **sentenced to suffer the penalty of *Reclusion Perpetua***.
>
> Accused is hereby ordered to pay the amount of ₱50,000.00 as civil indemnity and the amount of ₱25,000.00 as exemplary damages.
>
> SO ORDERED. [25]

Preliminarily, the RTC dismissed the case against Roberto in view of his death during the pendency of the trial; then it proceeded to determine the guilt of the accused-appellant.[26] The RTC was convinced, on the basis of the evidence presented by the prosecution, that it was Roberto who shot the victim. It, however, adjudged that accused-appellant was liable as a principal by inducement, as she was the one who ordered Roberto to finish off her husband. Ultimately, the RTC held that the positive identification of the accused-appellant prevails over her bare denial.[27]

The CA's Decision

On appeal, the CA affirmed the RTC in its Decision[28] of August 17, 2017, the dispositive portion of which reads:

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[23] *Rollo*, p. 7.

[24] Rendered by Judge Ruth D. Cruz-Santos, CA *rollo*, pp. 55-68.

[25] *Id.* at 68.

[26] *Id.* at 65.

[27] *Id.* at 68.

[28] *Rollo*, pp. 2-19.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Regional Trial Court of Antipolo City, Branch 72, dated November 10, 2015, is hereby AFFIRMED with the following MODIFICATIONS:

Defendant-appellant is ORDERED to PAY ₱100,000.00 instead of ₱50,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 instead of ₱25,000 as exemplary damages.

SO ORDERED. [29]

The CA found the testimonies of the prosecution witnesses to be credible and sufficient to prove the guilt of the accused-appellant as a principal by inducement in the crime of parricide. Similarly, the CA brushed aside the apparent inconsistencies and minor issues relating to the witnesses' testimonies. The CA held that these issues are expected considering that the witnesses are testifying about a nerve-wracking event; therefore, total recall or perfect symmetry is not required as long as witnesses concur on material points.[30]

Thus, this appeal, whereby the Court must resolve whether or not the accused-appellant is guilty of parricide.

The Court's Ruling

The appeal is **unmeritorious**.

Parricide is defined under Article 246 of the Revised Penal Code (RPC) as:

Article 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

The spousal relationship between the accused-appellant and the victim is undisputed. Similarly, the accused-appellant's participation in the victim's death has been clearly established by the testimonies of the prosecution witnesses.

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[29] *Id.* at 19.

[30] *Id.* at 13-14, 16-17.

The records are bereft of any allegation, much more proof, that Mac-Mac and Ajie harbored any ill motive to implicate the accused-appellant in the crime. They, for one, were not familiar with any of the accused even prior to the crime. Thus, the Court sees no reason not to accord the testimonies of the prosecution witnesses the same faith and credit which the RTC and the CA have given them. Deference to the trial court is inevitable when the circumstances present no cogent reason to disturb its evaluation, as it has the unique opportunity to see the witnesses on the stand and determine, on the basis of their demeanor, the truthfulness of their testimony.[31]

The accused-appellant has been convicted by both the RTC and the CA as a principal by inducement. The Court agrees; nonetheless, the nature of the accused-appellant's participation is irrelevant in view of the existence of conspiracy.

In order for a person to be convicted as a principal by inducement, "the inducement [must] be made with the intention of procuring the commission of the crime," and "such inducement [must] be the determining cause"[32] by the one executing the same. The prosecution must show that the inducer has "the most positive resolution and most persistent effort to secure the commission of the crime" which when related upon the person induced constituted a very strong kind of temptation to commit the crime.[33]

Under Article 17 of the RPC, a principal by inducement either: a) directly forces, or b) directly induces another to commit the crime. There are equally two ways of committing each mode. Directly forcing another to commit a crime may be accomplished by: (i) using irresistible force, or (ii) causing uncontrollable fear; whereas, directly inducing the commission

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[31] *People v. Supremo*, 314 Phil. 489, 492 (1995).

[32] *People v. Yanson-Dumancas*, 378 Phil. 341, 359-360 (1999), citing *US v. Indanan*, 24 Phil. 203 (1913).

[33] *Id.*

of a crime may be: (i) by giving a price, reward, or promise, or (ii) by using words of command.[34]

The Court adopts with approval the CA's determination that the attendant facts and circumstances established that the accused-appellant exerted great dominance and influence over Roberto, such that her words constituted an efficacious and powerful coercion for the latter to commit the crime:

> Although the words "bilis-bilisan baka may makakita" cannot be considered inciting on their own because they merely instruct [Gacuma] to hurry without reference to any other act, the utterance of the words "yariin na" taken together with the former statement and the fact that it was followed by [Gacuma] shooting Angel are enough to consider such statements as inciting words which in this instant case were direct and efficacious, or powerful as the physical or moral coercion or the violence itself.[35]

The words "*yariin na*" is unequivocal. Literally translated in English, it means to "finish off"; in tagalog slang, it means "to kill." The words are neither thoughtless nor spontaneous as they were uttered in a situation specifically sought for the purpose of killing the victim. Further, the accused-appellant's dominance over Roberto is evident from the fact that immediately after the words of command were uttered, Roberto was moved into action by approaching the victim and then bringing him to a dark place and there, shooting him.[36]

At any rate, the relative participation of the accused-appellant is immaterial in this case as the Court finds that she, together with Roberto, and one unidentified male, acted in conspiracy to kill the victim. The records establish that the three waited for the victim to arrive. After the accused-appellant identified

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[34] *People v. Yanson-Dumancas*, *supra*, note 32 at 358-359.

[35] *Rollo*, p. 13.

[36] See *People v. Yanson-Dumancas*, *supra*, note 32 at 360, where the Court, citing the case of *People v. Castillo, et al.*, 124 Phil. 69 (1966), held that: the act of inducement should precede the commission of the crime itself.

the victim, Roberto approached him, brought him to a dark place and fired a shot in his head, all of which happened while the accused-appellant and their unidentified male companion were in their places acting as lookouts. Afterwards, Roberto escaped with the accused-appellant.

These overt acts prove that accused-appellant and her companions acted in an implied conspiracy to kill the victim:

> An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[37]

In a conspiracy, a person is guilty as co-principal when he or she performs an overt act, that is, either "by actively participating in the actual commission of the crime, by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy."[38] In this case, the intent and character of the participation of each accused are irrelevant. It need not be identified who inflicted the fatal blow; all the conspirators are equally liable as the act of one is the act of all.[39]

In this case, the collective testimonies of the prosecution witnesses, corroborated by the autopsy report which details the injuries sustained by the victim, prevail over the accused-appellant's denial. The accused-appellant's defense of alibi does

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[37] *Macapagal-Arroyo v. People, et al.*, 790 Phil. 367, 419-420 (2016).

[38] *People v. Vasquez*, 474 Phil. 59, 85 (2004).

[39] *Id.* at 86.

not stand as she failed to prove that she was in a place other than the *situs criminis* such that it was physically impossible for her to be at the scene of the crime when it was committed. Here, the accused-appellant failed to present evidence to support her claim that she was in the store at the time the crime was being committed. Noting that she was supposedly in there with her son, Angelo, it is interesting that she did not present him to affirm such fact. Instead, she merely relied on her bare testimony, which is easy enough to fabricate. In contrast, the testimonies of the prosecution witnesses are simple, straightforward, and riddled with details of the incident which could not have been merely fabricated. The testimonies of Mac-Mac and Ajie were consistent on pertinent points and the identity of the persons involved therein. Without a doubt, the prosecution's evidence should prevail over the accused-appellant's denial.

On the issue of penalty, Article 246 of the RPC provides that the crime of parricide shall be punished by the penalty of *reclusion perpetua* to death. Pursuant to Article 63(2) when the law prescribed a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances, as in the case at bar, the lesser penalty shall be applied. Consequently, the penalty of *reclusion perpetua* was properly imposed.

In line with *People v. Jugueta*,[40] the amount of civil indemnity, moral damages, and exemplary damages shall be at ₱75,000.00 each. In addition, there being no documentary evidence of burial or funeral expenses presented in court, the award of ₱50,000.00 as temperate damages is in order in view of the victim's death.

WHEREFORE, the appeal interposed by accused-appellant Florenda Manzanilla *y* De Asis is **DISMISSED** for lack of merit. Consequently, the Decision dated August 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08336, convicting the accused-appellant of Parricide, as defined and penalized under Article 246 of the Revised Penal Code, and imposing

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[40] 783 Phil. 806 (2016).

upon her the penalty of *reclusion perpetua*, is **AFFIRMED** with **MODIFICATION** in that in accordance with recent jurisprudence,[41] accused-appellant is hereby **ORDERED** to **PAY** the heirs of Angel Manzanilla *y* Saporma, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages.

All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.[42]

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda, JJ.*, concur.

SECOND DIVISION

[G.R. No. 236848. June 8, 2020]

CANDELARIA DE MESA MANGULABNAN, *petitioner*, *vs.* **PEOPLE OF PHILIPPINES**, *respondent*.

SYLLABUS

1. CRIMINAL LAW; DIRECT BRIBERY; ELEMENTS, ENUMERATED. — As may be gleaned from above, the elements of the crime charged are as follows: *(a)* the offender is a public officer; *(b)* he accepts an offer or promise or receives a gift or present by himself or through another; *(c)* such offer or promise be accepted or gift or present be received by the public officer

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[41] *Id.*

[42] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and *(d)* the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.

2. **ID.; ID.; PETITIONER WAS CORRECTLY CONVICTED OF DIRECT BRIBERY UNDER ARTICLE 210 OF THE RPC AS A CO-CONSPIRATOR; THE CONSPIRACY AND ALL THE ELEMENTS OF DIRECT BRIBERY WERE SUFFICIENTLY ESTABLISHED. —** After a judicious review of the case, the Court is convinced that the SB correctly convicted Mangulabnan for Direct Bribery under Article 210 of the Revised Penal Code as the co-conspirator of Judge Flores. Firstly, the conspiracy between the two accused has been duly proven by the findings of Judge Medina and by Mangulabnan's own admission. When conspiracy is established, the responsibility of the conspirators is collective, not individual, rendering all of them **equally liable regardless of the extent of their respective participations**. Secondly, the elements constituting Direct Bribery have been sufficiently established considering that: (*a*) Mangulabnan and Judge Flores were indisputably public officers, being the Court Interpreter and Presiding Judge, respectively, of the MTCC of the City of San Fernando, Pampanga, Branch 2 at the time of the offense; *(b)* she acted as Judge Flores' middleman in committing the crime, specifically by receiving Twenty Thousand Pesos (₱20,000.00) from Manalastas and delivering it to Judge Flores; *(c)* the amount was given in exchange for the rendition of a judgment favorable to Manalastas, as may be inferred from Mangulabnan's own admission that Judge Flores ordered the release of the decision only after receiving the Twenty Thousand Pesos (₱20,000.00); and (*d*) the rendition of judgment relates to the functions of Judge Flores.

3. **ID.; ID.; PROPER PENALTY. —** As regards the proper penalty to be imposed on Mangulabnan, Article 210 of the Revised Penal Code prescribes the penalty of *prision mayor* in its medium and maximum periods and a fine not less than three times the value of the gift with the accessory penalty of special temporary disqualification. Thus, taking into consideration the provision

of the Indeterminate Sentence Law, the SB correctly sentenced her to suffer the indeterminate penalty of imprisonment for a period of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor* as maximum, and a fine in the amount of Sixty Thousand Pesos (₱60,000.00), with special temporary disqualification from holding public office.

4. REMEDIAL LAW; EVIDENCE; WHILE DOCUMENTARY EVIDENCE AND ADMISSIONS MADE IN THIS CASE HAVE BEEN SOURCED FROM THE RELATED ADMINISTRATIVE AND CIVIL CASES, THE DUE EXECUTION OF THESE EVIDENCE WERE STIPULATED UPON BY THE PARTIES AND FORMED PART OF THE RECORD OF THIS CASE, HENCE, MAY RESULT IN CRIMINAL CONVICTION. — While the SB's findings appear to have been sourced from the documentary evidence submitted and the admissions made in the related administrative and civil cases, the due execution of these documentary evidence has been stipulated upon by the parties, thus dispensing with the presentation of further witnesses. Given that these evidence formed part of the records of the case, they may be properly considered by the SB in its own independent determination of Mangulabnan's guilt, which it did in this case. Although it is true that the quantum of evidence for administrative and civil cases differ greatly from those of criminal cases, the evidence adduced in the former may result in a criminal conviction. "Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. **Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."**

APPEARANCES OF COUNSEL

Celerina Caballero-Pineda for petitioner.
Office of the Special Prosecutor 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 October 6, 2017 and the Resolution[3] dated January 15, 2018 of the Sandiganbayan (SB) in Criminal Case No. SB-11-CRM-0228 which found petitioner Candelaria De Mesa Mangulabnan (Mangulabnan) guilty beyond reasonable doubt of Direct Bribery under Article 210 of the Revised Penal Code.[4]

The Facts

The instant case stemmed from an Information[5] charging Mangulabnan of Direct Bribery under Article 210 of the Revised Penal Code, the accusatory portion of which states:

> That on or about March 1998 or for sometime subsequent thereto, in the City of San Fernando, Pampanga, Philippines, accused RODRIGO R. FLORES, Presiding Judge of the Municipal Trial Court in Cities (MTCC), Branch 2, City of San Fernando, Pampanga, with Salary Grade 27, thus, within the jurisdiction of this Honorable Court, together with CANDELARIA MANGULABNAN, Court Interpreter and specially assigned as Chairman of the Revision Committee of the same MTCC of San Fernando City, Pampanga, while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their respective official positions, and with grave abuse of authority, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously demanded and request the amount of

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[1] *Rollo*, pp. 58-73.

[2] *Id.* at 10-21. Penned by Associate Justice Reynaldo P. Cruz with Associate Justices Alex L. Quiroz and Geraldine Faith A. Econg, concurring.

[3] *Id.* at 86-88.

[4] Act No. 3815 entitled, "AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS," approved on December 8, 1930.

[5] Not attached to the *rollo*.

₱20,000.00 from Dario Manalastas, a party to an election protest case filed by Alberto Guinto against Dario Manalastas where accused Rodrigo R. Flores and Candelaria Mangulabnan have to intervene in their official capacities since such case is pending before the Court where accused Rodrigo R. Flores is the Presiding Judge and Candelaria Mangulabnan is the Court Interpreter and Chairman of the Revision Committee, which amount accused Candelaria Mangulabnan actually received for accused Rodrigo R. Flores in consideration of a decision in the case favorable to Dario Manalastas which is unjust, since the decision should be based on the merits of the case and not the monetary consideration, the damage and prejudice of Dario Manalastas and public service.

CONTRARY TO LAW.[6]

The prosecution alleged that sometime in May 1997, private complainant Alberto Guinto (Guinto) filed an election protest against Dario Manalastas (Manalastas) before the Municipal Trial Court in Cities (MTCC) of the City of San Fernando, Pampanga, Branch 2, where Rodrigo R. Flores was Presiding Judge (Judge Flores) and Mangulabnan worked as a Court Interpreter. On several occasions, Judge Flores allegedly visited Guinto in the latter's workplace and asked for several monetary favors. Despite receiving these favors, Judge Flores decided the case in favor of Manalastas. Guinto then filed complaints before the Office of the Court Administrator (OCA), charging Judge Flores for his failure to decide the election protest within the required period, and against Mangulabnan for releasing an unauthorized copy of the decision. These administrative complaints were referred to Executive Judge Adelaida Ala-Medina (Judge Medina) for investigation, review, and recommendation. In her report, Judge Medina revealed that while the election protest case was pending before the MTCC, Judge Flores borrowed Twenty Thousand Pesos (₱20,000.00) from Manalastas, which Mangulabnan received as middleman in favor of Judge Flores. Hence, Judge Medina recommended Mangulabnan's dismissal from service for her participation as conduit in the commission

[6] See *rollo*, p. 11.

of the crime.[7] In a Resolution[8] dated August 10, 2006, the Court adopted Judge Medina's findings, suspended Mangulabnan for one (1) year,[9] and ordered that the Court's Resolution be furnished to the Office of the Ombudsman (OMB) for investigation. Thereafter, the OMB found that the allegations make out a case for Direct Bribery; hence, the Information was filed.[10]

Mangulabnan pleaded "not guilty" to the charge.[11]

During the proceedings before the SB, the prosecution did not present any witnesses, and instead presented the documents culled from the administrative case, the due execution of which was stipulated on by the parties. After the prosecution rested its case, Mangulabnan filed a Motion for Leave to File Demurrer to Evidence, which the SB denied.[12] Thereafter, Mangulabnan filed an *Ex-Parte* Manifestation waiving her right to present evidence. The SB then ordered the parties to submit their respective Memoranda; following which, the case would be submitted for decision.[13] In her Memorandum, Mangulabnan

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[7] *Id.* at 13-14.

[8] *Guinto v. Flores and Mangulabnan*, A.M. MTJ-02-1399, August 10, 2006. Since Judge Flores had already been dismissed from service in a previous administrative case, he was simply ordered to pay a ₱50,000.00 fine. As regards Mangulabnan, the Court held that: "we find that she, indeed, acted as a conduit in the solicitation of money from the litigants. While she claimed that she did so only under the instruction of respondent judge, we believe, however, that respondent Mangulabnan was not at all ignorant of what respondent judge had asked her to do. She knew it was illegal for Judge Flores to "borrow" money from litigants who had pending cases in his *sala*. She was aware that it was wrong yet she still allowed herself to be a part of respondent judge's immoral activities. Her complicity notwithstanding, the penalty of dismissal from the service is too harsh considering that this appears to be her first offense."

[9] *Rollo*, p. 13.

[10] *Id.* at 13-14.

[11] *Id.* at 11.

[12] *Id.* at 12.

[13] *Id.* at 13.

principally argued that the prosecution failed to prove her guilt beyond reasonable doubt considering its heavy reliance on the evidence adduced during the administrative proceedings, without presenting a single witness to identify the same or to be cross-examined.[14] She argued that administrative accountability cannot amount to a finding of guilt in a criminal case.[15] Thus, she prayed that the Information be dismissed.[16]

The SB Ruling

In a Decision[17] dated October 6, 2017, the SB found Mangulabnan guilty beyond reasonable doubt of Direct Bribery[18] and accordingly, sentenced her to suffer the indeterminate penalty of imprisonment for a period of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor* as maximum, and to pay a fine in the amount of Sixty Thousand Pesos (₱60,000.00), with special temporary disqualification from holding public office.[19]

The SB noted Mangulabnan's admission in open court in a separate civil case for injunction filed by Manalastas, which formed part of the administrative case's records, that she indeed

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[14] *Id.* at 111-112.

[15] *Id.* at 112.

[16] *Id.*

[17] *Id.* at 10-21.

[18] *Id.* at 19. Accordingly, the SB sentenced her to suffer imprisonment for an indeterminate period of four years, two months, and one day of *prision correccional* as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor*, as maximum, and ordered her to pay a fine of ₱60,000.00 with special temporary disqualification from holding public office.

Note: The case was deemed submitted for decision only with respect to accused Mangulabnan per the SB's Court Agendum dated May 24, 2017. Hence, the case of her co-accused, Judge Flores, remained pending before the SB. (See *id.* at 74)

[19] See *id.* at 19.

received money from the latter and delivered it to Judge Flores, thus proving their conspiracy in committing the crime. Moreover, it found that the prosecution had established all the elements constituting Direct Bribery under Article 210 of the Revised Penal Code, considering that: (*a*) Judge Flores and Mangulabnan were both public officers, being the Presiding Judge and Court Interpreter, respectively, of the MTCC of the City of San Fernando, Pampanga, Branch 2 at the time of the commission of the offense; (*b*) Mangulabnan acted as a conduit of Judge Flores when she received Twenty Thousand Pesos (₱20,000.00) from Manalastas, and delivered the same to Judge Flores; (*c*) the amount was in consideration of the rendition of judgment in the pending election protest in favor of Manalastas; and (*d*) that the rendition of judgment relates to the function of Flores as Presiding Judge. Considering the concurrence of all the elements, and that Mangulabnan was a co-conspirator of Judge Flores, the SB found the prosecution's evidence sufficient to prove her guilt beyond reasonable doubt.[20]

Aggrieved, Mangulabnan filed a Motion for Reconsideration and/or To Reopen Case,[21] but was denied in a Resolution[22] dated January 15, 2018. It found no showing that the SB deprived Mangulabnan of her right to present evidence to justify the reopening of the case;[23] hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the SB correctly convicted Mangulabnan of the crime of Direct Bribery under Article 210 of the Revised Penal Code.

The Court's Ruling

The petition is without merit.

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[20] *Id.* at 14-19.

[21] Dated October 18, 2017; *id.* at 89-94.

[22] *Id.* at 86-88.

[23] *Id.* at 88.

Article 210 of the Revised Penal Code, as amended, states:

> ARTICLE 210. *Direct Bribery*. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.
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> x x x x x x x x x
>
> In addition to the penalties provided in the preceding Paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

As may be gleaned from above, the elements of the crime charged are as follows: (*a*) the offender is a public officer; (*b*) he accepts an offer or promise or receives a gift or present by himself or through another; (*c*) such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and (*d*) the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.[24]

After a judicious review of the case, the Court is convinced that the SB correctly convicted Mangulabnan for Direct Bribery under Article 210 of the Revised Penal Code as the co-conspirator of Judge Flores. Firstly, the conspiracy between the two accused has been duly proven by the findings of Judge Medina and by Mangulabnan's own admission.[25] When conspiracy is established, the responsibility of the conspirators is collective, not individual,

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[24] *Re: Decision dated 17 March 2011 in Criminal Case No. SB-28361 entitled "People of the Philippines vs. Joselito C. Barrozo,"* 764 Phil. 310, 317-318 (2015).

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

rendering all of them **equally liable regardless of the extent of their respective participations**.[26] Secondly, the elements constituting Direct Bribery have been sufficiently established considering that: (*a*) Mangulabnan and Judge Flores were indisputably public officers, being the Court Interpreter and Presiding Judge, respectively, of the MTCC of the City of San Fernando, Pampanga, Branch 2 at the time of the offense; (*b*) she acted as Judge Flores' middleman in committing the crime, specifically by receiving Twenty Thousand Pesos (₱20,000.00) from Manalastas and delivering it to Judge Flores; (*c*) the amount was given in exchange for the rendition of a judgment favorable to Manalastas, as may be inferred from Mangulabnan's own admission that Judge Flores ordered the release of the decision only after receiving the Twenty Thousand Pesos (₱20,000.00);[27] and (*d*) the rendition of judgment relates to the functions of Judge Flores.[28]

Moreover, the SB also correctly held that Mangulabnan failed to provide any sufficient reason to reopen the case on the ground of violation of her right to due process since she was given ample opportunity to adduce evidence in her behalf but willingly waived her right to do so.[29]

While the SB's findings appear to have been sourced from the documentary evidence submitted and the admissions made in the related administrative and civil cases, the due execution of these documentary evidence has been stipulated upon by the parties, thus dispensing with the presentation of further witnesses.[30] Given that these evidence formed part of the records of the case, they may be properly considered by the SB in its own independent determination of Mangulabnan's guilt, which

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[26] *People v. Dionaldo*, 739 Phil. 672, 681 (2014).

[27] *Rollo*, pp. 16-17.

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

[29] *Id.* at 87-88.

[30] *Id.* at 12.

it did in this case. Although it is true that the quantum of evidence for administrative and civil cases differ greatly from those of criminal cases,[31] the evidence adduced in the former may result in a criminal conviction. "Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. **Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.**"[32]

In view of the foregoing, the Court finds no reason to overturn these findings, as there was no showing that the SB overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case.[33] "It bears pointing out that in appeals from the [SB], as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact. Hence, absent any of the recognized exceptions to the above-mentioned rule, the [SB's] findings on the foregoing matters should be deemed as conclusive."[34] As such, Mangulabnan's conviction for Direct Bribery under Article 210 of the Revised Penal Code must stand.

As regards the proper penalty to be imposed on Mangulabnan, Article 210 of the Revised Penal Code prescribes the penalty of *prision mayor* in its medium and maximum periods and a fine not less than three times the value of the gift with the accessory penalty of special temporary disqualification. Thus, taking into consideration the provision of the Indeterminate

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[31] See *Miro v. Mendoza*, 721 Phil. 772, 788-789 (2013).

[32] *People v. Ganguso*, 320 Phil. 324, 335 (1995).

[33] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, 860 SCRA 86, 96, citing *Peralta v. People*, 817 Phil. 554, 567-568 (2017).

[34] *SPO1 Ramon Lihaylihay v. People*, 715 Phil. 722, 728 (2013).

Sentence Law,[35] the SB correctly sentenced her to suffer the indeterminate penalty of imprisonment for a period of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor* as maximum, and a fine in the amount of Sixty Thousand Pesos (₱60,000.00), with special temporary disqualification from holding public office.[36]

WHEREFORE, the petition is **DENIED**. The Decision dated October 6, 2017 and the Resolution dated January 15, 2018 of the Sandiganbayan in Criminal Case No. SB-11-CRM-0228 are **AFFIRMED**. Petitioner Candelaria De Mesa Mangulabnan is found **GUILTY** beyond reasonable doubt of the crime of Direct Bribery under Article 210 of the Revised Penal Code, and accordingly, sentenced to suffer the indeterminate penalty of imprisonment for a period of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor* as maximum, and a fine in the amount of Sixty Thousand Pesos (₱60,000.00), with special temporary disqualification from holding public office.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Gaerlan,*[*] *JJ.*, concur.

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[35] Act No. 4103, entitled "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," approved on December 5, 1933.

[36] See *rollo*, p. 19.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 238059. June 8, 2020]

TERESITA M. CAMSOL, *petitioner*, *vs.* **CIVIL SERVICE COMMISSION**, *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT MAY NOT BE RAISED. –– [Q]uestions of fact may not be raised by *certiorari* under Rule 45 because We are not a trier of facts. As We explained in *Encinas v. Agustin, et al.*, findings of fact of administrative bodies, like the CSC, will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence. These factual findings carry even more weight when affirmed by the CA, in which case, they are accorded not only great respect, but even finality, as We are wont to do in this case.

2. POLITICAL LAW; ADMINISTRATIVE LAW; GRAVE MISCONDUCT AND SERIOUS DISHONESTY; PENALTY OF DISMISSAL FROM SERVICE MITIGATED IN CASE AT BAR. — Grave Misconduct and Serious Dishonesty being grave offenses, the penalty of dismissal may be meted even for the first-time offenders. However, it is not lost to Us that under Section 48, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, mitigating and aggravating circumstances may still be appreciated in the penalty to be imposed, with the disciplining authority having the discretion to consider these circumstances in the interest of substantial justice. In a *catena* of administrative cases involving grave offenses, We had indeed exercised the discretion granted by Section 48, and appreciated the existence of mitigating factors, which ultimately led to the imposition of a penalty less harsh than an automatic dismissal. In those cases, factors such as the respondents' length of service, their acknowledgment of infractions and feeling of remorse, family circumstances, humanitarian and equitable

considerations, advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty. x x x Petitioner did not benefit from the spurious certificate of eligibility; neither did she take advantage of the same to be promoted, as her current position does not require a 2nd grade eligibility. In fact, there was not an instance she indicated in her Personal Data Sheet (PDS) that she passed the same examinations. Moreover, petitioner has been diligently serving the public for more than three (3) decades, from being a casual laborer to her current position as Forest Technician II. This was also her first offense, not having been the subject of any complaint, administrative or criminal, since she started working. She was a loyalty awardee, having rendered 30 years of dedicated service in the government and was rated Very Satisfactory in her performance rating. Furthermore, petitioner is now 56 years old and at the threshold of her retirement. Her dismissal from the service could foreclose her an opportunity to earn income and support her family. While We cannot condone or countenance petitioner's offenses, We subscribe to the OSG's apt suggestion to appreciate the foregoing factors to mitigate petitioner's penalty. Indeed, We should not be impervious to petitioner's plea as the duty to sternly wield a corrective hand to discipline errant employees, and to weed out from the roster of civil servants those who are found to be undesirable comes with the sound discretion to temper the harshness of its judgment with mercy. Accordingly, petitioner is meted the penalty of suspension of one (1) year without pay instead of dismissal.

APPEARANCES OF COUNSEL

Mary G. Wayagwag-Guibac for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

ZALAMEDA, *J.*:

The Case

This petition[1] assails the 13 February 2018 Decision[2] promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 149825, which affirmed *in toto* the 04 October 2016 Decision[3] of the Civil Service Commission (CSC), finding Teresita M. Camsol (petitioner) guilty of Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service.

Antecedents

The facts of this case, as found by the CSC, are not in dispute:

> Petitioner is a Forest technician II at the Department of Environment and Natural Resources (DENR), Community Environment Natural Resources Office (CENRO) Buguias, Abatan, Buguias, Benguet.[4]
>
> Records show that Camsol (petitioner) requested from the CSC-Cordillera Administrative Region (CSC-CAR) the authentication of her Career Service Professional Eligibility. Thus, she indicated in the Eligibility/Exam Records Request Form (ERRF) that she passed the Career Service Professional Examination (Computer-Assisted Test/ CAT) on September 16, 2002 in Baguio City with a rating of 82.10.
>
> It appears, however, from the Master List of Eligibles on file with the CSC-CAR that no Career Service Professional Examination, either Paper or Pencil Test (PPT) or CAT, was conducted on September 16, 2002 in Baguio City. Instead, it was discovered that Camsol took

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[1] *Rollo,* pp. 9-33.

[2] *Id.* at 35-46; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justice Ramon Paul L. Hernando (now a Member of this Court) and Associate Justice Rafael Antonio M. Santos of the Special Fifteenth Division, Court of Appeals, Manila.

[3] *Id.* at 80-86.

[4] *Id.* at 80.

and failed the Career Service Professional Examination (CSPE) conducted on May 2, 2002 and October 17, 2002, where she obtained ratings of both 48.08 on both occasions.

Meanwhile, Camsol attributed the issuance of her alleged spurious Certificate of Eligibility (COE) from a certain Allan, who 'sweet talked' her into believing that the said COE was legitimate/authentic. That she personally received said COE from Allan, after she gave him one hundred pesos (₱100.00). Allan allegedly asked for more money but she refused.[5]

Finding a *prima facie* case, petitioner was formally charged with Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service.[6] She denied the charges in her Answer.[7]

In its 05 February 2016 Decision,[8] the CSC-Cordillera Administrative Region (CSC-CAR) found petitioner guilty of Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service. Petitioner moved for reconsideration, but was denied.[9] Feeling aggrieved, petitioner appealed to the CSC.

Ruling of the CSC

On 04 October 2016, the CSC dismissed the petition for review filed by the petitioner, as it affirmed the CSC-CAR's findings. The dispositive portion of the CSC ruling stated:

WHEREFORE, the Petition for Review of Teresita M. Camsol, Forest Technician II, Department of Environment and Natural Resources (DENR), Community Environment Natural Resources Office (CENRO) Buguias, Abatan, Buguias, Benguet, is hereby **DISMISSED**. Accordingly, Decision No. 16-0012 dated February 5, 2016 issued by the Civil Service Commission-Cordillera Administrative Region

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[5] *Id.* at 90.

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

[7] *Id.* at 82.

[8] *Id.* at 72-78.

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

(CSC-CAR), Baguio City, which found her guilty of Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service, and imposed upon her the penalty of dismissal from the service with all its accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, except terminal/accrued leave benefits and personal contributions to the GSIS, if any, perpetual disqualification from holding public office, and bar from taking any civil service examinations and Resolution No. 16-00010 dated March 14, 2016, which denied her subsequent Motion for Reconsideration, are **AFFIRMED**.

Copies of this Decision shall be furnished the Commission on Audit-DENR and the Government Service Insurance System (GSIS), for their reference and appropriate action.[10]

The CSC agreed that petitioner's possession of a spurious/ fake Certificate of Eligibility (COE) sufficed to hold petitioner liable for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service. Petitioner's possession of a fake eligibility, in exchange for a fee, constituted violation or transgression of some rule and manifested corrupt behavior, making her liable for Grave Misconduct. The CSC likewise found petitioner liable for Serious Dishonesty as her act of securing the same for a fee tarnished the integrity, not only of the Commission, but the entire bureaucracy. Further, said act was prejudicial to the interest of the public service.[11]

Petitioner sought reconsideration, which was denied in the 07 February 2017 Resolution[12] of the CSC. Hence, petitioner appealed to the CA.

Ruling of the CA

The CA denied the petition and affirmed *in toto* the CSC's decision.

The CA held that petitioner's procurement of the spurious COE, by itself, constituted Grave Misconduct and Serious

[10] *Id.* at 86.

[11] *Id.* at 85.

[12] *Id.* at 88-92.

Dishonesty.[13] It emphasized that under Resolution No. 060538,[14] a dishonest act involving a Civil Service examination or fake Civil Service eligibility, such as, but not limited to impersonation, cheating, and use of crib sheets, is serious dishonesty.[15] It added that seriously dishonest acts involving spurious civil service eligibility likewise result in grave misconduct and conduct prejudicial to the service.[16]

The offenses of petitioner being grave, the CA sustained the extreme penalties imposed against her, without considering any mitigating circumstance such as petitioner's previous clean record, noting that a government employee found guilty of a grave offense may be dismissed even for the first infraction. For the same reason, the CA likewise stressed that petitioner's length of service was of no moment, as the seriousness of her offenses has eclipsed the effect of said circumstance.[17]

Hence, this petition.[18]

Issue

The sole issue in this case is whether the CA erred in holding that petitioner is guilty of Grave Misconduct, Serious Dishonesty and Conduct Prejudicial to the Service, and imposing the penalty of dismissal, without considering any mitigating circumstance in petitioner's favor.

Ruling of the Court

The petition is partially meritorious.

Petitioner now claims that the CA erred in finding her guilty of the aforesaid offenses for her mere act of presenting a fake

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[13] *Id.* at 41.

[14] Rules on the Administrative Offense of Dishonesty.

[15] *Rollo*, p. 41.

[16] *Id.* at 43.

[17] *Id.* at 45.

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

civil service eligibility to the CSC for validation. Petitioner is adamant that she did not seek the intervention of a certain Allan to procure the same as she had nothing evil in mind to misrepresent, falsify, or use the COE which turned out to be spurious.[19] In fact, she neither used it for her benefit nor in any transaction.[20] When she went to the CSC, her intention was really to determine the legitimacy of the COE which, to her, appeared to be genuine as it contained her personal circumstances, signed by the CSC Chairman, and watermarked.[21]

The same notwithstanding, petitioner is apologetic and begs the indulgence of this Court to extend her some leniency on her transgression. She prays that the penalty of dismissal and the forfeiture of her retirement benefits be mitigated.[22]

The OSG, on the other hand, concurs with the CA that petitioner's purchase of the eligibility certificate from Allan was patently illegal, and exemplified grave misconduct. Furthermore, petitioner's possession of the forged document, knowing that she did not pass the exams, reflected her want of integrity consistent with serious dishonesty for possessing a fake Civil Service eligibility.[23]

Nevertheless, the OSG agrees with petitioner that dismissal is too harsh a penalty for the latter's misdeed. In lieu thereof, the OSG recommended the penalty of suspension for one (1) year of service.[24]

We agree with the OSG.

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[19] *Id.* at 19.

[20] *Id.* at 13.

[21] *Id.* at 19.

[22] *Id.* at 21.

[23] *Id.* at 40.

[24] *Id.* at 14-15.

At the outset, We emphasize that questions of fact may not be raised by *certiorari* under Rule 45 because We are not a trier of facts.[25] As We explained in *Encinas v. Agustin, et al.*,[26] findings of fact of administrative bodies, like the CSC, will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence. These factual findings carry even more weight when affirmed by the CA, in which case, they are accorded not only great respect, but even finality, as We are wont to do in this case.

As adverted to earlier, the facts of the case are not disputed. Petitioner herself admitted procuring the fake civil service eligibility, despite knowing fully well that she never passed the civil service exam. What is worse, she even went to the extent of going to the CSC office to check if the said document could stand the crucible of validation. She is definitely not innocent, as she claims to be, and must be held accountable under the law. As CSC Memorandum Circular No. 15, Series of 1991 provides:

> An act which included the procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, cheating, collusion, impersonation, or any other anomalous act which amounts to any violation of the Civil Service examination, has been categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service.

Grave Misconduct and Serious Dishonesty being grave offenses, the penalty of dismissal may be meted even for the first-time offenders.[27] However, it is not lost to Us that under Section 48,[28] Rule 10 of the Revised Rules on Administrative

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[25] *Fajardo v. Corral*, 813 Phil. 149-159 (2017).

[26] 709 Phil. 236-265 (2013).

[27] *Office of the Ombudsman, et al. v. Espina*, 807 Phil. 529-555 (2017).

[28] As found in Civil Service Commission (CSC) Resolution No. 11-01502, promulgated on 08 November 2011. This has been repealed by the 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017

Cases in the Civil Service, mitigating and aggravating circumstances may still be appreciated in the penalty to be imposed, with the disciplining authority having the discretion to consider these circumstances in the interest of substantial justice.

In a *catena* of administrative cases involving grave offenses,[29] We had indeed exercised the discretion granted by Section 48,

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RACCS), as per CSC Resolution No. 1701077, promulgated on 03 July 2017 and took effect on 17 August 2017, However, the previous RRACCS remains applicable to pending cases filed before its effectivity, provided it will not unduly prejudice substantive rights, in accordance with Section 124, Rule 23 of the 2017 RACCS.

[29] In the case of *Office of the Court Administrator v. Flores*, (A.M. No. P-07-2366 [Resolution], 16 April 2009), the Court found Flores guilty of dishonesty and imposed upon her the penalty of six (6) months suspension without pay, taking into account her length of service and that it was her first offense during her employment in the judiciary. Indeed, the Court held that while dishonesty is considered a grave offense punishable by dismissal even at the first instance, jurisprudence is replete with cases where the Court lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances such as length of service in the government and being a first time offender.

In the case of *Alfornon v. De los Santos, et al.*, (G.R. No. 203657, 11 July 2016), Alfornon, was found guilty of serious dishonesty because of a material misrepresentation in her PDS. However, finding that her outright dismissal from the service would be too harsh, she was only meted the penalty of suspension for six (6) months taking in consideration her continued service to the Municipality of Argao, Cebu since 2003.

In the case of *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, (A.M. Nos. 2001-7-SC & 2001-8-SC, 22 July 2005, 464 SCRA 1) where therein respondents were found guilty of dishonesty, the Court, for humanitarian considerations, in addition to various mitigating circumstances in respondents' favor, meted out a penalty of six months suspension instead of imposing the most severe penalty of dismissal from service. In imposing a lower penalty, the court, for humanitarian considerations, took note of various mitigating circumstances in respondent's favor, to wit: (1) for respondent ANGELITA C. ESMERIO: her continued long years of service in the judiciary amounting to 38 years; her faithful observance of office rules and regulations from the time she submitted her explanation-letter up to the present; her acknowledgment of her infractions and feelings of remorse; her retirement on 31 May 2005;

and appreciated the existence of mitigating factors, which ultimately led to the imposition of a penalty less harsh than an

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and her family circumstances (*i.e.*, support of a 73-year old maiden aunt and a 7-year old adopted girl); and (2) for ELIZABETH L. TING: her continued long years of service in the judiciary amounting to 21 years; her acknowledgment of her infractions and feelings of remorse; the importance and complexity of the nature of her duties (*i.e.*, the preparation of the drafts of the Minutes of the Agenda); the fact that she stays well beyond office hours in order to finish her duties; and her Performance Rating has always been "Very Satisfactory" and her total score of 42 points is the highest among the employees of the Third Division of the Court.

In the case of *Concerned Taxpayer v. Doblada, Jr.* (A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218), the penalty of dismissal was reduced by the Court to six months suspension without pay for the attendant equitable and humanitarian considerations therein: Norberto V. Doblada, Jr., had spent 34 years of his life in government service and that he was about to retire; this was the first time that he was found administratively liable per available record; Doblada, Jr., and his wife were suffering from various illnesses that required constant medication, and that they were relying on Doblada's retirement benefits to augment their finances and to meet their medical bills and expenses.

In *Civil Service Commission v. Belagan* (G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601), Allyson Belagan, who was charged with sexual harassment and found guilty of Grave Misconduct, was meted out the penalty of suspension from office without pay for one year, instead of the heavier penalty of dismissal, given his length of service, unblemished record in the past, and numerous awards.

In *Vidallon-Magtolis v. Salud* (A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469-470), Cielito M. Salud, a Court of Appeals personnel, was found guilty of inefficiency and gross misconduct, punishable by dismissal from service even for the first time offenses. However, considering that Salud had not been previously charged nor administratively sanctioned, the Court instead imposed the penalty of suspension for one year and six months.

In *De Guzman, Jr. v. Mendoza* (A.M. No. P-03-1693, 17 March 2005, 453 SCRA 545, 574), sheriff Antonio O. Mendoza was charged with conniving with another in causing the issuance of an alias writ of execution and profiting on the rentals collected from the tenants of the subject property. Mendoza was subsequently found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service; but instead of imposing the penalty of dismissal, the Court meted out the penalty of suspension for one year without pay, it appearing that it was Mendoza's first offense.

automatic dismissal. In those cases, factors such as the respondents' length of service, their acknowledgment of infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.[30] For instance, in *Committee on Security and Safety, Court of Appeals v. Dianco, et al.*,[31] We imposed the lesser penalty of one (1)-year without pay and demotion instead of dismissal upon Dianco who was found guilty of Serious Dishonesty and Gross Misconduct. We appreciated in his favor the mitigating circumstances of: admission of infractions, commission of the offense for the first time, almost thirty (30)

In the case of *Buntag v. Pana* (G.R. No. 145564, 24 March 2006, 485 SCRA 302), the Court affirmed the findings of the Court of Appeals and the Ombudsman when they took into consideration Corazon G. Buntag's length of service in the government and the fact that this was her first infraction. Thus, the penalty of dismissal for Falsification of Official Document was reduced to merely one year suspension.

In Re: *Delayed Remittance of Collections of Teresita Lydia Odtuhan* (445 Phil. 220 [2003]), a court legal researcher, Lydia Odtuhan of the Regional Trial Court of Pasay City was found guilty of serious misconduct in office for failing to remit a ₱12,705.00 fund collection to the proper custodian for three years and doing so only after several demands or directives from the clerks of court and from the Office of the Court Administrator (OCA). For humanitarian reasons, the Court found dismissal from the service to be too harsh considering that Odtuhan subsequently remitted the entire amount and she was afflicted with ovarian cancer. She was imposed a fine ₱10,000.00, with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

In *Sarenas-Ochagabia v. Atty. Balmes Ocampos* (466 Phil. 1 [2004]), Atty. Balmes Ocampos failed to file for his clients an appellants' brief and the necessary Manifestation and Motion with the Court of Appeals. The Court noted that for the said offense, it had imposed penalties ranging from reprimand, warning with fine, suspension and, in aggravated cases, disbarment. Owing to his advanced age, the Court imposed on Atty. Balmes Ocampos the penalty of suspension for three months with a warning that a repetition thereof will be dealt with more severely.

[30] See *Rayos v. Hernandez*, 558 Phil. 228-235 (2007).

[31] 777 Phil. 16-28 (2016).

years of service in the Judiciary, and restitution of the amount involved. He was also afforded humanitarian consideration due to his health condition and age.

Guided by these past judicious pronouncements and the peculiar circumstances We found herein, We find cogent reasons to impose a lower penalty upon petitioner.

Petitioner did not benefit from the spurious certificate of eligibility; neither did she take advantage of the same to be promoted, as her current position does not require a 2nd grade eligibility.[32] In fact, there was not an instance she indicated in her Personal Data Sheet (PDS) that she passed the same examinations.[33] Moreover, petitioner has been diligently serving the public for more than three (3) decades, from being a casual laborer to her current position as Forest Technician II.[34] This was also her first offense, not having been the subject of any complaint, administrative or criminal, since she started working.[35] She was a loyalty awardee, having rendered 30 years of dedicated service in the government[36] and was rated Very Satisfactory in her performance rating.[37] Furthermore, petitioner is now 56 years old and at the threshold of her retirement.[38] Her dismissal from the service could foreclose her an opportunity to earn income and support her family.[39]

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[32] *Rollo*, p. 25.

[33] *Id.* at 120-123 (Personnel Data Sheet dated 18 January 2016).

[34] *Id.* at 60 (Service Record), 120-123 (Personnel Data Sheet dated 18 January 2016).

[35] *Id.* at 124 (Certification by CENR Officer Rabindranath P. Quilala, CESE).

[36] *Id.* at 125 (Loyalty Award signed by PENR Officer Octavio B. Cuanso).

[37] *Id.* at 126-132 (IPCR dated 8 February 2016 and Performance Evaluation Report for the rating period of 2 January to 30 June 2013).

[38] *Id.* at 120 (Personnel Data Sheet dated 18 January 2016).

[39] *Id.* at 25-26.

While We cannot condone or countenance petitioner's offenses, We subscribe to the OSG's apt suggestion to appreciate the foregoing factors to mitigate petitioner's penalty. Indeed, We should not be impervious to petitioner's plea as the duty to sternly wield a corrective hand to discipline errant employees, and to weed out from the roster of civil servants those who are found to be undesirable comes with the sound discretion to temper the harshness of its judgment with mercy.[40] Accordingly, petitioner is meted the penalty of suspension of one (1) year without pay instead of dismissal.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision promulgated on 13 February 2018 by the Court of Appeals in CA-G.R. SP No. 149825 is **AFFIRMED WITH MODIFICATION** in that the penalty of dismissal from service with accessory penalties imposed upon petitioner Teresita M. Camsol is **REDUCED** to **ONE (1)-YEAR SUSPENSION** without pay, and with a warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Delos Santos, JJ.*, concur.

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[40] *Office of the Court Administrator v. Retired Judge Chavez*, 815 Phil. 41-53 (2017).

FIRST DIVISION

[G.R. No. 238578. June 8, 2020]

VENTIS MARITIME CORPORATION,[*] K-LINE SHIPMANAGEMENT CO., LTD., JOSE RAMON GARCIA, and CAPT. WILFRED D. GARCIA, *petitioners*, *vs.* **EDGARDO L. SALENGA**, *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; SECTION 20 (A) OF POEA-SEC APPLIES ONLY IF THE SEAFARER SUFFERED FROM AN ILLNESS OR INJURY DURING THE TERM OF HIS CONTRACT. — [T]he evidence supports the conclusion that Salenga suffered from his illnesses **after the term of his contract**. After his arrival in the Philippines on November 1, 2015, Salenga executed a Debriefing Sheet stating, among others, that he had no complaints regarding the vessel and offered no suggestions to improve the working conditions therein, and a Clearance Form certifying that he had worked inside the ship under normal conditions and that he was declared physically fit thereafter. Given these admissions by Salenga that he had no complaints while he was on board the vessel and even declared that he was working under normal conditions, his illnesses cannot therefore be considered as illnesses that arose during the term of his contract. Accordingly, it was an error for the CA to rely on Section 20(A) of the POEA-SEC. Section 20(A) applies only if the seafarer suffers from an illness or injury **during the term of his contract**, *i.e.*, while he is employed. x x x **[If] the seafarer suffers from an illness or injury during the term of the contract**, the process in Section 20(A) applies. The employer is obliged to continue to pay the seafarer's wages, and to cover the cost of treatment and medical repatriation, if needed. After medical repatriation, the seafarer had the duty to report to the company-designated

[*] Also appears as Ventis Maritime, Inc. in some parts of the *rollo*.

physician within three days upon his return. The employer shall then pay sickness allowance while the seafarer is being treated. And thereafter, the dispute resolution mechanism with regard to the medical assessments of the company-designated, seafarer-appointed, and independent and third doctor, shall apply.

2. ID.; ID.; ID.; ID.; THE DISPUTABLE PRESUMPTION OF WORK-RELATEDNESS ARISES WHEN SEAFARER SUFFERS FROM AN ILLNESS OR INJURY DURING THE TERM OF THE CONTRACT AND THE RESULTING DISABILITY IS NOT LISTED IN SECTION 32 OF THE POEA-SEC. — The disputable presumption of work-relatedness provided in paragraph 4 above arises only if or when the seafarer suffers from an illness or injury **during the term of the contract** and the resulting disability is not listed in Section 32 of the POEA-SEC. That paragraph 4 above provides for a disputable presumption is because the injury or illness is suffered while working at the vessel. Thus, or stated differently, it is only when the illness or injury manifests itself during the voyage and the resulting disability is not listed in Section 32 of the POEA-SEC will the disputable presumption kick in. This is a reasonable reading inasmuch as, at the time the illness or injury manifests itself, the seafarer is in the vessel, that is, under the direct supervision and control of the employer, through the ship captain. Another way of stating this is that it is only during the term of the voyage that the principal/employer/master/company has the duty to take all necessary precautions to prevent or avoid accident, injury, or illness to the crew and to observe the Code of Ethics for Seafarers, and to provide a workplace conducive for the promotion and protection of the health of the seafarers.

3. ID.; ID.; ID.; TWO INSTANCES WHEN THE INJURY OR ILLNESS IS COMPENSABLE ALTHOUGH MANIFESTED OR DISCOVERED AFTER THE TERM OF THE SEAFARER'S CONTRACT; WORK-RELATED ILLNESS, DEFINED; CONDITIONS THAT MUST BE COMPLIED WITH TO BE ENTITLED TO DISABILITY BENEFITS FOR WORK-RELATED ILLNESS. — In instances where the illness manifests itself or is discovered after the term of the seafarer's contract, the illness may either be (1) an occupational illness listed under Section 32-A of the POEA-SEC, in which case, it is categorized

as a work-related illness if it complies with the conditions stated in Section 32-A, or (2) an illness not listed as an occupational illness under Section 32-A but is reasonably linked to the work of the seafarer. For the first type, the POEA-SEC has clearly defined a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." What this means is that to be entitled to disability benefits, a seafarer must show compliance with the conditions under Section 32-A, as follows: 1. The seafarer's work must involve the risks described therein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer.

4. **ID.; ID.; ID.; ID.; FOR AN ILLNESS THAT IS NOT LISTED AS AN OCCUPATIONAL DISEASE, SEAFARER MAY STILL CLAIM DISABILITY BENEFITS PROVIDED THAT THE REQUIREMENTS OF REASONABLE LINKAGE BETWEEN THE DISEASE SUFFERED BY THE SEAFARER AND HIS WORK WERE SUFFICIENTLY ESTABLISHED. —** As to the second type of illness — one that is **not listed as an occupational disease in Section 32-A** — *Magsaysay Maritime Services v. Laurel*, instructs that the seafarer may still claim provided that he suffered a disability occasioned by a disease contracted on account of or aggravated by working conditions. For this illness, "[i]t is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, *at the very least, aggravation of any pre-existing condition he might have had*." Operationalizing this, to prove this reasonable linkage, it is imperative that the seafarer must prove the requirements under Section 32-A: the risks involved in his work; his illness was contracted as a result of his exposure to the risks; the disease was contracted within a period of exposure and under such other factors necessary to contract it; and he was not notoriously negligent.

5. **ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT RESPONDENT SEAFARER'S CARDIOVASCULAR DISEASE AND TYPE II DIABETES MELLITUS BOTH MANIFESTED AFTER HE HAD**

DISEMBARKED FROM THE VESSEL, HE IS REQUIRED TO PROVE THAT THERE WAS A REASONABLE LINKAGE BETWEEN HIS ILLNESSES AND HIS WORK AS CHIEF COOK; RESPONDENT FAILED IN THIS REGARD. — Since his cardiovascular disease and his Type II Diabetes Mellitus both manifested themselves after he had already disembarked from the vessel, Section 32-A on the list of occupational illnesses does not apply. Hence, Salenga was required to prove that there was a reasonable linkage between his cardiovascular disease and diabetes, and his work as Chief Cook to lead a rational mind to conclude that his work might have contributed to the establishment of his illnesses. He had the burden to prove the risks involved in his work, his illnesses were contracted as a result of his exposure to the risks, the diseases were contracted within a period of exposure and under such other factors necessary to contract it, and he was not notoriously negligent. He failed to do this. There was no proof or explanation in the findings of his doctors as to how he acquired his illnesses as a result of his work as a Chief Cook. There was no proof that as Chief Cook, he was exposed to toxic and hazardous materials. These materials were not even specified. It was also not explained how these materials caused Salenga's cardiovascular disease and diabetes. There was no proof that he contracted his illnesses as a result of his exposure to risks involved in his work, and that he was not notoriously negligent. It was incumbent upon Salenga to prove the requirements above because it is only upon presentation of substantial evidence of the reasonable linkage between his work and his illnesses will his illnesses be considered as work-related illnesses and therefore compensable.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Dante L. Acorda 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 assailing the Decision[2] dated October 24, 2017 and Resolution[3] dated March 27, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 150484. The CA affirmed the findings of both the National Labor Relations Commission (NLRC) and the Labor Arbiter (LA) that respondent Edgardo L. Salenga (Salenga) was entitled to permanent and total disability benefits.

Facts

On January 7, 2015, Salenga was engaged by petitioner Ventis Maritime Corporation (Ventis), for its principal K-Line Shipmanagement Co., Ltd., as Chief Cook for nine months on board the vessel MT Viking River with a basic salary of US$661.00. His employment was covered by a Collective Bargaining Agreement with IBF JSU/AMOSUP IMMAJ.[4]

On October 31, 2015, Salenga's contract expired and he disembarked in South Korea. He arrived in the Philippines on November 1, 2015.[5]

Salenga alleged that on November 3, 2015, he went to Ventis to get his unpaid wages and asked to be referred to a company physician for medical consultation. He was advised to wait for Ventis's call for his medical examination. He, however, executed a Debriefing Sheet stating, among others, that he had no

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[1] *Rollo*, pp. 3-32, excluding the Annexes.

[2] *Id.* at 34-57. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.

[3] *Id.* at 59-60.

[4] *Id.* at 35.

[5] *Id.* at 37.

complaints regarding the vessel and offered no suggestions to improve the working conditions therein.[6] Likewise, Salenga executed a Clearance Form, certifying that he had worked inside the ship under normal conditions and that he was declared physically fit thereafter.[7]

On November 22, 2015, Salenga was referred to PMP Diagnostic Center in preparation for his line-up on board his next embarkation[8] and it was there that he was diagnosed by the company physicians with Type II Diabetes Mellitus and Hypertension. As such, his documents for line-up were withdrawn and he executed a Release and Quitclaim on December 9, 2015, releasing petitioners from all claims.[9]

On December 10, 2015, after he suffered from dizziness and chest pains, Salenga consulted a private physician, Dr. Erlinda Bandong-Reyes (Dr. Bandong-Reyes), who eventually issued a certification dated January 11, 2016 that Salenga had cardiovascular disease and Type II Diabetes Mellitus, and that he was permanently unfit for further sea duties and "entitled under POEA Disability Grade 1."[10]

On February 4, 2016, Salenga filed a complaint for disability benefits, moral and exemplary damages, and attorney's fees against petitioners.[11]

On March 14, 2016, another private physician, Dr. Wenceslao Llauderes (Dr. Llauderes), confirmed Dr. Bandong-Reyes's findings.[12]

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 38.

[9] *Id.*

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

[11] *Id.* at 39 and 92.

[12] *Id.* at 39.

LA Decision

In his/her Decision dated May 18, 2016, the LA gave due course to the complaint and awarded Salenga with permanent and total disability benefits amounting to US$96,909.00, with sickness allowance, moral and exemplary damages, and attorney's fees. The dispositive portion of the LA Decision states:

> "WHEREFORE, premises considered, judgment is hereby rendered awarding Complainant total and permanent disability benefits including sickness allowance in the respective sums of US $96,909 and $2644, plus moral and exemplary damages of ₱50,000 each and attorney's fees equal to 10% of the total judgment awards.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED."[13]

According to the LA, the Clearance Form or the Quitclaim executed by Salenga cannot be used to deprive him of the benefits due him. These were against public policy as they were signed by Salenga who was not a medical practitioner.[14] Moreover, the LA ruled that Salenga was able to prove that he reported to the company within three days from repatriation as this was admitted by petitioners, but that they treated Salenga as a signed-off employee and not one who was medically repatriated.[15] As regards the work-relatedness of Salenga's illnesses, the LA ruled that since the medical reports confirm that Salenga was ill, it is reasonable to conclude that they were acquired or were aggravated on board the vessel as they could not only have been contracted upon his disembarkation.[16] With respect to the award for moral and exemplary damages, the LA opined that petitioners were in bad faith for depriving Salenga of his right to medical evaluation.[17] For having the power to put on

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[13] *Id.* at 42.

[14] *Id.* at 39.

[15] *Id.* at 40.

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

[17] *Id.* at 41.

hold Salenga's benefits, the individual officers of petitioners were made solidarily liable.[18]

NLRC Decision

On appeal to the NLRC, the NLRC issued a Decision dated December 29, 2016 partially granting the appeal of petitioners, and modifying the LA's Decision by deleting the award for moral and exemplary damages as well as reducing the amount of disability benefits to US$60,000.00. The dispositive portion of the NLRC Decision states:

"WHEREFORE, premises considered, the Appeal dated 18 May 2016 is PARTIALLY GRANTED. The assailed Decision dated 11 May 2016 is AFFIRMED WITH MODIFICATION.

The award of moral and exemplary damages [is] DELETED.

Respondents-appellants Ventis Maritime, Inc., K-Line Shipmanagement Co., Ltd., Jose Ramon Garcia, and Capt. Wilfredo A. Garcia, are jointly and severally liable to pay complainant-appellee Edgardo L. Salenga, the following:

1) US$60,000.00 as total and permanent disability benefits;

2) US$2,644.00 as sickness allowance for 120 days; and

3) Attorney's fees equivalent to 10% of the total monetary award.

All other claims are dismissed for lack of factual or legal basis.

SO ORDERED."[19]

The NLRC affirmed the factual findings of the LA and also accorded them great weight as they were supported by substantial evidence.[20] The NLRC, however, found that Salenga failed to prove bad faith on the part of petitioners to warrant the award of moral and exemplary damages.[21]

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[18] *Id.* at 42.

[19] *Id.* at 45.

[20] *Id.* at 44.

[21] *Id.*

Petitioners moved for reconsideration but this was denied in the NLRC's Resolution dated February 14, 2017, prompting petitioners to file a petition for *certiorari* with the CA.[22]

CA Decision

In the assailed Decision, the CA dismissed the petition and affirmed the rulings of the NLRC. The dispositive portion of the CA Decision states:

> **WHEREFORE**, the instant petition for *certiorari* is **DISMISSED**. The assailed NLRC *Decision* dated December 29, 2016, and *Resolution* dated February 14, 2017 are hereby **AFFIRMED**.
>
> **SO ORDERED**.[23]

The CA relied on the findings of the labor tribunals that the CA found to be supported by substantial evidence. The CA affirmed that Salenga's illnesses were work-related based on the medical evaluation of the company-designated physicians who found him suffering from Diabetes Mellitus Type II and cardiovascular disease.[24] This was also supported by the medical assessment of Salenga's own doctors.[25] The CA likewise found the award of attorney's fees proper because the withholding of wages need not be attended by bad faith or malice to warrant the grant of attorney's fees.[26]

Petitioners moved for reconsideration but this was denied. Hence, this Petition.

Issue

Whether the CA is correct in affirming the NLRC ruling that Salenga is entitled to total and permanent disability benefits.

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[22] *Id.* at 45.

[23] *Id.* at 56.

[24] *Id.* at 53-54.

[25] *Id.*

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

The Court's Ruling

The Petition is granted.

Although a Rule 45 petition is limited to questions of law, the Court may resolve questions of facts if the appealed decision is based on a misapprehension of facts.[27] Although as a rule, the factual findings of the CA, especially if it affirms the factual findings of the labor tribunals, are binding on this Court, this rule does not find application when these are based on speculations, conjectures and surmises.[28]

Here, the LA, NLRC, and CA erred in finding that Salenga's illnesses were work-related.

Section 20(A) of the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) is irrelevant if the seafarer did not suffer from an illness or injury during the term of his contract.

The seafarer's complaints for disability benefits arise from (1) injury or illness that manifests or is discovered **during** the term of the seafarer's contract, which is usually while the seafarer is on board the vessel or (2) illness that manifests or is discovered **after** the contract, which is usually after the seafarer has disembarked from the vessel. As further explained below, it is only in the first scenario that Section 20(A) of the POEA-SEC applies.

In ruling that Salenga is entitled to disability benefits, the CA ruled that he was able to show that his illnesses existed during the term of his contract, as follows:

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[27] See *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 414-415 (2012).

[28] *Allied Banking Corp. v. Court of Appeals*, 461 Phil. 517, 533 (2003).

The terms and conditions for claiming disability benefits by a seafarer against his employer are contained in the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA-SEC). Specifically, Section 20[(A)[29]] provides that the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. To be compensable, the injury or illness (1) must be work-related and (2) must have arisen during the term of the employment contract.

x x x x x x x x x

Furthermore, [Salenga] was also able to show that his illness[es] existed during the term of his employment. There is sufficient basis to conclude that his illness[es] x x x developed while he was onboard, considering the conditions of his workplace and the strain he experienced while attending to his duties on the vessel. The NLRC based its conclusion on the medical findings of Dra. Bandong-Reyes and Dr. L[l]auderes. These findings were contained in physicians' certifications which also state that [Salenga] is permanently unfit for further sea duties in any capacity. Clearly, the labor tribunals' ruling was not capricious or whimsical so as to constitute grave abuse of discretion, the conclusions being based on substantial evidence.

There was also no grave abuse of discretion on the part of the NLRC when it decided to give no evidentiary weight to the clearance and quitclaim that [Salenga] allegedly signed. These forms are pre-drafted and prepared by the company as *pro forma* waivers. These waivers are generally looked upon with disfavor and are largely ineffective to bar claims based on a worker's legal rights. Unless it can be established that the person executing the waiver voluntarily did so, with full understanding of its contents, and with reasonable and credible consideration, the same is not a valid and binding undertaking. Moreover, the burden to prove that the waiver or quitclaim was voluntarily executed is with the employer.[30]

The CA's ruling is erroneous.

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[29] Appears as Section 20(B) in the CA Decision but is actually referring to Section 20(A) of the POEA-SEC.

[30] *Rollo*, pp. 52-54.

The CA concluded that Salenga's illnesses existed during the term of the contract on the basis of the medical findings of Dr. Bandong-Reyes and Dr. Llauderes. Their medical findings state:

> This is to certify that, Mr. Edgardo Lacson Salenga x x x was seen and examined in this clinic from December 10, 2015 up to present, with the following findings and/or diagnosis:
>
> Cardiovascular Disease
> Type II Diabetes Mellitus
>
> Patient is permanently unfit for further sea duties in any capacity and entitled under POEA Disability Grade 1 for severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will [en]able worker to seek any gainful employment.
>
> Such injury/illness[es] are work related since exposed to toxic and hazardous materials.[31]

There is absolutely nothing in the foregoing that indicates, or even implies, that Salenga suffered from the illnesses during the term of his contract.

To the contrary, the evidence supports the conclusion that Salenga suffered from his illnesses **after the term of his contract**. After his arrival in the Philippines on November 1, 2015, Salenga executed a Debriefing Sheet stating, among others, that he had no complaints regarding the vessel and offered no suggestions to improve the working conditions therein,[32] and a Clearance Form certifying that he had worked inside the ship under normal conditions and that he was declared physically fit thereafter.[33] Given these admissions by Salenga that he had no complaints while he was on board the vessel and even declared that he was working under normal conditions, his illnesses cannot therefore be considered as illnesses that arose during the term of his contract.

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

[32] See *id.* at 4, 37.

[33] *Id.* at 37.

Accordingly, it was an error for the CA to rely on Section 20(A) of the POEA-SEC. Section 20(A) applies only if the seafarer suffers from an illness or injury **during the term of his contract**, *i.e.*, while he is employed. Section 20(A) of the POEA-SEC clearly states the parameters of its applicability:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer **suffers work-related injury or illness *during the term of his contract*** are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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

   The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost

of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

5. In case a seafarer is disembarked from the ship for medical reasons, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former ship or another ship of the employer.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

   The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

> 7. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws such as from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund). (Emphasis and underscoring supplied)

Based on the foregoing, **if the seafarer suffers from an illness or injury during the term of the contract**, the process in Section 20(A) applies. The employer is obliged to continue to pay the seafarer's wages, and to cover the cost of treatment and medical repatriation, if needed. After medical repatriation, the seafarer has the duty to report to the company-designated physician within three days upon his return. The employer shall then pay sickness allowance while the seafarer is being treated. And thereafter, the dispute resolution mechanism with regard to the medical assessments of the company-designated, seafarer-appointed, and independent and third doctor, shall apply.

The disputable presumption of work-relatedness provided in paragraph 4 above arises only if or when the seafarer suffers from an illness or injury **during the term of the contract** and the resulting disability is not listed in Section 32 of the POEA-SEC. That paragraph 4 above provides for a disputable presumption is because the injury or illness is suffered while working at the vessel. Thus, or stated differently, it is only when the illness or injury manifests itself during the voyage and the resulting disability is not listed in Section 32 of the POEA-SEC will the disputable presumption kick in. This is a reasonable reading inasmuch as, at the time the illness or injury manifests itself, the seafarer is in the vessel, that is, under the direct supervision and control of the employer, through the ship captain.

Another way of stating this is that it is only during the term of the voyage that the principal/employer/master/company has the duty to take all necessary precautions to prevent or avoid accident, injury, or illness to the crew and to observe the Code

of Ethics for Seafarers, and to provide a workplace conducive for the promotion and protection of the health of the seafarers. Section 1(A) of the POEA-SEC states:

SECTION 1. DUTIES

A. Duties of the Principal/Employer/Master/Company:

1. To faithfully comply with the stipulated terms and conditions of this contract, particularly the prompt payment of wages, remittance of allotment and the expeditious settlement of valid claims of the seafarer.

2. To extend coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees' Compensation Commission (ECC) and Home Development Mutual Fund (Pag-IBIG Fund), unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries.

3. To make operational on board the ship the grievance machinery provided in this contract and ensure its free access at all times by the seafarer.

4. **To provide a seaworthy ship for the seafarer and take all reasonable precautions to prevent accident and injury to the crew including provision of safety equipment, fire prevention, safe and proper navigation of the ship and such other precautions necessary to avoid accident, injury or sickness to the seafarer**.

5. **To observe the Code of Ethics for Seafarers and conduct himself in the traditional decorum of a master**.

6. **To provide a workplace conducive for the promotion and protection of the health of the seafarers in accordance with the standards and guidelines in Title 4 of the ILO Maritime Labor Convention, 2006**. (Emphasis and underscoring supplied)

At the same time, the seafarer has the duty to act in an orderly and respectful manner, to abide by the Code of Discipline and Code of Ethics for Seafarers, and to take personal responsibility for his health while on board by practicing a healthy

lifestyle which includes taking medications and lifestyle changes as prescribed by the company-designated doctor. Section 1 (B) of the POEA-SEC states:

SECTION 1. DUTIES

x x x x x x x x x

B. Duties of the Seafarer:

1. To faithfully comply with and observe the terms and conditions of this contract, violation of which shall be subject to disciplinary action pursuant to Section 33 of this contract.
2. To abide by the Code of Discipline as provided in the POEA rules and regulations governing overseas contract workers and the Code of Ethics for Seafarers.
3. To be obedient to the lawful commands of the Master or any person who shall lawfully succeed him and to comply with the company policy including safety policy and procedures and any instructions given in connection therewith.
4. To be diligent in his duties relating to the ship, its stores and cargo, whether on board, in boats or ashore.
5. To conduct himself at all times in an orderly and respectful manner towards shipmates, passengers, shippers, stevedores, port authorities and other persons on official business with the ship.
6. To take personal responsibility for his health while onboard by practicing a healthy lifestyle which includes taking medications and lifestyle changes as prescribed by the company-designated doctor.

Here, Salenga was repatriated because his contract had already ended. Further, based on his own admissions, he did not suffer any illness while he was on board the ship, and in fact, he failed to present any proof that his illnesses manifested while he was on board the vessel. Hence, Section 20(A) of the POEA-SEC does not apply to him. Indeed, because he disembarked at the end of his contract, he was not required to

submit to the company-designated physician within three days from repatriation. Petitioners also had no obligation to pay him sickness allowance.

An illness suffered after the term of the contract may still be considered work-related.

Nonetheless, even if Salenga's illnesses manifested or were discovered after the term of the contract, and even if Section 20(A) finds no application to him, he may still claim disability benefits.

In instances where the illness manifests itself or is discovered after the term of the seafarer's contract, the illness may either be (1) an occupational illness listed under Section 32-A of the POEA-SEC, in which case, it is categorized as a work-related illness if it complies with the conditions stated in Section 32-A, or (2) an illness not listed as an occupational illness under Section 32-A but is reasonably linked to the work of the seafarer.

For the first type, the POEA-SEC has clearly defined a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[34] What this means is that to be entitled to disability benefits, a seafarer must show compliance with the conditions under Section 32-A, as follows:

1. The seafarer's work must involve the risks described therein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

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[34] POEA-SEC, Definition of Terms, No. 16.

As to the second type of illness — one that is **not listed as an occupational disease in Section 32-A** — *Magsaysay Maritime Services v. Laurel*,[35] instructs that the seafarer may still claim provided that he suffered a disability occasioned by a disease contracted on account of or aggravated by working conditions. For this illness, "[i]t is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, *at the very least, aggravation of any pre-existing condition he might have had*."[36] Operationalizing this, to prove this reasonable linkage, it is imperative that the seafarer must prove the requirements under Section 32-A: the risks involved in his work; his illness was contracted as a result of his exposure to the risks; the disease was contracted within a period of exposure and under such other factors necessary to contract it; and he was not notoriously negligent.

In effect, the table of illnesses and the corresponding nature of employment in Section 32-A only provide the list of occupational illnesses. It does not exempt a seafarer from providing proof of the conditions under the first paragraph of Section 32-A in order for the occupational illness/es complained of to be considered as work-related and, therefore, compensable.

Further, in both types, to determine the amount of compensation, the seafarer must show the resulting disability following as guide the schedule listed in Section 32.

To illustrate the first type: Assuming that the seafarer seeks disability benefits for cancer of the epithelial of the bladder that manifests itself after the term of the contract, which is listed in Section 32-A as follows:

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[35] 707 Phil. 210 (2013).

[36] *Id.* at 225, citing *David v. OSG Shipmanagement Manila, Inc.*, 695 Phil. 906, 919 (2012), further citing *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 320 (2009); and *NYK-Fil Ship Management v. Talavera*, 591 Phil. 786, 801 (2008). Italics supplied.

OCCUPATIONAL DISEASE	NATURE OF EMPLOYMENT
1. Cancer of the epithelial of the bladder (Papilloma of the bladder)	Work involving exposure to alphanapthylamine, betanaphathylamin, or benzidine of any part of the salts; and auramine or magenta

this alone does not mean that the seafarer is automatically entitled to disability benefits. He must still show compliance with the conditions — that is, he must still prove that the nature of his work involved exposure to alphanapthylamine, betanaphathylamin, or benzidine of any part of the salts, and auramine or magenta, that the disease was contracted within a period of exposure and under such other factors necessary to contract it, and that he was not notoriously negligent. Once such proof is adduced, then the illness is considered work-related and compensable.

As to the disability benefit he is entitled to, the seafarer (through his physician) must then provide a disability grade following Section 32, which provides for a specific disability grade for a specific type of disability or impediment. Thus, the seafarer who suffers from cancer of the epithelial of the bladder may have a disability grade of 1, 7 or 12, depending on which of the following applies to him:

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED

x x x x x x x x x

ABDOMEN

x x x x x x x x x

3. Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment — Gr. 1

4. Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea — Gr. 7

5. Slight residuals or disorder of the intra-abdominal organs resulting in impairment of nutrition, slight tenderness and/or constipation or diarrhea — Gr. 12

The amount of disability benefit is computed following the schedule in Section 32, as follows:

SCHEDULE OF DISABILITY ALLOWANCES

IMPEDIMENT GRADE		IMPEDIMENT	
1	US$50,000	x	120.00%
2	"	x	88.81%
3	"	x	78.36%
4	"	x	68.66%
5	"	x	58.96%
6	"	x	50.00%
7	"	x	41.80%
8	"	x	33.59%
9	"	x	26.12%
10	"	x	20.15%
11	"	x	14.93%
12	"	x	10.45%
13	"	x	6.72%
14	"	x	3.74%

Thus, the seafarer may receive US$60,000.00 if he has a Grade 1 Disability Grade, US$20,900.00 if Grade 7, or US$5,225.00 if Grade 12.

On the other hand, if a seafarer seeks disability benefits under the second type (not listed as an occupational disease under Section 32-A), the seafarer must prove the reasonable linkage between his disease and his work. The seafarer must prove that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had. This means that the seafarer must prove: the risks involved in his work; his illness was contracted as a result of his exposure to the risks; the disease was contracted

within a period of exposure and under such other factors necessary to contract it; and he was not notoriously negligent. Assuming these are proven, the seafarer must also provide a disability grade following Section 32 as shown above.

More importantly, the rule applies that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence[37] which is more than a mere scintilla; it is real and substantial, and not merely apparent.[38] Further, while in compensation proceedings in particular, the test of proof is merely probability and not ultimate degree of certainty,[39] the conclusions of the courts must still be based on real evidence and not just inferences and speculations.[40]

Here, it is not disputed that Salenga was lined-up for re-deployment and during his pre-employment medical examination for such re-deployment, he was found to have been suffering from cardiovascular disease and Type II Diabetes Mellitus. In order to be considered as work-related illnesses, Salenga was required to present substantial evidence of how his illnesses are work-related.

For his cardiovascular disease, Section 32-A, on the list of occupational illnesses, finds no application. Although cardiovascular and cerebro-vascular events are listed as occupational illnesses in paragraphs 11 and 12 of Section 32-A, the conditions stated therein show that such events, in order to be considered as work-related, should manifest themselves while the seafarer was at work. Thus:

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[37] *Jebsens Maritime, Inc. v. Undag*, 678 Phil. 938, 946-947 (2011).

[38] *Panganiban v. Tara Trading Shipmanagement, Inc.*, 647 Phil. 675, 688 (2010).

[39] *Villamor v. Employees' Compensation Commission*, 800 Phil. 269, 270 & 282 (2016).

[40] See *Scanmar Maritime Services, Inc. v. De Leon*, 804 Phil. 279, 291-292 (2017).

11. Cardio-vascular events — to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

    a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work

    b. **the strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute a causal relationship**

    c. If a person who was apparently asymptomatic before being subjected to strain at work **showed signs and symptoms of cardiac injury during the performance of his work** and such symptoms and signs persisted, it is reasonable to claim a causal relationship

    d. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5

    e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME

12. Cerebro-vascular events

All of the following conditions must be met:

    a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work

    b. the strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute a causal relationship

    c. If a person who was apparently asymptomatic before being subjected to strain at work **showed signs and**

symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship

d. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5

e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME. (Emphasis and underscoring supplied)

Salenga's cardiovascular disease cannot be considered as a cardiovascular or cerebro-vascular event under Section 32-A because his cardiovascular disease did not manifest itself while he was performing his work. There was no proof that Salenga was suffering from heart disease during his employment and that a cardiovascular or cerebro-vascular event had occurred that was precipitated by reasons of the nature of his work. As to Salenga's diabetes, it is not listed in Section 32-A.

Since his cardiovascular disease and his Type II Diabetes Mellitus both manifested themselves after he had already disembarked from the vessel, Section 32-A on the list of occupational illnesses does not apply. Hence, Salenga was required to prove that there was a reasonable linkage between his cardiovascular disease and diabetes, and his work as Chief Cook to lead a rational mind to conclude that his work might have contributed to the establishment of his illnesses. He had the burden to prove the risks involved in his work, his illnesses were contracted as a result of his exposure to the risks, the diseases were contracted within a period of exposure and under such other factors necessary to contract it, and he was not notoriously negligent.

He failed to do this.

There was no proof or explanation in the findings of his doctors as to how he acquired his illnesses as a result of his work as

a Chief Cook. There was no proof that as Chief Cook, he was exposed to toxic and hazardous materials. These materials were got even specified. It was also not explained how these materials caused Salenga's cardiovascular disease and diabetes. There was no proof that he contracted his illnesses as a result of his exposure to risks involved in his work, and that he was not notoriously negligent.

It was incumbent upon Salenga to prove the requirements above because it is only upon presentation of substantial evidence of the reasonable linkage between his work and his illnesses will his illnesses be considered as work-related illnesses and therefore compensable. Given this, the LA, NLRC, and CA all erred in awarding total and permanent disability benefits to Salenga when he failed to present substantial evidence to prove that his illnesses were work-related.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated October 24, 2017 and Resolution dated March 27, 2018 of the Court of Appeals in CA-G.R. SP No. 150484 are **REVERSED** and **SET ASIDE**. The complaint of respondent Edgardo L. Salenga is **DISMISSED** for lack of merit.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 238914. June 8, 2020]

QATAR AIRWAYS COMPANY WITH LIMITED LIABILITY, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE**, *respondent*.

SYLLABUS

TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; PENALTY FOR LATE FILING OF INCOME TAX RETURN (ITR); THE COURT AGREES WITH THE FINDINGS OF THE COURT OF TAX APPEALS (CTA) THAT THE SURCHARGE IMPOSED UPON PETITIONER FOR FAILURE TO TIMELY FILE ITS RETURN AND PAY THE TAX DUE THEREON WAS NOT UNJUST OR EXCESSIVE; NO ABUSE OF AUTHORITY ON THE PART OF THE CTA. — [T]he Court finds no abuse of authority on the part of the CTA. Verily, the findings of the CTA, supported as they are by logic and law, carry great weight in the proper interpretation of what constitutes as "circumstances beyond control." Undeniably, a technical malfunction is not a situation too bleak so as to render petitioner completely without recourse. As correctly observed by the CTA, petitioner would not incur delay in the filing of its ITR if only it filed the same before the deadline and not at the 11th hour or on the last day of filling. On petitioner's averment that it had difficulty in interpreting the correct Gross Philippine Billings Computation for income tax under the then newly-issued RR No. 11-2011[.] x x x Further, the Court agrees that the surcharge imposed upon petitioner was not unjust or excessive pursuant to Section 248(A)(1) of the 1997 NIRC which provides for the imposition of a penalty equivalent to 25% of the amount due for failure to timely file any return and pay the tax due thereon. *Dura lex sed lex*. While the Court commiserates with the unfortunate plight of petitioner, the Court, like the CTA, is still bound to apply and give effect to the applicable law and rules.

APPEARANCES OF COUNSEL

Pizarras Gainza & Associates Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

The Court subscribes to the time-honored doctrine that the findings and conclusions of the Court of Tax Appeals (CTA) are accorded with the highest respect given its expertise on the subject.[1] This case is no exception.

Assailed in this Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court are the September 5, 2017 Decision[3] and the April 12, 2018 Resolution[4] of the CTA *En Banc* in CTA EB No. 1468.

The Facts

On November 30, 2011, Qatar Airways Company with Limited Liability (petitioner) filed, through the Electronic Filing and Payment System (*e*FPS) of the Bureau of Internal Revenue (BIR), its 2nd Quarterly Income Tax Return (ITR) for the Fiscal Year ending March 31, 2012 and paid the corresponding tax due thereon in the amount of ₱29,540,836.00. The said filing was **one day late**. Thus, petitioner sent a Letter dated April 11,

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[1] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, 784 Phil. 874, 898 (2016).

[2] *Rollo*, pp. 11-31.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Cielito N. Mindaro-Grulla and Catherine T. Manahan, concurring. Associate Justice Caesar A. Casanova, concurring and dissenting (*see* Concurring and Dissenting Opinion), joined by Associate Justice Ma. Belen M. Ringpis-Liban, *id.* at 32-48.

[4] *Id.* at 49-52.

2012 addressed to respondent Commissioner of Internal Revenue (CIR) requesting for the abatement of surcharge.[5]

On May 18, 2012, BIR issued Assessment Notice No. QA-12-000-135 informing petitioner of the following charges/fees: a) 25% surcharge in the amount of ₱7,385,209.00; b) interest amounting to ₱16,186.76 for late payment; and c) compromise penalty of ₱50,000.00.[6]

On July 3, 2012, *via* the *e*FPS,[7] petitioner paid a total of ₱66,186.76 to cover for the compromise penalty and the interest for late payment. As for the ₱7,385,209.00 surcharge, petitioner sent Letters dated July 4, 2012[8] and March 7, 2013[9] to the CIR requesting for its abatement or cancellation on the ground that its imposition was unjust and excessive considering that: 1) petitioner paid the tax due just one day after the deadline; 2) such belated filing was due to circumstances beyond petitioner's control; and 3) petitioner acted in good faith.

In a Letter[10] dated October 3, 2013 signed by the Legal Taxpayers Service Officer-in-Charge Assistant Commissioner Alfredo V. Misajon (OIC-ACIR Misajon), the BIR informed petitioner that its application for abatement has been **denied** and that its payment of ₱66,186.76 shall be deemed as partial payment of the total amount due (*i.e.*, ₱7,451,395.76). The BIR also requested that the balance of ₱7,385,209.00 be paid within 10 days from receipt of the letter.

Petitioner sought reconsideration, but the BIR denied due course[11] thereon after finding that no new/additional justification

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[5] *Id.* at 151.

[6] *Id.*

[7] *Id.* at 78-81.

[8] *Id.* at 82.

[9] *Id.* at 73-77.

[10] *Id.* at 118.

[11] See Letter dated February 10, 2014; *id.* at 89.

was introduced as provided under Revenue Regulations (RR) No. 13-2001, and reiterated the request for payment of the balance within 10 days.

Undeterred, petitioner appealed for another reconsideration, but in a Letter[12] dated April 3, 2014, the CIR denied petitioner's request for the last time, *viz.*:

03 April 2014

Mr. Abdallah A. Okasha
Country Manager Philippines
Qatar Airways Company with Limited Liability
Units 803-804, One Global Place, 5th Ave., cor. 25th St.
Bonifacio Global City, Taguig City

Dear Mr. Okasha:

We refer to the letter dated 19 February 2014 of your counsel, Atty. Estrella V. Martinez, addressed to [OIC-ACIR Misajon] and forwarded to this Office, requesting another reconsideration of the earlier denial of your company's application for abatement of surcharge in the amount of [₱]7,385,209.00, imposed for the late filing of the 2nd Quarterly Income Tax Return for the Fiscal Year 2012 (July 2011 to September 2011).

As may be recalled, in a letter dated 03 October 2013, OIC-ACIR Misajon informed you of the denial of [your] company's application for abatement of surcharge. Thereafter, you filed, [through] counsel, a request for reconsideration contending *inter-alia*, that the late filing of such return was due to circumstances beyond the company's control as it was due to a technical failure brought about by faulty internet connection at the company's office on 29 November 2011. In [a] letter dated 10 February 2014, OIC-ACIR Misajon informed you of the denial of such request for reconsideration as you did not introduce any new/additional justifiable reason as provided under [RR] No. 13-2001, as amended by RR [No.] 4-2012. Dissatisfied still, you filed, [through] counsel, the present letter, which, in effect, is a second request or motion for reconsideration.

Kindly be informed that there is no law, rules or regulations that allow a second request or motion for reconsideration of a decision

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

on abatement cases. This is a prohibited pleading. Be that as it may, we find no cogent reason to depart from our earlier findings. There was no advice on eFPS Unavailability on 29 November 2011, which means that no technical problems were encountered in eFPS on that day. Also, if you claimed that you had log-in problems on the night of 29 November 2011, filing of the return should have been done on the first working hour of the following day. But as it [were], the return was filed and paid only on the following day, 30 November 2011, at 1:38 in the afternoon.

Further, you were given a period of sixty (60) days to file the return. You chose, however, to file it on the last day [when] you could have filed it any day before. An acceptable reason that may be advanced for failing to file the return on time is if there is a major natural catastrophe. This is not, however, the situation in the present case. To us, any other reasons could have been avoided if the filing was made earlier or before the deadline.

Based thereon, the instant request for reconsideration is hereby **denied**. This denial is **final**. No further request for reconsideration, or other letters or pleadings of similar import, shall be entertained.

Accordingly, we reiterate our request that the amount of **Seven Million Three Hundred Eighty[-]Five Thousand Two Hundred Nine Pesos Only ([₱]7,385,209.00)** be paid within ten (10) days upon receipt of this notice, thru the [*e*FPS] to any Authorized Agent Bank (AAB) for large taxpayers. Otherwise, we shall be constrained to enforce the collection thereof [through the] administrative summery remedies provided by law, without further notice. (Emphases and underscoring in the original)

Very truly yours,

(sgd.)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

Hence, on May 8, 2014, petitioner filed a Petition for Review[13] before the CTA docketed as CTA Case No. 8816.

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[13] *Id.* at 53-65.

The Ruling of the CTA Division

The 2nd Division of the CTA denied the petition for lack of jurisdiction. It held that the 30-day period to file a Petition for Review already commenced when petitioner received the February 10, 2014 letter of the BIR denying petitioner's request for reconsideration. It ratiocinated that since petitioner sought reconsideration for the second time and waited for the BIR's action thereon, it therefore had no jurisdiction over the petition for review belatedly filed on May 8, 2014. Thus, the dispositive portion of its Decision[14] dated January 22, 2016 reads:

> WHEREFORE, premises considered, the Petition for Review filed by [petitioner] is hereby DENIED for lack of jurisdiction.
>
> SO ORDERED.

Petitioner filed a Motion for Reconsideration,[15] but the same was denied in a Resolution[16] dated May 25, 2016.

The Ruling of the CTA En Banc

Upon appeal, the CTA *En Banc* ruled that while the petition for review was seasonably filed, the surcharge imposed by the BIR was not unjust nor excessive pursuant to Section 248(A)(1)[17] of the 1997 National Internal Revenue Code (NIRC). The pertinent portion of the CTA *En Banc* Decision reads as follows:

> WHEREFORE, the Petition for Review filed by [petitioner] on June 10, 2016 is hereby DENIED, for lack of merit.
>
> SO ORDERED.

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[14] *Id.* at 150-165.

[15] *Id.* at 167-176.

[16] *Id.* at 178-185.

[17] SEC. 248. *Civil Penalties*. —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed[.]

The Motion for Reconsideration filed by petitioner was denied by the CTA *En Banc* in a Resolution dated April 12, 2018.

Hence, this petition.

The Court's Ruling

The Court finds no merit in the present petition.

The authority of the CIR to abate or cancel a tax liability is enshrined in Section 204(B) of the 1997 NIRC, *viz.*:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. —

The Commissioner may —

x x x x x x x x x

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

On September 27, 2001, the BIR issued Revenue Regulations (RR) No. 13-2001[18] prescribing the guidelines on the implementation of Section 204(B) regarding abatement or cancellation of internal revenue tax liabilities. Section 2 of RR No. 13-2001 is hereunder summarized, to wit:

SEC. 2. INSTANCES WHEN THE PENALTIES AND/OR INTEREST IMPOSED ON THE TAXPAYER MAY BE ABATED OR CANCELLED ON THE GROUND THAT THE IMPOSITION THEREOF IS UNJUST OR EXCESSIVE. —

2.1 When the filing of the return/payment of the tax is made at the wrong venue;

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[18] Under RR 4-2012 (March 28, 2012), which amended RR No. 13-2001, the one (1) day late filing and remittance of tax due to failure to beat the bank cut-off time is no longer considered a meritorious circumstance in which penalties and/or interest imposed on late payment of the tax may be abated or cancelled.

2.2 When [the] taxpayer's mistake in payment of his tax due is due to erroneous written official advice from a revenue officer;

2.3 When [the] taxpayer fails to file the return and pay the tax on time due to substantial losses from prolonged labor dispute, *force majeure*, legitimate business reverses such as in the following instances, provided, however, that the abatement shall only cover the surcharge and the compromise penalty and not the interest;

x x x x x x x x x

2.4 When the assessment is brought about or the result of taxpayer's non-compliance with the law due to a difficult interpretation of said law;

2.5 When [the] taxpayer fails to file the return and pay the correct tax on time due to circumstances beyond his control provided, however, that abatement shall cover only the surcharge and the compromise penalty and not the interest; [and]

2.6 Late payment of the tax under meritorious circumstances.

Here, petitioner insists that the surcharge of ₱7,385,209.00 should be abated under RR No. 13-2001 for being unjust and excessive. Petitioner claims its belated filing of ITR was due to a technical problem beyond its control.

To recall, the CTA *En Banc*, citing the CIR's April 3, 2014 Letter, found that there was no advice on *e*FPS unavailability on November 29, 2011 and the delay could have been easily avoided had petitioner undertook to file its ITR earlier or before the deadline. Moreover, the CTA *En Banc* ruled that the surcharge was not unjust nor excessive.

The Court will not set aside lightly the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has, accordingly, developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[19]

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[19] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 609 Phil. 695, 724 (2009).

In the present case, the Court finds no abuse of authority on the part of the CTA. Verily, the findings of the CTA, supported as they are by logic and law, carry great weight in the proper interpretation of what constitutes as "circumstances beyond control." Undeniably, a technical malfunction is not a situation too bleak so as to render petitioner completely without recourse. As correctly observed by the CTA, petitioner would not incur delay in the filing of its ITR if only it filed the same before the deadline and not at the 11th hour or on the last day of filing. On petitioner's averment that it had difficulty in interpreting the correct Gross Philippine Billings Computation for income tax under the then newly-issued RR No. 11-2011, the CTA aptly stated that:

> To avoid delay, petitioner could file a tentative quarterly income tax return if it was still unsure with the figures contained therein to avoid paying the [25%] surcharge for late filing. Thereafter, it could modify, change, or amend the tentative return already filed if warranted, pursuant to Section 6(A) of the 1997 NIRC.[20]

Further, the Court agrees that the surcharge imposed upon petitioner was not unjust or excessive pursuant to Section 248 (A) (1) of the 1997 NIRC which provides for the imposition of a penalty equivalent to 25% of the amount due for failure to timely file any return and pay the tax due thereon. *Dura lex sed lex*. While the Court commiserates with the unfortunate plight of petitioner, the Court, like the CTA, is still bound to apply and give effect to the applicable law and rules.

WHEREFORE, premises considered, the Decision dated September 5, 2017 and Resolution dated April 12, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1468 are hereby **AFFIRMED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (*Working Chairperson*), *Lazaro-Javier,* and *Lopez, JJ.*, concur.

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[20] *Rollo,* p. 43.

FIRST DIVISION

[G.R. No. 241383. June 8, 2020]

NIDA P. CORPUZ, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES**, *respondent*.

SYLLABUS

1. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; ELEMENTS; WHAT IS REQUIRED FOR CONVICTION IS PROOF THAT THE ACCOUNTABLE OFFICER HAD RECEIVED THE PUBLIC FUNDS AND FAILED TO ACCOUNT FOR THE SAID FUNDS UPON DEMAND WITHOUT JUSTIFIABLE EXPLANATION. — The elements of malversation under said provision of law are: 1) that the offender is a public officer; 2) that he or she had custody or control of funds or property by reason of the duties of his or her office; 3) that those funds or property were funds or property for which he or she was accountable; and 4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. In addition, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that such officer failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.

2. ID.; ID.; ELEMENTS OF MALVERSATION OF PUBLIC FUNDS THROUGH NEGLIGENCE, SUFFICIENTLY ESTABLISHED. —[A]ll of the above-mentioned elements were sufficiently established by the prosecution. *First*, it is undisputed that petitioner is a public officer, being then a revenue collection officer of the BIR assigned at Alabel, Sarangani Province. x x x *Next*, it is also beyond dispute that petitioner is an accountable officer. An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property. x x x *Finally*, as regards the last element for the crime of malversation of public funds through negligence, the prosecution was able to establish that petitioner failed to return the amount of ₱188,671.40, the recorded cash shortage, upon demand. Her failure to return said cash shortage upon demand, without offering a justifiable explanation for such shortage, created a

prima facie evidence that public funds were put to her personal use, which petitioner failed to rebut and overturn. Hence, the Court rules that petitioner is guilty beyond reasonable doubt of malversation of public funds through negligence, since all the elements thereof were sufficiently established by the prosecution.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; SUFFICIENCY OF THE INFORMATION; PETITIONER WAS DULY INFORMED OF THE ACCUSATION AGAINST HER; WHERE PETITIONER VOLUNTARILY ENTERED A PLEA AND PARTICIPATED IN THE TRIAL SHE WAIVED HER RIGHT TO ASSAIL THE SUFFICIENCY OF THE INFORMATION. — We note that petitioner had knowledge of such alleged amounts during the audit examination. Records show that two separate demand letters were sent to petitioner, the first letter was issued on March 12, 1996, which required her to produce the amount of ₱2,684,997.60 - the difference of the total amount of revenues actually collected under 26 official receipts and the total amount of collections reported to have been made under the same receipts. Thereafter, the second demand letter dated March 29, 1996 was sent to petitioner, when the outcome of the cash examination under her accountability resulted in cash shortage in the amount of ₱188,671.40. In the same letter, petitioner was also reminded of the earlier demand to produce the amount of ₱2,684,997.60 of unreported collections, which comes to the total amount of ₱2,873,669.00. Furthermore, during trial, the prosecution was able to adduce proof in support of the audit report, to which petitioner had participated thereto. As such, petitioner was duly informed of the detailed breakdown of the alleged malversed public funds. Moreover, the Court stresses that it is too late for petitioner to question the sufficiency of the Information against her, since the right to assail the sufficiency of the same is not absolute. An accused is deemed to have waived this right if said accused fails to object upon his or her arraignment or during trial. In either case, evidence presented during trial can cure the defect in the Information. Here, petitioner had waived her right to assail the sufficiency of the Information when she voluntarily entered a plea during arraignment, and thereafter participated in the trial. More importantly, the Information duly informed petitioner of the charge against her, and adequately stated the elements of malversation under *Article 217 of the RPC.*

4. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; EVEN IF THE MODE CHARGED DIFFERS FROM THE MODE PROVED, THE SAME OFFENSE OF MALVERSATION IS INVOLVED AND CONVICTION THEREOF IS PROPER; PRINCIPLE, APPLIED. — [T]he CA correctly applied the rule, as elucidated in the case of *Zoleta v. Sandiganbayan*, that malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. *Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper*. A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said that due process was denied by deluding the accused into an erroneous comprehension of the charge against him or her. Here, the said exception is not present, and that based on the records of this case, petitioner was not prejudiced nor does it appear that she failed to comprehend the crime charged against her. Thus, petitioner was not deprived of due process.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE OF CRIMINAL ACTIONS; VENUE AS AN ESSENTIAL ELEMENT OF JURISDICTION IN CRIMINAL CASES, EXPLAINED; ALLEGATIONS IN THE INFORMATION SUPPORT A FINDING THAT PETITIONER COMMITTED THE CRIME WITHIN THE TERRITORIAL JURISDICTION OF THE TRIAL COURT. — It is settled that venue is an essential element of jurisdiction in criminal cases. It determines not only the place where the criminal action is to be instituted, but also the court that has the jurisdiction to try and hear the case. The reason for this rule is two-fold. *First*, the jurisdiction of trial courts is limited to well-defined territories such that a trial court can only hear and try cases involving crimes committed within its territorial jurisdiction. *Second*, laying the venue in the *locus criminis* is grounded on the necessity and justice of having an accused on trial in the municipality of province where witnesses and other facilities for his defense are available. Unlike in civil cases, a finding of improper venue in criminal cases carries jurisdictional consequences. In determining the venue where the criminal action is to be instituted and the court which has jurisdiction over it, Section 15(a), Rule 110 of the Rules of Court states that *"subject to existing laws, the criminal action*

shall be instituted and tried in the court or municipality or territory where the offense was committed or where any of its essential ingredients occurred." This provision should be read with Section 10, Rule 110 of the Rules of Court in that, *"the complaint or information is sufficient if it can be understood from its allegations that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court, unless the particular place where it was committed constitutes an essential element of the offense charged or is necessary for its identification."* Both aforequoted provisions categorically place the venue and jurisdiction over criminal cases not only in the court where the offense was committed, but also where any of its essential ingredients took place. In other words, the venue of action and of jurisdiction are deemed sufficiently alleged where the Information states that the offense was committed or some of its essential ingredients occurred at a place within the territorial jurisdiction of the court. Perusing the Information dated August 2, 1999, the Court finds that said Information had sufficiently alleged the crime of malversation through negligence against petitioner. Essentially, the said crime was committed in connection with petitioner's function as a revenue collection officer of the BIR at Alabel, Sarangani Province, and who is accountable to all the public funds that are recorded in her possession. Indubitably, the allegations in the Information indeed support a finding that petitioner committed the crime within the territorial jurisdiction of the RTC of Alabel. As such, said RTC had jurisdiction over the crime charged.

6. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS THROUGH NEGLIGENCE; PENALTY; R.A. 10951 GIVEN RETROACTIVE EFFECT IN IMPOSING THE PENALTY SINCE IT IS FAVORABLE TO PETITIONER; MITIGATING CIRCUMSTANCE OF RESTITUTION, APPRECIATED. — We are mindful that although the law adjusting the penalties for malversation was not yet in force at the time of the commission of the offense, the Court shall give the new law - R.A. No. 10951, a retroactive effect, insofar as it favors petitioner by reducing the penalty that shall be imposed against her. As partly stated under Article 22 of the RPC, *"penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal."* Under the old law, the proper penalty for the amount petitioner malversed -

₱188,671.40, is *reclusion temporal* in its maximum period to *reclusion perpetua*. However, with the amendment introduced under R.A. No. 10951, the proper imposable penalty corresponding to the amount petitioner malversed, is the lighter sentence of *prision mayor* in its minimum and medium periods. In addition, as correctly held by the CA, petitioner enjoys the mitigating circumstance of restitution, which is akin to voluntary surrender, due to her restitution of the amount malversed. Indubitably, under Article 64 of the RPC, if only a mitigating circumstance is present in the commission of the act, the Court shall impose the penalty in the minimum period. Accordingly, applying the Indeterminate Sentence Law, petitioner shall be sentenced to an indeterminate penalty of **two years, four months and one day of *prision correccional,* as minimum, to six years and one day of *prision mayor,* as maximum.** Lastly, under the second paragraph of Article 217 of the RPC, as amended by R.A. No. 10951, petitioner shall also suffer the penalty of perpetual special disqualification, and a fine equal to the amount of funds malversed, which in this case is ₱188,671.40. Also, said amount shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Arlyn Joy C. Allosa-Alaba for petitioner.
The Solicitor General for respondent.

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 June 28, 2018 of the Court of Appeals—Cagayan de Oro City (CA) in CA-G.R. CR No. 01526-MIN, wherein it denied the

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[1] *Rollo*, pp. 8-19.

[2] Penned by Associate Justice Walter S. Ong, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring; *id.* at 20-39.

appeal of Nida P. Corpuz (petitioner) and affirmed with modification the Decision[3] dated December 5, 2016 of the Regional Trial Court (RTC) of Alabel, Sarangani, Branch 38 in Crim. Case No. 303-99, which found said petitioner guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC).

Factual Antecedents

In an Information dated August 2, 1999, petitioner was charged with the crime of malversation through negligence, defined and penalized under Article 217 of the RPC. The accusatory portion of the said Information reads:

> That during the period from January 1995 to December 1995 and for some time prior or subsequent thereto, in Alabel, Sarangani Province and within the jurisdiction of this Honorable Court, the accused NIDA P. CORPUZ, a low ranking public officer, being then the Revenue Officer I of the Bureau of Internal Revenue (BIR) assigned at Alabel, Sarangani Province and, as such, is accountable for all the funds that comes into her possession, while in the performance of her official function, through negligence, did then and there allow and permit one ROLINDA BANTAWIG, then also a public officer, being then a Revenue Officer I and Acting Revenue Administration Officer of the BIR, to take and appropriate the total amount of TWO MILLION EIGHT HUNDRED SEVENTY THREE THOUSAND SIX HUNDRED SIXTY NINE PESOS (₱2,873,669.00), and that, despite the demand for the return of the said amount, accused failed to do so, to the damage and prejudice of the government.
>
> CONTRARY TO LAW.[4]

Upon her arraignment on June 25, 2011, petitioner pleaded not guilty to the crime charged. Trial ensued thereafter.

Records reveal that the said criminal charge stemmed from a Special Audit which was conducted on petitioner's cash and collection accounts, in order to confirm reported irregularities.

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[3] See CA Decision, *rollo*, p. 20.

[4] *Id.* at 21.

The findings were summarized in the Report on the Results of the Audit, to wit:

The total amount of ₱2,873,669.00 was found to have been misappropriated by Ms. Nida P. Corpuz, Revenue Officer I, BIR, Alabel, Sarangani Province and cohorts, thru the following:

1. Tampering of official receipts	-	₱2,684,997.60
2. Cash Shortage	-	188,671.40
Total	-	₱2,873,669.00

x x x x x x x x x

The following persons involved or responsible with their actual participations are as follows:

1. Mrs. Rolinda R. Bantawig, formerly a BIR employee
   a. For falsifying official receipts.
   b. For directing to commit falsification [by] an apprentice under her supervision.
2. Mrs. Nida P. Corpuz, Revenue Officer I
   a. Neglect of Duty.
3. Mr. Muslimen L. Maca-agir
   a. For non-implementation of the decision of BIR Administrative Case No. 00907-95 dated April 18, 1995.[5]

The prosecution's version of the facts, as stated in its Brief, stated as follows:

9. The audit examination disclosed that twenty-six (26) official receipts were tampered such that the amounts in the taxpayer's copies are different from those of the original, triplicate (auditor's), quadruplicate copies, and as well as those in the report of collections. The aggregate amount of these twenty-six (26) official receipts is ₱2,813,157.49, while the total collections per report and per cash cashbook amounted only to ₱128,159.89, or a difference of ₱2,684,997.60.

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[5] *Id.* at 22. The said Report was conducted by a certain Crisostomo Pamplona, State Auditor I of the Commission on Audit.

10. On March 12, 1996, a letter of demand was issued requiring the petitioner to produce the amount of ₱2,684,997.60, which represent the difference of the total amount of revenues actually collected under twenty-six (26) official receipts and the total amount of collections reported to have been made for the same set of receipts.

11. Also, the outcome of the cash examination under the accountability of petitioner resulted in a cash shortage in the amount of ₱188,671.40. Another letter of demand was made on March 29, 1996 for petitioner to produce her cash of ₱188,671.40 out of her recorded collection, including her undeclared/unreported collections of ₱2,684,997.60 or the total amount of ₱2,873,699.

12. Despite the demand, the amount was not restituted nor accounted for by the petitioner.[6]

As for the defense, it did not contest the version of the prosecution. Instead, petitioner filed an Entry of Appearance with Motion to Quash dated April 16, 2001, which was subsequently denied by the RTC in its Order dated June 5, 2001.[7]

During pre-trial conference, as stated in an Order dated November 19, 2001, the RTC noted petitioner's admission that she is an employee of the Bureau of Internal Revenue (BIR) and an accountable officer, and that the defense made no proposition for admission by the prosecution considering that its defense is negative.[8]

On December 5, 2016, after finding that the prosecution had established all the elements of the crime charged, the RTC rendered the Decision convicting petitioner of the crime of malversation of public funds. The said RTC found that petitioner, however, was able to adduce proof that public funds in the amount of ₱2,684,997.60 included in the audit report was not misappropriated for her personal use. The RTC also found that the tampered official receipts, although bearing petitioner's name,

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[6] *Id.* at 22-23.

[7] *Id.* at 23.

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

were not signed or issued by her, but were issued by a certain Rolinda Bantawig (Bantawig), an administrative officer of the BIR. Nonetheless, the RTC ruled that petitioner is guilty of malversation through negligence, for her failure to explain the cash shortage in the amount of ₱188,671.40 in public funds, to which she was accountable. It added that petitioner had testified that there was indeed cash shortage when she was audited upon, and when it was demanded of her to restitute the said shortage, she could not pay the same since her salary was then withheld. Also, the RTC found that petitioner failed to adduce proof that said cash shortage was deducted from her salary, and held that even if there was full restitution, such circumstance cannot exonerate her. Thus, petitioner was sentenced as follows:

> WHEREFORE, premises considered, judgment is rendered finding accused Nida P. Corpuz guilty beyond reasonable doubt of the crime of malversation of public funds defined and penalized by Article 217 of the Revised Penal Code as amended, and finding in her favor the mitigating circumstance of voluntary surrender, she is sentenced with the penalty of imprisonment of ten (10) years and one day of *prision mayor* as minimum, to eighteen (18) years and eight (8) months of *reclusion temporal* as maximum, to suffer the penalty of perpetual disqualification, to pay the fine of ₱188,671.40, indemnity in the like amount of ₱188,671.40, and costs.
>
> SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration on December 27, 2016, but was denied by the RTC in a Resolution dated March 15, 2017.

Aggrieved, petitioner then appealed to the CA, asserting that the RTC erred when it found her guilty of the crime of malversation through negligence, and that said court had no jurisdiction to try the case against her.

On June 28, 2018, the CA rendered the assailed Decision which affirmed the conviction of petitioner with modification

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[9] *Id.* at 20-21, 26.

on the penalty. The CA ruled that petitioner's conviction did not violate her right to be informed of the nature and cause of the charge against her since the Information filed did not charge petitioner with more than one offense. The CA also ruled that the RTC had jurisdiction over the offense charged, and that said RTC did not err in holding that the Certification[10] dated December 27, 2016, even if considered in evidence, could not exonerate petitioner from criminal liability. The decretal portion of the said Decision reads in this wise:

> WHEREFORE, the instant appeal is DENIED for lack of merit. The assailed Decision dated 05 December 2016, rendered by Branch 38 of the Regional Trial Court, 11th Judicial Region, Alabel, Sarangani in Crim. Case No. 303-99 is hereby AFFIRMED with MODIFICATION in that [petitioner] is sentenced to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to twelve (12) years, five (5) months and eleven (11) days of *reclusion temporal*, as maximum.
>
> SO ORDERED.[11]

Hence, the present Petition for Review on *Certiorari*.

Petitioner raises the following assignment of errors, *viz.*:

1. The CA erred in affirming the Decision of the RTC convicting petitioner of malversation of the amount of Php188,641.40 which forms part of the total amount of Php2,873,669.00 indicated in the Information, in violation of the right of the petitioner to be informed of the nature and the cause of the charges against her, and existing principles and jurisprudence in criminal law.
2. The CA, by affirming the Decision of the RTC, also erred in holding that it has jurisdiction to try the case as the crime was committed by Rolinda Bantawig in General Santos City,

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[10] *Id.* at 36. The Certification stated in part — Ms. NIDA P. CORPUZ, x x x has remitted her cash accountabilities as per the subsidiary ledgers kept at the Finance Division, Revenue Region No. 18, Koronadal City.

[11] *Id.* at 38.

> before the subject accountable forms became the accountability of petitioner.[12]

The core issue for our resolution is whether or not the CA erred in affirming the Decision of the RTC when it held that the prosecution was able to establish petitioner's guilt beyond reasonable doubt.

Petitioner seeks the reversal of her conviction by asserting that the prosecution failed to establish the existence of the elements of the crime charged, and thus, her guilt was not established beyond reasonable doubt.

On the other hand, the People, through the Office of the Solicitor General (OSG), counter that petitioner's guilt for the crime of malversation of public funds was sufficiently established by the Prosecution beyond reasonable doubt. The OSG contends that petitioner failed to account for the cash shortage, and could not explain why she did not have it in her possession or custody when audited. As such, the OSG maintains that petitioner was properly charged and convicted of the said crime.[13]

The Court's Ruling

The present Petition must be denied.

Malversation is defined and penalized under Article 217 of the RPC,[14] as amended by Republic Act (R.A.) No. 10951,[15] to wit:

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[12] *Id.* at 11-12.

[13] *Id.* at 53-56.

[14] AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS [Revised Penal Code], Act No. 3815, (1932).

[15] 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 OF ACT NO. 3815, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AS AMENDED, Section 40, (2017).

ART. 217. *Malversation of public funds or property.* — Presumption of malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

x x x x x x x x x

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

x x x x x x x x x

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.

The elements of malversation under said provision of law are: 1) that the offender is a public officer; 2) that he or she had custody or control of funds or property by reason of the duties of his or her office; 3) that those funds or property were funds or property for which he or she was accountable; and 4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[16]

In addition, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that such officer failed

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[16] *Venezuela v. People*, G.R. No. 205693, February 14, 2018.

to account for the said funds upon demand without offering a justifiable explanation for the shortage.[17]

A judicious review of the records reveal that the CA correctly affirmed the Decision dated December 5, 2016 of the RTC that the prosecution had proven beyond reasonable doubt petitioner's guilt for malversation of public funds through negligence.

Here, all of the above-mentioned elements were sufficiently established by the prosecution.

First, it is undisputed that petitioner is a public officer, being then a revenue collection officer of the BIR assigned at Alabel, Sarangani Province. A public officer, as defined in the RPC,[18] is "*any person who, by direct provision of law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class*."

Second, the cash shortage in the amount of ₱188,671.40 in petitioner's recorded collection are public in character, as said amount were public funds which must be remitted to the Government.

Next, it is also beyond dispute that petitioner is an accountable officer. An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property.[19] As a Revenue Officer I, petitioner's responsibilities include, to collect revenue for the Government, which must be duly recorded, and to remit such collection to the Government Treasury. Thus, as a revenue collection officer in Alabel, petitioner had the control and responsibility of her collections, including the cash

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[17] *Id.*

[18] REVISED PENAL CODE, Art. 203.

[19] *Zoleta v. Sandiganbayan*, 765 Phil. 39 (2015).

shortage in the amount of ₱188,671.40 in public funds, and was accountable therefor.

Finally, as regards the last element for the crime of malversation of public funds through negligence, the prosecution was able to establish that petitioner failed to return the amount of ₱188,671.40, the recorded cash shortage, upon demand. Her failure to return said cash shortage upon demand, without offering a justifiable explanation for such shortage, created a *prima facie* evidence that public funds were put to her personal use, which petitioner failed to rebut and overturn.[20]

Hence, the Court rules that petitioner is guilty beyond reasonable doubt of malversation of public funds through negligence, since all the elements thereof were sufficiently established by the prosecution.

Yet, petitioner wants us to undo her conviction. Petitioner insists that she was denied due process as she was not informed of the true nature and cause of the charges against her. Petitioner contends that the RTC erred in convicting her of malversation involving the amount of ₱188,671.40, since the Information dated August 2, 1999 indicted her with malversation through negligence in the amount of ₱2,873,669.00.[21]

We are not persuaded.

As stated in the Information dated August 2, 1999, petitioner was charged with malversation through negligence in the amount of ₱2,873,669.00. Records reveal that such amount was the total amount of alleged malversed public funds, as shown in the Report on the Results of the Audit conducted and submitted by Crisostomo Pamplona, an auditor of the Commission on Audit, *viz.*:

The total amount of ₱2,873,669.00 was found to have been misappropriated by Ms. Nida P. Corpuz, Revenue Officer I, BIR, Alabel, Sarangani Province and cohorts, thru the following:

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[20] *Supra* note 16.

[21] *Rollo*, pp. 11-14.

1. Tampering of official receipts	-	₱2,684,997.60
2. Cash Shortage	-	188,671.40
Total	-	₱2,873,669.00[22]

We note that petitioner had knowledge of such alleged amounts during the audit examination. Records show that two separate demand letters were sent to petitioner, the first letter was issued on March 12, 1996, which required her to produce the amount of ₱2,684,997.60 — the difference of the total amount of revenues actually collected under 26 official receipts and the total amount of collections reported to have been made under the same receipts. Thereafter, the second demand letter dated March 29, 1996 was sent to petitioner, when the outcome of the cash examination under her accountability resulted in cash shortage in the amount of ₱188,671.40. In the same letter, petitioner was also reminded of the earlier demand to produce the amount of ₱2,684,997.60 of unreported collections, which comes to the total amount of ₱2,873,669.00.[23] Furthermore, during trial, the prosecution was able to adduce proof in support of the audit report, to which petitioner had participated thereto. As such, petitioner was duly informed of the detailed breakdown of the alleged malversed public funds.

Moreover, the Court stresses that it is too late for petitioner to question the sufficiency of the Information against her, since the right to assail the sufficiency of the same is not absolute. An accused is deemed to have waived this right if said accused fails to object upon his or her arraignment or during trial. In either case, evidence presented during trial can cure the defect in the Information.[24] Here, petitioner had waived her right to assail the sufficiency of the Information when she voluntarily entered a plea during arraignment, and thereafter participated in the trial. More importantly, the Information duly informed

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[22] *Id.* at 22.

[23] *Id.* at 23.

[24] *Frias, Sr. v. People*, 561 Phil. 55 (2007).

petitioner of the charge against her, and adequately stated the elements of malversation under *Article 217 of the RPC*.

Also, the CA correctly applied the rule, as elucidated in the case of *Zoleta v. Sandiganbayan*,[25] that malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. *Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper.* A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said that due process was denied by deluding the accused into an erroneous comprehension of the charge against him or her. Here, the said exception is not present, and that based on the records of this case, petitioner was not prejudiced nor does it appear that she failed to comprehend the crime charged against her. Thus, petitioner was not deprived of due process.

We now discuss the second assigned error. In another dire attempt to be exonerated from the crime charged, petitioner contends that the CA erred in ruling that the RTC has jurisdiction to try and hear the case since the crime was committed by Bantawig in General Santos City before the accountable forms became an accountability of the petitioner and not in Alabel, Sarangani.

Petitioner's contention fails to convince us.

It is settled that venue is an essential element of jurisdiction in criminal cases. It determines not only the place where the criminal action is to be instituted, but also the court that has the jurisdiction to try and hear the case. The reason for this rule is two-fold. *First*, the jurisdiction of trial courts is limited to well-defined territories such that a trial court can only hear and try cases involving crimes committed within its territorial jurisdiction. *Second*, laying the venue in the *locus criminis* is grounded on the necessity and justice of having an accused on

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[25] *Supra* note 19.

trial in the municipality of province where witnesses and other facilities for his defense are available.[26]

Unlike in civil cases, a finding of improper venue in criminal cases carries jurisdictional consequences. In determining the venue where the criminal action is to be instituted and the court which has jurisdiction over it, Section 15(a), Rule 110 of the Rules of Court[27] states that "*subject to existing laws, the criminal action shall be instituted and tried in the court or municipality or territory where the offense was committed or where any of its essential ingredients occurred*."

This provision should be read with Section 10, Rule 110 of the Rules of Court in that, "*the complaint or information is sufficient if it can be understood from its allegations that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court, unless the particular place where it was committed constitutes an essential element of the offense charged or is necessary for its identification*."

Both aforequoted provisions categorically place the venue and jurisdiction over criminal cases not only in the court where the offense was committed, but also where any of its essential ingredients took place. In other words, the venue of action and of jurisdiction are deemed sufficiently alleged where the Information states that the offense was committed or some of its essential ingredients occurred at a place within the territorial jurisdiction of the court.[28]

Perusing the Information dated August 2, 1999, the Court finds that said Information had sufficiently alleged the crime of malversation through negligence against petitioner. Essentially, the said crime was committed in connection with petitioner's function as a revenue collection officer of the BIR at Alabel,

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[26] *Union Bank of the Philippines v. People*, 683 Phil. 108 (2012).

[27] REVISED RULES ON CRIMINAL PROCEDURE, Rule 110.

[28] *Union Bank of the Philippines v. People*, *supra* note 26.

Sarangani Province, and who is accountable to all the public funds that are recorded in her possession. Indubitably, the allegations in the Information indeed support a finding that petitioner committed the crime within the territorial jurisdiction of the RTC of Alabel.[29] As such, said RTC had jurisdiction over the crime charged.

As regards the proper penalty, we must stress that R.A. No. 10951 amended Article 217 of the RPC, which increased the thresholds of the amounts malversed, and amended the penalties of fines it corresponds to. As currently worded, Article 217 of the RPC, now provides that the penalties for malversation shall be as follows:

ART. 217. *Malversation of public funds or property*. — Presumption of malversation.

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).

2. **The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).**

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

4. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

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[29] *Id.*

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. (Emphasis supplied)[30]

We are mindful that although the law adjusting the penalties for malversation was not yet in force at the time of the commission of the offense, the Court shall give the new law — R.A. No. 10951, a retroactive effect, insofar as it favors petitioner by reducing the penalty that shall be imposed against her. As partly stated under Article 22 of the RPC,[31] "*penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal*."

Under the old law, the proper penalty for the amount petitioner malversed - ₱188,671.40, is *reclusion temporal* in its maximum period to *reclusion perpetua*.[32] However, with the amendment introduced under R.A. No. 10951, the proper imposable penalty corresponding to the amount petitioner malversed, is the lighter sentence of *prision mayor* in its minimum and medium periods.

In addition, as correctly held by the CA,[33] petitioner enjoys the mitigating circumstance of restitution, which is akin to voluntary surrender, due to her restitution of the amount malversed.[34] Indubitably, under Article 64 of the RPC, if only a mitigating circumstance is present in the commission of the act, the Court shall impose the penalty in the minimum period.[35]

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[30] Republic Act No. 10951.

[31] REVISED PENAL CODE, Art. 22.

[32] Republic Act No. 1060. Section 1 partly states that: "4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*."

[33] *Rollo*, pp. 36-37.

[34] *Venezuela v. People*, *supra* note 16.

[35] REVISED PENAL CODE, Art. 64.

Accordingly, applying the Indeterminate Sentence Law,[36] petitioner shall be sentenced to an indeterminate penalty of **two years, four months and one day of *prision correccional*, as minimum**, to **six years and one day of *prision mayor*, as maximum**.

Lastly, under the second paragraph of Article 217 of the RPC, as amended by R.A. No. 10951, petitioner shall also suffer the penalty of perpetual special disqualification, and a fine equal to the amount of funds malversed, which in this case is ₱188,671.40. Also, said amount shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.[37]

All told, we find no error in the conviction of petitioner.

WHEREFORE, the appeal is **DENIED**. The Decision dated June 28, 2018 of the Court of Appeals—Cagayan de Oro City in CA-G.R. CR No. 01526-MIN is **AFFIRMED with MODIFICATION** in that petitioner Nida P. Corpuz is sentenced to suffer the indeterminate penalty of imprisonment ranging from **two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum**, to **six (6) years and one (1) day of *prision mayor*, as maximum**. In addition, petitioner Nida P. Corpuz is **ORDERED** to **PAY** a **FINE** of ₱188,671.40, with legal interest of 6% per annum reckoned from the finality of this Decision until full satisfaction. Petitioner Nida P. Corpuz shall also suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (*Working Chairperson*), *Lazaro-Javier,* and *Lopez, JJ.*, concur.

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[36] Act No. 4103, Sec. 1.

[37] *Venezuela v. People*, *supra* note 16.

FIRST DIVISION

[G.R. No. 242516. June 8, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **ZAINODIN GANDAWALI *y* MAWARAO, JENELYN GUMISAD *y* CABALHIN, and NURODIN ELIAN *y* KATONG**, *respondents*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE DRUGS ITSELF CONSTITUTE THE *CORPUS DELICTI* OF THE CRIME; LINKS THAT MUST BE ESTABLISHED TO PROVE SATISFACTORILY THE MOVEMENT AND CUSTODY OF THE SEIZED DRUGS; RECORDS OF THIS CASE REVEAL A BROKEN CHAIN OF CUSTODY. — In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court. Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court. Here, the records reveal a broken chain of custody. Foremost, the absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph of the seized item puts serious doubt as to the integrity of the first link. We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs. x x x In this case, only an elected public official signed the inventory of evidence. There was no attempt on the part of the buy-bust team to comply with the law and

its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved. They did not 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.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY IS DESTROYED WHEN SUCH PERFORMANCE IS TAINTED WITH IRREGULARITIES. — [I]t must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed. We reiterate that the provisions of Section 21 of R.A. No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Zainodin, Jenelyn, and Nurodin must be acquitted of the charge against them given the prosecution's failure to prove an unbroken chain of custody.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for respondents.

R E S O L U T I O N

LOPEZ, *J.*:

The conviction of Zainodin Gandawali, Jenelyn Gumisad, and Nurodin Elian for illegal sale of dangerous drugs is the subject of review in this motion for reconsideration[1] assailing the Court's

[1] *Rollo*, pp. 34-46.

Resolution[2] dated July 15, 2019, which affirmed the Court of Appeals' Decision[3] dated May 29, 2018 in CA-G.R. CR HC No. 09135.

ANTECEDENTS

On October 4, 2014, the District Anti-Illegal Drugs Special Operations Task Group of Camp Karingal, Quezon City planned a buy-bust operation against Zainodin, Jenelyn, and Nurodin based on a tip that they are selling *shabu*. After the briefing, PO3 Napoleon Zamora was designated as the poseur-buyer, PO3 Joel Diomampo as back-up, and the other team members as perimeter guards. The confidential informant arranged a meeting with Zainodin, Jenelyn, and Nurodin in SM Fairview. However, the transaction was moved the following day because the order was not yet available.[4]

On October 5, 2014, about 3:00 o'clock in the afternoon, the entrapment team together with the informant went to SM Fairview food court. Thereat, the informant introduced PO3 Zamora to Zainodin, Jenelyn, and Nurodin. PO3 Zamora told Zainodin that he would buy ₱75,000 worth of *shabu*. Thus, Nurodin handed to PO3 Zamora a plastic sachet containing white crystalline substance. Jenelyn commented that they are selling good quality *shabu*. Upon receipt of the drugs, PO3 Zamora gave Zainodin the boodle money. At that moment, PO3 Zamora scratched his head, which served as the pre-arranged signal that the transaction has been consummated. Thus, the rest of the entrapment team rushed in and arrested Zainodin, Jenelyn, and Nurodin. Immediately, PO3 Zamora marked the plastic sachet.[5]

Thereafter, the mall security guard requested the team to leave the area because a crowd is forming and their presence

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[2] *Id.* at 49.

[3] *Id.* at 2-12. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Sesinando E. Villon and Maria Filomena D. Singh.

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

[5] *Ibid.*

is starting to cause a commotion. The police officers then proceeded to Greater Lagro Barangay Hall where they conducted an inventory and photograph of the seized item. Afterwards, PO3 Zamora personally delivered the marked item to PCI Anamelisa Bacani of the Quezon City District Crime Laboratory. After examination, the substance tested positive for methamphetamine hydrochloride.[6] Zainodin, Jenelyn, and Nurodin were then charged with violation of Section 5, Article II of R.A. No. 9165 before the Regional Trial Court docketed as Criminal Case No. R-QZN-14-10225-CR, to wit:

"That on or about the 5th day of October 2014, in Quezon City, Philippines, the accused, conspiring, confederating and mutually helping one another, without lawful authority, did then and there willfully, unlawfully, sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: twenty-four point sixty three (24.63) grams of methamphetamine hydrochloride, a dangerous drug."[7]

Zainodin denied the accusation and claimed that he was with Jenelyn in SM Fairview food court. After using the restroom, several men declared themselves as police officers and arrested him. Jenelyn approached him but she too was handcuffed. They were brought to Camp Karingal. The police officers demanded ₱300,000 in exchange for their liberty. The amount was later reduced to ₱100,000.00 and then ₱50,000.00. Unable to produce the money, they were brought to the barangay hall where they were photographed. The next day, they were subjected to inquest proceedings.[8] On the other hand, Nurodin denied any relationship with Zainodin and Jenelyn and averred that he was only strolling in SM Fairview to buy personal items. Suddenly, unidentified men forcibly took him to Camp Karingal and demanded ₱300,000.

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[6] *Id.* at 4-5.

[7] Records, pp. 1-2.

[8] *Rollo*, p. 5.

Since he failed to produce the money, he was brought to the barangay hall and was placed under inquest proceedings.[9]

On March 14, 2017, the RTC convicted Zainodin, Jenelyn, and Nurodin of illegal sale of dangerous drugs. It gave credence to the prosecution's version as to the transaction that transpired between them and the poseur buyer.[10] On May 29, 2018, the CA affirmed the RTC's findings and ruled that the prosecution presented an unbroken chain of custody of dangerous drugs. The absence of a representative of the National Prosecution Service or the media during the conduct of physical inventory and photograph did not compromise the identity and integrity of the seized item.[11]

On July 15, 2019, we dismissed the appeal of Zainodin, Jenelyn, and Nurodin for their failure to show how the CA committed any reversible error. Aggrieved, they sought a reconsideration arguing that the police officers did not observe the proper handling and custody of the seized item in the course of the buy-bust operation.

RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[12] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.[13] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized

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[9] *Ibid*.

[10] CA *Rollo*, pp. 55-66.

[11] *Rollo*, pp. 2-12.

[12] *People v. Partoza*, G.R. No. 182418, May 8, 2009.

[13] *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.[14] Here, the records reveal a broken chain of custody.

Foremost, the absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph of the seized item[15] puts serious doubt as to the integrity of the first link. We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[16] In *People v. Lim*,[17] we explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

> 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. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a

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[14] *People v. Bugtong y Amoroso*, G.R. No. 220451, February 26, 2018.

[15] The offense was allegedly committed on October 5, 2014. Hence, the applicable law is R.A. No. 9165, as amended by R.A. No. 10640, which mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

[16] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit y Casilang*, G.R. No. 232381, August 1, 2018.

[17] G.R. No. 231989, September 4, 2018.

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. (Emphasis in the original)

Later, in *People v. Caray*,[18] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule under Section 21 of R.A. No. 9165. Similarly, in *Matabilas v. People*,[19] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, only an elected public official signed the inventory of evidence. There was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved. They did not 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. Indeed, PO3 for Diomampo and PO3 Zamora acknowledged the importance of the presence of insulating witness. Yet, they did not offer any justification for non-compliance. Their

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[18] G.R. No. 245391, September 11, 2019.

[19] G.R. No. 243615, November 11, 2019.

testimonies show on the part of the buy-bust team an utter disregard of the required procedure laid down in Section 21 of R.A. No. 9165 which created a huge gap in the chain of custody, *viz.*:

[Testimony of PO3 Diomampo]

Q: In this inventory, Mr. Witness, is supposed to be signed by the accused, correct, under Section 21 of R.A. 9165, Yes or no?
A: I do not know, **but I know it is to be witnessed by elective Barangay Official, DOJ representative and Media representative, sir.**

Q: Now, going over this inventory that you prepared, was there any showing that this was witnessed by a Media representative?
A: None, sir.

Q: Was there any showing that the same was, likewise, witnessed by the representative from the Department of Justice.
A: None, sir.

Q: And going over again, **this was not signed by the accused in this case or any of their representatives**, correct?
A: Yes, sir."[20]

[Testimony of PO3 Zamora]

Q: Who was present during the inventory, Mr. witness?
A: The investigator, the three (3) accused, the barangay chairman, I, PO3 Diomampo and the rest of the team, sir.

x x x x x x x x x

Q: And there is also a signature above the name Punong Barangay Renato Galimba, whose signature is this?
A: That's the signature of the barangay captain of Brgy. Greater Lagro, sir.

Q: How do you know that this is his signature?
A: I saw him when he affixed his signature on the document.

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[20] TSN dated May 7, 2015, p. 18.

FISCAL: The signatures of Officer Napoleon Zamora, PO3 Diomampo and the Punong Barangay, your Honor, were respectively marked as Exhibits E-1, E-2 and E-3, your Honor.

Q: Why there are no signatures from the representatives of the media and DOJ, Mr. Witness?
A: I can no longer recall, sir."[21]

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.[22] Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.[23]

We reiterate that the provisions of Section 21 of R.A. No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Zainodin, Jenelyn, and Nurodin must be acquitted of the charge against them given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the motion for reconsideration is **GRANTED**. The Court's July 15, 2019 Resolution is **REVERSED** and **SET ASIDE**. Zainodin Gandawali, Jenelyn Gumisad, and Nurodin Elian are **ACQUITTED** in Criminal Case No. R-QZN-14-10225-CR and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let entry of judgment be issued immediately.

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[21] TSN dated July 29, 2015, pp. 4-5.

[22] *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Lopez v. People*, G.R. No. 172953, April 30, 2008.

[23] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, and to the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Director and the Superintendent are directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

FIRST DIVISION

[G.R. No. 242900. June 8, 2020]

EDWIN L. SAULO, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES and MARSENE ALBERTO**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; LIMITED TO REVIEWING ERRORS OF LAW ALLEGEDLY COMMITTED BY THE COURT OF APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS THAT PETITIONER DELIBERATELY AND WILLFULLY ASSERTED FALSEHOOD IN HIS COMPLAINT-AFFIDAVIT, UPHELD. — Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 of the Rules of Court is limited to reviewing errors of law allegedly committed by the CA. Factual findings of the trial courts, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect, if not

conclusive effect, especially if such findings are affirmed by the CA. This is so because the trial court is able to observe at close range the demeanor and deportment of the witnesses as they testify. However, this rule does not apply if the trial court overlooked, misunderstood or misapplied some facts or circumstances which, if considered, will warrant a modification or reversal of the outcome of the case, which do not obtain here. The issues as to whether or not the petitioner deliberately and willfully asserted falsehood in his Complaint-Affidavit necessitates the examination of the credibility and veracity of the witnesses. Consequently, it is undeniably a question of fact, not within the ambit of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

2. CRIMINAL LAW; PERJURY; ELEMENTS; SUFFICIENTLY ESTABLISHED. — [T]he MeTC and RTC's factual findings as affirmed by the appellate court that petitioner deliberately and willfully assert falsehood in his complaint-affidavit is binding on us, as well as its findings of the presence of all the elements constituting the crime of Perjury. Indeed, the CA had sufficiently disposed of this issue as follows: The elements of perjury under Article 183 of the Revised Penal Code (RPC) are (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose. The **first element** of the crime of Perjury was sufficiently proven by the prosecution. x x x Saulo executed a *Complaint-Affidavit* charging Alberto with Qualified Theft. The allegations in the subject *Complaint-Affidavit* have the material effect or tendency to influence the Prosecutor in the determination of the existence of probable cause for the filing of information before the court of justice. x x x It also bears noting that the effects of the statement are weighed in terms of potentiality rather than probability. The prosecution need not prove that the false testimony actually influenced the Commission. Similarly, the presence of the **second** and **fourth elements** could hardly be denied. As found by the MeTC, the subject *Complaint-Affidavit* was subscribed and sworn to by Saulo himself before Assistant

City Prosecutor Philip G. Labastida, an officer authorized to administer oath. The *Complaint-Affidavit* is required by law. It is necessary to institute a criminal action against Saulo pursuant to Section 1 (a), Rule 110 of the Rules of Court[.] x x x The **third element** requires that the accused must make a willful and deliberate assertion of a falsehood in the statement or affidavit. x x x This element is present here.

3. ID.; *BATAS PAMBANSA BILANG 22* (B.P. 22); ESSENTIAL ELEMENTS FOR VIOLATION THEREOF, PRESENT IN THIS CASE. — To be liable for violation of B.P. 22, the following essential elements must be present: (1) The making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Under B.P. 22, the mere issuance of a worthless check is already the offense in itself. In this case, we find no reason to depart from the trial courts' findings. All three elements are present here. The first and third elements of B.P. 22 are undisputed. The prosecution was able to present the two original BDO checks x x x. These checks were dishonored upon presentation for payment for the reasons "Account Closed" and "Drawn against Insufficient Funds." Petitioner also failed to rebut the statutory presumption of knowledge of insufficient funds, the second element, which attaches when the two checks were presented and dishonored by BDO within 90 days from its issuance and that petitioner failed to pay the amount of the check or make arrangement for its payment within five days from the time the written notice of dishonor was received by him on December 17, 1996. In his Complaint-Affidavit for Qualified Theft and Falsification filed against respondent before the Office of the City Prosecutor of Pasig, petitioner admitted that he indeed received the Notice of Dishonor on December 17, 1996.

4. ID.; ID.; ID.; A CORPORATE OFFICER WHO ISSUES A WORTHLESS CHECK IN THE CORPORATE NAME IS PERSONALLY LIABLE. — When a corporate officer issues a worthless check in the corporate name, he may be held

personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act. Evidence showed that what was issued here were corporate checks issued against the account of Khumbmela. Petitioner admitted that he was the President of the said corporation and as testified by the prosecution witnesses, petitioner was the one signing the check for the corporation. Also, petitioner never disputed the authenticity and genuineness of his signatures in the two checks subject matter of these cases.

APPEARANCES OF COUNSEL

Apostol Gumaru & Balgua Law Offices for petitioner.
The Solicitor General for private respondent.

R E S O L U T I O N

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

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking a reversal of the Court of Appeals' (CA's) Decision[1] and Resolution[2] dated May 23, 2018 and October 19, 2018, respectively, in CA-G.R. CR No. 39251, which affirmed the December 22, 2015 Decision[3] and the September 26, 2016 Order[4] of the Regional Trial Court (RTC) of Pasig City, Branch 268, in the consolidated Criminal Case

[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Sesinando E. Villon and Maria Filomena D. Singh, concurring; *rollo*, pp. 7-17.

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

[3] CA *rollo*, pp. 6-18.

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

Nos. 157569-70 and 157571 convicting herein petitioner Edwin L. Saulo (Saulo) for two counts of Violation of *Batas Pambansa Bilang* 22 (B.P. 22) and for Perjury. The RTC also affirmed *in toto* the Decision[5] dated April 27, 2015 of the Metropolitan Trial Court (MeTC), Branch 71 of Pasig City and its subsequent Resolution[6] dated July 13, 2015 denying Saulo's Motion for Reconsideration.

The Antecedent Facts

The Version of the Prosecution

Petitioner Saulo was the owner of Yadoo Dynasty and Khumbmela Products, Inc. (Khumbmela), engaged in the manufacturing of various bags, backpacks, and accessories. He hired private respondent Marsene Alberto (Alberto) from 1992-1996 as Disbursing Officer and was then promoted as Operations Manager at Khumbmela and later on at Yadoo Dynasty. During that time, Saulo encountered financial problems and sought Alberto's help to find someone who could lend him money. To help Saulo, Alberto asked her husband, Amando V. Alberto, to approach Eladio Naval (Naval), who in turn lent Saulo ₱1,500,000.00. Upon receipt of the said amount, Saulo issued and signed three checks with the following face values: (a) ₱1,200,000.00, (b) ₱200,000.00, and (c) ₱100,000.00.[7]

Sometime in October 1996, Saulo borrowed from Alberto the amount of ₱12,270.00, and as payment, he issued Banco De Oro (BDO) Check No. 0000157580 dated October 28, 1996 drawn against Khumbmela's account. In the same month, Saulo again sought Alberto's assistance to find someone who could lend him money for the construction of his studio in Pasig City. Alberto and her husband (spouses Alberto) obliged and helped him obtain the required materials from Masinag Lumber. Since Masinag Lumber was reluctant to accept the check from Saulo,

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[5] Records, pp. 239-259.

[6] *Id.* at 280-281.

[7] *Rollo,* p. 8.

Alberto's husband issued his personal check to Masinag Lumber and Saulo in turn issued BDO Check No. 0000157581 dated November 20, 1996 in the amount of ₱29,300.00 under the account name of Khumbmela. However, when the spouses Alberto presented the two checks (BDO Check Nos. 0000157580 and 0000157581) for payment, both checks bounced for the reasons "Account Closed" and "Insufficient Funds," respectively. After the two checks bounced, Alberto sent Saulo a Notice of Dishonor dated December 17, 1996 which was received by Saulo on the same day.

To Alberto's surprise, Saulo filed an Estafa case against her before the Office of the City Prosecutor of Pasig City. In his complaint-affidavit, Saulo claimed that Alberto stole from him five checks (including BDO Check Nos. 0000157580 and 0000157581) and that Alberto falsified them. Alberto denied these allegations and claimed that they were all lies. On reconsideration, the case was dismissed.[8]

Two other cases, "Qualified Theft" and "Falsification of Commercial Documents," were filed by Saulo against Alberto before the Office of the City Prosecutor of Pasig City, also involving the same five checks, but the said cases were dismissed due to insufficient evidence.[9] The dismissal of these cases became the basis of Alberto in filing the present controversies against Saulo, the cases of Perjury and two counts of violation of B.P. 22.

On September 22, 1997, Alberto filed a case of Perjury against Saulo before the MeTC of Pasig City, docketed as Criminal Case No. 31929. The accusatory portion of the Information reads:

> On or about the month of January 1997, in Pasig City, and within the jurisdiction of this Honorable Court, the [petitioner], did then and there willfully, unlawfully and feloniously and knowingly make untruthfully statements, by then and there executing a Complaint-

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

[9] *Id.* at 30.

Affidavit on material matters, which as required by law, subscribed and sworn to before 3rd Assistant City Prosecutor Philip Labastida, a duly authorized officer to administer oath, in which the said accused, affirmed and swore, among other things, the following false statements, to wit:

x x x x x x x x x

3.5 Undersigned had no knowledge of any business relationship with the Sps. Alberto. As a result of said letter, undersigned engaged the services of CPA Angeles Elena B. Rioveras and an audit of the corporation's financial papers and documents was conducted;

3.6 The audit of the company financial documents revealed among others unauthorized check payments made to the order of "cash" and were withdrawn by respondent herein. Further, it was discovered that certain checks of the company were missing, to wit:

Allied Bank Check No. 000021170
Banco de Oro Check No. 0000157516
Banco de Oro Check No. 0000157420
Banco de Oro Check No. 0000157580
Banco de Oro Check No. 0000157581

3.7 Undersigned referred the matter of the lost checks to [petitioner's] lawyer. A letter formally demanding the return of the checks of [petitioner] corporation was sent to respondent, a copy of which is hereto attached and made an integral part hereof as Annex "C." As a safety measure for unauthorized check payments, the [petitioner] corporation closed its accounts with Allied Bank and Banco [De] Oro (BDO).

3.8 [Petitioner] was taken by surprise when a letter dated 17 December 1996 was received by undersigned purportedly claiming the proceeds of the missing checks. The said demand letter admitted that the checks were made to be paid to the order of respondent and were filled up with various amounts. A copy of the letter dated 17 December 1996 is hereto attached and made an integral part hereof as Annex "D".

3.9 Undersigned had absolutely no business relationship with respondent except for the fact that Marsene T. Alberto was an employee of the Khumbmela Products, Incorporated.

3.10 Respondent Alberto abused the trust and confidence of the [petitioner] by surreptitiously and unlawfully taking the personal property of Khumbmela consisting of five (5) checks without its consent.

3.11 Worse, respondent Alberto illegally filled up the five (5) checks of the [petitioner's] corporation without any basis except to defraud the company and with the intention of causing damage to Khumbmela. Respondent Alberto filled up the amounts and dates on said checks without the authority of undersigned and with the sole purpose of attempting to defraud the company of the amounts placed therein.

3.12 The five checks subject of the above captioned cases were kept at the office of the [petitioner's] corporation in Pasig before they were taken without consent by the respondent.

x x x x x x x x x

When in truth and in fact, as the accused very well knew that the above assertion is a complete falsity and was made with criminal intent and bad faith and malice.

Contrary to law.[10]

Also, on October 24, 1997, Alberto filed against Saulo two counts of Violation of B.P. 22, in two separate sets of Information, the accusatory portion of which read:

Crim. Case No. 33348 (for Violation of B.P. 22)

On or about October 10, 1996, in Pasig City, and within the jurisdiction of this Honorable Court, the accused did then and there willfully, unlawfully and feloniously make, draw and issue to Marsene T. Alberto, to apply on account the check described below:

Check No.	:	157580
Drawn against	:	Banco [De] Oro
In the amount of	:	₱12,270.00
Date/Post-dated	:	October 28, 1996
Payable to	:	Cash

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

said accused well knowing that at the time of issue he did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "Drawn Against Insufficient Funds." Despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or make arrangement for full payment thereof within five (5) banking days after receiving notice.

Contrary to law.[11]

Crim. Case No. 33349 (for Violation of B.P. 22)

The allegation in Criminal Case No. 33349 dated October 24, 1997 substantially contains the same allegation as the one quoted above except for the following details:

Check No.	:	157581
Drawn against	:	Banco [De] Oro
In the amount of	:	₱29,300.00
Date	:	November 20, 1996[12]

The Version of the Defense

Saulo testified that he hired Alberto in 1992 as Internal Auditor and Finance Officer at Khumbmela. Alberto's duties included the handling of the company's receivables and payables.

That in October 1997, Alberto's husband came to him with a check for rediscounting and told him that he owed him money. He denied this as his company only accepts rediscounting on checks issued by Robinsons and Shoemart and never did his company rediscount their own company checks. He asserted that he did not issue in favor of the spouses Alberto BDO Check Nos. 0000157580 and 0000157581 as he did not have any loan obligation with them neither did he have any business dealings/ relationship with them nor did he transact business with Masinag Lumbers.

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[11] Records, p. 239.

[12] *Id.* at 240.

That sometime in 1997, an audit was conducted in his company and it was discovered that the said two BDO checks were among the missing checks. He noted that Alberto did not report back to work after the audit. Although he was unable to present a copy of the Audit Report because it was destroyed by the flooding caused by Typhoon Ondoy, he was nevertheless convinced that Alberto was the culprit.

That after he discovered that some checks were missing, and upon the advice of their company lawyer, he closed his accounts in Allied Bank and BDO. Thereafter, he received a demand letter dated December 17, 1996 from Alberto's counsel claiming the proceeds of the two missing checks. In return, his lawyer wrote a letter to Alberto, asking her to return the five missing checks. That he filed a case of qualified theft against Alberto and that he confirmed and affirmed all the statements stated in his complaint-affidavit.

When arraigned, Saulo entered a plea of not guilty. During the preliminary conference, the parties stipulated on the following facts:

1. The charge for qualified theft and falsification of commercial documents filed by the [petitioner] before the Office of the City Prosecutor of Pasig City was filed ahead of the perjury case;

2. The first resolution of the City Prosecutor of Mandaluyong City was for the filing of the Information for Estafa against the [private respondent] Alberto;

3. [Private respondent] Alberto was employed at Khumbmela products where the [petitioner] is the President; and

4. Sometime on October 18, 1996, [private respondent] Alberto filed her leave of absence. (Order dated September 2, 1998)[13]

Ruling of the MeTC

On April 27, 2015, the MeTC rendered a Decision convicting petitioner Saulo of the crimes charged. The dispositive portion reads:

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[13] CA *rollo*, p. 9.

WHEREFORE, premises considered, the court hereby finds accused EDWIN L. SAULO:

1. GUILTY beyond reasonable doubt of two (2) counts of violation of B.P. Blg. 22 in Criminal Case Nos. 33348-49. Accordingly, the Court hereby imposes upon him the penalty of fine in the amount of Eighty Three Thousand One Hundred Forty pesos (₱83,140.00), with subsidiary imprisonment in case of insolvency.

Accused Saulo is further ordered to pay private complainant Marsene Alberto the amount of Forty One Thousand Five Hundred Seventy pesos (₱41,570.00), with 6% legal interest per annum from the date of finality of this decision.

2. GUILTY beyond reasonable doubt, of the crime of perjury in Criminal Case No. 31929. Accordingly, the Court hereby imposes upon him the indeterminate penalty of three (3) months and one (1) day of *arresto mayor* as minimum, up to one year and one day of *prison correccional* as maximum.

SO ORDERED.[14]

The MeTC ruled that the prosecution was able to prove all the elements constituting the crime of Violation of B.P. 22. Saulo also admitted receiving the demand letter or the notice of dishonor from Alberto's counsel dated December 17, 1996. As to the charge of Perjury, the trial court held that: a) there was no doubt that Saulo executed and filed a complaint-affidavit charging Alberto of Qualified Theft and Falsification and Use of Public Document; b) the said affidavit was subscribed and sworn by Saulo before the City Prosecutor of Pasig City, an officer duly authorized to administer oath; c) his allegation that he did not have any business relationship with Alberto turned out to be false; and d) contrary to Saulo's claim, he actually issued five checks to Alberto as payment for the various amounts he borrowed.

Petitioner's motion for reconsideration of the above Decision was denied in the MeTC's Resolution dated July 13, 2015.[15]

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[14] *Id.* at 107-108.

[15] Records, pp. 280-281.

Ruling of the RTC

Petitioner appealed his case before the RTC of Pasig City, Branch 268. The case was docketed as Criminal Case Nos. 157569-157570 (for Violation of B.P. 22) and Criminal Case No. 157571 (for Perjury). In its Decision dated December 22, 2015, the RTC affirmed the appealed MeTC Judgment, ruling thus:

> WHEREFORE, premises considered the challenged Decision of the Metropolitan Trial Court, Branch 71, Pasig City, in Criminal Cases Nos. 31929 and 333348-49 is hereby affirmed.[16]

Petitioner filed with the RTC a Motion for Reconsideration in which he argues that the court erred in finding the existence of the third element of the crime of perjury, which is the willful and deliberate assertion of falsehood. He contends that his mere receipt of the subject demand letter is not enough proof of his motive to have leverage to the impending cases that Alberto may have filed against him as regard the subject checks. However, the RTC, in an Order dated September 26, 2016, refused to reconsider its earlier Decision. The RTC stressed that:

> The court maintains its findings that evidence presented by the parties established [Saulo's] motive to deliberately lie in his complaint-affidavit to have leverage to the impending cases that [Alberto] may file against him as regards the subject checks. This finding of guilt is bolstered by the fact that [Saulo] executed the subject complaint-affidavit charging [Alberto] with the crime of qualified theft and estafa, after he received the latter's demand letter dated December 17, 1996. [Alberto] was only being made accountable in that case of qualified theft and estafa for the checks being referred in the demand letter although in the subject complaint-affidavit of [Saulo], he alleges that, "the audit of the company's financial documents revealed among others, unauthorized check payments made to the order of 'cash' and were withdrawn by [Alberto].

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[16] CA *rollo*, p. 87.

Moreover, noteworthy is the fact that the prosecution witness, Leah Celso, testified that she was employed at Khumbmela Products until April 1997. She also testified that she was the one who prepared and released the subject checks which were supported by vouchers signed by her, [Alberto] and [Saulo]. She was still with the company when [Saulo] received [Alberto's] demand letter on December 17, 1996 and gained knowledge of the whereabouts of the subject checks. It was well within the authority and power of [Saulo] to verify from Ms. Celso the status of the said checks or the legality of [Alberto's] possession of the same. His failure to so verify negates bad faith and bolstered this Court's findings of his motive to deliberately lie on his complaint-affidavit.[17]

Aggrieved, petitioner filed a petition for review before the CA.

Ruling of the CA

The appellate court dwelt only on Saulo's conviction for the crime of Perjury. As pointed out by the Office of the Solicitor General (OSG) in its Comment, Saulo did not put as issue in his petition for review his conviction for Violation of B.P. 22, thus, his conviction for the two counts of Violation of B.P. 22 stands.

The CA found that all the elements of the crime of Perjury are present in this case, thus, it affirmed the conviction of petitioner. It ruled:

WHEREFORE, the present petition for review is DENIED. The December 22, 2015 Decision and September 26, 2016 Order of the Regional Trial Court (RTC) of Pasig City, Branch 268, in Criminal Case Nos. 157569-70 and 157571 are hereby AFFIRMED.

SO ORDERED.[18]

Petitioner's Motion for Reconsideration was also denied in the CA Resolution dated October 19, 2018, as no novel issue has been raised to warrant a reversal or modification of the challenged decision. According to the CA, petitioner's submission

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[17] *Id.* at 73.

[18] *Rollo*, p. 60.

is undeniably a rehash of what he had earlier argued in his petition which had been squarely addressed in the assailed ruling and that a re-examination thereof is only risking repetition.

Petitioner is now before this Court assigning the following as errors:

1. WHETHER OR NOT THERE WAS DELIBERATE ASSERTION OF FALSEHOOD.
2. WHETHER OR NOT PETITIONER COULD BE CONVICTED FOR VIOLATION OF B.P. 22.[19]

Petitioner contends that he did not willfully, knowingly and deliberately lie in claiming that he did not have business transactions with Alberto, Naval, and Masinag Lumber, as it was Alberto who negotiated the checks involved without his knowledge or of disclosing the same to him. He also avers that the two checks (BDO Check Nos. 0000157580 and 0000157581) were payable to cash instead of a specified person, a practice prohibited by the corporation, which Alberto is much aware of. Being the account/disbursing officer/operations manager, it is her primary duty to safeguard and preserve company funds and assets and prevent any unauthorized use/negotiation of corporate checks which he entrusted to her.

On the other hand, the respondent, through the OSG, argues that the issue as to whether petitioner deliberately and willfully asserted falsehood in his Complaint-Affidavit filed against Alberto is an issue that necessitates the examination of the credibility and veracity of the testimonies of the witnesses, thus, undeniably a question of fact, not within the ambit of a petition for review on *certiorari*.

The Court's Ruling

For the case of Perjury

Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 of the Rules of Court is limited to

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[19] *Id.* at 33.

reviewing errors of law allegedly committed by the CA.[20] Factual findings of the trial courts, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect, if not conclusive effect, especially if such findings are affirmed by the CA. This is so because the trial court is able to observe at close range the demeanor and deportment of the witnesses as they testify. However, this rule does not apply if the trial court overlooked, misunderstood or misapplied some facts or circumstances which, if considered, will warrant a modification or reversal of the outcome of the case,[21] which do not obtain here.

The issues as to whether or not the petitioner deliberately and willfully asserted falsehood in his Complaint-Affidavit necessitates the examination of the credibility and veracity of the witnesses. Consequently, it is undeniably a question of fact, not within the ambit of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Hence, the MeTC and RTC's factual findings as affirmed by the appellate court that petitioner deliberately and willfully assert falsehood in his complaint-affidavit is binding on us, as well as its findings of the presence of all the elements constituting the crime of Perjury. Indeed, the CA had sufficiently disposed of this issue as follows:

> The elements of perjury under Article 183 of the Revised Penal Code (RPC) are (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

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[20] *Tuazon v. Heirs of Bartolome Ramos*, 501 Phil. 695, 701 (2005).

[21] *People v. Bulan*, 498 Phil. 586 (2005).

The **first element** of the crime of Perjury was sufficiently proven by the prosecution.

The term "material matter" under the first element pertains to the main fact subject of the inquiry, or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony related to the subject of the inquiry, or which legitimately affects the credence of any witness who testified. Saulo executed a *Complaint-Affidavit* charging Alberto with Qualified Theft. The allegations in the subject *Complaint-Affidavit* have the material effect or tendency to influence the Prosecutor in the determination of the existence of probable cause for the filing of information before the court of justice. Saulo asserted therein, among others, that Alberto surreptitiously and unlawfully took five (5) checks drawn against Khumbmela's account and thereafter illegally filled them up to defraud the company. The relevant portions of the *Complaint-Affidavit* categorically state:

> 3.10 Respondent Alberto abused the trust and confidence of the complainant corporation by surreptitiously and unlawfully taking the personal property of Khumbmela consisting of five (5) checks without its consent.
>
> 3.11 Worse, respondent Alberto illegally filled up the five (5) checks of the complainant corporation without any basis except to defraud the company and with the intention of causing damage to Khumbmela. Respondent Alberto filled up the amounts and dates on said checks without the authority of undersigned and with the sole purpose of attempting to defraud the company of the amounts placed therein.

It also bears noting that the effects of the statement are weighed in terms of potentiality rather than probability. The prosecution need not prove that the false testimony actually influenced the Commission.

Similarly, the presence of the **second** and **fourth elements** could hardly be denied. As found by the MeTC, the subject *Complaint-Affidavit* was subscribed and sworn to by Saulo himself before Assistant City Prosecutor Philip G. Labastida, an officer authorized to administer oath. The *Complaint-Affidavit* is required by law. It is necessary to institute a criminal action against Saulo pursuant to Section 1(a), Rule 110 of the Rules of Court, to wit:

> Section 1. *Institution of criminal actions*. – Criminal action shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to Section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

The **third element** requires that the accused must make a willful and deliberate assertion of a falsehood in the statement or affidavit. A mere assertion of a false objective fact, a falsehood, is not enough. The assertion must be deliberate and willful. Perjury being a felony by *dolo*, there must be malice on the part of the accused. Willfully means intentionally; with evil intent and legal malice, with the consciousness that the alleged perjurious statement is false with the intent that it should be received as a statement of what was true in fact. It is equivalent to knowingly [*sic*]. Deliberately implies meditated as distinguished from inadvertent acts. It must appear that the accused knows his statement to be false or as consciously ignorant of its truth.

This element is present here. We quote with approval the pertinent portions of the MeTC ruling as upheld by the RTC, thus:

x x x x x x x x x

The testimonies of complainant Alberto and witness Celso essentially and categorically confirmed that accused Saulo borrowed from her on different dates ₱1,500,000.00, ₱12,270.00 and ₱29,300.00. As payment for the last two amounts, accused Saulo issued BDO check with No. 0000157[5]80 dated October 28, 1996 x x x and BDO check with no. 0000157581 dated November 20, 1996 x x x. Both checks were drawn from the account name of Khumbmela. The same witnesses were also one in saying that the said monies (₱12,270.00 and ₱29,300.00) were loaned by accused Saulo for at that time he was having financial problems and the monies loaned were used to pay for the salary of the employees of the corporation and for the construction of the studio of accused Saulo. As to the ₱1,500,000.00, witness Celso confirmed the loan transaction by stating that the money was handed over to her in the presence of Vonnel Salvacion.

Witness Celso all the more bolstered these transactions when she affirmed that she, as the one preparing and releasing the checks whenever Carol Dela Cruz was absent, personally prepared the checks "payable to cash" x x x and after accused Saulo had signed them, she personally released them. She further attested that these checks issued by accused Saulo in favor

> of complainant Alberto were duly supported by vouchers signed by her, by complainant Alberto and accused Saulo.
>
> It bears noting that witness Celso's testimony was straightforward, concise, candid and firm. She was not actuated by any ill or improper motive to falsely testify against accused Saulo. In fact, at the time she testified or executed her affidavit before the NBI on March 21, 1997, she was still employed at Khumbmela Products. As such, she could be properly described and considered as a disinterested person and a credible witness whose testimony must be given full faith and credit.[22] (Emphases in the original)

For the case of Violation of B.P. 22

The OSG, in its Comment to the Petition for Review filed before this Court, emphasizes that petitioner's conviction for violation of B.P. 22 should stand, as the latter failed to question his conviction and even stated in his Amended Petition for Review filed before the appellate court and that he is not veering away from liability for his act of issuing the subject corporate checks.

It is a settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.[23]

Petitioner was charged with Violation of B.P. 22 under the following provision:

> SEC. 1. *Checks without sufficient funds*. — Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished

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[22] *Rollo*, pp. 14-16.

[23] *Ferrer v. People*, 518 Phil. 196, 220 (2006).

by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

To be liable for violation of B.P. 22, the following essential elements must be present: (1) The making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[24]

Under B.P. 22, the mere issuance of a worthless check is already the offense in itself. In this case, we find no reason to depart from the trial courts' findings. All three elements are present here.

The first and third elements of B.P. 22 are undisputed. The prosecution was able to present the two original BDO checks with Check No. 157580 dated October 28, 1996 in the amount of ₱12,270.00 and Check No. 157581 dated November 20, 1996 in the amount of ₱29,300.00. These checks were dishonored upon presentation for payment for the reasons "Account Closed" and "Drawn against Insufficient Funds." Petitioner also failed to rebut the statutory presumption of knowledge of insufficient funds, the second element, which attaches when the two checks were presented and dishonored by BDO within 90 days from its issuance and that petitioner failed to pay the amount of the check or make arrangement for its payment within five days from the time the written notice of dishonor was received by him on December 17, 1996. In his Complaint-Affidavit for Qualified Theft and Falsification filed against respondent before

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[24] *Navarra v. People*, 786 Phil. 439, 448 (2016).

the Office of the City Prosecutor of Pasig, petitioner admitted that he indeed received the Notice of Dishonor on December 17, 1996. Incidentally, this Complaint-Affidavit was also the basis of respondent in filing this present case of perjury against petitioner.

Likewise, B.P. 22, also provides:

> Where the check is drawn by a corporation, company or entity, the person or persons, who actually signed the check in behalf of such drawer shall be liable under this Act.

When a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.[25]

Evidence showed that what was issued here were corporate checks issued against the account of Khumbmela. Petitioner admitted that he was the President of the said corporation and as testified by the prosecution witnesses, petitioner was the one signing the check for the corporation. Also, petitioner never disputed the authenticity and genuineness of his signatures in the two checks subject matter of these cases.

With regard to the penalty imposed and in view of our ruling in *Nacar v. Gallery Frames*,[26] We modify the rate of legal interest imposed. Pursuant to our ruling in *Nacar*, the sum of ₱41,570.00 due to respondent shall earn interest at the rate of 12% per annum from the filing of the Information until June 30, 2013 and thereafter, at the rate of 6% per annum from July 1,

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[25] *Gosiaco v. Ching*, 603 Phil. 457, 464-465 (2009).

[26] 716 Phil. 267 (2013).

2013 until finality of this Decision. The total amount owing to respondent shall further earn legal interest at the rate of 6% per annum from its finality until full payment.

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. The assailed May 23, 2018 Decision and the October 19, 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 39251 are **AFFIRMED** with **MODIFICATION** in that petitioner Edwin L. Saulo is ordered to pay Marsene Alberto interest on the value of the checks at the rate of 12% per annum from the date the Information was filed on October 24, 1997 until June 30, 2013 and at the rate of 6% per annum from July 1, 2013 until finality of this judgment. The monetary award shall be subject to interest at the rate of 6% per annum from date of the finality of this judgment until full satisfaction of the same.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 243459. June 8, 2020]

HEIRS OF THE LATE MARCELINO O. NEPOMUCENO, represented by his wife, MA. FE L. NEPOMUCENO, *petitioners, vs.* **NAESS SHIPPING PHILS., INC./ ROYAL DRAGON OCEAN TRANSPORT, INC.**, *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CONTRACTS; EMPLOYMENT CONTRACT OF A SEAFARER; DEATH BENEFITS CANNOT BE GRANTED IN THE ABSENCE OF A SPECIFIC PROVISION IN THE EMPLOYMENT CONTRACT.

— While it is not disputed that the cause of Nepomuceno's death was myocardial infarction (heart attack), the Court nevertheless finds that petitioners' claim for death benefits under the Addendum cannot be sustained. x x x Contrary to petitioners' position, the subject provisions of the Addendum are clear that respondents' obligation to take out the necessary insurance only pertains to disability compensation in cases of work-related injuries suffered not through the seafarer's fault. x x x Rather than ambiguity, the Court finds that the Addendum has gaps regarding the payment of death benefits, as it did not provide what constitutes death benefits, the amount to be paid, as well as other details pertaining to said benefits. Such being the case, the Court cannot rule in favor of petitioners in the absence of these provisions governing these specific details.

2. **ID.; ID.; MISSING DETAILS IN LABOR CONTRACTS CANNOT BE PROVIDED BY THE COURT UNDER THE GUISE OF INTERPRETING THE SAME. —** While it is true that Article 1700 of the Civil Code provides that "[t]he relations between capital and labor are not merely contractual" such that labor contracts are subject to the special laws governing working conditions and other similar subjects, this does not authorize the Court to provide missing details in the contract under the guise of interpreting the same nor compel the parties to negotiate such terms and conditions.

3. **ID.; ID.; OCCUPATIONAL DISEASES; WHILE MYOCARDIAL INFARCTION HAS BEEN CONSIDERED AS A COMPENSABLE OCCUPATIONAL DISEASE UNDER THE PROVISION OF THE WORKMEN'S COMPENSATION ACT, CLAIMS FOR BENEFITS FOR DEATH ARISING THEREFROM CANNOT BE LODGED AGAINST AN EMPLOYER ABSENT A PROVISION IN THE CONTRACT. —** [T]he Court points out that petitioners' reliance on *Government Service Insurance System (GSIS) v. Villareal*, which held that myocardial infarction is a compensable occupational disease, is misplaced for it is inapplicable to the present case. In said case, the claim was not lodged against the employer, but against GSIS. On the other hand, *Rañises v. Employees Compensation Commission (ECC)*, cited in *GSIS v. Villareal*, involved a claim of benefits filed before the Social Security System (SSS). In *Rañises*, this Court enumerated its rulings in cases which held that myocardial infarction is a compensable occupational disease. . . . Perusal

of the abovementioned cases will reveal that they do not involve claims for death benefits by virtue of an employment contract but claims under the provisions of Act No. 3428, also known as the Workmen's Compensation Act, as amended, or those filed with the GSIS or the SSS, in which case the pertinent rules of the ECC on cardiovascular disease as compensable occupational disease find application.

4. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; ATTORNEY'S FEES; THESE DAMAGES CANNOT BE AWARDED ABSENT EVIDENCE OF GROSS AND EVIDENT BAD FAITH IN DENYING AN EMPLOYEE'S CLAIM. — As regards the prayer for the award of moral damages, exemplary damages, and attorney's fees, we find no error on the part of the VA and CA in denying the same. Other than petitioners' bare allegation that respondents' unjustified denial of death benefits claim caused them to suffer and to continue to suffer tremendous pain and humiliation, coupled with mental anguish, it was not shown that respondents' denial of petitioners' claim was tainted with "bad faith or fraud, or done in manner oppressive to labor, or in a manner contrary to morals, good customs, or public policy." In the absence of any finding that petitioners are entitled to moral damages, and that respondents acted in "a wanton, fraudulent, reckless, oppressive or malevolent manner," the award of exemplary damages is likewise unwarranted. The petitioners, not being entitled to exemplary damages, the prayer for attorney's fees must likewise be denied. Neither can such award be justified on the ground of "[refusal] to satisfy the [petitioners'] plainly valid, just and demandable claim," in the absence of proof that respondents acted in gross and evident bad faith in such refusal, nor on the ground that petitioners were "compelled to litigate with third persons or to incur expenses to protect their interest," for even when such is the case, attorney's fees still "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."

APPEARANCES OF COUNSEL

Sapalo Velez Bundang & Bulilan for petitioners.

Veralaw (Del Rosario Raboca Gonzales Grasparil) for respondents.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated April 27, 2018 and the Resolution[2] dated December 10, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 147588.

Under a Contract of Employment for Marine Crew on Board Domestic Vessels (Contract, for brevity) dated October 10, 2013,[3] Marcelino O. Nepomuceno (Nepomuceno) was engaged by NAESS Shipping Philippines, Inc., through its local manning agent Royal Dragon Ocean Transport, Inc. (respondents) to work as 2nd Engineer on board the vessel *M/V Meilling 11*[4] for six months, effective November 26, 2013. Nepomuceno embarked on the said vessel on the last aforementioned date. His duties involved keeping the mooring logs, scheduling the shifting of engine personnel, maintenance of equipment, and discipline of engine crew.

In the morning of December 17, 2013, Nepomuceno was found in his cabin, sitting and holding his cellular phone, and looking very pale. At 10:40 a.m., he was declared dead by the shipyard medical officer. The Autopsy Report stated that the cause of his death was myocardial infarction (heart attack).

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[1] Penned by Associate Justice Mario V. Lopez (now a Member of the Court), with Associate Justices Victoria Isabel A. Paredes and Carmelita Salandanan Manahan, concurring; *rollo*, pp. 175-184.

[2] *Id.* at 168-173.

[3] The present Petition for Review on *Certiorari* and the CA Decision dated April 27, 2018 state that he was engaged on October 10, 2012. See *Rollo*, p. 17 and p. 175, respectively. Both the Decision dated June 8, 2015 of the Voluntary Arbitrator and Nepomuceno's contract, however, state that Nepomuceno was engaged on October 10, 2013; *id.* at 56 and 83, respectively.

[4] *M/V Meiling 11* in the Decision dated June 8, 2015 of the Voluntary Arbitrator, *id.* at 56; *M/V Meiling-11* in the CA Decision, *id.* at 175.

Nepomuceno's family was informed of his death and the shipping company arranged for his remains to be brought from Cebu to Manila for interment and burial.

Nepomuceno's heirs (petitioners) sought to claim death benefits under Nepomuceno's Contract. In particular, Section C, Part II of the Addendum to the Contract (Addendum) provides:

> SECTION C. COMPENSATION AND BENEFITS.
>
> 1. If the seafarer due to no fault of his own, suffers a work-related injury and as a result his ability to work is reduced, the Company shall pay him a disability compensation calculated on the basis of the impediment for injuries at a percentage recommended by a doctor authorized by the Company for the medical examination of seafarers.
>
>   The Company shall take out the necessary insurance to cover the benefits mentioned above.
>
> 2. No compensation shall be payable with respect to any injury, incapacity, disability, or death resulting from a deliberate or willful act by the seaman against himself, provided however, that the Employer can prove that such injury, incapacity, disability, or death is directly attributable to the seaman.[5]

When the claim was denied by the respondents, petitioners filed a complaint before the National Conciliation and Mediation Board (NCMB).

In his Decision[6] dated June 8, 2015, the Voluntary Arbitrator[7] (VA) dismissed the claim for death benefits, holding that under the Addendum, the employer was obliged to take out the necessary insurance to cover disability compensation for work-related injuries only, and not death.[8] As regards petitioners'

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[5] *Id.* at 87-88. The Addendum is attached to the Contract and is made an integral part thereof.

[6] *Id.* at 56-59.

[7] Accredited Voluntary Arbitrator Walfredo D. Villazor.

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

claim that the cause of Nepomuceno's death was work-related, the VA found that based on the records, Nepomuceno did not suffer from any work-related injury or disability, and was not performing any work-related functions at the time of his death. The fact that Nepomuceno was issued a clean bill of health when he was declared fit for sea duty in his Pre-Employment Medical Examination, does not justify a conclusion that his illness was work-related. The VA also found that Nepomuceno did not report any health issue or medical condition to any of the vessel's officers in the duration of his contract indicating that his duties caused his illness. In sum, petitioners were unable to prove by substantial evidence that there was a causal connection between Nepomuceno's death and the nature of his work.[9] The claim for damages and attorney's fees was likewise dismissed absent proof that respondents acted in a wanton, reckless, and oppressive manner in dealing with the petitioners.[10]

Petitioners' Motion for Reconsideration (MR) was denied in a Resolution dated August 5, 2016.[11] Aggrieved, petitioners filed a petition for review before the CA.

In its assailed Decision,[12] the CA denied the petition for review, holding that respondents were not liable for death benefits since the Addendum did not provide for payment of said benefits in case of death not due to the willful or deliberate act of the seafarer. Thus, the CA held that the provisions of the Labor Code should apply in order to fill the gap, and as such, petitioners' recourse was not against respondents but to utilize the System[13] to claim death benefits.[14] Furthermore, the CA noted that

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[9] *Id.* at 58.

[10] *Id.* at 58-59.

[11] *Id.* at 54.

[12] *Supra* note 1.

[13] Referring to the Social Security System (SSS) or Government Service Insurance System (GSIS), as the case may be.

[14] *Id.* at 181-182. In particular, the CA cited Article 194 of the Labor Code, now renumbered as Article 200 per DOLE Department Advisory No. 01, s. 2015, which provides:

respondents have paid for the autopsy, transportation of Nepomuceno's remains, interment, and burial amounting to ₱126,167.75.[15] The CA also denied petitioners' prayer for moral and exemplary damages, as well as attorney's fees. As regards moral damages, the CA found that respondents acted reasonably in denying the claim for death benefits and extending assistance regarding Nepomuceno's interment and burial. As there was no clear right to moral damages having been established, no award of exemplary damages was also made. Finally, no award of attorney's fees was made as the CA found no compelling reason to justify the award.[16]

ART. 200. [194] Death. — (a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of the covered employee under this Title, an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 hereof: Provided, however, That the monthly income benefit shall be guaranteed for five years: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit but not to exceed sixty months: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos.

(b) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of a covered employee who is under permanent total disability under this Title, eighty percent of the monthly income benefit and his dependents to the dependents' pension: Provided, That the marriage must have been validly subsisting at the time of disability: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly pension excluding the dependents' pension, of the remaining balance of the five-year guaranteed period: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos.

(c) The monthly income benefit provided herein shall be the new amount of the monthly income benefit for the surviving beneficiaries upon the approval of this decree.

(d) Funeral benefit. — A funeral benefit of Three Thousand Pesos (₱3,000.00) shall be paid upon the death of a covered employee or permanently totally disabled pensioner.

[15] *Id.* at 182.

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

Petitioners' MR was likewise denied by the CA in a Resolution[17] dated December 10, 2018, hence, the present Petition.

Petitioners argue that they are entitled to death benefits since under the Addendum, what is not compensable is injury, illness, disability, or death due to the seafarer's deliberate or willful act against himself. They also cite jurisprudence which held that cardiovascular disease is a compensable occupational disease in support of their argument that Nepomuceno's death was work-related. They also pray for the award of moral and exemplary damages, as well as attorney's fees, for the unjustified denial of their claim for death benefits.

Respondents, aside from arguing that the Addendum did not provide for payment of death benefits and that petitioners failed to present proof that Nepomuceno's death was work-related, claim that petitioners have no standing to claim for death benefits as Nepomuceno's marriage to Ma. Fe L. Nepomuceno was alleged to be bigamous.

The Court resolves.

The Court will not pass upon respondents' allegation regarding the validity of Nepomuceno's marriage as this is not the proper case to resolve such issue. Thus, the resolution of this case is limited to whether petitioners are entitled to death benefits under Nepomuceno's employment contract.

At the outset, the Court notes that in their Petition before this Court, the sentence "[t]he Company shall take out the necessary insurance to cover the benefits mentioned above" was omitted when the petitioners quoted the subject provisions of the Addendum. Respondents assert in their Comment[18] that this omission is deliberate and malicious,[19] while in their Reply,[20] petitioners argue that the omission is by inadvertence, and at

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[17] *Id.* at 168-173.

[18] *Id.* at 187-213.

[19] *Id.* at 193-194.

[20] *Id.* at 236-249.

any rate, the sentence only affects the first paragraph on work-related injuries but not the succeeding paragraph which includes death.[21]

While it is not disputed that the cause of Nepomuceno's death was myocardial infarction (heart attack), the Court nevertheless finds that petitioners' claim for death benefits under the Addendum cannot be sustained.

Petitioners assert that respondents should be liable for death benefits in case of death not due to the seafarer's deliberate or willful act against himself, since under the Addendum, the respondents can negate liability upon proof that a seafarer's injury, illness, disability, or death is directly attributable to the seafarer. Petitioners argue that it would be absurd if only work-related injuries, but not work-related death, sustained not through the seafarer's fault are compensable. There being an ambiguity in the Addendum to Nepomuceno's Contract, the same should be resolved in his favor, considering also that his employment contract partakes of a contract of adhesion.

Contrary to petitioners' position, the subject provisions of the Addendum are clear that respondents' obligation to take out the necessary insurance only pertains to disability compensation in cases of work-related injuries suffered not through the seafarer's fault. On the other hand, no compensation is payable in cases of injury, incapacity, disability, or death resulting from a deliberate or willful act by the seafarer against himself.

Rather than ambiguity, the Court finds that the Addendum has gaps regarding the payment of death benefits, as it did not provide what constitutes death benefits, the amount to be paid, as well as other details pertaining to said benefits. Such being the case, the Court cannot rule in favor of petitioners in the absence of these provisions governing these specific details. While it is true that Article 1700 of the Civil Code provides that "[t]he relations between capital and labor are not merely

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[21] *Id.* at 237-239.

contractual" such that labor contracts are subject to the special laws governing working conditions and other similar subjects,[22] this does not authorize the Court to provide missing details in the contract under the guise of interpreting the same nor compel the parties to negotiate such terms and conditions. As stated in *Century Properties, Inc. v. Babiano*:[23]

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[24] (Citations and emphases omitted)

On the basis of the foregoing discussion, the Court finds it no longer necessary to pass upon the issue of whether Nepomuceno's death is work-related and whether the disease he contracted and which ultimately caused his death is compensable. This is in order not to preempt any determination of the same in another recourse that petitioners may want to resort to, with respect to claims for other benefits to which

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[22] ART. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

[23] G.R. No. 220978, July 5, 2016, 795 SCRA 671, citing *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 388 (2009).

[24] *Id.* at 681-682.

they may be entitled to. Notably, Section K [Applicable Law], Part I of the Addendum provides that "[i]t is understood and agreed that all rights and obligations of the parties to this Contract, shall be governed by the terms and conditions of this Contract and by the laws of the Republic of the Philippines."[25] In relation to this, Department Order No. 129-13 *(Rules and Regulations Governing the Employment and Working Conditions of Seafarers Onboard Ships Engaged in Domestic Shipping)* of the Department of Labor and Employment, dated June 7, 2013, provides:

RULE VI
SOCIAL SECURITY

SEC. 1. *Coverage and Benefits*. Without prejudice to established policy, collective bargaining agreement or other applicable employment agreement, all seafarers shall be covered by the Social Security System (Republic Act No. 1161, as amended by Republic Act No. 8282), Employees' Compensation and State Insurance Fund (Presidential Decree No. 626), PhilHealth (Republic Act No. 7875, as amended by Republic Act No. 9241), and the Pag-IBIG Fund (Republic Act No. 7742), and other applicable laws. The seafarers shall be entitled to all the benefits in accordance with the respective policies, laws, rules and regulations.

At this juncture, the Court points out that petitioners' reliance on *Government Service Insurance System (GSIS) v. Villareal*,[26] which held that myocardial infarction is a compensable occupational disease, is misplaced for it is inapplicable to the present case. In said case, the claim was not lodged against the employer, but against GSIS. On the other hand, *Rañises v. Employees Compensation Commission (ECC)*,[27] cited in *GSIS v. Villareal*, involved a claim of benefits filed before the Social Security System (SSS). In *Rañises*, this Court enumerated its rulings in cases which held that myocardial infarction is a

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[25] *Rollo*, p. 87.

[26] 549 Phil. 504 (2007).

[27] 504 Phil. 340 (2005).

compensable occupational disease, particularly the cases of *Sepulveda v. ECC*,[28] *Cortes v. ECC*,[29] *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration (POEA)*,[30] *Roldan v. Republic*,[31] *Tibulan v. Inciong*,[32] *Heirs of the Late R/O Reynaldo Aniban v. National Labor Relations Commission*,[33] *GSIS v. Gabriel*,[34] and *Republic v. Mariano*.[35] Perusal of the abovementioned cases will reveal that they do not involve claims for death benefits by virtue of an employment contract but claims under the provisions of Act No. 3428, also known as the Workmen's Compensation Act, as amended, or those filed with the GSIS or the SSS, in which case the pertinent rules of the ECC on cardiovascular disease as compensable occupational disease find application.

On the other hand, *Eastern Shipping Lines* and *Heirs of Aniban*, in particular, also do not find application here, as these cases dealt with seafarers in overseas employment, while the present case involves a seafarer in a vessel engaged in domestic shipping. Furthermore, a reading of *Eastern Shipping Lines* reveals that the issue there is with regard to the POEA's jurisdiction as well as the validity and applicability of Memorandum Circular No. 71 of the then National Seamen Board. In *Heirs of Aniban*, the claim for death benefits was based on a Collective Bargaining Agreement (which contained specific details on payment of said benefits) and on the POEA Standard Employment Contract (POEA-SEC). Note must be taken that in *Delos Santos v. Jebsen Maritime, Inc.*,[36] the Court upheld the CA's ruling

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[28] 174 Phil. 242 (1978).

[29] 175 Phil. 331 (1978).

[30] 252 Phil. 59 (1989).

[31] 261 Phil. 327 (1990).

[32] 257 Phil. 324 (1989).

[33] 347 Phil. 46 (1997).

[34] 368 Phil. 187 (1999).

[35] 448 Phil. 99 (2003).

[36] 512 Phil. 301 (2005).

therein rejecting the applicability of the POEA-SEC to the employment of a seafarer on board an inter-island vessel.

As regards the prayer for the award of moral damages, exemplary damages, and attorney's fees, we find no error on the part of the VA and CA in denying the same. Other than petitioners' bare allegation that respondents' unjustified denial of death benefits claim caused them to suffer and to continue to suffer tremendous pain and humiliation coupled with mental anguish, it was not shown that respondents' denial of petitioners' claim was tainted with "bad faith or fraud, or done in manner oppressive to labor, or in a manner contrary to morals, good customs, or public policy."[37] In the absence of any finding that petitioners are entitled to moral damages,[38] and that respondents acted in "a wanton, fraudulent, reckless, oppressive or malevolent manner,"[39] the award of exemplary damages is likewise unwarranted.

The petitioners not being entitled to exemplary damages, the prayer for attorney's fees must likewise be denied.[40] Neither can such award be justified on the ground of "[refusal] to satisfy the [petitioners'] plainly valid, just and demandable claim," in the absence of proof that respondents acted in gross and evident bad faith in such refusal,[41] nor on the ground that petitioners

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[37] "Moral damages may be awarded to an employee when the employer acted in bad faith or fraud, in a manner oppressive to labor, or in a manner contrary to morals, good customs, or public policy." (*Beltran v. AMA Computer College-Biñan*, G.R. No. 223795, April 3, 2019).

[38] CIVIL CODE, Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, **in addition** to the moral, temperate, liquidated or compensatory damages. See also *Timado v. Rural Bank of San Jose*, 789 Phil. 453 (2016).

[39] *Id.* at Art. 2232.

[40] *Id.* at Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

x x x x x x x x x

[41] See CIVIL CODE, Art. 2208(5).

were "compelled to litigate with third persons or to incur expenses to protect their interest,"[42] for even when such is the case, attorney's fees still "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."[43]

On the basis of the foregoing discussion, the Court denies the present Petition. We emphasize, however, that this ruling denying recourse against the respondents should not be construed to preclude petitioners from proving, before the proper forum, their claim for benefits to which they may be entitled to under applicable laws, rules and regulations, on account of Nepomuceno's death.

WHEREFORE, the petition is **DENIED**. The Decision dated April 27, 2018 and the Resolution dated December 10, 2018 of the Court of Appeals in CA-G.R. SP No. 147588 are hereby **AFFIRMED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Gaerlan,*[*] *JJ.*, concur.

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[42] *Id.* at Art. 2208(2).

[43] See *Pardillo v. Bandojo*, G.R. No. 224854, March 27, 2019, citing *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499, 529 (1999).

[*] Additional member per Raffle dated February 12, 2020 in lieu of Associate Justice Mario V. Lopez.

SECOND DIVISION

[G.R. No. 243897. June 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **RAQUEL AUSTRIA NACIONGAYO**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); ELEMENTS FOR VIOLATION OF SECTION 3(e) OF R.A. 3019, SUFFICIENTLY ESTABLISHED IN THIS CASE. — [T]he elements of violation of Section 3(e) of RA 3019 are as follows: (*a*) 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); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions. As will be explained hereunder, the Court agrees with the findings of the SB that all the elements were proven beyond reasonable doubt in this case. ***As to the first element***, it is undisputed that at the time the crime was committed, accused-appellant was a public officer acting in her official capacity as City Government Department Head II of the Pasig CENRO. ***As to the second element***, it must be noted that there are three (3) means of committing the crime charged — *i.e.*, through manifest partiality, evident bad faith, or gross inexcusable negligence — and proof of any of these in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict. x x x In this case, accused-appellant acted with manifest partiality and evident bad faith in the procurement of Enviserve's consultancy services, having accepted the latter's proposal to organize and conduct the Environmental Congress notwithstanding: (*a*) the absence of a competitive bidding; (*b*) her knowledge that Enviserve was operating as a corporate entity without proper SEC registration; and (*c*) her close ties to Enviserve — being listed as the contact person in the latter's corporate cover sheet, and the one who ordered the registration

of its articles of incorporation, as well as her sister being one of its incorporators. ***As to the third and last element***, case law instructs that "there are two ways by which a public official violates Section 3(e) of [RA] 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term 'or' connotes that either act qualifies as a violation of Section 3(e) of [RA] 3019. In other words, the presence of one would suffice for conviction." Here, accused-appellant's act of procuring Enviserve's services without the requisite competitive bidding pursuant to RA 9184 gave the latter unwarranted benefits, advantage, and preference, especially considering that the latter was able to derive income through the collection of registration fees from business establishments in Pasig City.

2. ID.; ID.; ID.; ACCUSED-APPELLANT'S ACTS WERE MADE WITH MANIFEST PARTIALITY AND EVIDENT BAD FAITH IN ALLOWING AN ENTITY TO UNDULY DERIVE UNWARRANTED BENEFITS AND ADVANTAGE FROM THE TRANSACTION; PENALTY IMPOSED BY THE SANDIGANBAYAN, MODIFIED. — [A]ccused-appellant's acts as a public officer, which as previously discussed, were made with manifest partiality and evident bad faith, allowed Enviserve to unduly derive unwarranted benefit, advantage, and preference from the transaction. Therefore, the Court finds no reason to overturn the SB's findings, as there was no showing that the court *a quo* overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. It bears pointing out that the SB was in the best position to assess and determine the credibility of the witnesses presented by both parties. As such, accused-appellant's conviction for violation of Section 3(e) of RA 3019 must stand. x x x [T]here is a need to adjust the penalty imposed by the SB. Section 9(a) of RA 3019, as amended, provides that a violation of Section 3 of the same law shall be punished with, *inter alia*, "imprisonment for not less than six years and one month nor more than fifteen years" and "perpetual disqualification from public office." Applying the provisions of the Indeterminate Sentence Law, accused-appellant should be sentenced with the penalty of

imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, together with the aforementioned perpetual disqualification from public office.

3. ID.; ID.; R.A. 3019 *VIS-À-VIS* THE LAW ON GOVERNMENT PROCUREMENT (R.A. 9184); ACCEPTING A PROPOSAL TO ORGANIZE AND CONDUCT A TRAINING SEMINAR AMOUNTS TO A "PROCUREMENT" OF "CONSULTING SERVICES" THAT FALLS WITHIN THE SCOPE OF R.A. 9184 MANDATING SUCH PROCUREMENT TO BE DONE THROUGH COMPETITIVE BIDDING. –– Section 10, Article IV, in relation to paragraphs (n) and (o), Section 5, Article I, of RA 9184, mandates that "all acquisition of goods, **consulting services**, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and **local government units** shall be done through competitive bidding." "This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding." Notably, Section 4 of the law itself states that it applies to the "Procurement of Infrastructure Projects, Goods and Consulting Services, **regardless of the source of funds**[.] x x x Here, accused-appellant's acceptance of Enviserve's proposal, on behalf of the Pasig City Government, to organize and conduct the Environmental Congress, as well as to provide technical experts and resource persons for such purpose, amounted to a "**procurement**" of "**consulting services**," as respectively defined under paragraphs (i) and (aa), Section 5 of the Implementing Rules and Regulations (IRR) of RA 9184. Particularly,the primary purpose of the agreement, which was for Enviserve to train and equip Pasig CENRO personnel and business establishments operating in the city with specialized knowledge on topics related to environmental protection, falls within the definition of "design and execution of training programs," one of the recognized kinds of consulting services, as provided under Item 6, Annex "B" of the aforementioned IRR. x x x [A]s a procurement of consulting

services made for the benefit of the Pasig City Government as a procuring entity, the transaction in question fell within the scope of RA 9184, and absent the applicability of any of the recognized exceptions to such rule, as in this case, the same should have been the subject of a competitive bidding.

APPEARANCES OF COUNSEL

Cesar B. Tuozo for accused-appellant.
Office of the Special Procecutor for plaintiff-appellee.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated December 7, 2018 and Resolution[3] dated December 18, 2018 of the Sandiganbayan (SB) in Crim. Case No. SB-16-CRM-0085, which found accused-appellant Raquel Austria Naciongayo (accused-appellant) guilty beyond reasonable doubt of violating Section 3 (e) of Republic Act No. (RA) 3019,[4] entitled the "Anti-Graft and Corrupt Practices Act."

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[1] See Notice of Appeal dated January 21, 2019; *rollo*, pp. 23-24.

[2] *Id.* at 3-22. Penned by Associate Justice Lorifel L. Pahimna with Associate Justices Oscar C. Herrera, Jr. and Michael Frederick L. Musngi, concurring.

[3] Not attached to the *rollo*.

[4] Section 3 of RA 3019, as amended, reads:

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

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This

The Facts

The instant case stemmed from an Information[5] charging accused-appellant with violation of Section 3 (e) of RA 3019, the accusatory portion of which reads:

> That on January 5, 2006, or sometime prior or subsequent thereto, in Pasig City and within the jurisdiction of this Honorable Court, accused Raquel Austria Naciongayo, holding the item of City Government Department Head II and being the Head of City Environment and Natural Resources Office (CENRO), office of the City Mayor, Pasig City, (Salary Grade 26), while in the discharge of her official functions, committing the offense in relation to her office, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Enviserve[,] Inc., by procuring its services for the conduct of an environmental congress for a capacity building training for Environment Protection Officers from factories and industries in Pasig City without the required competitive public bidding in violation of Sec. 10 of R.A. 9184 that enabled Enviserve, Inc. to collect the amount of One Thousand Seven Hundred Pesos (₱1,700.00) and Two Thousand Pesos (₱2,000.00) for the 2006 and 2007 environmental congress, respectively, as participants' registration fees and by requiring a certificate of participation therefrom as a requisite for securing Environmental Permit and renewal of Business Permit to Operate thereby unduly benefiting Enviserve, Inc., to the exclusion of other service providers, to the damage and prejudice of the government and the public interest.
>
> CONTRARY TO LAW.

The prosecution alleged that on January 5, 2006, accused-appellant, acting in her official capacity as City Government Department Head II of the City Environment and Natural Resources Office of Pasig City (Pasig CENRO), procured the

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provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions;

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[5] *Rollo*, pp. 3-4.

[6] *Id.* at 14.

services of Enviserve, Inc. (Enviserve) by accepting the latter's proposal to organize and conduct a training seminar known as the "*Environmental Industrial and Commercial Congress*" (Environmental Congress) for the purpose of providing Pasig CENRO personnel and business establishments in the city with technical knowledge on topics related to environmental protection, *e.g.*, pollution prevention, waste reduction, recycle management, environmental policy, and sewage operation, in exchange for the payment of registration fees from the participants.[6] The proposal includes the following, to wit:

1. One day training/seminar with focus on pollution prevention; waste reduction, reuse, recycle management; industrial energy efficiency; environmental natural laws and policies; and sewerage treatment plan maintenance and operation. Participating manufacturing companies in Pasig City shall pay corresponding registration fees.
2. Technical experts and resource persons who will provide the training.
3. Certificate of Participation.
4. Free training for [ten (10)] CENRO Staff.[7]

According to the prosecution, accused-appellant's act of entering into the foregoing transaction with Enviserve on behalf of the Pasig City Government is tainted with manifest partiality, evident bad faith, or gross inexcusable negligence, as she procured the latter's services without first conducting a competitive bidding, and despite knowledge of its lack of legal personality, as the company was incorporated only on November 22, 2006, *i.e.*, after the contract between the parties was perfected. Furthermore, the prosecution pointed out accused-appellant's supposed close ties to Enviserve considering that: (*a*) she ordered one of her staff to register the company's articles of incorporation with the Securities and Exchange Commission (SEC); (*b*) her

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[7] See *id.* at 14-15.

[8] See *id.* at 6 and 15.

father was the one who stood as speaker for the events held by Enviserve; (*c*) her sister, Aileen Shirly Austria, was one of the incorporators of the company; and (*d*) accused-appellant herself was made the contact person of Enviserve, as listed in its General Information Sheet submitted to the SEC.[8]

Subsequently, accused-appellant then required respective representatives from each business establishment in Pasig City to attend the Environmental Congress by enjoining the attendance thereof as a mandatory requirement for the issuance of an *Environmental Permit to Operate* from her office, which, in turn, was necessary to secure or renew a business permit from the Pasig City Government. As above-stated, the Environmental Congress eventually took place on December 19, 2006 and June 14, 2007, with accused-appellant's father serving as a speaker on both occasions.[9]

In defense, accused-appellant denied the charges against her, claiming that she collaborated with Enviserve in good faith, and that, at the time of the alleged incident, her office had no budget for conducting seminars on environmental matters, and the latter was the only one who made an offer and submitted a proposal to conduct the same at no cost to the Pasig City Government.[10]

The SB Ruling

In a Decision[11] dated December 7, 2018, the SB found accused-appellant **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of one (1) year and one (1) month, as minimum, to three (3) years, as maximum, with perpetual disqualification from public office.[12] Giving

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[9] See *id.* at 5-7 and 15.

[10] See *id.* at 15-16.

[11] *Id.* at 3-22.

[12] *Id.* at 42.

credence to the evidence presented by the prosecution, the SB found that accused-appellant, as head of the Pasig CENRO, through manifest partiality and evident bad faith, gave Enviserve unwarranted benefit, advantage, and preference, considering that she procured the latter's consultancy services: (*a*) without competitive bidding; (*b*) with knowledge of Enviserve's lack of legal personality; and (*c*) despite her close ties to the latter.[13]

Aggrieved, accused-appellant filed a motion for reconsideration,[14] which was denied in a Resolution[15] dated December 18, 2018; hence, this appeal.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not accused-appellant is guilty beyond reasonable doubt of the crime charged.

The Court's Ruling

The appeal is without merit.

Section 3 (e) of RA 3019 states:

> Section 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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[13] *Id.* at 16-21.

[14] Filed on December 17, 2018; *id.* at 23.

[15] Not attached to the *rollo*.

x x x x x x x x x

Verily, the elements of violation of Section 3 (e) of RA 3019 are as follows: (*a*) 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); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[16] As will be explained hereunder, the Court agrees with the findings of the SB that all the elements were proven beyond reasonable doubt in this case.

As to the first element, it is undisputed that at the time the crime was committed, accused-appellant was a public officer acting in her official capacity as City Government Department Head II of the Pasig CENRO.

As to the second element, it must be noted that there are three (3) means of committing the crime charged — *i.e.*, through manifest partiality, evident bad faith, or gross inexcusable negligence — and proof of any of these in connection with the prohibited acts mentioned in Section 3 (e) of RA 3019 is enough to convict.[17] In *Coloma, Jr. v. Sandiganbayan*,[18] the Court defined the foregoing means of commission as follows:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence

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[16] *Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016), citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 102 (2015).

[17] *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 229 (2014), citing *Sison v. People*, 628 Phil. 573, 583 (2010).

[18] 744 Phil. 214 (2014).

has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but [willfully] and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[19]

In this case, accused-appellant acted with manifest partiality and evident bad faith in the procurement of Enviserve's consultancy services, having accepted the latter's proposal to organize and conduct the Environmental Congress notwithstanding: (*a*) the absence of a competitive bidding; (*b*) her knowledge that Enviserve was operating as a corporate entity without proper SEC registration; and (*c*) her close ties to Enviserve — being listed as the contact person in the latter's corporate cover sheet, and the one who ordered the registration of its articles of incorporation, as well as her sister being one of its incorporators.[20]

As to the third and last element, case law instructs that "there are two ways by which a public official violates Section 3(e) of [RA] 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term 'or' connotes that either act qualifies as a violation of Section 3(e) of [RA] 3019 In other words, the presence of one would suffice for conviction."[21] Here, accused-appellant's act of procuring Enviserve's services without the requisite competitive bidding pursuant to RA 9184[22] gave the latter unwarranted benefits,

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[19] *Id.* at 229, citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687-688.

[20] See *rollo*, pp. 19-20.

[21] *Coloma, Jr. v. Sandiganbayan*, *supra* at 231-232.

[22] Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES," approved on January 10, 2003.

advantage, and preference, especially considering that the latter was able to derive income through the collection of registration fees from business establishments in Pasig City.[23]

In insisting on her innocence, accused-appellant argues that the requirement of competitive bidding does not apply to the transaction in question, as she merely accepted Enviserve's proposal to organize and conduct the Environmental Congress, which was made without cost to the Pasig City Government.[24]

Accused-appellant's arguments are untenable.

Section 10,[25] Article IV, in relation to paragraphs (n) and (o), Section 5,[26] Article I, of RA 9184, mandates that "all acquisition of goods, **consulting services**, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state

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[23] See *rollo*, pp. 16-20.

[24] See Appellant's Brief dated July 16, 2019; *id.* at 37-90.

[25] Section 10 of RA 9184 reads:

Section 10. Competitive Bidding. — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

[26] Section 5 of RA 9184 reads:

Section 5. Definition of Terms. — x x x.

x x x x x x x x x

(n) Procurement — refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location of National Government Infrastructure Projects and for Other Purposes" and other applicable laws, rules and regulations.

(o) Procuring Entity — refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and **local government units** shall be done through competitive bidding."[27] "This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding."[28] Notably, Section 4 of the law itself states that it applies to the "Procurement of Infrastructure Projects, Goods and Consulting Services, **regardless of the source of funds** x x x"; to wit:

> Section 4. Scope and Application. — This act shall apply to the Procurement of Infrastructure Projects, Goods and **Consulting Services, regardless of source of funds**, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and **local government units** x x x. (Emphases and underscoring supplied)

Here, accused-appellant's acceptance of Enviserve's proposal, on behalf of the Pasig City Government, to organize and conduct the Environmental Congress, as well as to provide technical experts and resource persons for such purpose, amounted to a "**procurement**" of "**consulting services**," as respectively defined under paragraphs (i) and (aa), Section 5 of the Implementing Rules and Regulations (IRR) of RA 9184.[29]

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[27] *De Guzman v. Office of the Ombudsman*, 821 Phil. 681, 691 (2017).

[28] See *Andaya v. Field Investigation Office of the Office of the Ombudsman*, G.R. No. 237837, June 10, 2019.

[29] Section 5 (i) and (aa) of the IRR of RA 9184 reads:

Section 5. Definition of Terms. —

x x x x x x x x x

i) Consulting Services. Refer to services for infrastructure projects and other types of projects or activities of the GoP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GoP to undertake such as, but not limited to: (i) advisory

Particularly, the primary purpose of the agreement, which was for Enviserve to train and equip Pasig CENRO personnel and business establishments operating in the city with specialized knowledge on topics related to environmental protection, falls within the definition of "design and execution of training programs," one of the recognized kinds of consulting services, as provided under Item 6, Annex "B" of the aforementioned IRR.[30]

Notably, the Court observes that the Environmental Congress was organized and conducted under the authority of the Pasig City Government, given for the benefit of Pasig CENRO personnel and business establishments operating in the city.[31]

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and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. General principles on Consulting Services are provided for in Annex "B" of this IRR;

x x x x x x x x x

aa) Procurement. Refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, *i.e.*, Goods, Infrastructure Projects or Consulting Services, shall be determined based on the primary purpose of the contract. x x x.

[30] Item 6, Annex "B" of the IRR of RA 9184 reads:

6. Types of Consulting Services

The services to be provided by consultants can be divided into six (6) broad categories, namely: (a) advisory and review services; (b) pre-investment or feasibility studies; (c) design; (d) construction supervision; (e) management and related services; and (f) other technical services or special studies.

x x x x x x x x x

6.6. Other Technical Services or Special Studies. The Technical Services may include the following:

x x x x x x x x x

b) Design and execution of training programs at different levels;

x x x x x x x x x

Technology and knowledge transfer should be considered an important objective in the provision of consulting services.

[31] See also *rollo*, pp. 14-16.

The proposal to conduct the same was addressed to the Pasig CENRO, and was accepted by accused-appellant in her official capacity as head of the aforementioned office.[32] Such finding is further bolstered by accused-appellant's directive to enjoin attendance in the event as a mandatory requirement for businesses to successfully obtain an *Environmental Permit to Operate* from her office.[33] Hence, as a procurement of consulting services made for the benefit of the Pasig City Government as a procuring entity, the transaction in question fell within the scope of RA 9184, and absent the applicability of any of the recognized exceptions to such rule,[34] as in this case,[35] the same should have been the subject of a competitive bidding.

In fine, accused-appellant's acts as a public officer, which as previously discussed, were made with manifest partiality and evident bad faith, allowed Enviserve to unduly derive unwarranted benefit, advantage, and preference from the transaction. Therefore, the Court finds no reason to overturn the SB's findings, as there was no showing that the court *a*

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[32] See *id*.

[33] See *id*.

[34] "There are recognized exceptions to the bidding requirement, as can be gleaned in the above-quoted provision. The exceptions are laid out on the provisions of 'Alternative Modes of Procurement' under Section 48, Article XVI of RA 9184, which [are]:

x x x x x x x x x

a. Limited Source Bidding, otherwise known as Selective Bidding x x x;

b. Direct Contracting, otherwise known as Single Source Procurement x x x;

c. Repeat Order x x x; d. Shopping — x x x; [or]

x x x x x x x x x

e. Negotiated Procurement x x x."

(See *Capalla v. Commission on Elections*, 697 Phil. 644 [2012].)

[35] The recognized exceptions to the bidding requirement only apply if prior approval of the head of the procuring entity or his duly authorized representative was obtained (see Section 48, Article XVI of RA 9184), which

quo overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case.[36] It bears pointing out that the SB was in the best position to assess and determine the credibility of the witnesses presented by both parties.[37] As such, accused-appellant's conviction for violation of Section 3(e) of RA 3019 must stand.

Finally, there is a need to adjust the penalty imposed by the SB. Section 9(a)[38] of RA 3019, as amended, provides that a violation of Section 3 of the same law shall be punished with, *inter alia*, "imprisonment for not less than six years and one month nor more than fifteen years" and "perpetual disqualification from public office." Applying the provisions of the Indeterminate Sentence Law, accused-appellant should be sentenced with the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, together with the aforementioned perpetual disqualification from public office.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated December 7, 2018 and the Resolution dated December 18,

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[36] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, 817 Phil. 554 (2017).

[37] *Cahulogan v. People*, *id.*, citing *Peralta v. People*, *id.*, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[38] Section 9 (a) of RA 3019, as amended, reads:

Section 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

x x x x x x x x x

2018 of the Sandiganbayan in Crim. Case No. SB-16-CRM-0085 are hereby **AFFIRMED with MODIFICATION**, in that accused-appellant Raquel Austria Naciongayo is found **GUILTY** beyond reasonable doubt of violating Section 3 (e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and accordingly, sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years, and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Gaerlan,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 246460. June 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL QUINTO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; WHEN IT COMES TO THE CREDIBILITY OF WITNESSES, THE TRIAL COURT'S ASSESSMENT DESERVES GREAT WEIGHT AND IS EVEN CONCLUSIVE AND BINDING PROVIDED THAT IT IS NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE. — It should be emphasized that when it comes to the credibility of witnesses, the trial court's assessment

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[*] Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

deserves great weight, and is even conclusive and binding provided that it is not tainted with arbitrariness or oversight of some fact or circumstance weight and influence. The reason is basic. The trial court, having the full opportunity to observe directly the witnesses' deportment and manner of testifying, is in a better position than the appellate court to properly evaluate testimonial evidence and in assessing who among the witnesses holds the truth. Matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him. The appellate courts are far detached from the details and drama during trial and would have to rely solely on the records of the case in its review.

2. ID.; ID.; DENIAL AND ALIBI; REQUISITES; NOT PRESENT IN THE CASE AT BAR. — Furthermore, case law provides that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence. In the present case, the RTC and the CA both correctly held that the accused-appellant was within the immediate vicinity of the place of the crime. As the RTC held, the store and the house of accused-appellant was just seven houses away. This is a short distance which can be traversed by the accused-appellant to the scene of the crime in approximately 10 minutes. Hence, it was not impossible for him to be at the place of the crime at the time it happened. His defense of alibi, thus, fails to convince compared with the positive identification by the private complainant that it was him who committed the rape.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

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

Under consideration is the appeal filed by accused-appellant Michael Quinto (accused-appellant), seeking the reversal of the Decision[1] dated October 24, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR HC No. 09732, which affirmed the Regional Trial Court's (RTC's) Decision[2] convicting the accused-appellant of the crime of Rape against the private complainant, AAA,[3] with modifying circumstance of use of bladed weapon to commit the felony.

The Antecedents

An Amended Information was filed indicting the accused-appellant for Rape under Article 266-A of the Revised Penal Code (RPC) in relation to Republic Act (R.A.) No. 7610[4] by the prosecution against the accused-appellant, the accusatory portion of which reads:

That on or about the 26th day of March 2004, in the [XXX], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and actuated by lust, by

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Manuel M. Barrios and Henri Jean Paul B. Inting (now a Member of the Court), concurring; *rollo*, pp. 3-11.

[2] Penned by Judge Betlee-Ian J. Barraquias, Regional Trial Court, 4th Judicial Region, Branch 17, Cavite City; CA *rollo*, pp. 61-93.

[3] In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703, 709 (2006), citing Sec. 40, Rule on Violence Against Women and their Children; and Sec. 63, Rule XI, Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004," the real names of the rape victims will not be disclosed. The Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

[4] Otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

means of force, threat, violence and intimidation, being then armed with bladed weapon, and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a minor of 14 years old against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

During the arraignment, the accused-appellant pleaded not guilty. Trial ensued thereafter.

Evidence for the Prosecution

The prosecution's evidence tends to prove that complainant AAA, who was then 14 years of age, was on her way to the store to buy bread when she noticed her neighbor, accused-appellant, behind her pointing a knife. She was brought to the house of a certain "Bornoy"; where she saw Bornoy, Annabelle, Lenlen and two Jenells. Accused-appellant brought AAA to another room where he ordered her to sniff *marijuana*. Out of fear, she followed accused-appellant. Thereafter, she felt dizzy. That was the time when accused-appellant undressed her and inserted his penis in her private part. When he was done, he ordered her to put on her clothes and warned her not to tell anyone about what transpired. She went to her house afterwards, which is located nearby. In time, she revealed her harrowing experience to her aunt.

On March 29, 2004, AAA's aunt told BBB, AAA's mother, about what happened. Shocked, she confronted AAA and asked her if what she came to know was true. AAA admitted the incident after an emotional breakdown.[6]

The next day, AAA, together with her mother, reported the incident to the police. The National Bureau of Investigation (NBI) conducted a medical examination on AAA. Dr. Salome Fernandez (Dr. Fernandez), the Medico-Legal Officer of NBI assigned to assist AAA, found a clear evidence of healed injury

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[5] *Rollo*, pp. 3-4.

[6] *Id.* at 4.

secondary to intravaginal penetration by a blunt object. These observations were corroborated by Dr. Valentin Bernales, then Acting Chief of the Medico-Legal Division of the NBI. Aside from that, Dr. Ma. Victoria Briguela (Dr. Briguela), a psychiatrist, after a thorough psychological examination of AAA, discovered that she had been suffering from mild mental retardation and that her mental age was between seven to eight years old compared to her chronological age of 14 years old at the time of the alleged rape.[7]

Evidence for the Defense

On the other hand, accused-appellant vehemently denied the charge against him. To exculpate himself from any liability, the accused-appellant averred that he and AAA had a relationship and that the sexual congress was consensual. He further alleged that their relationship was known to AAA's aunts and that they usually met at the house of accused-appellant's friend, Bornoy.

According to the accused-appellant, in the afternoon of March 26, 2004 at 3 o'clock in the afternoon, he was at home along with his grandfather watching television. Furthermore, he testified that he did not meet AAA that day.

The statement of the accused-appellant that he and AAA were sweethearts was affirmed by accused-appellant's friends Alfredo Timbang (Alfredo) and Ruther Prodigalidad (Ruther). This allegation was also confirmed by Zenaida Sangil (Zenaida), accused-appellant's neighbor.[8]

Ruling of the Trial Court

On July 19, 2017, the RTC rendered a Decision[9] convicting the accused-appellant of the crime of Rape defined and penalized under Article 266-A of the RPC, as amended, in relation to R.A. No. 7610. The dispositive portion reads as follows:

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[7] *Id.* at 4-5.

[8] *Id.* at 5.

[9] *Supra* note 2.

WHEREFORE, premises considered, the prosecution having proved all the elements of Rape under Article 266-A, of our Revised Penal Code, as amended, in relation to Republic Act No. 7610, beyond reasonable doubt, the acccused herein MICHAEL QUlNTO, of [XXX] is hereby CONVICTED of the crime of RAPE against the private complainant, [AAA], with modifying circumstance of use of bladed weapon to commit said felony, and the Court hereby sentence him to suffer in prison the penalty of [*reclusion perpetua*] without possibility of parole and to pay his victim, [AAA] the amount of Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, all with interest at the rate of Six Percent (6%) per annum from the date of finality of this judgement. No costs.

SO ORDERED.[10]

The RTC was convinced that the prosecution was able to establish accused-appellant's guilt beyond reasonable doubt for the crime of rape with modifying circumstance of use of bladed weapon to commit said felony.[11]

Based on its observation, the testimony of AAA narrating the rape incident was credible. In contrast, the version of the defense of denial and alibi was found by the RTC to be incredulous. Likewise, the sweetheart defense was not given credence by the RTC as it cannot prevail over the positive identification and straightforward testimony given by AAA.[12]

Aggrieved, the accused-appellant filed an appeal before the CA asseverating error in the conviction due to the incredibility of the testimony of the accused and the failure of the RTC to consider the accused-appellant's sweetheart defense and alibi despite the fact that these were corroborated by the numerous witnesses.[13]

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[10] CA *rollo*, p. 92.

[11] *Id.*

[12] *Id.* at 87-90.

[13] *Id.* at 53-58.

Ruling of the CA

On October 24, 2018, the CA rendered the assailed Decision[14] affirming accused-appellant's conviction of the crime of rape with modifying circumstance of use of bladed weapon to commit the felony. The CA reasoned that AAA's testimony was believable and sufficient to establish the incident of rape committed by accused-appellant. The CA reiterated that as to matters relating to credibility of witnesses, the findings of the trial court is accorded high respect, if not conclusive effect. Moreover, the fact that AAA has been diagnosed with mild mental retardation lends more credibility in her testimony because a witness of subnormal mental capacity would not publicly admit that she was abused if it were not true.

Furthermore, the sweetheart theory and alibi defense espoused by the accused were rejected by the CA because it did not prove that it was physically impossible for the accused-appellant to be at the scene of the crime and that no abuse ever took place even if it were true that they were lovers.

Thus, the dispositive portion of the assailed CA Decision reads:

> WHEREFORE, the *Appeal* is hereby DENIED. The *Decision* dated 19 July 2017 of the Regional Trial Court, 4th Judicial Region, Cavite City, Branch 17, in Criminal Case No. 146-04 is AFFIRMED WITH MODIFICATION in that the amount of exemplary damages is increased to ₱75,000.00.
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> SO ORDERED.[15]

Dissatisfied with the Decision of the CA, accused-appellant filed a Notice of Appeal dated November 12, 2018.[16] Both the plaintiff-appellee and the accused-appellant manifested that they

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[14] *Supra* note 1.

[15] *Rollo*, p. 10.

[16] *Id.* at 12.

are adopting their respective briefs before the CA as their Supplemental Briefs before this Court.[17]

The Issue

The primordial issue for the Court's resolution is whether or not accused-appellant's conviction should be sustained.

In seeking the reversal of the CA Decision, accused-appellant asserts the alleged incredibility of the testimony of AAA. According to the accused-appellant, it was highly impossible for him to have pointed a *balisong* at AAA's back within public view and in broad daylight. Likewise, accused-appellant states that it was quite perplexing why AAA did not seek help when they were at the house of Bornoy given that there were other people in the house. Also, no witnesses were presented to testify that indeed AAA was at the house of Bornoy at the alleged time of the incident.

In addition, accused-appellant insists the appreciation of his sweetheart defense for the reason that it was corroborated by credible witnesses. Furthermore, the accused-appellant avers that he was at the house of his grandfather watching television at 3 o'clock in the afternoon and that he did not see AAA on March 26, 2004. Such fact was corroborated by Zenaida.[18]

On the other hand, the People, through the Office of the Solicitor General, counters that the prosecution proved the guilt of the accused-appellant beyond reasonable doubt through the testimony of AAA which was found by the RTC and the CA to be clear, categorical and straightforward, unshaken by the defense's cross-examination, thereby bearing the earmarks of truthfulness. AAA unwaveringly and positively identified accused-appellant as the person who sexually abused her without any purpose rather than to bring him to justice.[19]

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[17] *Id.* at 20-21; 25-28.

[18] CA *rollo*, pp. 47-58.

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

The Court's Ruling

The instant petition is bereft of merit. However, we find it proper to modify the nomenclature of the offense to conform to the ruling in the case of *People v. Tulagan*.[20]

In the aforementioned case, it was already ruled that if the victim is 12 years or older, the offender cannot be accused of both rape under Article 266-A paragraph 1(a) of the RPC and sexual abuse under Section 5(b) of R.A. No. 7610 because it may violate the right of the accused against double jeopardy. Furthermore, under Section 48 of the RPC, a felony, in particular rape, cannot be complexed with an offense penalized by a special law, such as R.A. No. 7610, to wit:

> Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — *e.g.*. carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1(a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

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[20] G.R. No. 227363, March 12, 2019.

Article 266-A, paragraph 1 (a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997.*" R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC, or even the death penalty if the victim is (1) under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or common-law spouse of the parent of the victim; or (2) when the victim is a child below 7 years old.

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. Indeed, statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence, and if several laws cannot be harmonized, the earlier statute must yield to the later enactment, because the later law is the latest expression of the legislative will. Hence, Article 266-B of the RPC must prevail over Section 5(b) of R.A. No. 7610.[21]

Hence, it is clear that the designation of the offense should be "Rape under Article 266-A(1) in relation to Article 266-B of the RPC" as the accused-appellant committed "rape by carnal knowledge" against his victim of "12 years old or below 18."

As to the substantive portion of the accused-appellant's contentions, he attacks AAA's credibility, averring that the facts and circumstances narrated by her are beyond the realm of possibility. Specifically, accused-appellant points out that he could not have pointed a *balisong* at the back of AAA considering that it was in broad daylight and such could be readily seen by people at the store.

Likewise, accused-appellant points out the lack of witnesses that were presented to corroborate the allegation that he was at the house of Bornoy at the time of the incident even if Anabelle, Bornoy, Lenlen and two Jenells were in the house.

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[21] *Id.*

In addition, the accused-appellant reiterates the appreciation of his sweetheart defense as it was corroborated by other witnesses aside from the testimony of the accused-appellant. Along with that, accused-appellant emphasized his alibi that he was at the house of his grandfather watching television at 3 o'clock in the afternoon and that he did not see AAA on March 26, 2004.

We are not convinced.

The RTC and the CA have exhaustively discussed, explained and rebutted all the defenses raised by accused-appellant and we see no reason to deviate from such pronouncements.

It should be emphasized that when it comes to the credibility of witnesses, the trial court's assessment deserves great weight, and is even conclusive and binding provided that it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is basic. The trial court, having the full opportunity to observe directly the witnesses' deportment and manner of testifying, is in a better position than the appellate court to properly evaluate testimonial evidence and in assessing who among the witnesses holds the truth.[22] Matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him.[23] The appellate courts are far detached from the details and drama during trial and would have to rely solely on the records of the case in its review. On the matter of credence and credibility of witnesses, therefore, the Court acknowledges said limitations and recognizes the advantage of the trial court whose findings must be given due deference.[24] Since the defense failed to show any palpable error, arbitrariness, or capriciousness on the findings of fact of the trial court, these findings deserve great weight and are

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[22] *People v. Apattad*, 671 Phil. 95, 112-113 (2011).

[23] *Valbueco, Inc. v. Province of Bataan*, 710 Phil. 633, 652 (2013).

[24] *People v. Vergara*, 713 Phil. 224, 234 (2013).

deemed conclusive and binding more so that it is concurred by the appellate court.[25]

Thus, we agree with the RTC and the CA in applying the jurisprudential principle that testimonies of child victims are to be given full weight and credit, for when a woman or a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[26] Here, attention must be given to the findings of Dr. Briguela saying that AAA suffers from mild mental retardation and that she has a mental capacity of a child of 7 to 8 years old although her actual age is 14 years old. Given such fact, it is highly improbable that AAA concocted her story contrary to the allegations of the accused-appellant.

Besides, at any rate, even if the prosecution only presented AAA as its only witness against the numerous witnesses of the defense, it will not suffice to discredit the former. The prosecution is under no duty to present a definite number of witnesses. The discretion to decide who it wants to call to the stand lies with the prosecution. It is axiomatic that witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable for there is no law which requires that the testimony of a single witness needs corroboration except where the law expressly mandates otherwise.[27] In other words, AAA's testimony during the course of the trial as the sole eyewitness to the whole event should not by itself diminish her credibility.

It is worthy to note that AAA testified with candor and consistency in recounting the material events of the crime. A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[28] She was very categorical and positive, not

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[25] *Supra* note 22.

[26] *People v. Pamintuan*, 710 Phil. 414, 422 (2013).

[27] *People v. Ponsaran*, 426 Phil. 836, 846-847 (2002).

[28] *Id.*

only in naming the accused-appellant as the perpetrator, but also in narrating the particularities of the criminal incident.

With respect to the defense of alibi, accused-appellant's defenses of alibi and denial cannot outweigh the candid and straightforward testimony of AAA that he indeed had sexual intercourse with her against her will. The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[29]

Furthermore, case law provides that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.[30]

In the present case, the RTC and the CA both correctly held that the accused-appellant was within the immediate vicinity of the place of the crime. As the RTC held, the store and the house of accused-appellant was just seven houses away. This is a short distance which can be traversed by the accused-appellant to the scene of the crime in approximately 10 minutes. Hence, it was not impossible for him to be at the place of the crime at the time it happened. His defense of alibi, thus, fails to convince compared with the positive identification by the private complainant that it was him who committed the rape.

As to the accused-appellant's sweetheart defense, he claims that he and AAA were lovers and the act of sexual intercourse was a free and voluntary act between them. In short, he interposes

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[29] *People v. Dongallo*, G.R. No. 220147, March 27, 2019 (Minute Resolution).

[30] *Id.*

the "sweetheart" theory to exculpate himself from the rape charge filed against him.

Accused-appellant's claim that they are lovers is untenable. For one, such claim was not substantiated by the evidence on record. The only evidence adduced by accused-appellant were his and his witnesses' testimonies. According to Alfredo, he knows of their relationship because accused-appellant told him so. While Ruther and Zenaida testified that they saw accused-appellant and AAA very sweet and happily talking and embracing each other.

To the mind of the Court, these are not enough evidence to prove that a romantic relationship existed between accused-appellant and AAA. In *People v. Napudo*[31] where the accused likewise invoked the sweetheart defense, this Court held that:

> [T]he fact alone that two people were seen seated beside each other, conversing during a jeepney ride, without more, cannot give rise to the inference that they were sweethearts. Intimacies such as loving caresses, cuddling, tender smiles, sweet murmurs or any other affectionate gestures that one bestows upon his or her lover would have been seen and are expected to indicate the presence of the relationship.

Other than accused-appellants self-serving assertions and those of his witnesses which were rightly discredited by the trial court, nothing supports accused-appellant's claim that he and AAA were indeed lovers. "A 'sweetheart defense,' to be credible, should be substantiated by some documentary or other evidence of relationship such as notes, gifts, pictures, mementos and the like."[32] Accused-appellant failed to discharge this burden.

Besides, even if it were true that accused-appellant and AAA were sweethearts, this fact does not necessarily negate rape because love is not a license for lust.[33]

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[31] 589 Phil. 201, 213 (2008).

[32] *People v. Hanggan*, G.R. No. 213830, November 25, 2015 (Minute Resolution).

[33] *People v. Napoles*, 814 Phil. 865, 870 (2017).

With the credibility of AAA having been firmly established, the courts below did not err in finding accused-appellant guilty beyond reasonable doubt of rape committed through force and intimidation. The "sweetheart" theory interposed by accused-appellant was correctly rejected for lack of substantial corroboration.

As to the proper penalty to be imposed, Article 266-B of the RPC provides the following, *viz*:

> ART. 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*
>
> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.[34]

In the instant case, it was proven that the accused used a bladed weapon in order to perpetrate the felony. Thus, the penalty should be *reclusion perpetua to death*. However, due to the suspension of the death penalty,[35] the proper penalty to be imposed is "*reclusion perpetua without eligibility of parole.*"

WHEREFORE, the appeal is **DISMISSED**. The October 24, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 09732 is **AFFIRMED with MODIFICATION** in that, herein accused-appellant Michael Quinto, of XXX, is hereby CONVICTED of the crime of Rape under Article 266-A(l) in relation to Article 266-B of the Revised Penal Code against AAA. The Court hereby sentences him to suffer in prison the penalty of *reclusion perpetua* without eligibility of parole and to pay his victim, AAA, the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages, all with

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[34] The Anti-Rape Law of 1997.

[35] An Act Prohibiting the Imposition of Death Penalty in the Philippines, repealing Republic Act No. 8177 otherwise known as the Act Designating Death by Lethal Injection, Republic Act No. 7659 otherwise known as the Death Penalty Law and all other laws, executive orders and decrees.

interest at the rate of 6% per annum from the date of finality of this judgment until fully paid. No costs.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa* (*Working Chairperson*), *Lazaro-Javier*, and *Lopez, JJ.*, concur.

EN BANC

[A.C. No. 9223. June 9, 2020]

EVELYN LORENZO-NUCUM, *complainant, vs.* **ATTY. MARK NOLAN C. CABALAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER WHO EXHIBITS HIS INEXCUSABLE LACK OF CARE AND DILIGENCE IN MANAGING HIS CLIENT'S CAUSE MUST BE CLEARLY HELD ADMINISTRATIVELY LIABLE. — The records definitively show that respondent was completely remiss and negligent in handling complainant's case, notwithstanding his receipt of the sum of ₱15,000.00 from respondent by way of his acceptance and filing fees and another ₱5,000.00 as payment for the motion for reconsideration. Respondent's agreement to handle complainant's case, as shown by his receipt of his legal fees, is an assurance and representation to his client that he would be diligent and competent in handling the case. This includes the timely filing of the motion for reconsideration, constantly updating on the status of the case, and availing of the proper remedy, such as filing a notice of appeal when the motion for reconsideration will be denied. Thus, his actuations are contrary to Canon 18, and Rule 18.03 of the CPR x x x. In

this case, it is clear that respondent filed the motion for reconsideration 17 days late. Also, when the motion for reconsideration was denied he, likewise, failed to file a notice of appeal. Because of this, the judgment has attained finality and judgment was executed against complainant. Without a doubt, this exhibits his inexcusable lack of care and diligence in managing his client's cause in violation of Canon 18, and Rule 18.03 of the CPR. As such, he neglected the legal matters entrusted to him for which he must be clearly held administratively liable.

2. ID.; ID.; AN ATTORNEY WHO HAS A PENCHANT FOR VIOLATING NOT ONLY HIS OATH AS A LAWYER AND THE CODE OF PROFESSIONAL RESPONSIBILITY BRINGS EMBARRASSMENT AND DISHONOR TO THE LEGAL PROFESSION. — The Court also notes respondent's brazen disregard for the proceedings before this Court as he did not file his comment despite several resolutions issued by this Court. In fact, in a Resolution dated August 30, 2016, the Court resolved to impose upon him a fine of ₱1,000.00 for failure to comply with the show cause order, and to consider as waived the filing of the said comment. Likewise, in the proceedings before the IBP Commission on Bar Discipline, respondent failed to appear in the mandatory conference set on different dates and to file his verified position paper as directed by the Investigating Commissioner. We also take note of the past administrative complaint that had been filed against respondent, which resulted in his suspension for one year from the practice of law in the case entitled "*Romel H. Rivera v. Atty. Mark Nolan C. Cabalan.*" x x x Indubitably, respondent has a penchant for violating not only his oath as a lawyer and the CPR, but orders from the Court as well. He had been repeatedly warned that a similar violation will merit a more severe penalty, and yet, his reprehensible conduct has, time and again, brought embarrassment and dishonor to the legal profession.

3. ID.; ID.; PUBLIC INTEREST DEMANDS THAT AN ATTORNEY EXERTS HIS BEST EFFORTS AND ABILITY TO PRESERVE HIS CLIENT'S CAUSE, FOR HIS UNWAVERING LOYALTY DISPLAYED TO HIS CLIENT LIKEWISE SERVES THE ENDS OF JUSTICE. — A lawyer has a duty to serve his client with competence and diligence. A member of the legal profession owes his client entire devotion to his genuine interest, warm

zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability. Public interest demands that an attorney exerts his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice.

R E S O L U T I O N

***PER CURIAM*:**

The instant administrative case[1] was filed by Evelyn Lorenzo-Nucum (complainant), against Atty. Mark Nolan C. Cabalan (respondent) for patent ignorance of the law and neglecting his duties as counsel of complainant.

Facts of the Case

Complainant engaged respondent, a law professor at the University of Baguio, to represent her and her co-heirs in a case entitled "*Alfredo Arquitola v. Pedro Lorenzo*," docketed as Civil Case No. 4047, filed before Regional Trial Court (RTC) of San Fernando, La Union City, Branch 30. Complainant and her co-heirs are the surviving children of Pedro Lorenzo, the defendant in the said civil case. Complainant paid respondent ₱15,000.00 as acceptance fee and ₱3,000.00 as appearance fee per court hearing.[2]

Complainant always communicated with respondent to get updates on the case either through cellphone or by personally visiting respondent at his office. In November 2010, respondent updated complainant that the RTC already rendered its Decision[3] in the case on August 20, 2010. Because the Decision was unfavorable to complainants, respondent informed them that he already filed a Motion for Reconsideration[4] before the RTC and asked for ₱5,000.00 as payment for the same. Respondent

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[1] *Rollo*, pp. 1-5.

[2] *Id.* at 1-2.

[3] Penned by Judge Alpino P. Florendo; *id.* at 6-15.

[4] *Id.* at 16-20.

likewise assured complainant that he will file a notice of appeal should the motion for reconsideration be denied.[5]

In the second week of February 2011, complainant was surprised to learn from the RTC that an Order[6] dated September 28, 2010 denied the Motion for Reconsideration and that the Decision dated August 20, 2010 had already attained finality. As such, a Writ of Execution was already issued through the motion filed by the intervenors in the case. Furthermore, complainant discovered that the motion for reconsideration was filed 17 days late, but the RTC still resolved the same on the merits. Likewise, respondent did not file a notice of appeal, contrary to his previous assurance.[7]

Upon learning what happened, complainant called respondent's law office. The call was answered by respondent's secretary, who asked who was on the line, to which complainant replied "Evelyn Lorenzo-Nucum." A few minutes after the secretary talked to somebody in the office, the secretary replied "sorry Atty. Cabalan is not around." After this, complainant tried communicating with respondent from time to time, but she could not contact him anymore. Thus, a complaint was filed for violation of Canon 15 of the Code of Professional Responsibility (CPR), which requires a lawyer to observe candor, fairness, and loyalty in all his dealings and transactions with his client.[8]

An examination of the records would show that respondent was ordered to file his comment to the complaint in the Supreme Court Resolutions dated October 19, 2011,[9] September 12, 2012,[10] June 19, 2013,[11] and August 30, 2016.[12] Likewise, the Integrated

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[5] *Id.* at 2.

[6] *Id.* at 21-23.

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

[8] *Id.*

[9] *Id.* at 27.

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

[11] *Id.* at 31.

[12] *Id.* at 34.

Bar of the Philippines (IBP) Commission on Bar and Discipline ordered respondent to file his position paper in its order dated February 2, 2018. Respondent did not file either a comment or position paper.[13]

Recommendation of the IBP Commissioner and Board of Governors

On July 20, 2018, the Investigating Commissioner submitted a Report and Recommendation[14] and found that the complaint does not present a charge under Canon 15, but a violation of Canon 18, which provides that "a lawyer shall serve his client with competence and diligence" and Rule 18.03, which states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." The Investigating Commissioner recommended his suspension from the practice of law for six months, with a warning that the commission of the same or similar acts shall be dealt with more severely.

Furthermore, the Investigating Commissioner found that respondent was negligent in handling complainant's case. Besides, complainant was able to establish her claim by submitting certified true copies of the Order and decision of the RTC. Meanwhile, respondent did not file his answer or position paper to controvert the claim against him. The Investigating Commissioner considered his refusal to file his answer or position paper as an admission of guilt.

As such, the Investigating Commissioner held that it was established by preponderance of evidence that respondent belatedly filed the motion for reconsideration and thereafter, failed to file the notice of appeal after the motion for reconsideration was denied by the RTC. Hence, respondent is guilty of violating Rule 18.03 and Canon 18 of the CPR.

In a Resolution[15] dated October 4, 2018, the IBP Board of Governors adopted the Report and Recommendation of the

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[13] *Id.* at 40.

[14] *Id.* at 47-51.

[15] *Rollo,* pp. 45-46.

Investigating Commissioner with modification, by imposing the penalty of six months suspension from the practice of law and a fine of ₱15,000.

Ruling of the Court

The Court adopts the findings of the Investigating Commissioner and the IBP Board of Governor and concurs with its modification, subject to the modification of the recommended penalty to be imposed against respondent.

The records definitively show that respondent was completely remiss and negligent in handling complainant's case, notwithstanding his receipt of the sum of ₱15,000.00 from respondent by way of his acceptance and filing fees and another ₱5,000.00 as payment for the motion for reconsideration.

Respondent's agreement to handle complainant's case, as shown by his receipt of his legal fees, is an assurance and representation to his client that he would be diligent and competent in handling the case. This includes the timely filing of the motion for reconsideration, constantly updating on the status of the case, and availing of the proper remedy, such as filing a notice of appeal when the motion for reconsideration will be denied. Thus, his actuations are contrary to Canon 18, and Rule 18.03 of the CPR, which state:

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

In this case, it is clear that respondent filed the motion for reconsideration 17 days late. Also, when the motion for reconsideration was denied he, likewise, failed to file a notice of appeal. Because of this, the judgment has attained finality and judgment was executed against complainant. Without a doubt, this exhibits his inexcusable lack of care and diligence in managing his client's cause in violation of Canon 18, and Rule 18.03 of the CPR. As such, he neglected the legal matters

entrusted to him for which he must be clearly held administratively liable.

The Court also notes respondent's brazen disregard for the proceedings before this Court as he did not file his comment despite several resolutions issued by this Court. In fact, in a Resolution dated August 30, 2016, the Court resolved to impose upon him a fine of ₱1,000.00 for failure to comply with the show cause order, and to consider as waived the filing of the said comment. Likewise, in the proceedings before the IBP Commission on Bar Discipline, respondent failed to appear in the mandatory conference set on different dates and to file his verified position paper as directed by the Investigating Commissioner.

We also take note of the past administrative complaint that had been filed against respondent, which resulted in his suspension for one year from the practice of law in the case entitled "*Romel H. Rivera v. Atty. Mark Nolan C. Cabalan.*"[16] In this case, respondent was completely remiss and negligent in handling Rivera's case as he failed to prepare and file the petition for declaration of nullity of marriage despite his receipt of ₱30,000.00 by way of acceptance and filing fees. Respondent also failed to return the amount of ₱18,000.00 despite demand, as he never filed the petition for annulment of marriage. Thus, respondent was suspended by the Court for one year from the practice of law, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

Indubitably, respondent has a penchant for violating not only his oath as a lawyer and the CPR, but orders from the Court as well. He had been repeatedly warned that a similar violation will merit a more severe penalty, and yet, his reprehensible conduct has, time and again, brought embarrassment and dishonor to the legal profession.

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[16] *Rivera v. Cabalan*, A.C. No. 10941 [Formerly CBD Case No. 12-3551] (Notice), January 25, 2016.

A lawyer has a duty to serve his client with competence and diligence. A member of the legal profession owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability. Public interest demands that an attorney exerts his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice.[17]

WHEREFORE, having clearly violated Canon 18, Rule 18.03 of the Code of Professional Responsibility, respondent Atty. Mark Nolan C. Cabalan is **SUSPENDED** from the practice of law for **THREE (3) YEARS**, with a stern warning that a repetition of the same or similar acts shall give a cause for his disbarment.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished 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 for their information and guidance.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.,* concur.

Delos Santos, J., on leave.

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

EN BANC

[A.C. No. 11104. June 9, 2020]

ROGELIO PASAMONTE, *complainant, vs.* **ATTY. LIBERATO TENEZA**, *respondent*.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; GROSSLY IMMORAL CONDUCT, DEFINED; ENTERING INTO A SECOND MARRIAGE DESPITE A VALID AND SUBSISTING MARRIAGE AND SUPPORTING ANOTHER PERSON TO CONTRACT BIGAMOUS MARRIAGES CONSTITUTE GROSS IMMORALITY; PENALTY OF DISBARMENT, IMPOSED. — [T]he evidence adduced by the parties and Atty. Teneza's own admission establish that he committed acts of gross immorality. *First,* Atty. Teneza contracted a second marriage while the first one was still subsisting. Notably, Atty. Teneza did not dispute the existence, due execution and authenticity of the Marriage Contracts issued by the National Statistics Office (NSO). x x x [T]he marriage contracts bearing Atty. Teneza's name are competent and convincing evidence to prove that he contracted two marriages. Moreover, in his counter-affidavit in the charge for bigamy, Atty. Teneza admitted entering into a second marriage. This admission more than proves his identity as husband in both marriages and the existence of the two marriages. x x x *Second,* Atty. Teneza was complicit to two bigamous marriages. Atty. Teneza knew that Rogelio had a subsisting marriage when he contracted the second marriage with Mary Grace. x x x [W]hen he attended the marriage of Rogelio and Mary Grace in 2006, Atty. Teneza was fully aware that Rogelio is engaging in an unlawful act. However, he did not do anything to stop Rogelio. This is a violation of his sworn duty not to support activities aimed at defiance of the law. More, Atty. Teneza admitted that he was a witness in the two marriages of Francisco. x x x [H]e did not do anything to prevent others from transgressing the law. He consented to the unlawful act. x x x [T]he totality of the foregoing circumstances showed Atty. Teneza's utter disregard of the laws and highly immoral conduct that is so gross and so unprincipled as to be reprehensible to

a high degree. Atty. Teneza not only entered into a second marriage knowing fully well that his first marriage is valid and subsisting, he likewise supported and allowed another to contract a bigamous marriage. Notably, he did not show remorse or sincere repentance for committing these acts. He even seeks to be admired and complimented for "braving" to be a witness in the marriages of Francisco. Indeed, Atty. Teneza's wanton disregard of the sanctity of marriage and his own vows of fidelity, not to mention his gross ignorance of the law demonstrate that he is morally and legally unfit to remain in the legal profession. He deserves the extreme penalty of disbarment.

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

1. LEGAL ETHICS; ATTORNEYS; GROSS IMMORALITY; SECULAR PARAMETERS MUST BE THE STANDARD IN DETERMINING MORALITY OF CONDUCT IN DISCIPLINARY PROCEEDINGS; COMPLAINTS FOR IMMORALITY SHOULD ONLY BE ENTERTAINED WHEN COMMENCED BY THE VICTIMS AND THE COURT MUST SCRUTINIZE ALLEGATIONS OF GROSS IMMORALITY IN A CALIBRATED MANNER. — The standard for determining morality of conduct in disciplinary proceedings must be measured by secular and not religious parameters. "At best, religious morality weighs only persuasively on us." This Court's determination of what constitutes gross immorality must hinge on the lawyer's conduct as an officer of the court, and "only insofar as it involves conduct that affects the public or its interest." x x x [T]his Court must exercise caution when third parties raise gross immorality in disciplinary proceedings so as to not *unduly* intrude into the personal relationships of lawyers. "Marital indiscretion by itself is insufficient to strip one's license to practice law. To sensibly implement our notion of secular morality is to reckon with the prevailing realities of how marriage works, and not dwell on its idealized versions." As officers of the court, lawyers are held to exacting standards, and their indiscretions must be sanctioned. However, stripping them of their license to practice law on the ground of immorality requires a degree of moral depravity that severely erodes public trust in the rule of law. In *Anonymous Complaint v. Dagala,* I proposed the following guidelines in resolving administrative

complaints for gross immorality: If at all, *any complaint for immorality should not be entertained except when it is commenced by its victims.* That is, the betrayed spouse, the paramour who has been misled, or the children who have to live with the parent's scandalous indiscretions. x x x Disinterested third parties who charge court officers of gross immorality are generally unbothered by the misconduct, until, for some reason, they deem it fit to wield it high-handedly against judges and lawyers. "This is not to say that complainants' motives are relevant to their causes of actions." Rather, it is why this Court must scrutinize allegations of gross immorality in a calibrated manner.

2. ID.; ID.; ID.; WHILE RESPONDENT'S ACTS CANNOT BE CLASSIFIED AS GROSSLY IMMORAL, HE IS STILL ADMINISTRATIVELY LIABLE FOR VIOLATING HIS OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY; RESPONDENT'S COMPLICITY TO MULTIPLE MARRIAGES MOCKS OUR LAWS AND DEFILES THE INTEGRITY OF HIS PROFESSION; HE SHOWED UTTER DISREGARD OF THE RULES AND IS UNBECOMING OF A COURT OFFICER; RESPONDENT IS UNWORTHY OF CONTINUING AS A MEMBER OF THE BAR. — While I do not find respondent's acts as grossly immoral, he is still administratively liable for violation of his oath and the Code of Professional Responsibility. I agree with the majority that respondent's complicity to multiple marriages of two men to different women, and his blasé attitude in seeking to be complimented for his imagined bravery for witnessing them, mocks our laws. His words and actions showed utter disregard for rules and is unbecoming of a court officer. x x x Canon 1, Rules 1.01, and 1.02 mandate lawyers to "uphold the constitution, obey the laws of the land, and promote respect for law and for legal processes." Meanwhile, Canon 7 of the Code of Professional Responsibility requires them to "uphold the integrity and dignity of the legal profession." However, respondent instead encouraged these men to defy the law, which act lessens the public confidence in our legal system. Certainly, his consent to multiple marriages of the same men defiles the integrity of his profession. Lastly, Lawyers are called upon to avoid potential conflicts of interest. Here, respondent courted conflict when he assisted complainant's second wife in filing charges against complainant, his former client. It was his duty

to be circumspect with his words and actions, and actively prevent scenarios where they may be deemed unethical and or cast in a bad light. All told, I agree with the majority that respondent is unworthy of continuing as a member of the bar.

D E C I S I O N

***PER CURIAM*:**

Before this Court is an administrative complaint[1] for disbarment filed by Rogelio Pasamonte against Atty. Liberato Teneza, charging him of being unfit to continue as a member of the Bar for violating the lawyer-client relationship and consenting to and engaging in a bigamous marriage.

Facts

In his Complaint,[2] Rogelio alleged that he and Atty. Teneza have known each other for at least 25 years. Atty. Teneza handled Rogelio's ejectment cases and was even the godparent of one of his children.[3]

On June 9, 2006, Rogelio went to the house of Atty. Teneza. To his surprise, Atty. Teneza already planned and arranged Rogelio's wedding with Mary Grace dela Roca (Mary Grace). Rogelio objected since he is already married, which Atty. Teneza knew because of their prior dealings. However, Atty. Teneza assured him that their marriage will not be registered with the Local Civil Registry. Hence, reluctantly and "with a heavy heart," Rogelio was forced into the marriage.[4]

A few months later, Mary Grace, assisted by Atty. Teneza, filed a case against Rogelio for bigamy and violation of Republic Act (RA) No. 9262. Rogelio then discovered that Atty. Teneza

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[1] *Rollo*, pp. 2-6, Docketed as CBD Case No. 08-2267.

[2] *Id.* at 2-6.

[3] *Id.* at 18.

[4] *Id.* at 19.

himself was engaged in a bigamous marriage. Atty. Teneza was still married to one Victoria Reyes on April 18, 1979[5] when he contracted a subsequent marriage with one Charina dela Roca on July 3, 1993.[6] As such, Rogelio filed a bigamy case against Atty. Teneza.[7] Further, Rogelio learned that Atty. Teneza was a witness in the marriage of Francisco dela Roca III to Cristina Villacarlos on June 11, 2004[8] and also to Michelle Buhat on March 22, 2007.[9] Rogelio alleged that Atty. Teneza had a propensity for meddling with the processes of the Local Civil Registry. Lastly, Atty. Teneza reneged on his promise not to register Rogelio's marriage with Mary Grace.

On August 11, 2008, the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) directed Atty. Teneza to submit his answer to the complaint.[10]

In his Answer,[11] Atty. Teneza admitted that he was Rogelio's lawyer for certain ejectment cases and denied violating their lawyer-client relationship when he assisted Mary Grace in the unrelated bigamy case. Also, he did not register Rogelio and Mary Grace's marriage with the Local Civil Registry.

Atty. Teneza admitted that he was a wedding sponsor in the marriage of Francisco with Cristina and with Michelle. He explained that "he acceded to the behest (*sic*) of Cristina, and Michelle, that he stood as one of their principal sponsors in their marriages with [Francisco] because, if something goes wrong in any of these marriage (*sic*), [he] would stand witness

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[5] *Id.* at 32.

[6] *Id.* at 33.

[7] The bigamy charge docketed as Crim. Case No. L-4392 before the Regional Trial Court of Libmanan, Camarines Sur, Branch 57, was provisionally dismissed on October 5, 2009. See *rollo*, p. 92.

[8] *Rollo*, p. 51.

[9] *Id.* at 52.

[10] *Id.* at 53.

[11] *Id.* at 61-66.

and testify on the facts of said marriages against his own brother-in-law [Francisco]." Atty. Teneza posits that "instead of [Rogelio] attributing an alleged wrong-doing against [him], he should even commend, and laud him for braving to stand against his own brother-in-law, if a complaint will be filed against [Francisco]."

During the mandatory conference on March 3, 2009, Rogelio appeared,[12] while Atty. Teneza requested for a resetting.[13] The mandatory conferences on April 14, 2009[14] and May 5, 2009[15] were attended only by Atty. Teneza. Thereafter, the IBP-CBD ordered the parties to file their respective position papers.[16]

In his Position Paper,[17] Atty. Teneza asserts that the allegations in the complaint are fabricated and are the products of Rogelio's vindictive mind. He insists that he did not violate the lawyer-client relationship when he assisted his sister-in-law, Mary Grace, in the bigamy and RA No. 9262 cases. The ejectment cases that he handled for Rogelio were only on a case-to-case basis; he is not Rogelio's exclusive lawyer. Further, he did not use the information he obtained from Rogelio in the ejectment cases in filing the bigamy and RA No. 9262 cases. Besides, Rogelio's civil status is of public knowledge. Atty. Teneza reiterates that he did not meddle with the legal processes of the Local Civil Registry and insists that he only stood as sponsor in the wedding of Francisco and Cristina and also with Michelle upon the request of the brides.

On September 8, 2009, the IBP-CBP issued its Report and Recommendation[18] finding Atty. Teneza to be wanting in integrity, honesty, probity, trustworthiness and morality when he conspired

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

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

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

[15] *Id.* at 75-76.

[16] *Id.* at 76.

[17] *Id.* at 77-81.

[18] *Id.* at 85-86; penned by Commissioner Norberto B. Ruiz.

to a bigamous marriage. The IBP-CBD recommended that Atty. Teneza be suspended from the practice of law for two (2) years without prejudice to his criminal and civil liabilities.

On May 14, 2011, the IBP Board of Governors passed a Resolution[19] modifying the penalty to suspension from the practice of law for five (5) years, *viz.*:

RESOLUTION NO. XIX-2011-230
CBD Case No. 08-2267
Rogelio Pasamonte vs. Atty. Liberato Teneza

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and finding respondent wanting in integrity, honesty, probity, trustworthiness and morality by conspiring to a bigamous marriage. Atty. Liberato Teneza, is hereby* ***SUSPENDED*** *from the practice of law for five (5) years without prejudice to his criminal and civil liabilities.*

Aggrieved, Atty. Teneza sought reconsideration.[20] On March 21, 2014, the IBP Board of Governors passed a Resolution[21] affirming with modification the Resolution of the IBP-CBD, as follows:

RESOLUTION NO. XIX-2014-87
CBD Case No. 08-2267
Rogelio Pasamonte vs. Atty. Liberato Teneza

RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Further, finding Respondent's (sic) guilty of gross immorality, the Board RESOLVED to ***AFFIRM with modification****. Resolution No. XIX-2011-230 dated May 14, 2011 and accordingly increased the penalty earlier meted*

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[19] *Id.* at 84.

[20] *Id.* at 87-91.

[21] *Id.* at 96-97.

him of five years suspension from the practice [of] law to ***Disbarment*** *and his name* ***stricken off from the Roll of Attorney****.*

The Extended Resolution issued on April 21, 2014 by the IBP Board of Governors held that Atty. Teneza's utter disregard for the sanctity of marriage, not only of his own but also those of around him, shows his unfitness to continue practicing law and his unworthiness of the principles that the privilege confers upon him.[22]

Thereafter, the case was transmitted to this Court for review.

Issue

Should Atty. Teneza be disbarred from the practice of law due to his alleged immoral acts?

Ruling

The Court affirms the factual findings and recommendation of the IBP Board of Governors.

Possession of good moral character is both a condition precedent and a continuing requirement to membership in the legal profession.[23] Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility (CPR) mandate all lawyers to possess good moral character at the time of their application for admission to the Bar, and require them to maintain such character until their retirement from the practice of law,[24] *viz.*:

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

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

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[22] *Id.* at 98-104; penned by Director for Bar Discipline Dominic C.M. Solis.

[23] *AAA v. De Los Reyes*, A.C. Nos. 10021 & 10022, September 18, 2018, 880 SCRA 268, 281.

[24] *Panagsagan v. Panagsagan*, A.C. No. 7733, October 1, 2019, citing *Advincula v. Advincula*, 787 Phil. 101 (2016).

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

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

In *Valdez v. Dabon*,[25] we held:

Lawyers have been repeatedly reminded by the Court that possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. This proceeds from the lawyer's bounden duty to observe the highest degree of morality in order to safeguard the Bar's integrity, and the legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality.

The Court explained in *Arnobit v. Atty. Arnobit* that "as officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. A member of the bar and an officer of the court is not only required to refrain from adulterous relationships or keeping a mistress but must also behave himself as to avoid scandalizing the public by creating the impression that he is flouting those moral standards." Consequently, any errant behavior of the lawyer, be it in his public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.

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[25] 773 Phil. 109, 121-122 (2015), quoted in *AAA v. De Los Reyes*, *supra*.

Thus, a lawyer may be removed or suspended from the practice of law for grossly immoral conduct.[26] In administrative cases against lawyers involved in illicit relationships, grossly immoral conduct was defined as an act that is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.[27] In this case, the evidence adduced by the parties and Atty. Teneza's own admission establish that he committed acts of gross immorality.

First, Atty. Teneza contracted a second marriage while the first one was still subsisting. Notably, Atty. Teneza did not dispute the existence, due execution and authenticity of the Marriage Contracts[28] issued by the National Statistics Office (NSO). He merely asserts that these are "illegally fished evidence" obtained through unlawful means,[29] and that it was not proven that he was the same person who contracted the two marriages.[30] We are not persuaded. A marriage contract, being a public document, enjoys the presumption of regularity in its execution and is

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[26] See Section 27, Rule 138 of the Rules of Court.

Sec. 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 wilful 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. (Emphasis supplied.)

[27] *Dr. Perez v. Atty. Catindig, et al.*, 755 Phil. 297 (2015). See also *Garrido v. Atty. Garrido*, 625 Phil. 347 (2010), citing *St. Louis University Laboratory High School (SLU-LHS) and Faculty and Staff v. Dela Cruz*, 531 Phil. 213 (2006).

[28] See notes 5 and 6.

[29] *Rollo*, pp. 34-37.

[30] See note 20.

conclusive as to the fact of marriage.[31] Thus, the marriage contracts bearing Atty. Teneza's name are competent and convincing evidence to prove that he contracted two marriages.[32] Moreover, in his counter-affidavit[33] in the charge for bigamy, Atty. Teneza admitted entering into a second marriage. This admission more than proves his identity as husband in both marriages and the existence of the two marriages.

Atty. Teneza claims good faith because he had not heard from his first wife since 1983. This argument is futile and pathetic. We note that Atty. Teneza was already a lawyer when he contracted the second marriage in 1993, having been admitted to the bar on March 31, 1976.[34] As such, he cannot feign ignorance of the law that before a second marriage may be validly contracted, the first and subsisting marriage must first be annulled by the appropriate court.[35] We have consistently held that he who contracts a second marriage before the judicial declaration of the first marriage assumes the risk of being prosecuted for bigamy,[36] which renders him unfit to continue as member of the bar.[37]

Moreover, it is of no moment that the bigamy charge against him was dismissed, *albeit* provisional. In *In re Almacen*,[38] we held that a disbarment case is *sui generis* for it is neither purely

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[31] *Diaz-Salgado v. Anson*, 791 Phil. 481 (2016). See also Section 44, Rule 130, Rules of Court.

[32] *Villatuya v. Atty. Tabalingcos*, 690 Phil. 381 (2012).

[33] *Rollo*, pp. 34-37.

[34] http://sc.judiciary.gov.ph/lawlist/137803/. Last accessed on February 19, 2020.

[35] See *Marbella-Bobis v. Bobis*, 391 Phil. 648 (2000).

[36] See *Capili v. People*, 713 Phil. 256 (2013).

[37] See *Dr. Perez v. Atty. Catindig, et al.*, *supra* note 27; *Villatuya v. Atty. Tabalingcos*, *supra* note 32; and *Villasanta v. Peralta*, 101 Phil. 313 (1957).

[38] 31 Phil. 562 (1970), cited in *Cojuangco, Jr. v. Palma*, 481 Phil. 646 (2004).

civil nor purely criminal; it is an investigation by the court into the conduct of its officers. Thus, the acquittal of a lawyer or the dismissal of the case in a criminal action is not determinative of an administrative case against him. As long as the quantum of proof in disciplinary proceedings against members of the Bar is met, as in this case, liability attaches.[39]

Second, Atty. Teneza was complicit to two bigamous marriages. Atty. Teneza knew that Rogelio had a subsisting marriage when he contracted the second marriage with Mary Grace. The complaint for ejectment wherein Atty. Teneza was the counsel states that "[Rogelio] is . . . married but separated in fact from his wife."[40] This was filed in 2005. Thus, when he attended the marriage of Rogelio and Mary Grace in 2006, Atty. Teneza was fully aware that Rogelio is engaging in an unlawful act. However, he did not do anything to stop Rogelio. This is a violation of his sworn duty not to support activities aimed at defiance of the law.[41]

More, Atty. Teneza admitted that he was a witness in the two marriages of Francisco.[42] He posits, however, that he should be lauded because he attended the two weddings so that he can testify against Francisco in case "something goes wrong in any of these marriages." This excuse is lame and does not merit credence. The fact remains that he did not do anything to prevent others from transgressing the law. He consented to the unlawful act.

We are not unmindful of the rule that the power to disbar must be exercised with great caution, and only the most imperative of reasons or in cases of clear misconduct affecting the standing

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[39] *Cojuangco, Jr. v. Palma*, *supra*.

[40] *Rollo*, pp. 13-15.

[41] Canon 1, Rule 1.02, Code of Professional Responsibility.

Rule 1.02 — A lawyer shall not counsel or abet activities at defiance of the law or at lessening confidence in the legal system.

[42] See *rollo*, pp. 51-52.

and moral character of the lawyer as an officer of the court and member of the bar.[43] Thus, when a lesser penalty, such as temporary suspension, could accomplish the end desired, disbarment should never be decreed.[44]

Here, the totality of the foregoing circumstances showed Atty. Teneza's utter disregard of the laws and highly immoral conduct that is so gross and so unprincipled as to be reprehensible to a high degree. Atty. Teneza not only entered into a second marriage knowing fully well that his first marriage is valid and subsisting, he likewise supported and allowed another to contract a bigamous marriage. Notably, he did not show remorse or sincere repentance for committing these acts. He even seeks to be admired and complimented for "braving" to be a witness in the marriages of Francisco. Indeed, Atty. Teneza's wanton disregard of the sanctity of marriage and his own vows of fidelity, not to mention his gross ignorance of the law demonstrate that he is morally and legally unfit to remain in the legal profession. He deserves the extreme penalty of disbarment.

In *Villasanta v. Peralta*,[45] the respondent married the complainant while his marriage with his first wife was subsisting. We held that respondent's "act of x x x contracting the second marriage (even his act in making love to another woman while his first wife is still alive and their marriage still valid and existing) is contrary to honesty, justice, decency and morality. Respondent made a mockery of marriage which is a sacred institution demanding respect and dignity." Respondent, who was then a 1954 successful bar candidate, was declared disqualified from being admitted to the bar.

Meanwhile, in *Villatuya v. Atty. Tabalingcos*,[46] the respondent attorney failed to dispute the authenticity or impugn the genuineness of the NSO-certified copies of the Marriage

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[43] *Genato v. Mallari*, A.C. No. 12486, October 15, 2019.

[44] *Dr. Perez v. Atty. Catindig, et al.*, *supra* note 27.

[45] 101 Phil. 313 (1957).

[46] *Supra* note 32.

Contracts presented by the complainant to prove that respondent married three different women. Further, the respondent did not invoke any grounds in the Civil Code provisions on marriage in his petitions to annul the second and third marriages. We ruled that "[r]espondent exhibited a deplorable lack of that degree of morality required of him as a member of the bar. He made a mockery of marriage, a sacred institution demanding respect and dignity." We disbarred Atty. Tabalingcos for engaging in bigamy, a grossly immoral conduct.

In *Dr. Perez v. Atty. Catindig, et al.*,[47] we also disbarred the respondent for entering into a second marriage despite knowing fully well that his previous marriage still subsisted. We held that contracting a marriage during the subsistence of a previous one amounts to a grossly immoral conduct in violation of Rule 1.01 and Canon 7, Rule 7.03 of the CPR. We explained:

> While the fact that Atty. Catindig decided to separate from Dr. Perez to pursue Atty. Baydo, in itself, cannot be considered a grossly immoral conduct, such fact forms part of the pattern showing his propensity towards immoral conduct. Lest it be misunderstood, **the Court's finding of gross immoral conduct is hinged not on Atty. Catindig's desertion of Dr. Perez, but on his contracting of a subsequent marriage during the subsistence of his previous marriage to Gomez.**
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> "The moral delinquency that affects the fitness of a member of the bar to continue as such includes conduct that outrages the generally accepted moral standards of the community, conduct for instance, which makes 'a mockery of the inviolable social institution of marriage.'" In various cases, the Court has held that disbarment is warranted when a lawyer abandons his lawful wife and maintains an illicit relationship with another woman who has borne him a child.
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> **Atty. Catindig's subsequent marriage during the subsistence of his previous one definitely manifests a deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws.** By his own admission, Atty. Catindig made a mockery out of the institution of marriage, taking

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[47] *Supra* note 27.

advantage of his legal skills in the process. He exhibited a deplorable lack of that degree of morality required of him as a member of the bar, which thus warrant the penalty of disbarment.[48] (Emphases supplied; citations omitted.)

Invariably, we disbarred lawyers who are engaged in or entered into a bigamous marriage, a grossly immoral conduct, in violation of Rules 1.01[49] and 7.03[50] of the CPR.

FOR THESE REASONS, this Court finds respondent Atty. Liberato Teneza **GUILTY** of gross immorality in violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility. He is **ORDERED DISBARRED** from the practice of law and his name stricken off the Roll of Attorneys, effective upon receipt of this Decision.

Let a copy of this decision be furnished to the Office of the Bar Confidant for immediate implementation; 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.

Peralta, C.J. (Chairperson), Perlas-Bernabe, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Leonen, J., see separate concurring opinion.

Delos Santos, J., on leave.

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[48] *Id.* at 309-310.

[49] *Supra*.

[50] *Supra*.

SEPARATE CONCURRING OPINION

LEONEN, *J.:*

I concur in the finding that respondent Atty. Liberato Teneza (Atty. Teneza) should be disbarred for violating the Lawyer's Oath and the Code of Professional Responsibility.

The basis of this penalty is clear. Atty. Teneza had no qualms in encouraging and witnessing two men's multiple marriages to different women. His comments did not satisfactorily justify his misconduct.

However, I reiterate my apprehension in entertaining administrative complaints for gross immorality filed by third parties before this Court. This is because "[a]s a ground for disbarment, gross immorality requires a nuanced analysis of our collective notions of morality, the prevailing reality of relationships and families, and the particular circumstances of each case."[1]

I

The standard for determining morality of conduct in disciplinary proceedings must be measured by secular and not religious parameters.[2] "At best, religious morality weighs only persuasively on us."[3] This Court's determination of what constitutes gross immorality must hinge on the lawyer's conduct as an officer of the court, and "only insofar as it involves conduct that affects the public or its interest."[4] As the *ponencia* explained:

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[1] *J.* Leonen, Concurring Opinion in *Hierro v. Atty. Nava II*, A.C. No. 9459, January 7, 2020 [*Per Curiam, En Banc*].

[2] *Perfecto v. Judge Esidera*, 764 Phil. 384, 399 (2015) [Per *J.* Leonen, Second Division].

[3] *Id.*

[4] *Id.*

[A] lawyer may be removed or suspended from the practice of law for grossly immoral conduct. In administrative cases against lawyers involved in illicit relationships, grossly immoral conduct was defined as an act that is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.[5]

Hence, this Court must exercise caution when third parties raise gross immorality in disciplinary proceedings so as to not *unduly* intrude into the personal relationships of lawyers. "Marital indiscretion by itself is insufficient to strip one's license to practice law. To sensibly implement our notion of secular morality is to reckon with the prevailing realities of how marriage works, and not dwell on its idealized versions."[6]

As officers of the court, lawyers are held to exacting standards, and their indiscretions must be sanctioned. However, stripping them of their license to practice law on the ground of immorality requires a degree of moral depravity that severely erodes public trust in the rule of law.

In *Anonymous Complaint v. Dagala*,[7] I proposed the following guidelines in resolving administrative complaints for gross immorality:

If at all, *any complaint for immorality should not be entertained except when it is commenced by its victims*. That is, the betrayed spouse, the paramour who has been misled, or the children who have to live with the parent's scandalous indiscretions.

I accept that in some cases, especially where there is some form of violence against women and children within the families affected, it would be difficult for the victims to come forward. It should only be then that a third party's complaint may be entertained. The third party must show that it acts for the benefit of the victims, not as a

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[5] *Ponencia*, p. 6.

[6] *J.* Leonen, Concurring Opinion in *Hierro v. Atty. Nava II*, A.C. No. 9459, January 7, 2020 [*Per Curiam, En Banc*].

[7] 814 Phil. 103 (2017) [*Per Curiam, En Banc*].

means to cause more harm on them. Furthermore, the inability of the victims must be pleaded and proven.

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I appreciate the ponente's acknowledgment that "immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice." This affirms this Court's principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people's confidence in the Rule of Law. There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country's predominantly religious sensibilities.[8] (Citations omitted, emphasis supplied.)

Accordingly, in a plethora of cases, I concurred with the finding of gross immorality based on the complaints of parties who were directly affected by and suffered from the respondents' indiscretions.

In *Tuvillo v. Laron*[9] and *Hierro v. Atty. Nava II*,[10] the complaints against a judge and a lawyer, respectively, were lodged by the paramour's husband. The mistresses also testified in both cases to support the charges.

In *Tumbaga v. Atty. Teoxon*,[11] it was the paramour, and in *Ceniza v. Atty. Ceniza, Jr.*,[12] the wife, who instituted the

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[8] *Id.* at 154-155.

[9] See J. Leonen, Separate Opinion in *Tuvillo v. Laron*, 797 Phil. 449, 469-495 (2016) [*Per Curiam, En Banc*].

[10] See J. Leonen, Concurring Opinion in *Hierro v. Atty. Nava II*, A.C. No. 9459, January 7, 2020 [*Per Curiam, En Banc*].

[11] See J. Leonen, Concurring Opinion in *Tumbaga v. Teoxon*, 821 Phil. 1, 20-27 (2017) [Per J. Leonardo-de Castro, *En Banc*].

[12] See J. Leonen, Concurring Opinion in *Ceniza v. Atty. Ceniza, Jr.*, A.C. No. 8335, April 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/howdocs/1/65158> [*Per Curiam, En Banc*].

administrative proceedings against the lawyers. I submitted that in these cases, gross immorality was properly pleaded and established by the most interested persons—the parties who were rightfully distressed, directly affected, and outraged by the court officers' immoral conduct.

I concurred in dismissing the respondent judge in *Dagala*,[13] but dissented from the majority in that immorality was among the proper grounds. The case involved an *anonymous* complaint against respondent Judge Exequil L. Dagala alleging that he had brandished a firearm in an altercation, taken part in illegal logging, and, in passing, claimed he had a mistresses, from which the issue of immorality arose.

There, respondent admitted to siring children with other women with his wife's knowledge. It was found that respondent and his wife amicably parted but that he continued to send her support. I opined that respondent's conduct was not grossly immoral, one that is of perverse nature that undermines the legal profession. While the other allegations of misconduct were clearly unethical and warranted his dismissal, the majority underscored his personal relationships. I remained consistent in my view that this Court must be cautious in acting upon charges of immorality where the most affected parties did not even participate:

> Many of us hold the view that it is unethical to breach one's fervent commitments in an intimate relationship. At times however, the breach is not concealed and arises as a consequence of the couple's often painful realization that their marriage does not work. In reality, there are couples who already live separately and whose children have grown and matured understanding that their environment best nurtured them when their natural parents do not live with each other with daily pain.
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> In this case, the wife of the judge may have chosen to live separately. They have been childless due to an unfortunate disease suffered by the wife. It appears from the report of the National Bureau

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[13] 814 Phil. 103 (2017) [*Per Curiam, En Banc*].

of Investigation that the wife had been regularly receiving support from the judge. There are no complaints from any of the children fathered by the respondent. Finally, there is the unrebutted manifestation of the judge that his wife has forgiven and even forgotten him.

It appears that the judge's indiscretions, which were rumors from the point of view of the Anonymous Complaint and unmentioned in the report of the investigating judge but which became the main basis for the interim report of the male agent of the National Bureau of Investigation, are now the main basis for dismissing the respondent. All these without consulting the spouse or any of his children. All these without regard to whether their lives should again be disrupted.

It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.[14]

Likewise, in my dissent in *Sabillo v. Atty. Lorenzo*,[15] where the grounds for disbarment were anchored on allegations of physical and psychological abuse, I also disagreed with the majority's finding of immorality which was not even pleaded:

This case arose out of a Complaint alleging that complainant was misled by respondent, and that she has suffered from psychological and physical abuse in his hands. However, it was found that complainant, respondent, and respondent's wife had forged an arrangement that worked for all those involved.

As opined, what this arrangement seems to offend is the religious sensibilities of our nation, which, by itself, is *not* immoral. It is not the business of the state to interfere with the intimate relationships of couples and assess their morality, unless their conduct is so depraved that it affects the public's confidence in the rule of law.

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[14] *J.* Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103, 156 (2017) [*Per Curiam, En Banc*].

[15] A.C. No. 9392, December 4, 2018 [*Per Curiam, En Banc*].

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I fail to see what scandalous circumstances were present here. The "arrangement" where respondent's two (2) children stayed with complainant and respondent in their condominium unit, as explicitly intended by the children's mother, is neither scandalous nor immoral. Save for respondent's supposedly abusive behavior toward complainant, they were living in harmony. There was no evidence of hostility between [the paramour] and the children's mother.

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Thus, I cannot agree with the Investigating Commissioner's finding that "while respondent has an 'arrangement' with his legal spouse with whom he has two children, who stays with him and complainant, the same does not make the illicit relationship morally upright."

The Resolution, meanwhile, expressed that "this Court is appalled by respondent's brazen attitude in admitting his sexual relationship with a woman, other than his wife, in full knowledge and recognition of his minor daughters as if there was nothing unconventional about their situation."

Deeming an amicable arrangement outside of marriage as immoral is a view that no longer keeps in step with the times.[16] (Citations omitted)

In *Sabillo*, the complainant, respondent's mistress, did not raise issues of immorality but alleged incidents of physical and psychological abuse. However, these were largely ignored by the Integrated Bar of the Philippines in its investigation and instead chose to focus on how respondent, his wife, and his paramour forged an arrangement where the paramour cared for the respondent's children. Even though there was no hostility among them, the majority viewed this "illicit relationship" as grossly immoral. However, I opined that this may have offended the majority's religious sensibilities only because secular standards would not view an amicable arrangement outside of marriage, by itself, as grossly immoral. I proposed for the case to be

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[16] *J.* Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018, 9-10 [*Per Curiam, En Banc*].

remanded to the Integrated Bar of the Philippines for further investigation on complainant's allegations of physical and psychological abuse.

II

Disinterested third parties who charge court officers of gross immorality are generally unbothered by the misconduct, until, for some reason, they deem it fit to wield it high-handedly against judges and lawyers. "This is not to say that complainants' motives are relevant to their causes of actions."[17] Rather, it is why this Court must scrutinize allegations of gross immorality in a calibrated manner.

Here, complainant Rogelio Pasamonte lodged the Complaint against respondent, claiming that respondent is no longer fit to be a member of the bar "for violating the lawyer-client relationship and consenting to and engaging in a bigamous marriage."[18] This is precisely the accusation of immorality described in *Dagala* and *Sabillo* which this Court must not entertain.

Respondent's acts of consenting to and engaging in multiple marriages were not inherently harmful to complainant. I do not see how complainant was injuriously affected by respondent's allegedly immoral conduct. The records are bereft of anything to indicate that he was outraged by respondent's indiscretions. Curiously, complainant 'discovered' respondent's two marriages after the latter assisted his second wife, Mary Grace dela Roca (dela Roca) in filing suits for bigamy and violation of Republic Act No. 9262 against him.[19]

Complainant also averred that he "reluctantly and with a heavy heart"[20] went on with the subsequent marriage with dela Roca when "[respondent] *assured* him that their marriage will

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[17] *Perfecto v. Judge Esidera*, 764 Phil. 384, 407 (2015) [Per *J.* Leonen, Second Division].

[18] *Ponencia*, p. 1.

[19] *Id.* at 2.

[20] *Id.*

not be registered with the Local Civil Registry."[21] More interesting is how he alleged that "[respondent] had a propensity [for] meddling with the processes of the Local Civil Registry."[22] Complainant at first appeared indifferent to respondent's seeming disobedience to the law. That is, until they had a falling out.

In any case, it is not this Court's business to speculate on his reasons for filing this complaint. I have previously stated that "an objective criterion of immorality is that which is tantamount to an illegal act."[23] However, even with this parameter, evidence is insufficient to support a claim of immorality on respondent's part.

In *Perfecto v. Judge Esidera*,[24] the respondent judge knowingly contracted a subsequent sacramental marriage before an unlicensed solemnizing officer. In ruling that respondent was not grossly immoral, this Court ratiocinated:

> We cannot conclude that, for purposes of determining administrative liability, respondent judge disobeyed the law against bigamy when she and her second husband conducted a marriage ceremony on March 18, 1990.
>
> Respondent judge claimed that this marriage was merely a sacramental marriage entered into only to comply with the requirements of their religious beliefs. It was valid only under the Roman Catholic Church but has no legal effect. Their solemnizing officer was not licensed to solemnize marriage from the National Archives or from the civil government.
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> Article 349 of the Revised Penal Code prohibits a second or subsequent marriage before the legal dissolution of a first marriage:

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[21] *Id.*

[22] *Id.*

[23] *J.* Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018 [*Per Curiam, En Banc*] *citing J.* Leonen, Separate Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [*Per Curiam, En Banc*].

[24] 764 Phil. 384 (2015) [Per *J.* Leonen, Second Division].

> Art. 349. Bigamy. — The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The second or subsequent marriage contemplated under this provision is the marriage entered into under the law. Article 1 of the Family Code defines marriage as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life[.]"

Thus, the validity of the second marriage, if not for the subsistence of the first marriage, is considered one of the elements of the crime of bigamy. The elements of bigamy are:

> (a) the offender has been legally married; (b) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity. The felony is consummated on the celebration of the second marriage or subsequent marriage. It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage. (Emphasis supplied, citations omitted)

Respondent judge's act of participating in the marriage ceremony as governed only by the rules of her religion is not inconsistent with our law against bigamy. What the law prohibits is not second marriage during a subsisting marriage per se. What the law prohibits is a second marriage that would have been valid had it not been for the subsisting marriage. Under our law, respondent judge's marriage in 1990 was invalid because of the solemnizing officer's lack of authority.[25] (Citations omitted)

However, we cannot reasonably conclude that respondent's subsequent marriage was bigamous in this case. "What the

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[25] *Id.* at 401-402.

law prohibits is not second marriage during a subsisting marriage per se. What the law prohibits is a second marriage that would have been valid had it not been for the subsisting marriage."[26] Here, we do not know the circumstances surrounding the marriages, whether both are valid and subsisting. Further, the *ponencia's* justification in finding gross immorality based on the strength of the marriage certificates appears doubtful:

> A marriage contract, being a public document, enjoys the presumption of regularity in its execution and is conclusive as to the fact of marriage. Thus, the marriage contracts bearing Atty. Teneza's name are competent and convincing evidence to prove that he contracted two marriages. Moreover, in his counter-affidavit in the charge for bigamy, Atty. Teneza admitted entering into a second marriage. This admission more than proves his identity as husband in both marriages and the existence of the two marriages.[27] (Citations omitted)

Marriage certificates alone are insufficient to support a bigamy charge, and cooperation of an offended party is crucial for it to prosper. It must also be noted that the criminal complaint for bigamy against respondent was provisionally dismissed, and there was no proof that any offended party participated in its proceedings. The *ponencia* narrated that respondent claimed good faith "because he had not heard from his first wife since 1983."[28] There was also no evidence that the first wife, who is the most interested person, objected to the subsequent marriage, or that the supposedly second wife was misled. In my view, state coercion to litigate on marital indiscretion unduly tramples on the individual autonomy of those involved.

III

While I do not find respondent's acts as grossly immoral, he is still administratively liable for violation of his oath and the Code of Professional Responsibility.

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[26] *Id.* at 402.

[27] *Ponencia*, pp. 6-7.

[28] *Id.* at 7.

I agree with the majority that respondent's complicity to multiple marriages of two men to different women, and his blasé attitude in seeking to be complimented for his imagined bravery for witnessing them, mocks our laws. His words and actions showed utter disregard for rules and is unbecoming of a court officer.

Respondent's defense is reproduced from the *ponencia's* discussion:

> In his Answer, Atty. Teneza admitted that he was Rogelio's lawyer for certain ejectment cases. He denied violating their lawyer-client relationship when he assisted Mary Grace in the bigamy case because bigamy is not related to the ejectment cases that he handled for Rogelio. He also denied registering Rogelio and Mary Grace's marriage with the Local Civil Registry.
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> Atty. Teneza admitted that he was a wedding sponsor in the marriage of Francisco with Cristina and with Michelle. He explained that "he acceded to the behest of Cristina, and Michelle, that he stood as one of their principal sponsors in their marriages with [Francisco] because, if something goes wrong in any of these marriage, [he] would stand witness and testify on the facts of said marriages against his own brother-in-law [Francisco]." Atty. Teneza posits that "instead of [Rogelio] attributing an alleged wrong-doing against [him], he should even commend, and laud him for braving to stand against his own brother-in-law, if a complaint will be filed against [Francisco]."
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> x x x x x x x x x
>
> In his Position Paper, Atty. Teneza asserts that the allegations in the complaint are fabricated and are the products of Rogelio's vindictive mind. He insists that he did not violate the lawyer-client relationship when he assisted his sister-in-law, Mary Grace, in the bigamy and R.A. No. 9262 cases. The ejectment cases that he handled for Rogelio are only on a case-to-case basis; he is not Rogelio's exclusive lawyer. Further, he did not use the information he obtained from Rogelio in the ejectment cases in filing the bigamy and R.A. No. 9262 cases. Besides, Rogelio's civil status is of public knowledge.
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> Atty. Teneza denies meddling with the legal processes of the Local Civil Registry. He insists that he only stood as sponsor in the wedding

of Francisco and Cristina and also with Michelle upon the request of the brides.[29] (Citations omitted)

Canon 1, Rules 1.01, and 1.02[30] mandate lawyers to "uphold the constitution, obey the laws of the land, and promote respect for law and for legal processes." Meanwhile, Canon 7[31] of the Code of Professional Responsibility requires them to "uphold the integrity and dignity of the legal profession." However, respondent instead encouraged these men to defy the law, which act lessens the public confidence in our legal system. Certainly, his consent to multiple marriages of the same men defiles the integrity of his profession.

Lastly, Lawyers are called upon to avoid potential conflicts of interest.[32] Here, respondent courted conflict when he assisted complainant's second wife in filing charges against complainant, his former client. It was his duty to be circumspect with his

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

[30] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1, Rules 1.01 and 1.02 provide:

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

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

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

[31] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 7 provides:

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

[32] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15, Rule 15.01 provides:

CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

RULE 15.01 A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

words and actions, and actively prevent scenarios where they may be deemed unethical and or cast in a bad light.

All told, I agree with the majority that respondent is unworthy of continuing as a member of the bar.

ACCORDINGLY, I vote that respondent Atty. Liberato Teneza be **DISBARRED**, and his name be stricken from the Roll of Attorneys.

EN BANC

[A.M. No. 16-01-3-MCTC. June 9, 2020]

RE: REPORT ON THE ARREST OF MR. OLIVER B. MAXINO, UTILITY WORKER I, MUNICIPAL CIRCUIT TRIAL COURT, TRINIDAD-SAN MIGUEL-BIEN UNIDO, BOHOL FOR VIOLATION OF SECTIONS 5 AND 11 OF REPUBLIC ACT NO. 9165.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED TO PROVE MISCONDUCT IN ADMINISTRATIVE CASES. — Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." Misconduct is considered grave "if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules." Unlike criminal cases where the quantum of evidence requires proof beyond reasonable doubt, only substantial evidence is required to prove misconduct in administrative cases.

2. CRIMINAL LAW; ENTRAPMENT; A BUY-BUST OPERATION IS GENERALLY CONSIDERED A VALID MEANS OF ENTRAPMENT AND TO BE CONSIDERED LAWFUL, THE OFFENDER MUST NOT BE INDUCED TO COMMIT THE OFFENSE. — A buy-bust operation is generally considered a valid means of entrapment. Law enforcers often use this method in order to catch offenders in the act of committing drugs offenses. To be considered valid, the offender must not be induced to commit the offense. Certain procedural requirements under the law must also be strictly complied with.

3. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GRAVE MISCONDUCT; THE MERE CONDUCT OF A BUY-BUST OPERATION AGAINST A COURT EMPLOYEE WITHOUT OTHER INFORMATION OR PROOF OF THE VALIDITY THEREOF THAT WOULD PROVE THAT HE IS GUILTY OF SELLING ILLEGAL DRUGS CANNOT BE CONSIDERED SUBSTANTIAL EVIDENCE OF GRAVE MISCONDUCT. — In this case, there is insufficient information in the records to show if the buy-bust operation against Maxino was valid. As trial had not yet commenced, the prosecution has yet to introduce evidence tending to show that Maxino did indeed commit the crime. x x x If this Court concludes that Maxino is guilty of grave misconduct for having been caught *in flagrante*, then it would be tantamount to preempting the trial court's conclusion on the validity of the buy-bust operation. There are no other facts, other than Maxino's arrest, that would strongly support a conclusion that he probably committed grave misconduct. x x x In this case, the only evidence to support the conclusion that Maxino committed grave misconduct is his arrest from the conduct of a buy-bust operation. There is no other information, such as prior surveillance of alleged drug activities or proof of the validity of the conduct of the buy-bust operation that would prove that Maxino is guilty of selling illegal drugs. Thus, he cannot be conclusively found guilty of grave misconduct.

4. ID.; ID.; ID.; GROSS NEGLECT OF DUTY AND HABITUAL ABSENTEEISM; PENALTY; IF THE RESPONDENT IS FOUND GUILTY OF TWO OR MORE CHARGES OR COUNTS, THE PENALTY TO BE IMPOSED SHOULD BE THAT CORRESPONDING TO THE MOST SERIOUS CHARGE AND THE REST SHALL BE CONSIDERED

AGGRAVATING CIRCUMSTANCES. — According to Rule 10, Section 46 (A) (2) of the Revised Rules on Administrative Cases in the Civil Service, gross neglect of duty is considered a grave offense with the corresponding punishment of dismissal from service. x x x Frequent unauthorized absences are also grave offenses punishable by "suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense." Here, Maxino was given five (5) consecutive "unsatisfactory" ratings from July 2012 to June 2015, as shown in his Performance Rating Forms. Under the Revised Rules on Administrative Cases in the Civil Service, an employee who is given two (2) consecutive "unsatisfactory" ratings may be dropped from the rolls after due notice. Considering that Maxino received no less than five (5) consecutive "unsatisfactory" ratings from 2012 to 2015, he should have been dropped from the rolls since 2015. Maxino was also reported to have stolen a fellow court employee's salary check in April 2014, although no criminal complaint was filed as he later returned the money taken. Prior to his arrest, he also failed to report to office for the entire month of November 2015, and was absent without leave for nine (9) days in September 2015 and for 16 days in October 2015. These undeniably show that Maxino was grossly inefficient and incompetent in the conduct of his tasks, to the detriment of the Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol. He has also cavalierly failed to report for work for long periods of time, without any valid reasons. Maxino, thus, is guilty of gross neglect of duty and frequent unauthorized absences. His dismissal from service is in order. x x x In any case, and as proven by substantial evidence, Maxino is found guilty of gross neglect of duty and habitual absenteeism. "If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances." This Court, therefore, adopts the Office of the Court Administrator's recommended penalty of dismissal from service.

RESOLUTION

PER CURIAM:

The mere conduct of a buy-bust operation cannot, by itself, be evidence of grave misconduct in an administrative case against a court employee. There must be sufficient basis to conclude that the buy-bust operation was valid and there must be a strong probability that he or she committed the crime. However, he or she may still be found guilty of gross neglect of duty if, even before the conduct of the buy-bust operation, he or she attends to his or her duties in an unsatisfactory manner and was frequently absent without any leave.

This is an administrative case against Oliver B. Maxino (Maxino), Utility Worker I, Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol, for grave misconduct, gross neglect of duty, and habitual absenteeism.

On December 1, 2015, Maxino was arrested by police officers in a buy-bust operation for possessing and selling plastic sachets containing 0.05 gram of *shabu*. An Information was filed against him for violation of Section 5[1] and Section 11[2] of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.[3]

On December 21, 2015, Judge Azucena C. Macalolot-Credo (Judge Macalolot-Credo), Presiding Judge of the Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol, submitted a Report[4] stating that prior to his arrest, Maxino neither reported to work for the whole month of November 2015 nor filed any leave applications. He also did not submit his daily time records for the months of September and October 2015, and had incurred several absences without leave.[5]

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[1] Sale of Illegal Drugs.

[2] Possession of Illegal Drugs.

[3] *Rollo*, p. 7, Police Report.

[4] *Id.* at 1-4.

[5] *Id.* at 1-3.

Judge Macalolot-Credo found that Maxino obtained five (5) consecutive "Unsatisfactory" ratings from July 2012 to June 2015, as reflected in his Performance Rating Forms.[6] She also discovered that Maxino had been involved in an incident regarding the loss of a stenographer's salary check in the amount of ₱4,625.00. In view of these findings, Judge Macalolot-Credo strongly recommended the imposition of disciplinary action and the appropriate sanction against Maxino.[7]

The Office of the Court Administrator asked Maxino to comment on Judge Macalolot-Credo's Report.[8] He, however, failed to file any comment despite receipt of notice.[9] On July 14, 2016, this Court sent a Tracer reiterating its directive to comply with the submission of a comment.[10]

In an August 25, 2016 Letter, Flora Mae Maxino, who stated that she was Maxino's wife, explained that her husband's detention was due to "fabricated and planted evidence"[11] and that he would like the opportunity to defend himself on the claims regarding his office performance, absences without leave, and nonsubmission of daily time reports, but was incapable of doing so since he was under detention.[12]

In a November 16, 2016 Letter, Acting Executive and Presiding Judge Marivic Tabajo-Daray of the Regional Trial Court of Talibon, Bohol, Branch 52, informed the Office of the Court Administrator that Maxino: (1) faces charges of violation of Section 5 and Section 11 of Republic Act No. 9165; (2) was

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

[7] *Id.* at 3.

[8] *Id.* at 55.

[9] Dorsal side of *rollo*, p. 55.

[10] *Rollo*, p. 56.

[11] *Id.* at 57.

[12] *Id.*

arraigned on January 14, 2016;[13] and (3) was currently detained at the BJMP District Jail in Talibon, Bohol.[14]

In a January 22, 2020 Memorandum,[15] the Office of the Court Administrator recommended that Maxino be found guilty of habitual absenteeism, gross neglect of duty, and grave misconduct.

According to the Office of the Court Administrator, Maxino, prior to his arrest, failed to report for office for the entire month of November 2015 and was absent without leave for nine (9) days in September 2015 and for 16 days in October 2015.[16]

The Office of the Court Administrator likewise found that although the criminal case was still pending, there was substantial evidence to find that Maxino was guilty of grave misconduct because his "illicit activities resulted in his apprehension by the police authorities in a buy-bust operation."[17] Thus, considering Maxino's numerous infractions, the Office of the Court Administrator recommended that he be dismissed from service, with forfeiture of his retirement benefits except for accrued leave credits, and with prejudice to his reinstatement or re-employment in any agency of government, including government-owned and controlled corporations.[18]

This Court adopts the findings of fact of the Office of the Court Administrator. However, its conclusions require further examination.

According to the Office of the Court Administrator, Maxino was guilty of grave misconduct since his "illicit activities resulted in his apprehension by the police authorities in a buy-bust

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[13] *Id.* at 60-61.

[14] *Id.* at 67.

[15] *Id.* at 79-84.

[16] *Id.* at 79-80.

[17] *Id.* at 83.

[18] *Id.*

operation"[19] and that "in entrapment operations [like buy-bust operations,] ways and means are resorted to for the purpose of ensuring and capturing law-breakers in the execution of their criminal plan."[20] Simply put, the Office of the Court Administrator opines that the mere conduct of the buy-bust operation on Maxino constituted substantial evidence to find him guilty of grave misconduct.

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[21] Misconduct is considered grave "if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules."[22]

Unlike criminal cases where the quantum of evidence requires proof beyond reasonable doubt, only substantial evidence is required to prove misconduct in administrative cases. In *Office of the Court Administrator v. Lopez*:[23]

> [T]o sustain a finding of administrative culpability, only substantial evidence is required. The present case is an administrative case, not a criminal case, against respondent. Therefore, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case. We emphasize the well-settled rule that a criminal case is different from an administrative case and

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[19] *Id.*

[20] *Id.*

[21] *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 608 (2011) [*Per Curiam, En Banc*] *citing Arcenio v. Pagorogon*, 296 Phil. 67 (1993) [*Per Curiam, En Banc*].

[22] *Id.*

[23] 654 Phil. 602 (2011) [*Per Curiam, En Banc*].

each must be disposed of according to the facts and the law applicable to each case.[24]

Thus, the proper issue before this Court is whether or not the mere conduct of a buy-bust operation against a court employee may be considered substantial evidence of grave misconduct.

A buy-bust operation is generally considered a valid means of entrapment. Law enforcers often use this method in order to catch offenders in the act of committing drugs offenses. To be considered valid, the offender must not be induced to commit the offense.[25] Certain procedural requirements under the law must also be strictly complied with.[26]

In this case, there is insufficient information in the records to show if the buy-bust operation against Maxino was valid. As trial had not yet commenced, the prosecution has yet to introduce evidence tending to show that Maxino did indeed commit the crime. In *Paredes v. Padua*:[27]

> As a general rule, this Court prefers to defer final action in an administrative case when there is a pending criminal case against the respondent based on the same set of facts as those obtaining in the administrative case. The purpose of the rule is not to preempt and influence the trial court in judging the merits of the defenses put up by the accused.[28]

If this Court concludes that Maxino is guilty of grave misconduct for having been caught *in flagrante*, then it would be tantamount to preempting the trial court's conclusion on the

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[24] *Id.* at 607 *citing Velasco v. Judge Angeles*, 557 Phil. 1 (2007) [Per *J.* Carpio, *En Banc*].

[25] See *People v. Bartolome*, 703 Phil. 148 (2013) [Per *J.* Bersamin, First Division].

[26] See *People v. Holgado*, 741 Phil. 78 (2014) [Per *J.* Leonen, First Division].

[27] 294 Phil. 92 (1993) [*Per Curiam*, *En Banc*].

[28] *Id.* at 92 and 95.

validity of the buy-bust operation. There are no other facts, other than Maxino's arrest, that would strongly support a conclusion that he probably committed grave misconduct.

In contrast, this Court in *Office of the Court Administrator v. Lopez*[29] found substantial evidence to conclude that respondent was guilty of grave misconduct despite the pendency of the criminal case. The respondent in *Lopez* was a process server in a Municipal Trial Court. By virtue of a search warrant, law enforcement agents seized 790.6 grams of marijuana fruiting tops under respondent's bed, which led to his arrest. Unlike the present case, in *Lopez*, an investigating judge was first assigned to the administrative matter in order to gather the substantial evidence required. Thus, the Court's ruling on grave misconduct did not merely emanate from respondent's arrest but rather from the findings of the investigating judge.

There have likewise been several instances where entrapment operations against court employees have been found to be valid. These are usually in complaints of bribery and extortion, where information is provided by either the trial court or the Office of the Court Administrator to law enforcement agents before the actual conduct of the entrapment operation.[30]

In this case, the only evidence to support the conclusion that Maxino committed grave misconduct is his arrest from the conduct of a buy-bust operation. There is no other information, such as prior surveillance of alleged drug activities or proof of the validity of the conduct of the buy-bust operation that would prove that Maxino is guilty of selling illegal drugs. Thus, he cannot be conclusively found guilty of grave misconduct.

However, it would be remiss of this Court to disregard that Maxino is also charged with gross neglect of duty and habitual absenteeism.

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[29] 654 Phil. 602 (2011) [*Per Curiam, En Banc*].

[30] See *Dela Cruz v. Malunao*, 684 Phil. 493 (2012) [*Per Curiam, En Banc*] and *Office of the Court Administrator v. Bautista*, 456 Phil. 193 (2003) [*Per Curiam, En Banc*].

According to Rule 10, Section 46 (A) (2) of the Revised Rules on Administrative Cases in the Civil Service, gross neglect of duty is considered a grave offense with the corresponding punishment of dismissal from service.

In *Escaño v. Manaois*:[31]

> Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and diligently at all times. Since the image of the courts, as the administrators and dispensers of justice, is not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions.[32]

Frequent unauthorized absences are also grave offenses punishable by "suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense."[33]

Here, Maxino was given five (5) consecutive "unsatisfactory" ratings from July 2012 to June 2015, as shown in his Performance Rating Forms.[34] Under the Revised Rules on Administrative Cases in the Civil Service, an employee who is given two (2) consecutive "unsatisfactory" ratings may be dropped from the rolls after due notice.[35] Considering that Maxino received no

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[31] 799 Phil. 622 (2016) [*Per Curiam*, *En Banc*].

[32] *Id.* at 635-636 *citing Marquez v. Pablico*, A.M. No. P-06-2201, June 30, 2008, 556 SCRA 531, 537 and *Office of the Court Administrator v. Gaspar*, 659 Phil. 437 (2011) [Per *J.* Brion, Third Division].

[33] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 46(B)(5).

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

[35] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 19, Section 93 (b) (1).

less than five (5) consecutive "unsatisfactory" ratings from 2012 to 2015, he should have been dropped from the rolls since 2015.

Maxino was also reported to have stolen a fellow court employee's salary check in April 2014,[36] although no criminal complaint was filed as he later returned the money taken. Prior, to his arrest, he also failed to report to office for the entire month of November 2015, and was absent without leave for nine (9) days in September 2015 and for 16 days in October 2015.[37]

These undeniably show that Maxino was grossly inefficient and incompetent in the conduct of his tasks, to the detriment of the Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol. He has also cavalierly failed to report for work for long periods of time, without any valid reasons.

Maxino, thus, is guilty of gross neglect of duty and frequent unauthorized absences. His dismissal from service is in order.

Maxino's wife laments that her husband was deprived of due process when he was rendered unable to refute the charges against him due to his arrest. On the contrary, the deprivation of liberty does not equate to the deprivation of due process. Maxino is not being held incommunicado. He was free to submit his comment on the charges in any form that could be available to him, whether in a handwritten letter or as assisted by counsel. He could even have requested for as much time as he needed to formulate his comment. He did none of these. He, therefore, chose to forego his opportunity to be heard.

In any case, and as proven by substantial evidence, Maxino is found guilty of gross neglect of duty and habitual absenteeism. "If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as

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[36] *Rollo*, pp. 17 and 53.

[37] *Id.* at 81.

aggravating circumstances."[38] This Court, therefore, adopts the Office of the Court Administrator's recommended penalty of dismissal from service.

WHEREFORE, Oliver B. Maxino, Utility Worker I, Municipal Circuit Trial Court, Trinidad-San Miguel-Bien Unido, Bohol, is found **GUILTY** of gross neglect of duty and habitual absenteeism. He is, thus, meted the penalty of **DISMISSAL** from the service with the accessory penalty of forfeiture of retirement benefits, except for accrued leave credits, with prejudice to reinstatement or re-employment in any agency of government, including government-owned and controlled corporations.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., on leave.

FIRST DIVISION

[G.R. No. 196580. June 10, 2020]

BANGKO SENTRAL NG PILIPINAS AND ITS MONETARY BOARD, *petitioners*, *vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK**, *respondent*.

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[38] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 50.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM THE REGIONAL TRIAL COURTS; AN APPEAL MAY BE TAKEN ONLY FROM A FINAL ORDER THAT COMPLETELY DISPOSES OF THE CASE, BUT WHEN THE CASE IS DISMISSED AND THE DISMISSAL PERTAINS TO ONE AMONG TWO OR MORE DEFENDANTS AND THE CASE AS TO THE LATTER REMAINS PENDING, THE REMEDY TO QUESTION THE DISMISSAL IS A PETITION FOR *CERTIORARI* UNDER RULE 65. — The CA (Special 3rd Division) erred in ascribing grave abuse of discretion on the part of the RTC when it disapproved Banco Filipino's Notice of Appeal. The filing of a Notice of Appeal was clearly an improper remedy to question the dismissal of an action against one of the parties while the main case is still pending x x x [, pursuant to] Section 1, Rule 41 of the 1997 Rules of Court x x x. While the x x x rule states that an appeal may be taken only from a final order that completely disposes of the case, it does not stop there. The rule likewise provides for several exceptions, such that no appeal may be taken on the following instances, to wit: x x x (g) **a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;** x x x. In all the foregoing instances, the **aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65**. In the instant case, while the RTC Order dated June 30, 2006 (which dismissed the civil case against BSP-MB on the ground of prescription, estoppel and lack of jurisdiction over their persons) is a final order because it terminates the proceedings against BSP-MB, it however falls within the exceptions in subparagraph (g). As mentioned, Rule 41 of the 1997 Rules of Court expressly provides for a remedy available to a party when the case is dismissed and the dismissal pertains to one amongst two or more defendants and the case as to the latter remains pending. x x x The CA (Special 3rd Division), despite the express provision of the rules which was fortified by jurisprudence, still proceeded to apply the rule on final orders of dismissal with prejudice, which generally is appealable. Like all general rules, it admits of exceptions. The case at bar falls within such exception. Contrary to the ruling of the CA (Special

3rd Division), no grave abuse of discretion was committed by the RTC when it denied Banco Filipinos' Notice of Appeal for being a wrong remedy. Banco Filipino should have filed a petition for *certiorari* under Rule 65 to challenge the RTC Orders dismissing the civil case against BSP-MB.

2. **ID.; ID.; ID.; ID.; RECORD ON APPEAL; SHALL BE REQUIRED ONLY IN SPECIAL PROCEEDINGS AND OTHER CASES OF MULTIPLE OR SEPARATE APPEALS WHERE THE LAW OR THE RULES SO REQUIRE. —** Under Section 2(a), Rule 41 of the Rules of Court, "no record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the Rules so require." Multiple appeals can be taken in special proceedings, in actions for recovery of property with accounting, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage. More than one appeal is allowed in the same case to "enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final." Obviously, the cases filed by Banco Filipino against CB-BOL, Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano, Ramon V. Tiaoqui and BSP-MB are not special proceedings cases but ordinary civil cases challenging the validity of Banco Filipino's receivership and liquidation and seeking the annulment of the resolution of the Monetary Board of the then Central Bank ordering its closure. The consolidated cases do not even fall under the classification of "other cases of multiple or separate appeals" requiring a record on appeal.

3. **ID.; ID.; COURTS; DOCTRINE OF NON-INTERFERENCE; MANDATES THAT A COURT CANNOT INTERFERE BY INJUNCTION WITH THE JUDGMENT, ORDER, OR RESOLUTION OF ANOTHER COURT EXERCISING CONCURRENT OR COORDINATE JURISDICTION HAVING THE POWER TO GRANT THE RELIEF SOUGHT BY INJUNCTION. —** The doctrine of non-interference or judicial stability is a time-honored policy that mandates that "no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction." Simply put, a court cannot interfere with the judgment, order, or resolution of another court exercising concurrent or coordinate jurisdiction. The doctrine

finds basis on the concept of jurisdiction: "a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment."

4. ID.; ID.; PLEADINGS; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; WHEN THERE IS NO SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING, THE PETITION SHOULD BE DISMISSED OUTRIGHT. — Time and again, we have held that a verification signed *sans* authority from the board of directors is defective. But where it is shown that strict compliance with the rules would not fully serve the ends of justice, the court may allow correction of the pleading if verification is lacking or even admit an unverified pleading. After all, verification of pleading is not a jurisdictional, but a formal, requisite and does not necessarily render the pleading fatally defective. While the Court is inclined to treat the verification and certification against forum shopping attached in Banco Filipino's petition as sufficient compliance, it cannot, however, ignore the fact that the authority granted to Abad and Rivera is confined to Banco Filipino's representation "in the institution or in all stages of Civil Case No. 04-823," which specifically referred to its Petition for Revival of Judgment filed against The Monetary Board, Central Bank of the Philippines, now Central Bank Board of Liquidators, and The Monetary Board, Bangko Sentral ng Pilipinas. Banco Filipino, however, failed to show that Abad and Rivera were also vested with authority to represent it before the CA and to sign the verification and certification against forum shopping attached in its petition. Hence, there being no substantial compliance with the requirements of verification and certification against forum shopping, the petition should have been dismissed outright by the appellate court.

APPEARANCES OF COUNSEL

Cruz Marcelo & Tenefrancia for petitioners.
Filemon L. Fernandez and *Francisco A. Rivera* for respondent.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari*[1] filed by Bangko Sentral ng Pilipinas and its Monetary Board (BSP-MB) under Rule 45 of the 1997 Rules of Court from the November 25, 2010 Decision[2] and April 1, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 98734, respectively reversing and setting aside the Orders dated December 4, 2006[4] and March 21, 2007[5] of the Regional Trial Court (RTC) Branch 136 of Makati City in Civil Case Nos. 8108, 9675 and 10183.

On different dates, three separate civil actions were filed by respondent Banco Filipino Savings and Mortgage Bank (Banco Filipino) with the RTC of Makati City as follows:

1. Civil Case No. 8108 — filed on August 6, 1984 by Banco Filipino against The Monetary Board, The Central Bank of the Philippines and Jose B. Fernandez, Jr. seeking to annul Resolution No. 955 of the Monetary Board of the then Central Bank of the Philippines (Central Bank), which placed Banco Filipino under conservatorship.

2. Civil Case No. 9675 — filed on February 2, 1985 by Banco Filipino against the Monetary Board, the Central Bank of the Philippines and Jose Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano and Ramon V. Tiaoqui, seeking to annul and set aside Resolution No. 75 of the Monetary Board of the then Central Bank, which ordered the closure of Banco Filipino.

3. Civil Case No. 10183 — filed on June 3, 1985 by Banco Filipino against the Monetary Board, the Central Bank of the Philippines and

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[1] *Rollo*, pp. 20-74.

[2] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Bienvenido L. Reyes (now retired SC Justice) and Priscilla J. Baltazar-Padilla, concurring; *id.* at 77-92.

[3] *Id.* at 95-96.

[4] *Id.* at 819-820 (Vol. II).

[5] *Id.* at 822-823 (Vol. II).

Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano and Ramon Tiaoqui, challenging the validity of the resolution dated March 22, 1985 of the Monetary Board of the then Central Bank, which ordered the liquidation of Banco Filipino.

In the meantime, on February 28, 1985, Banco Filipino filed a petition for *certiorari* and *mandamus* before this Court, docketed as G.R. No. 70054, which also sought, among other things, the annulment of Resolution No. 75 of the Monetary Board of the Central Bank.

In a Resolution dated August 29, 1985 in G.R. No. 70054, this Court ordered the consolidation of the aforesaid cases as Civil Case Nos. 8108, 9675 and 10183 with the RTC of Makati City, Branch 136. The consolidated civil cases had, as defendants, the following: The Monetary Board of the Central Bank of the Philippines, Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano and Ramon V. Tiaoqui.

On May 29, 1995, Banco Filipino filed with the RTC a Motion to Admit Amended/Supplemental Complaint in Civil Case Nos. 8108, 9675 and 10183. In the attached 134-page Amended/Supplemental Complaint, Banco Filipino claimed actual damages of at least ₱18.8 billion. It also substituted the Central Bank-Board of Liquidators (CB-BOL) for the then Central Bank and its Monetary Board.

On December 7, 1995, the RTC granted Banco Filipino's Motion to Admit Amended/Supplemental Complaint. Thus, by this time, the defendants were: The CB-BOL, Jose B. Fernandez, Jr., and Carlota P. Valenzuela, Arnulfo B. Aurellano and Ramon V. Tiaoqui.

On September 25, 2003, Banco Filipino again filed a Motion to Admit Attached Second Amended/Supplemental Complaint dated September 18, 2003 in the civil cases. It sought to implead petitioners BSP-MB as additional defendants in the consolidated civil cases.

In its Order dated January 27, 2004, the RTC granted the Motion to Admit Attached Second Amended/Supplemental Complaint dated September 18, 2003 over the objections of

CB-BOL. Thus, the defendants in these consolidated cases are: the CB-BOL, Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano, Ramon V. Tiaoqui and petitioners BSP-MB.

On March 1, 2004, BSP-MB entered their special appearance by filing a Motion to Dismiss the Second Amended/Supplemental Complaint dated September 18, 2003 *Ex-Abundante Ad Cautelam*,[6] on the ground, among others, of prescription of the claims, claims had been waived and lack of jurisdiction over their person for defective service of summons.

On October 1, 2004, the CB-BOL filed a petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 86697, assailing the admission of the Second Amended/Supplemental Complaint by the RTC in its Orders dated January 27, 2004 and July 20, 2004. At the time of the issuance of the RTC's Orders, BSP-MB had not been summoned nor informed of the proceedings of the consolidated civil cases.

On October 5, 2004, BSP-MB filed a Supplemental Motion for Summary Dismissal Based on Forum-Shopping, docketed as Civil Case No. 04-0823, praying that the consolidated civil cases be dismissed. They averred that Banco Filipino committed willful act of forum-shopping when it filed a petition to revive the judgment of this Court in G.R. No. 70054.

On December 13, 2005, BSP-MB filed a Second Supplemental Motion for Summary Dismissal Based on Forum-Shopping with Urgent Motion to Resolve Motion to Dismiss Second Amended/ Supplemental Complaint. BSP-MB argued that a coordinate branch of the RTC of Makati City, Branch 56, had already dismissed Civil Case No. 04-1047 on the ground of *litis pendencia* since Civil Case No. 04-1047 and the civil cases before the trial court involved the same parties and the same cause of action. Consequently, the civil cases must also be summarily dismissed on the ground of forum-shopping and Banco Filipino's

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[6] *Id.* at 441-486 (Vol. I).

failure to comply with its undertaking in the certification against forum-shopping.

On January 27, 2006, the CA (17th Division) rendered a Decision in CA-G.R. SP No. 86697 dismissing the petition filed by the CB-BOL.

Acting on the BSP-MB's Motion to Dismiss Second Amended/ Supplemental Complaint dated September 18, 2003 *Ex-Abundante Ad Cautelam*, Supplemental Motion for Summary Dismissal Based on Forum Shopping and Second Supplemental Motion for Summary Dismissal Based on Forum Shopping, the RTC issued an Order dated June 30, 2006, dismissing Banco Filipino's Second Amended Supplemental Complaint with prejudice as to BSP-MB on the grounds of prescription, estoppel and that the personalities of the then Central Bank and BSP are separate and distinct.

Banco Filipino filed a Motion for Reconsideration of the said June 30, 2006 Order but the said Motion was denied in an Order dated September 20, 2006.

Aggrieved, Banco Filipino filed a Notice of Appeal with the RTC, which was disapproved in the Order dated December 4, 2006, pertinent portion of which reads:

> Section 1, Rule 41 of the Rules of Civil Procedure provides, *inter alia*, that no appeal may be taken from (a) an order denying a motion for reconsideration and (g) a judgment or final order for or against one or more of several parties or in separate claims, counter claims, cross-claims and third-party complaints, while the main case is pending.
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> Pursuant to the above-stated legal provision, this court does not allow/approve the instant appeal.
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> WHEREFORE, the Notice of Appeal is hereby disapproved for lack of merit.

Banco Filipino filed a Motion for Reconsideration, which was subsequently denied in the Order dated March 21, 2007.

Dissatisfied, Banco Filipino filed a Petition for *Certiorari* with the CA (Special 3rd Division) ascribing grave abuse of

discretion on the part of the RTC when it denied Banco Filipino's Notice of Appeal against BSP-MB.

In a Decision dated November 25, 2010, the CA (Special 3rd Division) ruled in favor of Banco Filipino, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED** and the Orders dated 04 December 2006 and 21 March 2007 rendered by Branch 136 of the Regional Trial Court of Makati City in Civil Case Nos. 8108, 9675 and 10183 are **REVERSED** and **SET ASIDE**.[7]

The CA (Special 3rd Division) ruled that the order of dismissal of the case against BSP-MB is a final order and consequently, the proper subject of appeal. The CA also pointed out that another co-equal Court (CA, 17th Division) had already rendered a Decision[8] dated January 27, 2006 in CA-G.R. SP No. 86697 affirming the RTC Orders allowing the admission of Banco Filipino's Second Amended/Supplemental Complaint. In view of the doctrine of judicial stability or non-interference, the CA (Special 3rd Division) cannot issue a ruling which would directly affect the propriety of the admission of said Second Amended/ Supplemental Complaint. Hence, it is not proper for the CA (Special 3rd Division) to sustain the RTC's order dismissing Banco Filipino's Notice of Appeal.

BSP-MB moved to reconsider[9] but the same was denied by the CA (Special 3rd Division) in a Resolution dated April 1, 2011.

Dissatisfied, BSP-MB filed the instant Petition with this Court, arguing that the CA (Special 3rd Division) gravely erred in issuing its assailed Decision and Resolution, and acted contrary to prevailing law and established jurisprudence, considering that:

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[7] *Id.* at 91.

[8] This Decision was affirmed by this Court in a Resolution dated December 8, 2008, which is presently the subject of a Motion for Reconsideration which is yet to be resolved.

[9] *Rollo*, pp. 98-133.

I.

THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE NOTICE OF APPEAL FILED BY RESPONDENT BANCO FILIPINO. THE FILING OF THE NOTICE OF APPEAL BY RESPONDENT BANCO FILIPINO IS AN IMPROPER MODE OF APPEAL UNDER THE RULES OF COURT.

A. UNDER THE EXPRESS PROVISIONS OF SECTION 1(F), RULE 41 OF THE RULES OF COURT, NO APPEAL MAY BE TAKEN FROM THE DISMISSAL OF THE SECOND AMENDED/SUPPLEMENTAL COMPLAINT, CONSIDERING THAT THE CIVIL CASES REMAIN PENDING BEFORE THE TRIAL COURT AGAINST SEVERAL OTHER DEFENDANTS.

B. EVEN ASSUMING THAT AN APPEAL MAY BE HAD FROM THE DISMISSAL OF THE SECOND AMENDED/ SUPPLEMENTAL COMPLAINT, THE SAME MAY BE PERFECTED ONLY BY A RECORD ON APPEAL, AND NOT A NOTICE OF APPEAL AS ERRONEOUSLY DONE BY RESPONDENT BANCO FILIPINO, PURSUANT TO THE RULING OF THE HONORABLE COURT IN *GOVERNMENT SERVICE INSURANCE SYSTEM VS. PHILIPPINE VILLAGE HOTEL*, 438 SCRA 567 (2004).

II.

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE DOCTRINE OF NON-INTERFERENCE IN THE INSTANT CASE, SINCE THE ORDER DATED 30 JUNE 2006 DISMISSING THE SECOND AMENDED/SUPPLEMENTAL COMPLAINT DID NOT VIOLATE THE SAID DOCTRINE. THERE IS NO CONFLICT BETWEEN THE ORDER DATED 30 JUNE 2006 OF THE TRIAL COURT AND THE RULINGS IN THE DECISION DATED 27 JANUARY 2006 OF THE COURT OF APPEALS IN CA-G.R. SP NO. 86697 AND THE RESOLUTION DATED 08 DECEMBER 2008 OF THE HONORABLE COURT IN G.R. NO. 173399 AFFIRMING THE LATTER.

III.

THE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE RESPONDENT'S PETITION OUTRIGHT IN VIEW OF RESPONDENT BANCO FILIPINO'S LACK OF LEGAL CAPACITY TO FILE THE RESPONDENT'S PETITION, CONSIDERING THAT THE

INDIVIDUALS WHO CAUSED THE FILING OF THE RESPONDENT'S PETITION AND VERIFIED THE SAME FAILED TO PRESENT THE REQUISITE AUTHORITY TO DO SO FROM RESPONDENT BANCO FILIPINO'S BOARD OF DIRECTORS.[10]

The petition is meritorious.

The CA (Special 3rd Division) erred in ascribing grave abuse of discretion on the part of the RTC when it disapproved Banco Filipino's Notice of Appeal. The filing of a Notice of Appeal was clearly an improper remedy to question the dismissal of an action against one of the parties while the main case is still pending.[11] Section 1, Rule 41 of the 1997 Rules of Court provides:

RULE 41

Appeal from the Regional Trial Courts

SECTION 1. *Subject of Appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

While the foregoing rule states that an appeal may be taken only from a final order that completely disposes of the case, it does not stop there. The rule likewise provides for several exceptions, such that no appeal may be taken on the following instances, to wit:

(a) an order denying a motion for new trial or reconsideration;

(b) an order denying a petition for relief or any similar motion seeking relief from judgment;

(c) an interlocutory order;

(d) an order disallowing or dismissing an appeal;

(e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

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[10] *Id.* at 39-41.

[11] *D.M. Ferrer & Associates Corp. v. University of Sto. Tomas*, 680 Phil. 805, 810-811 (2012).

(f) an order of execution;

(g) **a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;** and

(h) an order dismissing an action without prejudice.

In all the foregoing instances, the **aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65**.

In the instant case, while the RTC Order dated June 30, 2006 (which dismissed the civil case against BSP-MB on the ground of prescription, estoppel and lack of jurisdiction over their persons) is a final order because it terminates the proceedings against BSP-MB, it however falls within the exceptions in subparagraph (g). As mentioned, Rule 41 of the 1997 Rules of Court expressly provides for a remedy available to a party when the case is dismissed and the dismissal pertains to one amongst two or more defendants and the case as to the latter remains pending. This Court, laying down a definitive rule, held:

> In *Jan-Dec Construction Corp. v. Court of Appeals* [517 Phil. 96, 105 (2006)], we held that **a petition for *certiorari* under Rule 65 is the proper remedy to question the dismissal of an action against one of the parties while the main case is still pending**. This is the general rule in accordance with Rule 41, Sec. 1 (g). In that case, ruled thus:
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> x x x x x x x x x
>
> In the present case, the Order of the RTC dismissing the complaint against respondent is a final order because it terminates the proceedings against respondent but it falls within exception (g) of the Rule since the case involves two defendants, Intermodal and herein respondent and the complaint against Intermodal is still pending. Thus, **the remedy of a special civil action for *certiorari* availed of by petitioner before the CA was proper and the CA erred in dismissing the petition**.[12] (Emphasis supplied)

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[12] *Id.* at 810-811.

The CA (Special 3rd Division), despite the express provision of the rules which was fortified by jurisprudence, still proceeded to apply the rule on final orders of dismissal with prejudice, which generally is appealable. Like all general rules, it admits of exceptions. The case at bar falls within such exception. Contrary to the ruling of the CA (Special 3rd Division), no grave abuse of discretion was committed by the RTC when it denied Banco Filipinos' Notice of Appeal for being a wrong remedy. Banco Filipino should have filed a petition for *certiorari* under Rule 65 to challenge the RTC Orders dismissing the civil case against BSP-MB.

In their petition, BSP-MB argue that even assuming that appeal is the proper remedy to assail the RTC's order of dismissal, the filing of a notice of appeal does not suffice to perfect Banco Filipino's appeal from the June 30, 2006 and September 20, 2006 Orders of the RTC. They assert that Banco Filipino should have filed a notice of appeal and a record on appeal within 30 days from notice of the assailed orders.

We do not agree.

Under Section 2(a), Rule 41 of the Rules of Court, "no record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the Rules so require." Multiple appeals can be taken in special proceedings, in actions for recovery of property with accounting, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage. More than one appeal is allowed in the same case to "enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final."[13]

Obviously, the cases filed by Banco Filipino against CB-BOL, Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano, Ramon V. Tiaoqui and BSP-MB are not special

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[13] *Roman Catholic Archbishop of Manila v. Court of Appeals*, 327 Phil. 810, 819 (1996).

proceedings cases but ordinary civil cases challenging the validity of Banco Filipino's receivership and liquidation and seeking the annulment of the resolution of the Monetary Board of the then Central Bank ordering its closure. The consolidated cases do not even fall under the classification of "other cases of multiple or separate appeals" requiring a record on appeal.

To recall, the subject civil cases had as original defendants The Monetary Board of the Central Bank of the Philippines, Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano and Ramon V. Tiaoqui. Later, Banco Filipino substituted (CB-BOL) for the then Central Bank and its Monetary Board. Meanwhile, the defendants in the Second Amended/ Supplemental Complaint were: CB-BOL, Jose B. Fernandez, Jr., Carlota P. Valenzuela, Arnulfo B. Aurellano, Ramon V. Tiaoqui and petitioners BSP-MB. When Banco Filipino sought to include BSP-MB as additional defendants, it raised a new and different cause of action not existing at the time the original complaint was filed. The original complaint arose from the alleged illegal closure of Banco Filipino effected by the CB while the Second Amended/Supplemental Complaint is founded on the alleged unjust and arbitrary acts committed by BSP-MB against Banco Filipino when it reopened in 1994. Since Banco Filipino has different and separate causes of action against the defendants in the consolidated cases, the trial court need not retain the records insofar as BSP-MB's case if Banco Filipino decides to appeal the case, assuming it is the proper remedy.

Anent the CA's (Special 3rd Division) application of the doctrine of non-interference, the same is mistaken. The CA (Special 3rd Division) enunciated:

> Consequently, even as the propriety of the admission of Banco Filipino's *Second Amended/Supplemental Complaint* is still subject to the outcome of the Supreme Court's Decision on the Motion for Reconsideration filed by the Central Bank Board of Liquidators, it cannot be gainsaid that the court *a quo*'s assailed Orders denying Banco Filipino's Notice of Appeal from the 30 June 2006 Order dismissing with prejudice the *Second Amended/Supplemental Complaint* would be tantamount to defeating the very essence of

the Court of Appeal's ruling in CA-G.R. SP No. 86697 allowing the admission of the said *Second Amended/Supplemental Complaint*. Clearly, the trial court cannot issue a contrary ruling to that of an appellate court regarding the same issue and involving the same parties. The court *a quo*, therefore, gravely abused its discretion when it issued its assailed Orders dismissing the Notice of Appeal by Banco Filipino which sought to question the dismissal of its *Second Amended/ Supplemental Complaint*, as said orders in effect countermanded and interfered with the Decision of the Court of Appeals in CA-G.R. SP No. 86697. This we cannot countenance as it would lead to confusion and seriously hamper the administration of justice. (Underscoring supplied)

The doctrine of non-interference or judicial stability is a time-honored policy that mandates that "no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction."[14] Simply put, a court cannot interfere with the judgment, order, or resolution of another court exercising concurrent or coordinate jurisdiction. The doctrine finds basis on the concept of jurisdiction: "a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment."[15]

In CA-G.R. SP No. 86697, the CA (17th Division) delved into the admission of the Second Amended/Supplemental Complaint filed by the Banco Filipino which sought to include the BSP-MB as additional defendants in the consolidated cases. It affirmed *in toto* the RTC's Order admitting the Second Amended/Supplemental Complaint and ruled that BSP-MB may be impleaded as defendants in the subject civil cases since they are the successors-in-interest of CB pursuant to Republic

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[14] *United Alloy Phils. Corp. v. United Coconut Planters Bank*, 773 Phil. 242, 260 (2015).

[15] *Id.*

Act (R.A.) No. 7653. It also stressed that the transfer of assets from the CB to BSP during the pendency of the civil cases raised Banco Filipino to the status of a transferee *pendente lite*. In CA-G.R. SP No. 98734, on the other hand, the CA (Special 3rd Division) determined whether the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the December 4, 2006 and March 21, 2007 Orders of the RTC disallowing Banco Filipino's Notice of Appeal. Citing Section I, Rule 41 subparagraphs (a) and (g), the RTC disapproved Banco Filipino's Notice of Appeal from its June 30, 2006 Order whereby it dismissed Banco Filipino's Second Amended/Supplemental Complaint with prejudice as to BSP-MB on the grounds of prescription, estoppel and that the personalities of CB and BSP are separate and distinct. In CA-G.R. SP No. 86697, the crux of the case was the propriety of admitting the Second Amended/Supplemental Complaint while in CA-G.R. SP No. 98734, the issue was the propriety of the remedy pursued by Banco Filipino, that is, the filing of a notice of appeal to challenge the RTC Orders dismissing its Second Amended/Supplemental Complaint.

The Court finds neither inconsistency nor incompatibility between the January 27, 2006 Decision of the CA (17th Division) and the December 4, 2006 and March 21, 2007 Orders of the RTC. It takes only simple logic and even common sense to say that Banco Filipino's Second Amended/Supplemental Complaint has to be admitted first before it can be dismissed on the merits, as what indeed happened in this case. In fact, the Court views the RTC's Orders dismissing the Second Amended/Supplemental Complaint as the RTC's recognition of the CA's (17th Division) pronouncement that the lower court's admission of the Second Amended/Supplemental Complaint is proper. Thus, contrary to CA's (Special 3rd Division) ruling, the December 4, 2006 and March 21, 2007 Orders of the RTC do not run counter to the ruling of the CA (17th Division) admitting the Second Amended/Supplemental Complaint. More importantly, a ruling sustaining the RTC's Order dismissing Banco Filipino's Notice of Appeal cannot in any way affect, disturb, or contradict the

CA's (17th Division) admission of the Second Amended/ Supplemental Complaint. Clearly, the CA mistakenly relied on the doctrine of non-interference in reversing the December 4, 2006 and March 21, 2007 Orders of the RTC.

Finally, the BSP-MB contend that the CA should have dismissed outright Banco Filipino's petition for *certiorari* because of its flawed verification and certification against forum shopping. They claim that the Secretary's Certificate, which was belatedly submitted by Banco Filipino, showed that the Executive Committee authorized Executive Vice Presidents Maxy S. Abad (Abad) and Atty. Francisco A. Rivera (Rivera) to represent Banco Filipino "in the institution or in all stages of Civil Case No. 04-823 entitled *Banco Filipino Savings and Mortgage Bank versus the Monetary Board, et al.*" They posit that since the authorization did not come from the Board of Directors, Abad and Rivera cannot validly sign the verification and certificate against forum shopping on behalf of Banco Filipino. Resultantly, Banco Filipino's petition produces no legal effect and is dismissible.

Time and again, we have held that a verification signed *sans* authority from the board of directors is defective. But where it is shown that strict compliance with the rules would not fully serve the ends of justice, the court may allow correction of the pleading if verification is lacking or even admit an unverified pleading. After all, verification of pleading is not a jurisdictional, but a formal, requisite and does not necessarily render the pleading fatally defective.[16] While the Court is inclined to treat the verification and certification against forum shopping attached in Banco Filipino's petition as sufficient compliance, it cannot, however, ignore the fact that the authority granted to Abad and Rivera is confined to Banco Filipino's representation "in the institution or in all stages of Civil Case No. 04-823," which specifically referred to its Petition for Revival of Judgment

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[16] *Swedish Match Philippines, Inc. v. Treasurer of the City of Manila*, 713 Phil. 240, 248 (2013).

filed against The Monetary Board, Central Bank of the Philippines, now Central Bank Board of Liquidators, and The Monetary Board, Bangko Sentral ng Pilipinas.[17] Banco Filipino, however, failed to show that Abad and Rivera were also vested with authority to represent it before the CA and to sign the verification and certification against forum shopping attached in its petition. Hence, there being no substantial compliance with the requirements of verification and certification against forum shopping, the petition should have been dismissed outright by the appellate court.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 25, 2010 and the Resolution dated April 1, 2011 of the Court of Appeals in CA-G.R. SP No. 98734 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

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[17] Banco Filipino's Petition for Revival of Judgment has already been dismissed for lack of merit in "*Bangko Sentral ng Pilipinas v. Banco Filipino Savings and Mortgage Bank*" G.R. Nos. 178696 & 192607, which was decided by this Court on July 30, 2018.

SECOND DIVISION

[G.R. No. 209375. June 10, 2020]

FRANCISCO G. MAGAT and EDGARDO G. GULAPA, *petitioners, vs.* **DANIEL C. GALLARDO**, *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; A RULE 45 PETITION IS LIMITED TO ERRORS OF LAW; PETITIONERS FAILED TO SUFFICIENTLY SHOW THAT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN ITS ASSAILED DECISION AND RESOLUTION; TOTALITY OF CIRCUMSTANTIAL EVIDENCE POINTS TO PETITIONERS AS THE ONES RESPONSIBLE FOR THE COUNTERFEITING AND MAKE A SUFFICIENT BASIS FOR A FINDING OF GUILT FOR DISHONESTY. — A perusal of the records of the case shows that petitioners failed to sufficiently show that the CA committed any reversible error in its Decision dated November 29, 2011, Resolution dated September 12, 2012, and Resolution dated August 29, 2013 as to warrant the exercise of the Court's appellate jurisdiction. The petition also raises factual issues which are not proper in petitions for review on *certiorari* under Rule 45 of the Rules of Court. It is well-settled that only errors of law, not of fact, are reviewable by the Court under Rule 45. x x x [T]here was no direct evidence linking petitioners to the submission of fake receipts. However, the incidents that led to the discovery of the controversy and all the pieces of circumstantial evidence gathered point to petitioners as the ones responsible for the counterfeiting. Eventually, the pieces of evidence found their way in the hands of the municipal accountant. In sum, by administrative standards, all the events and circumstances when taken together make a sufficient basis to find petitioners guilty of dishonesty.

APPEARANCES OF COUNSEL

Punsalan Lising & Punsalan for petitioners.
Oliver T. Misador for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to review and set aside the following Decision and Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 83745, to wit: (1) Decision[2] dated November 29, 2011 denying the petition for review of the Decision[3] dated August 6, 2003 and the Order[4] dated March 30, 2004 of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-02-0681-J finding Francisco G. Magat (Magat) and Edgardo G. Gulapa (Gulapa) (collectively, petitioners) guilty of Dishonesty in the administrative aspect of the criminal case; (2) Resolution[5] dated September 12, 2012 denying the motion for reconsideration; and (3) Resolution[6] dated August 29, 2013 noting without action the filing of a Motion for a Review or Reconsideration of the Resolution Promulgated on September 12, 2012.[7]

The Antecedents

On October 22, 2002, Daniel C. Gallardo (respondent), in his capacity as then Vice Mayor of the Municipality of Candaba, Pampanga accused herein petitioners, then members of the *Sangguniang Bayan*, of Grave Misconduct for having requested and received cash advances in the amount of ₱6,600.00 each from the Municipality of Candaba for the purpose of paying

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[1] *Rollo*, pp. 8-20.

[2] *Id.* at 109-123; penned by Associate Justice Stephen C. Cruz with Associate Justices Vicente S.E. Veloso and Danton Q. Bueser, concurring.

[3] CA *rollo*, pp. 60-63; penned by Graft Investigation Officer II Ismaela B. Boco.

[4] *Id.* at 90-95; penned by Graft Investigation & Prosecution Officer II Adoracion A. Agbada.

[5] *Rollo*, pp. 38-40.

[6] *Id.* at 47-48.

[7] *Id.* at 42-44.

their travel expenses for the 5th National Congress (National Congress) of the Philippine Councilors League (PCL) held at the World Trade Center in Pasay City on February 22, 2002.[8]

Respondent received an information that petitioners were not among those who attended the National Congress. Allegedly, to conceal their misrepresentation, petitioners conspired to pull out the official receipts issued by PCL and replaced them with falsified ones. Such acts are punishable under the Revised Penal Code under *Estafa* and Falsification of Public Document.[9]

On the other hand, petitioners justified the cash disbursement as in the nature of a loan or *mutuum* in which the use and consumption thereof need not necessarily redound to the intended purpose, but may also be spent for other functions to which the recipient had full discretion. Petitioners then prayed for the dismissal of the charge of *Estafa*.[10]

Petitioners likewise alleged that the crime of Falsification of Public Documents would not lie against them because the receipts in question were private in nature. They raised the argument that the documents were spurious, only because the copies thereof appeared to have been falsified, while the original documents remained unimpaired.[11]

In his Reply-Affidavit,[12] respondent alleged that the original duplicate copies in the custody of PCL did not register the names of petitioners as among those who were issued official receipts. Jaime S. Tan[13] (Tan), who was then the PCL Accounting Clerk, noticed the variance between the original receipts and the specimens presented by petitioners for liquidation purposes

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

[9] *Id.* at 110.

[10] *Id.*

[11] *Id.*

[12] CA *rollo*, pp. 148-154.

[13] Referred to as James Tan in some parts of the CA *rollo* and *rollo*.

such as the font used in the alleged spurious receipts appearing larger and of different type compared to the ones in his custody.[14] Tan also revealed that the Official Receipts with Serial Numbers 5862 and 5863 from PCL were later furnished to petitioners upon their behest with the concurrence of National Congress President Salvador D. Pangilinan. Consequently, respondent Gallardo advised against relying on the certificates of appearance/attendance of petitioners, saying that these could easily be secured by anyone from the Office of the Councilors League.[15]

In their Rejoinder,[16] petitioners belied the allegations in the Reply-Affidavit and criticized respondent for accusing six other councilors as their co-conspirators and for failing to exhaust administrative remedies available to them, *i.e.*, bypassing the duties of the local accountant and auditor to examine and settle the accounts and financial transactions of the Municipality. They also reiterated their previous claim that the cash advances they received from the Municipality were in the nature of loans and as such, subject only to the obligation of reimbursing the equivalent amount if the official business for which they were issued was not pursued. Petitioners further denied having falsified much less intervened in the preparation of the questioned receipts in their capacity as public officials saying, if at all, the offense should be Falsification of Private Document under Article 172 of the Revised Penal Code. Nevertheless, petitioners averred that the indictment would not prosper because the element of "damage" or the "intent to cause it" was lacking.

Regarding the two receipts issued in petitioners' names, they maintained that these were furnished in the ordinary course of business and should be given full faith and credence. However, since the receipts were issued belatedly, petitioners suggested that an audit investigation should be conducted to pinpoint the cause of the "retroactive date of the PCL seminar" and to

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[14] CA *rollo*, pp. 149-150.

[15] *Id.* at 152.

[16] *Id.* at 165-177.

implead Tan as a party respondent in the case. On the matter of attendance, petitioners relied on the attestations of six of their fellow council members who were in the conference with them.[17]

In the Resolution[18] dated January 3, 2003, Graft Investigation Officer I Remedios E. Granada (GIO I Granada) recommended the dismissal of the complaint for *Estafa* and Falsification against the petitioners. The pertinent portions of the Resolution are quoted herein as follows:

> The certificates of attendance issued by the Philippine Councilors League belied the allegation of non-attendance (to the Congress) against the respondents. Hence, no misrepresentation to speak of.
>
> Apart from the certifications, the sworn-declarations from the councilors who attended the National Congress, confirming the respondents attendance renders the complainants claim false.
>
> With regard to the falsification charges against the respondent, we find the same not substantiated by the evidence on record.
>
> It must be noted that the basis of complainants' falsification charges was the alleged forgery of the signatures of the Treasurer of the Philippine Councilors League. However, this bare allegation of complainant cannot be given weight amid the fact that respondents have submitted proof of payment. Moreover, it bears stressing that in the prosecution of forgery, the burden of proof lies on the one who alleges forgery.[19]

Respondent filed a motion for reconsideration of the Resolution, but the Office of the Deputy Ombudsman for Luzon denied it. Respondent then pursued the administrative aspect of the criminal case before the Office of the Deputy Ombudsman for Luzon.

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[17] *Id.* at 111-112.

[18] *Id.* at 383-385.

[19] *Id.* at 384.

In the Decision[20] dated August 6, 2003, GIO II Ismaela B. Boco observed that there was a real attempt on the part of petitioners to liquidate their cash advances by submitting falsified receipts issued by the PCL and found them guilty of dishonesty. The dispositive portion of the Decision reads:

> WHEREFORE, PREMISES CONSIDERED, respondents FRANCISCO MAGAT and EDGARDO G. GULAPA are hereby found guilty of Dishonesty for which the penalty of suspension for six (6) months without pay is recommended pursuant to Sec. 10, Rule III of AO No. 07, this Office, in relation to Sec. 25 of R.A. 6770.
>
> SO DECIDED.[21]

Petitioners filed a motion for reconsideration and/or reinvestigation. In an Order[22] dated March 30, 2004, Graft Investigation & Prosecution Officer II Adoracion A. Agbada ruled that the findings of petitioners' guilt for Dishonesty were clearly supported by the facts and evidence adduced in the case. However, in view of the fact that the suspension of local elective official was prohibited under Section 261, sub-paragraph (x) of the Omnibus Election Code, during an election period which officially started on December 15, 2003 and ended on June 9, 2004, per COMELEC Resolution No. 6420 dated November 25, 2003, there now existed a sufficient ground to modify the penalty into a fine, equivalent to petitioners' respective six months salary.[23]

On appeal *via* Rule 43, petitioners raised the following issues before the Court of Appeals, to wit:

> I. Whether or not the respondents were denied procedural due process;

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

[21] *Id.* at 62.

[22] *Id.* at 90-95.

[23] *Id.* at 93.

II. Whether or not the Order denying the Motion for Reconsideration/Reinvestigation was one-sided, biased and ill-conceived;

III. Whether or not the Petitioners were really the ones who submitted the forged PCL receipts;

IV. Whether or not there was really liquidation; and

V. Whether or not the Office of the Ombudsman has the authority to impose administrative sanctions over local elective public officials.[24]

On November 29, 2011, the CA rendered the assailed Decision[25] affirming the Decision dated August 6, 2003 and the Order dated March 30, 2004 of the Office of the Deputy Ombudsman for Luzon.

On September 12, 2012, the CA issued the assailed Resolution[26] denying the motion for reconsideration filed by petitioners.

On August 29, 2013, the CA issued another Resolution[27] noting without action the filing of a Motion for a Review or Reconsideration of the Resolution promulgated on September 12, 2012.

Our Ruling

A perusal of the records of the case shows that petitioners failed to sufficiently show that the CA committed any reversible error in its Decision dated November 29, 2011, Resolution dated September 12, 2012, and Resolution dated August 29, 2013 as to warrant the exercise of the Court's appellate jurisdiction.

The petition also raises factual issues which are not proper in petitions for review on *certiorari* under Rule 45 of the Rules

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

[25] *Rollo*, pp. 109-123.

[26] *Id.* at 38-40.

[27] *Id.* at 47-48.

of Court. It is well-settled that only errors of law, not of fact, are reviewable by the Court under Rule 45.[28]

The CA correctly affirmed the findings of the graft investigator's ruling that among the eight councilors who manifested their intention to attend the conference, only petitioners were unaccounted for at the venue; that the official receipts which were initially submitted for liquidation did not include those bearing the names of petitioners; that the receipts with numbers 3151 and 3152 were actually issued in the names of Jacinto Alabado and Luis Pelayo, respectively; and that the official receipts mysteriously disappeared from the files and were replaced by a different set of documents indicating the names of petitioners. In fine, the receipts issued in the name of Jacinto Alabado and Luis Pelayo were now in the names of petitioners.[29]

Further, as found by the graft investigator, petitioners belatedly secured Official Receipt Nos. 5862 and 5863 from PCL hoping that they would dispel any lingering doubts as to their presence at the conference. However, the PCL clerk had questioned the veracity of the documents and declared that his issuance thereof was merely an accommodation of the national president's request; that the receipts were furnished to petitioners as evidence of the payments made in the amount of ₱5,500.00 sometime in the third week of November 2002 or eight months after the seminar was conducted; and that by which reason, the receipts remained excluded in the summary registration of the National Congress as attested to by the congress auditor.[30]

Verily, there was no direct evidence linking petitioners to the submission of fake receipts. However, the incidents that led to the discovery of the controversy and all the pieces of

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[28] *Macad v. People*, G.R. No. 227366, August 1, 2018.

[29] *Rollo*, p. 118.

[30] *Id.* at 120.

circumstantial evidence gathered point to petitioners as the ones responsible for the counterfeiting. Eventually, the pieces of evidence found their way in the hands of the municipal accountant.[31]

In sum, by administrative standards, all the events and circumstances when taken together make a sufficient basis to find petitioners guilty of dishonesty.

Thus, the petition should be denied in the absence of any *exceptional circumstance*[32] as to merit the Court's review of factual questions that have already been settled by the tribunals below.

WHEREFORE, the petition is **DENIED**. The Court **AFFIRMS** the Decision dated November 29, 2011, and the Resolutions dated September 12, 2012 and August 29, 2013 of the Court of Appeals in CA-G.R. SP No. 83745.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Delos Santos, and *Gaerlan,*[*] *JJ.*, concur.

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[31] *Id.*

[32] See *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005).

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 212726. June 10, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LEILANIE DELA CRUZ FENOL**, *respondent*.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; A PETITION FOR DECLARATION OF PRESUMPTIVE DEATH OF AN ABSENT SPOUSE FOR THE PURPOSE OF CONTRACTING A SUBSEQUENT MARRIAGE IS A PROCEEDING SUMMARY IN NATURE, THE JUDGMENT THEREIN SHALL BE IMMEDIATELY *FINAL AND EXECUTORY*. — The procedural aspect of the case is governed by Article 41 in relation to Articles 238, 247 and 253 of the Family Code. x x x [Thus,] a petition for declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage under Article 41 of the Family Code involves a proceeding that is summary in nature, the judgment of the court therein shall be immediately final and executory. Consequently, a judicial declaration of presumptive death cannot be a proper subject of an appeal and the filing of a motion for reconsideration or a notice of appeal is a procedural misstep which warrants an outright denial or dismissal. The final and executory nature of the judgment in a petition for declaration of presumptive death renders the court's dispositions and conclusions therein immutable and unalterable not only as against the parties, but even as against the courts. Hence, except for correction of clerical errors, the courts are barred from modifying or altering a definitive final judgment, such as the one assailed in the case, even if the modification is intended to correct erroneous conclusion of fact or law.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN THE PRESENT SPOUSE SUCCESSFULLY OBTAINS A JUDICIAL DECLARATION OF HIS/HER SPOUSES PRESUMPTIVE DEATH,THE OFFICE OF THE SOLICITOR GENERAL (OSG) MAY BRING AN ACTION FOR *CERTIORARI* UNDER RULE 65 ON THE GROUND OF GRAVE

ABUSE OF DISCRETION. — [T]he losing party in a summary court proceeding is not left without a legal recourse. When the present spouse successfully obtains a judicial declaration of his/her spouse's presumptive death, the OSG may properly bring an original action for *certiorari* under Rule 65 of the Rules of Court, as it actually did in this case, before the appellate court on the ground that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered its judgment. In declaring that the OSG resorted to a wrong remedy by filing a petition for *certiorari*, the CA had been unmindful of our consistent pronouncement that "*certiorari* lies to challenge the decisions, judgments or final orders of trial courts in a summary proceeding for the declaration of presumptive death under the Family Code."

3. CIVIL LAW; FAMILY CODE; MARRIAGE; PETITION FOR DECLARATION OF SPOUSE'S PRESUMPTIVE DEATH; SCOPE AND EXTENT OF THE PRESENT SPOUSE'S DUTY BEFORE OBTAINING SUCH JUDICIAL DECLARATION. — In *Republic v. Tampus*, the Court clarified the scope and extent of the present spouse's duty before he/she can obtain a judicial declaration of spouse's presumptive death, *viz.*: x x x [I]t is not enough that the present spouse holds a firm conviction that his/her spouse is already dead and alleges the same in his/her petition. Belief is a state of the mind which may only be established by direct evidence or circumstantial evidence that tends, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth. At the same time, the law does not demand positive certainty of the absent spouse's death, for to do so would run counter to the very essence of a petition for declaration of presumptive death. Thus, to meet the requirement of the law, the present spouse must allege and prove that his/her belief is the result of proper and honest-to-goodness inquiries and efforts to locate the absent spouse and determine whether he/she is still alive or not. The term "proper and honest-to-goodness inquiries and efforts" is tantamount to diligent and reasonable inquiries and search to ascertain the absent spouse's whereabouts. x x x Time and again, we have held that the present spouse's bare assertion that he inquired from his friends or from the relatives of his absent spouse about the latter's whereabouts is insufficient especially when the names of the persons from whom he made inquiries were not

identified in the testimony nor presented as witnesses, as in this case. x x x A claim of a diligent search cannot be given credence *sans* evidentiary support. Basic is the rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence; thus, respondent should prove her allegation that she exercised the degree of diligence required for the search of her missing husband. Lamentably, respondent failed to discharge this burden. There being no basis of respondent's "well-founded belief" that Reneto is already dead, the petition for declaration of presumptive death must perforce be denied.

PERALTA, *C.J., separate concurring opinion:*

1. CIVIL LAW; FAMILY CODE; MARRIAGE; PETITION FOR DECLARATION OF PRESUMPTIVE DEATH OF ABSENT SPOUSE; BARE ASSERTION THAT THE WIFE EXERTED EFFORTS TO SEARCH FOR HER ABSENT HUSBAND CANNOT SUPPORT HER CLAIM OF WELL-FOUNDED BELIEF THAT HER HUSBAND IS ALREADY DEAD. — [O]n the basis of current and unwavering case law on the matter, I concur with the *ponencia* in finding that Leilanie's bare assertion that she exerted efforts to search for her absent husband in going to Manila and Davao Del Norte to ask the relatives of said spouse regarding his whereabouts cannot support her claim of well-founded belief that her husband is already dead. [S]he failed to present corroborative proof consisting of testimonies of her in-laws as well as reports to and inquiries with the police and other pertinent government authorities.

2. ID.; ID.; ID.; REQUISITES; AS THE PURPOSE OF THE PETITION FOR DECLARATION OF PRESUMPTIVE DEATH IS CONTRACTING A SUBSEQUENT MARRIAGE, STRICTER STANDARD APPROACH IS IMPOSED TO ENSURE THAT IT IS NOT USED AS A TOOL TO CONVENIENTLY CIRCUMVENT THE LAWS ON MARRIAGE. — [T]he Petition for Declaration of Presumptive Death filed by Leilanie herein is one for purposes of contracting a subsequent marriage under Article 41 of the Family Code x x x In *Nolasco*, the Court pointed out that Article 41 expressly imposed a standard stricter than that of the old Article 83 of the Civil Code. x x x [Thus,] the present spouse must have *a "well-founded belief" that the*

absent spouse is already dead before a petition for declaration of presumptive death can be granted. In particular, he or she must sufficiently establish the following: (1) that the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code; (2) that the present spouse wishes to remarry; (3) that the present spouse has a *well-founded belief that the absentee is dead*; and (4) that the present spouse files a summary proceeding for the declaration of presumptive death of the absentee." x x x In the end, it must be remembered that the purpose of the "stricter standard approach" is to ensure that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws on marriage.

LAZARO-JAVIER, *J., dissenting opinion:*

1. **CIVIL LAW; FAMILY CODE; MARRIAGE; PETITION FOR DECLARATION OF PRESUMPTIVE DEATH OF ABSENT SPOUSE; REQUISITES. —** Article 41 of the Family Code enumerates the following requisites for declaration of presumptive death: 1) the absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code; 2) the present spouse wishes to remarry; 3) the present spouse has a well-founded belief that the absentee is dead; and 4) the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.

2. **ID.; ID.; ID.; ID.; ID.; THAT THE PRESENT SPOUSE HAS A WELL-FOUNDED BELIEF THAT THE ABSENTEE IS DEAD; THE REQUISITE DEPENDS ON THE UNIQUE CIRCUMSTANCES OF EACH CASE. —** In ***Republic v. Cantor***, however, the Court ruled that whether one has a "well-founded belief" that his or her spouse is dead depends on the unique circumstances of each case and there is no exact definition nor set standard or procedure in its determination, thus: The law did not define what is meant by "well-founded belief." **It depends upon the circumstances of each particular case.** Its determination, so to speak, remains on a case-to-

case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of **diligent and reasonable efforts and inquiries** to locate the absent spouse and that based on these efforts and inquiries, he/she **believes** that under the circumstances, the absent spouse is already dead.

3. ID.; ID.; ID.; ID.; THE LAW ALLOWS A SPOUSE TO SEEK JUDICIAL RELIEF ON THE BASIS OF "REASONABLE BELIEF." –– Article 41 allows a spouse to seek judicial relief on the basis of "reasonable belief." Corollary to this, in declaring a person presumptively dead, it behooves the court to sustain a mere **presumption**. Absolute certainty is not a requisite. The *ponencia* even acknowledges this when it stated that: "the law does not demand positive certainty of the absent spouse's death for to do so would run counter to the very essence of a petition for declaration of presumptive death." Thus, to impose exacting standards and establish the same as solid proof of one's death defies what the law requires, which is a mere presumption. In ***Republic v. CA***, the Court held that Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully that their alleged missing spouses are alive and well. Thus, the law ordains that declarations of presumptive death are "without prejudice to the reappearance of the absent spouse." More, Article 42 of the Family Code decrees the automatic termination of the subsequent marriage entered into by the present spouse upon recording of the affidavit of reappearance by the absent spouse.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Ismael M. Guro for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated November 28, 2013 and the Resolution[3] dated May 26, 2014 of the Court of Appeals—Cagayan De Oro City (CA) in CA-G.R. SP No. 05084[-MIN] affirming *in toto* the Decision[4] dated April 15, 2011 of the Regional Trial Court of Kabacan, Cotabato, Branch 41 (RTC) in Spl. Proc. No. 09-22 declaring Reneto Alilongan Suminguit (Reneto) presumptively dead under Article 41 of the Family Code.

The Antecedents

On July 8, 2000, Leilanie Dela Cruz Fenol (respondent) married Reneto in Kidapawan City. Out of this union, they begot a child named Loren Jade Fenol Suminguit.[5]

Sometime in January 2001, Reneto left the conjugal dwelling in Malayan, M'lang, Cotabato and went to Manila to apply for work abroad. Since then, he has not come back to his family and his whereabouts have been unknown for a continuous period of more than eight years. Thus, respondent filed a Petition for Declaration of Presumptive Death of Reneto Alilongan Suminguit dated November 16, 2009 before the RTC of Kabacan, Cotabato.[6]

In the petition, respondent alleged that she exerted earnest efforts to locate the whereabouts of her husband. She went to Manila sometime in 2002 and stayed there for seven months

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[1] *Rollo*, pp. 9-27.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Oscar V. Badelles and Edward B. Contreras, concurring; *id.* at 28-33.

[3] *Id.* at 34-35.

[4] Penned by Acting Presiding Judge Lily Lydia A. Laquindanum; *id.* at 36-40.

[5] *Id.* at 11.

[6] *Id.*

to find Reneto, but the same proved futile. She also proceeded to Reneto's relatives in Cayawan, Davao del Norte only to find out that they have no knowledge of his whereabouts either. Sometime in 2004, she applied for employment abroad and worked overseas, but she still failed to find Reneto until she returned to the Philippines in 2008.[7]

The RTC Ruling

On April 15, 2011, the RTC declared Reneto presumptively dead subject to the restrictions and conditions imposed in Article 41 of the Family Code. The RTC reasoned:

> Taking into consideration the circumstances of the absence of the [respondent]'s husband, the Court is convinced that he may be declared as presumptively dead. From the time [respondent]'s husband left the conjugal dwelling for Manila in January of 2001, purposely to apply for work abroad, his whereabouts became unknown. From the time the whereabouts of [respondent]'s husband became unknown since he left the conjugal dwelling in 2001, up to the time that the [respondent] testified in 2010, the [respondent]'s husband has been absent for more than nine (9) years and his whereabouts unknown. And for purposes of re-marriage, a period of only four (4) years is required by law. The loss of a loved one is saddening but what is more saddening is a loved one whose whereabouts has been unknown for a long time. His absence or his presence cannot be determined, to the extent that the family left could not move on with their lives, as in this case.
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> In sum, the well-founded belief being required of under the Family Code has been preponderantly established by the [respondent] because although there were no concrete documentary evidences presented by her in Court to justify the declaration of [Reneto] as presumptively dead, the circumstances of the case would point to the fact that the [respondent]'s husband has already been absent for more than nine (9) years. And to allow the [respondent] to wait a little longer, to await her husband's return, without certainty, would be unfair to the [respondent] and to her daughter, who already have

[7] *Id.* at 11-12.

suffered so much when the [respondent]'s husband left them way back in 2001.[8]

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration of the RTC Decision, but the same was denied in an Order dated May 31, 2012.

The CA Ruling

In its Decision dated November 28, 2013, the CA denied the OSG's appeal. It held that respondent exerted efforts to locate Reneto, but she still failed to find him. It agreed with the RTC that respondent was able to prove a well-founded belief that Reneto was already dead. It enunciated that the Decision of the RTC is already final and executory and can no longer be modified or reversed since a petition for declaration of presumptive death is a summary judicial proceeding under the Family Code.[9]

The OSG filed a motion for reconsideration of the CA Decision which was denied in a Resolution dated May 26, 2014.

Hence, this petition.

Issues

The OSG claims that the conclusions of the RTC and the CA are not in accordance with law and jurisprudence. It maintains that while the Decision of the RTC is immediately final and executory and not appealable, it may still be reviewed *via* petition for *certiorari* under Rule 65 of the Rules of Court. It argues that, contrary to the findings of the courts below, the efforts of respondent in locating her husband were not sufficient to form a well-founded belief that he is already dead.

The Court's Ruling

The petition is granted.

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

[9] *Id.* at 31-33.

The OSG raises procedural and substantive issues in its petition. Procedurally, it imputes error on the part of the CA for dismissing its petition for *certiorari* for being the wrong remedy. Substantively, it questions the factual bases of the RTC in granting respondent's petition. It asserts that respondent's efforts did not generate a well-founded belief that her husband Reneto was already dead.

The procedural aspect of the case is governed by Article 41 in relation to Articles 238, 247 and 253 of the Family Code. The provisions read:

> ART. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
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> For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (Underscoring supplied)
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> x x x x x x x x x
>
> TITLE XI
> SUMMARY JUDICIAL PROCEEDING
> IN THE FAMILY LAW
>
> Chapter 1. Scope of the Application
>
> ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner, without regard to technical rules.
>
> Chapter 2. Separation in Fact Between
> Husband and Wife
>
> x x x x x x x x x

ART. 247. The judgment of the court shall be immediately final and executory. (Underscoring supplied)

x x x x x x x x x

Chapter 4. Other Matters Subject to Summary Proceedings

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Underscoring supplied)

Nothing could be clearer from the above legal provisions than that a petition for declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage under Article 41 of the Family Code involves a proceeding that is summary in nature, the judgment of the court therein shall be immediately final and executory.[10] Consequently, a judicial declaration of presumptive death cannot be a proper subject of an appeal and the filing of a motion for reconsideration or a notice of appeal is a procedural misstep which warrants an outright denial or dismissal. The final and executory nature of the judgment in a petition for declaration of presumptive death renders the court's dispositions and conclusions therein immutable and unalterable not only as against the parties, but even as against the courts.[11] Hence, except for correction of clerical errors, the courts are barred from modifying or altering a definitive final judgment, such as the one assailed in the case, even if the modification is intended to correct erroneous conclusion of fact or law.[12]

But the losing party in a summary court proceeding is not left without a legal recourse. When the present spouse successfully obtains a judicial declaration of his/her spouse's presumptive

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[10] *Republic v. Granada,* 687 Phil. 403, 408 (2012).

[11] *Republic v. Cantor*, 723 Phil. 114, 124 (2013).

[12] *C-E Construction Corp. v. National Labor Relations Commission*, 456 Phil. 597, 605 (2003).

death, the OSG may properly bring an original action for *certiorari* under Rule 65 of the Rules of Court, as it actually did in this case, before the appellate court on the ground that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered its judgment. In declaring that the OSG resorted to a wrong remedy by filing a petition for *certiorari*, the CA had been unmindful of our consistent pronouncement that "*certiorari* lies to challenge the decisions, judgments or final orders of trial courts in a summary proceeding for the declaration of presumptive death under the Family Code."[13] We held in *Republic v. Narceda*:[14]

> As explained in *Republic v. Tango*, the remedy of a losing party in a summary proceeding is not an ordinary appeal, but a petition for *certiorari*, to wit:
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> By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal. (Underscoring supplied)

There is, thus, no doubt that the OSG availed of the correct remedy when it filed a petition for *certiorari* before the CA.

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[13] *Republic v. Cantor*, *supra*, at 125.

[14] 708 Phil. 458, 464-465 (2013).

Going into the merits of the case, we find that the respondent failed to satisfy the "well-founded belief" requirement in Article 41 of the Family Code.

In *Republic v. Tampus*,[15] the Court clarified the scope and extent of the present spouse's duty before he/she can obtain a judicial declaration of spouse's presumptive death, *viz.*:

> The "well-founded belief" in the absentee's death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort, not a passive one. As such, the mere absence of the spouse for such periods prescribed under the law, lack of any news that such absentee spouse is still alive, failure to communicate, or general presumption of absence under the Civil Code would not suffice. The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts, but more importantly, whether the latter is still alive or is already dead. (Underscoring supplied)

Clearly, it is not enough that the present spouse holds a firm conviction that his/her spouse is already dead and alleges the same in his/her petition. Belief is a state of the mind which may only be established by direct evidence or circumstantial evidence that tends, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth.[16] At the same time, the law does not demand positive certainty of the absent spouse's death, for to do so would run counter to the very essence of a petition for declaration of presumptive death. Thus, to meet the requirement of the law, the present spouse must allege and prove that his/her belief is the result of proper and honest-to-goodness inquiries and efforts to locate

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[15] 783 Phil. 485, 492 (2016).

[16] *Republic v. Court of Appeals*, 513 Phil. 391, 397 (2005).

the absent spouse and determine whether he/she is still alive or not. The term "proper and honest-to-goodness inquiries and efforts" is tantamount to diligent and reasonable inquiries and search to ascertain the absent spouse's whereabouts.

In this case, the RTC and the CA were in unison in holding that the efforts exerted by the respondent are adequate to substantiate her belief that Reneto was already dead. But a careful examination of the records proved otherwise.

Respondent's so-called "earnest efforts" only consisted of two instances: (1) from Cotabato, respondent went to Manila and stayed there for seven months to look for Reneto; and (2) respondent went to Davao del Norte, Reneto's birthplace, to inquire about her husband's whereabouts from his family and relatives. When Reneto's family members denied knowing his whereabouts, respondent took it as gospel truth without even bothering to inquire from the neighbors or other disinterested persons as to the veracity of their narrative. She heavily relied on the uncorroborated and naturally biased statement of her husband's relatives. Interestingly, respondent did not present Reneto's family and relatives who could have attested that she personally inquired from them about Reneto's whereabouts and that she exerted active efforts to ascertain his location and status. Time and again, we have held that the present spouse's bare assertion that he inquired from his friends or from the relatives of his absent spouse about the latter's whereabouts is insufficient especially when the names of the persons from whom he made inquiries were not identified in the testimony nor presented as witnesses,[17] as in this case.

It bears stressing that other than the above "earnest efforts," respondent made no further attempt to find her husband. The fact that respondent worked abroad does not even bolster her claim that she extended her search for Reneto since it cannot be determined from her allegations that she purposely went to the country where her husband was deployed to look for him.

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[17] *Republic v. Nolasco*, 292-A Phil. 102, 112 (1993); *Republic v. Cantor*, *supra* note 11, at 133; *Republic v. Tampus*, *supra* note 15, at 493.

All that she stipulated in her petition was that she went abroad in 2004 and returned in the Philippines in 2008 without any information as to Reneto's whereabouts.

Furthermore, it perplexes the court that notwithstanding Reneto's absence for years, respondent never reported the matter to the local police or local government unit and sought its help in looking for her husband. When she was still working abroad, respondent did not coordinate with the Philippine consul office to express her serious concern for the safety and welfare of her missing husband and ask for its assistance. Respondent did not even offer plausible explanation as to why she failed to secure the assistance of the authorities which a person of ordinary prudence would have done under a similar circumstance.

A claim of a diligent search cannot be given credence *sans* evidentiary support. Basic is the rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence;[18] thus, respondent should prove her allegation that she exercised the degree of diligence required for the search of her missing husband. Lamentably, respondent failed to discharge this burden.

There being no basis of respondent's "well-founded belief" that Reneto is already dead, the petition for declaration of presumptive death must perforce be denied.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 28, 2013 and the Resolution dated May 26, 2014 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 05084[-MIN] are **REVERSED** and **SET ASIDE**. The petition of respondent Leilanie Dela Cruz Fenol to have her husband, Reneto Alilongan Suminguit, declared presumptively dead is **DENIED.**

SO ORDERED.

Caguioa (Working Chairperson) and *Lopez, JJ.*, concur.

Peralta, C.J. (*Chairperson*), with separate concurring opinion.

Lazaro-Javier, J., dissents, see dissenting opinion.

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[18] *Supra* note 11 at 128.

SEPARATE CONCURRING OPINION

PERALTA, ***C.J.*:**

I concur with the *ponencia* and vote to deny the petition of respondent Leilanie Dela Cruz Fenol to have her husband, Reneto Alilongan Suminguit, declared presumptively dead.

To recall, Leilanie and Reneto were married on July 8, 2000. In January 2001, Reneto left their conjugal home in Cotabato and went to Manila to apply for work abroad. Since then, he has neither come back nor given word to Leilanie as to his whereabouts. Consequently, Leilanie filed a Petition for Declaration of Presumptive Death of Reneto on November 16, 2009. In the petition, she alleged that she went to Manila in 2002 and stayed there for seven (7) months to look for Reneto. Then, she went to Davao del Norte to inquire about his whereabouts from his relatives. In 2004, she worked overseas and returned to the Philippines in 2008. But despite her efforts in going to said places, she still failed to locate Reneto who had been missing for a period of more than eight (8) years already.

The Court had consistently resolved this matter, time and again, in several of its pronouncements, imposing the same stringent requirements each time.

As early as 1993, the Court, in *Republic v. Nolasco*,[1] denied Nolasco's petition to declare his wife as presumptively dead finding that he did not possess a "well-founded belief" that she was already dead. There, Nolasco married his wife, a British woman, in Antique, Philippines in 1982. But in 1983, she left their home while he was on board a vessel working as a seafarer. Consequently, he filed the petition. The Court, however, rejected the same and ruled as insufficient Nolasco's efforts consisting of: (1) searching for his wife abroad; (2) writing letters to her; and (3) inquiring from friends regarding her whereabouts.

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[1] 292-A Phil. 102 (1993).

Specifically, We found that Nolasco could have easily sought the help of local authorities or of the British Embassy. But instead, he secured another seaman's contract, went to London, a "vast city of many millions of inhabitants," to look for her there. Also, while Nolasco claims to have inquired from their friends as to her whereabouts, he neither presented those friends to testify let alone identified them in his own testimony. In the end, We ruled that his evidence merely tended to show that his spouse had chosen not to communicate with him but not that she was dead.

In 2012, the Court had occasion to reiterate, in *Republic v. Granada*,[2] the stringent requirements laid down in *Nolasco*. In said case, respondent Granada married her husband in 1991 who left in 1994 to seek employment in Taiwan. After nine (9) years of waiting, Granada sought to declare her husband presumptively dead claiming that from the time he left in 1991, she had not received any communication from him. In support of her petition, she presented her brother who testified that he asked the relatives of her husband regarding the latter's whereabouts, but to no avail. The Court, however, found said testimony insufficient to show that Granada duly conducted a diligent search of her husband. Fatal to her case were her failure to: (1) present these relatives to corroborate her brother's testimony; (2) seek information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines; and (3) utilize such other means to search for her husband such as mass media.

Not long after, the Court denied another petition for declaration of presumptive death in *Republic v. Cantor*.[3] This time, it was a petition filed by respondent Cantor concerning her husband who left their home in January 1998 due to a quarrel they had about her "inability to reach sexual climax," just less than a year from their marriage in September 1997. But the Court found that the following efforts of Cantor fell short of the stringent

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[2] G.R. No. 187512, June 13, 2012, 687 Phil. 403, 412 (2012).

[3] 723 Phil. 114, 132 (2013).

standard required by jurisprudence: (1) making inquiries about her husband's whereabouts from her in-laws, neighbors and friends; and (2) whenever she went to a hospital, she saw to it that she looked through the patients' directory, hoping to find Jerry. As with *Granada* and *Nolasco*, We found that Cantor failed to present as witnesses her husband's relatives and friends, to report the absence to the police, as well as to seek the aid of authorities.

Recently, in *Republic v. Tampus*,[4] and *Republic v. Sareñogon, Jr.*,[5] the Court remained consistent with this prevailing standard of well-founded belief. In the former, respondent Tampus filed her petition claiming that she firmly believes that her husband, who left her for Jolo, Sulu as a member of the Armed Forces of the Philippines (AFP), is already dead in view of the fact that she has not heard from him for a period of thirty-three (33) years since he left. In the latter, respondent Sareñogon sought to declare his wife presumptively dead as he had not heard from her for over ten (10) years since the time he left to work as a seaman and the time she left for Hong Kong as a domestic helper. In both cases, We resolved to deny the petitions of the present spouses to declare their absent spouse as presumptively dead for the following reasons: (1) failure to call to the witness stand the specific relatives and friends of the missing spouse; and (2) failure to seek assistance from the pertinent government agencies and the media.

Thus, on the basis of current and unwavering case law on the matter, I concur with the *ponencia* in finding that Leilanie's bare assertion that she exerted efforts to search for her absent husband in going to Manila and Davao Del Norte to ask the relatives of said spouse regarding his whereabouts cannot support her claim of well-founded belief that her husband is already dead. As in the cases cited above, she similarly failed to present corroborative proof consisting of testimonies of her in-laws as

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[4] 783 Phil. 485 (2016).

[5] 780 Phil. 738, 763 (2016).

well as reports to and inquiries with the police and other pertinent government authorities.

It must be remembered that the Petition for Declaration of Presumptive Death filed by Leilanie herein is one for purposes of contracting a subsequent marriage under Article 41 of the Family Code which states:

> Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provision of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
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> For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

In *Nolasco*, the Court pointed out that Article 41 expressly imposed a standard stricter than that of the old Article 83[6] of the Civil Code. In the latter, it is merely required that there be *no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so*

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[6] Pertinent portions of Article 83 of the Civil Code read:

> Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any other person other than such first spouse shall be illegal and void from its performance, unless:
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> x x x x x x x x x
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> (2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of the contracting such subsequent marriage, or if the absentee is presumed dead according to Articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court."

by the spouse present, or is presumed dead under Articles 390 and 391 of the Civil Code. But in the former, the present spouse must have a "*well-founded belief*" *that the absent spouse is already dead* before a petition for declaration of presumptive death can be granted. In particular, he or she must sufficiently establish the following: (1) that the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code; (2) that the present spouse wishes to remarry; (3) that the present spouse has a *well-founded belief that the absentee is dead*; and (4) that the present spouse files a summary proceeding for the declaration of presumptive death of the absentee."

The records of the instant case, however, merely tend to show an absence of news that Reneto is alive under the old Civil Code but not so much the required well-founded belief that he is already dead under the present Article 41 of the Family Code. To repeat, after Reneto left their home in 2001, Leilanie's efforts merely consisted of going to Manila for work, Davao del Norte to talk to Reneto's relatives, and abroad, again, for work.

If one would really think about it, however, these jurisprudential requirements on "well-founded belief" may be designated as "stringent," but the same is not that difficult to achieve. On the contrary, I see nothing impractical nor costly about going to the police authorities to inquire about your spouse or asking said spouse's relatives to testify. After all, it is a search of a missing person none other than your husband or wife who may already be dead. It bears emphasis that Leilanie, here, had travelled far and wide from Cotabato to Manila to Davao del Norte and even overseas allegedly in search of her absent husband Reneto. It is, therefore, rather odd that she could not make a quick walk to the police station especially in view of the great distance that she already conquered.

In the end, it must be remembered that the purpose of the "stricter standard approach" is to ensure that a petition for

declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws on marriage.[7] It is a basic policy of the State to protect the institution of marriage as a family's foundation. Indeed, the Court is fully aware of the possible collusion between spouses to utilize the summary nature of said Article 41 in cases when they find it impossible to dissolve the marital bonds through existing legal means. For the purposes of remarriage, therefore, We must see to it that spouses should not be allowed, by the simple expedient of agreeing that one of them leave the conjugal abode and never to return again, to effectively evade the laws on marriage.[8]

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

The majority opinion grants the petition of the Republic of the Philippines to reverse and set aside the affirmance of the declaration of presumptive death of respondent's husband Reneto Alilongan Suminguit.

I respectfully dissent.

Article 41 of the Family Code enumerates the following requisites for declaration of presumptive death: 1) the absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code;[1] 2) the present spouse wishes

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[7] *Republic v. Cantor, supra* note 3, at 133-134.

[8] *Republic v. Nolasco, supra* note 1.

[1] Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs: (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

to remarry; 3) the present spouse has a well-founded belief that the absentee is dead; and 4) the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.[2]

Here, the Republic, through the Office of the Solicitor General (OSG) argues that Leilanie's trips to Manila and Davao del Norte in search of her husband were not sufficient[3] to prove the facts surrounding his disappearance. Too, it faults Leilanie for not reporting Reneto's disappearance to the authorities and for not presenting other witnesses in support of her allegations.[4] Due to these shortcomings, the OSG concludes that Leilanie fell short of the diligence required by law and jurisprudence to establish a well-founded belief that her husband is presumably dead.

The majority opinion agrees with the Republic that Leilanie's trips to Manila and Davao del Norte and her heavy reliance on the statements trade by her husband's family and relatives without presenting them as witnesses, and without seeking assistance to proper authorities cannot be concluded as earnest and diligent efforts to comply with the stringent requirement of "well-founded belief." In ***Republic v. Cantor***,[5] however, the Court ruled that whether one has a "well-founded belief" that his or her spouse is dead depends on the unique circumstances of each case and there is no exact definition nor set standard or procedure in its determination, thus:

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(2) A person in the armed forces who has taken part in war, and has been missing for four years; (3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

[2] See *Republic v. Tampus*, 783 Phil. 485, 491 (2016), citing *Republic v. Cantor*, 723 Phil. 114, 127-129 (2013); *Republic v. Granada*, 687 Phil. 403, 413 (2012); *Republic v. Nolasco*, 292-A Phil. 102, 109 (1993).

[3] *Rollo*, p. 20.

[4] *Id.*

[5] 723 Phil. 114, 129 (2013).

The law did not define what is meant by "well-founded belief." **It depends upon the circumstances of each particular case**. Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of **diligent and reasonable efforts and inquiries** to locate the absent spouse and that based on these efforts and inquiries, he/she **believes** that under the circumstances, the absent spouse is already dead. x x x[6] (emphasis added)

Here, sometime in January 2001, Leilanie's husband Reneto left their conjugal home in Malayan, M'lang Cotabato[7] and went to Manila to apply for work overseas. Reneto, however, never returned and his whereabouts since then had remained unknown.[8] Leilanie went to Manila and stayed there for seven (7) months to locate her husband but was not able to find him.[9] In 2004, Leilanie went abroad to work, and at the same time, continued her search for Reneto.[10] Her search abroad, however, was as futile as before.[11] Reneto's whereabouts had remained unknown and no one among his friends, acquaintances and relatives abroad knew of it. Thus, after three (3) years,[12] Leilanie returned to the Philippines, resumed her search for her husband but she never succeeded.[13] She went to Cayawan, Davao del Norte, her husband's birthplace, where she was able to talk with Reneto's family and relatives, but they said they had no knowledge of Reneto's whereabouts[14] nor heard a single news whether Reneto was still alive or already dead.

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[6] *Id.*

[7] *Rollo*, p. 36.

[8] *Id.*

[9] *Id.* at 37.

[10] *Id.*

[11] *Id.* at 12.

[12] *Id.* at 37.

[13] *Id.* at 38.

[14] *Id.* at 37.

Leilanie's lack of resources appears on record. When Reneto left the conjugal dwelling in January 2001, Leilanie single-handedly raised their two-month old baby,[15] without a stable source of income. Though she had no means to support their daily needs and depended on the meager allowance from her mother,[16] Leilanie was determined to find her missing husband. She travelled to Manila, Davao del Norte, and even abroad to search for Reneto. The financial difficulties and emotional struggles she and her daughter had to endure did not deter her from traversing different places to search and find him. She must have just started a new life, begun a career, and moved on from the despair of spousal abandonment yet, she had a resolute heart in her search for Reneto. In fine, Leilanie exerted her best efforts to locate her missing husband. She has shown "honest to goodness" efforts required in our jurisprudence to ascertain whether Reneto is still alive. To require Leilanie more than what she already did, and to demand that she should have tried much more or "hard enough," without saying how it should be done, is utterly unfair.

Whether Leilanie has exerted her best efforts to look for her husband is a question of fact that has been resolved by the trial court and affirmed by the Court of Appeals. Since the evidence on record support such factual finding, the same is deemed conclusive and will ought not be disturbed at this late stage.

To emphasize, a "well-founded belief" should be based on the circumstances of each case; and here, Leilanie has established a well-founded belief that her husband Reneto is presumably dead. Her search for Reneto, though unsuccessful, was not a mere passive search. It was sincere, honest, diligent, religious, and laborious. It took her nine (9) years to finally concede and accept that Reneto could no longer be found. Reneto left Leilanie and their newborn child in 2001, or for almost nineteen (19)

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[15] *Id.* at 32.

[16] *Id.*

years now. No one has heard of him. Nothing has been heard from him. No one has seen him.

Article 41 allows a spouse to seek judicial relief on the basis of "reasonable belief." Corollary to this, in declaring a person presumptively dead, it behooves the court to sustain a mere **presumption**. Absolute certainty is not a requisite. The *ponencia* even acknowledges this when it stated that: "the law does not demand positive certainty of the absent spouse's death for to do so would run counter to the very essence of a petition for declaration of presumptive death." Thus, to impose exacting standards and establish the same as solid proof of one's death defies what the law requires, which is a mere presumption.[17]

In ***Republic v. CA***,[18] the Court held that Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully that their alleged missing spouses are alive and well. Thus, the law ordains that declarations of presumptive death are "without prejudice to the reappearance of the absent spouse." More, Article 42 of the Family Code[19] decrees the automatic termination of the subsequent marriage entered into by the present spouse upon recording of the affidavit of reappearance by the absent spouse. Thus, in the distant possibility that Reneto reappears, the law provides remedies for him.

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[17] *J.* Leonen, Dissenting Opinion in *Republic v. Sareñogon, Jr.*, 780 Phil. 738 (2016).

[18] See 513 Phil. 391 (2005), as cited in *Republic v. Cantor*.

[19] Article 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void *ab initio*.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

All told, the Court of Appeals did not commit reversible error in affirming the trial court's declaration that Reneto Alilongan Suminguit is presumptively dead pursuant to Article 41 of the Family Code.

I, therefore, vote to **DENY** the petition and **AFFIRM** the dispositions of both the trial court and the Court of Appeals.

FIRST DIVISION

[G.R. No. 222166. June 10, 2020]

MERCEDES S. GATMAYTAN and ERLINDA V. VALDELLON, *petitioners, vs.* **MISIBIS LAND, INC.**, *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; ALTERNATIVE CAUSES OF ACTION OR DEFENSES; THE SUFFICIENCY OF ONE CAUSE OF ACTION PRECLUDES THE OUTRIGHT DISMISSAL OF THE COMPLAINT. — Section 2, Rule 8 of the Rules of Court permits the assertion of alternative causes of action, thus: SEC. 2. *Alternative causes of action or defenses*. — A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. **When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements**. Section 2, Rule 8 allows parties to plead as many separate claims as they may have, provided

that no rules regarding venue and joinder of parties are violated. **A complaint which contains two or more alternative causes of action cannot be dismissed where one of them clearly states a sufficient cause of action against the defendant**. This is hornbook law. In determining the sufficiency of the Complaint and whether it should be allowed to proceed to trial, analysis of each alternative cause of action alleged is necessary, as the sufficiency of one precludes its outright dismissal.

2. CIVIL LAW; PROPERTY; ACTION FOR RECONVEYANCE; RECONVEYANCE BASED ON A VOID CONTRACT IS IMPRESCRIPTIBLE. — An action for reconveyance is a legal remedy granted to a rightful owner of land wrongfully or erroneously registered in the name of another to compel the latter to *reconvey* the land to him. In reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right. x x x Petitioners' action should be characterized primarily as one for reconveyance based on a void contract, and thus, imprescriptible. x x x In essence, Petitioners assert that the 1996 Deed of Absolute Sale (DOAS) is void and inexistent, as: (i) the purported sellers were no longer the owners of the disputed lot at the time of execution; (ii) the signature of one of the sellers therein had been forged; and (iii) the buyer-corporation was legally inexistent at the time of execution.

3. ID.; ID.; OWNERSHIP; QUIETING OF TITLE. — Under Article 476 of the Civil Code, an action for quieting of title may be filed "[w]henever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title." This action may be brought by one who has legal or equitable title to, or interest in the real property which is the subject matter of the action, whether or not such party is in possession. As a general rule, an action for quieting of title, being a real action, prescribes thirty (30) years after accrual. However, by way of exception, an action to quiet title involving property in the possession of the plaintiff is imprescriptible. For an action for

quieting of title to prosper: (i) the plaintiff or complainant must have a legal or an equitable title to or interest in the real property subject of the action; and (ii) 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.

4. ID.; SPECIAL CONTRACTS; IMPLIED TRUST; PRESCRIPTION FOR RECONVEYANCE OF PROPERTY BASED ON IMPLIED CONSTRUCTIVE TRUST. — Under Article 1456 of the Civil Code, "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." The law thus creates the obligation of the trustee to reconvey the property and its title in favor of the true owner. An action for reconveyance of property based on an implied constructive trust prescribes in ten (10) years, in accordance with Article 1144(2) of the Civil Code, which states that an action involving an obligation created by law must be brought within ten (10) years from the time the right of action accrues. However, in cases where fraud is specifically alleged to have been attendant in the trustee's registration of the subject property in his/her own name, the prescriptive period is ten (10) years counted from the true owner's discovery of the fraud.

5. REMEDIAL LAW; CIVIL PROCEDURE; BELATED PAYMENT OF DOCKET FEES MAY STILL BE PERMITTED. –– Assuming that the payment made by Petitioners is in fact deficient, belated payment of the difference may still be permitted consistent with the Court's ruling in *Sun Insurance Office, Ltd. v. Asuncion*: x x x It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. Accordingly, in determining whether belated payment of the deficiency of Petitioners' docket fees may still be allowed, the prescriptive periods applicable to Petitioners' alternative causes of action, as discussed above, should be considered.

LAZARO-JAVIER, *J., dissenting opinion:*

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY LEGAL QUESTIONS MUST BE RAISED. —** In assailing the trial court's dispositions, petitioners availed of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Section 1 of the Rule allows such recourse to be filed with the Supreme Court, provided that purely legal questions are raised, *viz*: **Section 1.** *Filing of petition with Supreme Court.* — **A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the** Court of Appeals, the Sandiganbayan, the **Regional Trial Court** or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law** which must be distinctly set forth.

2. **CIVIL LAW; LAND TITLES; ACTION FOR RECONVEYANCE; PRESCRIPTION; DISCUSSED. ––** A complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful. It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith. The relief prayed for may be granted on the basis of intrinsic fraud - fraud committed on the true owner. In such a case, an implied trust is constituted in favor of the offended party, and the action for reconveyance and cancellation of title prescribes in ten (10) years from issuance of the Torrens title to the property in favor of the trustee. By way of exception, the Court has permitted the filing of an action for reconveyance of property despite the lapse of more than ten (10) years from issuance of title where plaintiff is in possession of the disputed property, converting the action from reconveyance of property into one for quieting of title. These cases are imprescriptible since the plaintiff has the right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right. The action for reconveyance, however, may also be premised on a void or inexistent contract. Being an absolute nullity, the transfer instrument is subject to attack anytime, in accordance with Article 1410 of the Civil Code. In other words, an action for reconveyance based on a void contract is imprescriptible. So long as the land wrongfully registered under the Torrens

system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner. Whether an action for reconveyance prescribes, therefore, depends on two (2) criteria: **First.** Whether it is founded on a claim of fraud resulting in an implied or constructive trust, or one based on a void or inexistent contract; and **Second.** Whether plaintiff is in possession of the disputed property.

3. ID.; ID.; QUIETING OF TITLE; ELEMENTS. — [P]etitioners' cause of action could not have been one for quieting of title which requires the following elements: (1) the plaintiff or complainant has legal or 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.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; COMPULSORY JOINDER OF INDISPENSABLE PARTIES. — Neither could petitioners' complaint sustain a cause of action for reconveyance of property against respondent based on the alleged nullity of the Deed of Absolute Sale dated February 21, 1996 and TCT No. 97059. Said deed was executed by both Cidra and Oscar Garcia in favor of DAA Realty, not respondent. Thus, if petitioners wish to challenge the validity of the conveyance and the consequent title, they should have impleaded DAA Realty in the present petition, being an indispensable party to the case. Section 3, Rule 7 of the Rules of Court defines an "indispensable party" thus: **Section 7.** *Compulsory joinder of indispensable parties.* — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. x x x Here, petitioners impleaded respondent Misibis Land, DAA Realty, Philippine National Bank, Spouses Oscar and Cidra Garcia, Hector Cledera in his capacity as Registrar of Deeds of Albay, and John and Jane Does as party-respondents in their complaint below. Subsequently, the trial court dismissed the complaint through its assailed Order dated October 22, 2015. But for reasons known only to petitioners, they appealed the order of dismissal against respondent Misibis Land alone. This allowed the dismissal of the Complaint against DAA Realty, *et al.* to lapse into finality. Unfortunately, Misibis Land is not the

proper party against whom the complaint for nullifying the Deed of Absolute Sale dated February 21, 1996 ought to proceed. It was not privy to the contract of sale and is therefore in no position to defend its validity.

5. ID.; ID.; PAYMENT OF DOCKET FEES IN CASES INVOLVING REAL PROPERTY; DISCUSSED. — Under Section 7(a), Rule 141, the docket fees in cases involving real property such as an action for reconveyance based on fraud, depend on the assessed value of the subject property at the time the complaint was filed. The higher the assessed value, the higher the docket fees. Here, respondent has never refuted that petitioners paid docket fees based on the assessed value of the property under DAA Realty's Tax Declaration No. 0059 dated 1998, albeit the case was filed in 2014 when the assessed value of the property had definitely increased. In the landmark case of ***Sun Insurance Office, Ltd. v. Asuncion***, the Court held that although belated payment of docket fees may still be allowed within a reasonable time, it cannot be extended beyond the applicable prescriptive or reglementary period. Thus, contrary to petitioners' claim, their failure to pay the correct docket fees here can no longer be cured. Ordering them to pay any deficiency will simply serve no purpose since their cause of action had already prescribed.

APPEARANCES OF COUNSEL

Madrid Danao & Carullo for petitioners.
Leandro M. Milano for respondent.

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 following

[1] *Rollo*, pp. 21-61.

orders issued by the Regional Trial Court (RTC) of Tabaco City, Branch 15 in Civil Case No. T-2820:

1. Order[2] dated October 22, 2015 (First RTC Order) dismissing the complaint filed by petitioners Mercedes S. Gatmaytan and Erlinda V. Valdellon (Petitioners) on the ground of prescription and lack of jurisdiction; and

2. Order[3] dated December 28, 2015 (Second RTC Order) denying Petitioners' motion for reconsideration.

The Facts

On December 9, 1991, Petitioners purchased from Oscar and Cidra Garcia (Spouses Garcia) a parcel of land (disputed lot) in Misibis, Cagraray Island, Albay with an area of 6.4868 hectares, covered by Transfer Certificate of Title (TCT) No. T-77703 issued in the latter's name. Petitioners paid the taxes arising from the transaction.[4]

On April 6, 1992, Petitioners, armed with the original owner's duplicate copy of TCT No. T-77703, attempted to register the corresponding Deed of Absolute Sale dated December 9, 1991 (1991 DOAS) with the Register of Deeds of Albay (RD). They were successful in having the 1991 DOAS duly annotated on TCT No. T-77703, but they were not able to cause the transfer of the Torrens title in their name since they lacked the Department of Agrarian Reform (DAR) clearance necessary to do so.[5]

In 2010, when Petitioners resumed processing the transfer of the Torrens title to their names, they discovered that the disputed lot had been consolidated by Misibis Land, Inc. (MLI) with other adjoining lots in Misibis, and sub-divided into smaller lots covered by several new Torrens titles.[6]

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[2] *Id.* at 62-69. Penned by Judge Alben Casimiro Rabe.

[3] *Id.* at 70-71.

[4] *Id.* at 26-27, 73-74.

[5] See *id.* at 27.

[6] *Id.*

Upon further investigation, Petitioners learned that TCT No. T-77703 had been stamped "cancelled," and replaced by subsequent Torrens titles issued on the basis of the following transactions:[7]

Date	Transaction	Parties	Resulting Titles
February 21, 1996	Deed of Absolute Sale (1996 DOAS)	Spouses Garcia as sellers and DAA Realty Corporation (DAA Realty) as buyer	TCT No. T-97059 issued on February 22, 1996
April 21, 2005	Deed of Absolute Sale (2005 DOAS)	DAA Realty as seller and MLI as buyer	TCT No. T-138212

With this discovery, Petitioners immediately caused, on September 1, 2010, the annotation of their Affidavit of Adverse Claim on MLI's Torrens titles.[8]

On December 10, 2014, Petitioners filed a complaint before the RTC (Complaint) against Spouses Garcia, DAA Realty and MLI, as well as Philippine National Bank (PNB) to whom the disputed lot had been mortgaged.[9]

In their Complaint, Petitioners stated their causes of action, as follows:

FIRST CAUSE OF ACTION
(For: Declaration of Plaintiffs' Ownership and Nullity of the [1996 DOAS,] [2005 DOAS] and [the April 21, 2005 MLI-PNB Mortgage])[10]

x x x x x x x x x

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[7] See *id.* at 65-66.

[8] *Id.* at 30, 140-143.

[9] *Id.* at 72-89.

[10] *Id.* at 79. Emphasis omitted.

FIRST ALTERNATIVE CAUSE OF ACTION
(Re: Declaration of Nullity Based on Double Sale *(sic)* of [the 1996 DOAS] and TCT Nos. T-97059 and T-138212 and Any and All Transfers and Dealings Thereafter)[11]

x x x x x x x x x

SECOND ALTERNATIVE CAUSE OF ACTION
(For: Quieting of Title)[12]

x x x x x x x x x

SECOND CAUSE OF ACTION
(For: Accounting and Remittance, if any, of [a]ll [of MLI's] Income and Profits *vis-à-vis* the [disputed lot])[13]

x x x x x x x x x

THIRD CAUSE OF ACTION
(For: Exemplary Damages)[14]

x x x x x x x x x

FOURTH CAUSE OF ACTION
(For: Moral Damages)[15]

x x x x x x x x x

FIFTH CAUSE OF ACTION
(For: Attorney's Fees and Litigation Expenses)[16]

Based on these causes of action, Petitioners prayed for the following reliefs:

1. The declaration of Petitioners as true and rightful owners of the disputed lot;[17]

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[11] *Id.* at 81. Emphasis omitted.

[12] *Id.* at 83. Emphasis omitted.

[13] *Id.* at 84. Emphasis and underscoring omitted.

[14] *Id.* Emphasis and underscoring omitted.

[15] *Id.* at 85. Emphasis and underscoring omitted.

[16] *Id.* Emphasis and underscoring omitted.

[17] *Id.* at 86.

2. The nullification of the 1996 DOAS and all subsequent transactions involving the disputed lot for being void *ab initio*;[18]

3. The cancellation of TCT Nos. T-97059 and T-138212 respectively issued in the name of DAA Realty and MLI, and the subsequent issuance of a Torrens title in Petitioners' name;[19]

4. A full and complete accounting and remittance of all profits and income derived by MLI from the use of the disputed lot;[20] and

5. The payment of moral and exemplary damages, and attorney's fees at the rate of Php500,000.00 each.[21]

In its Answer,[22] MLI claimed, among others, that it was an innocent purchaser for value since it relied on DAA Realty's TCT No. T-97059 which did not bear any defects.[23]

MLI further argued in its Answer that Petitioners' cause of action is already barred by prescription since an action for reconveyance of real property based on an implied constructive trust arising from fraud prescribes ten (10) years after the issuance of title in favor of the defrauder. Here, MLI stressed that the Complaint was filed in 2014, or more than ten (10) years after the issuance of DAA Realty's Torrens title in 1996.[24]

Based on the records, DAA Realty did not file any pleading before the RTC.

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[18] *Id.* at 85-87.

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

[20] *Id.* at 87.

[21] *Id.* at 87-88.

[22] *Id.* at 144-174.

[23] *Id.* at 145.

[24] *Id.* at 144-174.

Finding merit in MLI's assertions, the RTC issued the First RTC Order dismissing the Complaint on the ground of prescription of action and failure to pay the correct docket fees.[25] Petitioners' subsequent motion for reconsideration was also denied through the Second RTC Order.[26]

Petitioners received a copy of the Second RTC Order on January 14, 2016.[27]

On January 28, 2016, Petitioners filed a Motion for Extension of Time to File Petition for Review on *Certiorari*[28] (Motion for Extension). In the body of the Motion for Extension, Petitioners prayed for an additional period of fifteen (15) days from January 14, 2016, or until January 29, 2016 within which to file their petition for review. However, under the caption "Relief," Petitioners prayed for an additional period of thirty (30) days from January 29, 2016 or until February 28, 2016 to file said petition for review.[29]

On February 24, 2016, this Petition was filed.[30]

On April 18, 2016, the Court issued a Resolution[31] (April 2016 Resolution) denying the Petition, thus:

> Considering the allegations, issues and arguments adduced in the petition for review on *certiorari* assailing the Orders dated [October 22, 2015 and December 28, 2015] of the Regional Trial Court of Tabaco City, Br. 15 in Civil Case No. T-2820, the Court resolves to **DENY** the petition for failure to sufficiently show any reversible

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[25] *Id.* at 62-69.

[26] *Id.* at 70-71.

[27] *Id.* at 3.

[28] *Id.* at 3-6.

[29] *Id.* at 4.

[30] *Id.* at 21, 60.

[31] *Id.* at 302-303. Issued by the Second Division composed of Associate Justice Antonio T. Carpio, Chairperson and Associate Justices Arturo D. Brion, Mariano C. Del Castillo, Jose C. Mendoza and Marvic Mario Victor F. Leonen, Members.

error in the assailed orders to warrant the exercise of this Court's discretionary appellate jurisdiction in this case.

Moreover, the petition failed to strictly comply with the requirements specified in Rule 45 and other related provisions of the 1997 Rules of Civil Procedure, as amended, as the petition lacks: (1) a verified statement of the material date of receipt of the assailed order in accordance with Sections 4 (b) and 5, Rule 45 in relation to Section 5 (d), Rule 56 of the Rules; and (2) a proper verification in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7, and a valid certification of non-forum shopping in accordance with Section 5, Rule 7 of the Rules, the attached verification and certification against forum shopping having been signed by Mercedes S. Gatmaytan without the proof of authority to sign for her co-petitioner.[32]

Petitioners received the Court's April 2016 Resolution on May 30, 2016.[33]

On June 14, 2016, Petitioners filed a Motion for Reconsideration,[34] praying that the Court take a "second hard look" on the merits of the Petition.

Subsequently, Petitioners filed an Urgent Motion to Refer the Case to the Supreme Court *En Banc*[35] (Motion to Refer), claiming that the Court's April 2016 Resolution deviates from the settled doctrine that "an incidental action for cancellation or nullification of a 'certificate of title' with the declaration of nullity of a deed of sale does not convert the latter to an action for 'reconveyance,'" and that such action remains incapable of pecuniary estimation.[36] Petitioners added that the Petition presents a novel question of law which will have a far reaching impact on future litigation.[37]

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[32] *Id.* at 302.

[33] *Id.* at 304.

[34] *Id.* at 304-344.

[35] *Id.* at 345-365.

[36] *Id.* at 346.

[37] *Id.* at 346-347.

On August 22, 2016, the Court issued a Resolution[38] granting the Motion for Reconsideration. Thus, the Petition was reinstated and respondent MLI was directed to file its comment thereto. However, the Court denied Petitioners' Motion to Refer for lack of merit.[39]

MLI filed its Comment[40] on October 24, 2016, to which Petitioners filed their Reply.[41]

Here, Petitioners mainly argue that their Complaint should be allowed to proceed since it is an action "primarily for [the] declaration of nullity of the [1996 DOAS],"[42] and alternatively, for quieting of title.[43]

The Issue

The sole issue for the Court's resolution is whether Petitioners' Complaint should be allowed to proceed for trial on the merits.

The Court's Ruling

The Court grants the Petition.

Section 2, Rule 8 of the Rules of Court permits the assertion of alternative causes of action, thus:

SEC. 2. *Alternative causes of action or defenses*. — A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. **When two or more statements are made in the alternative and one of them if made independently**

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[38] *Id*. at 388-389. Issued by the Second Division composed of Associate Justice Antonio T. Carpio, Chairperson and Associate Justices Mariano C. Del Castillo, Jose C. Mendoza and Marvic Mario Victor F. Leonen, Members; Associate Justice Arturo D. Brion, Member, on leave.

[39] *Id.* at 388.

[40] *Id.* at 400-415.

[41] *Id.* at 417-422.

[42] *Id.* at 33, 37.

[43] *Id.* at 33, 45.

would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. (Emphasis and underscoring supplied)

Section 2, Rule 8 allows parties to plead as many separate claims as they may have, provided, that no rules regarding venue and joinder of parties are violated.[44] **A complaint which contains two or more alternative causes of action cannot be dismissed where one of them clearly states a sufficient cause of action against the defendant.**[45] This is hornbook law.

In determining the sufficiency of the Complaint and whether it should be allowed to proceed to trial, analysis of each alternative cause of action alleged is necessary, as the sufficiency of one precludes its outright dismissal.

Reconveyance based on the nullity of the 1996 DOAS in favor of DAA Realty

An action for reconveyance is a legal remedy granted to a rightful owner of land wrongfully or erroneously registered in the name of another to compel the latter to *reconvey* the land to him.[46] In reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right.[47]

In *Uy v. Court of Appeals*,[48] the Court expounded on the statutory basis of reconveyance, the two kinds of actions for reconveyance (as distinguished by their underlying basis), **and the prescriptive periods applicable to each**, thus:

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[44] See *Baluyot v. Court of Appeals*, 370 Phil. 30, 51 (1999).

[45] *Id.* at 51.

[46] *Tomas v. Court of Appeals*, 264 Phil. 221, 228 (1990).

[47] *Uy v. Court of Appeals*, 769 Phil. 705, 718-719 (2005).

[48] *Id.*

An action for reconveyance is based on Section 53, paragraph 3 of Presidential Decree (PD) No. 1529, which provides:

> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. x x x

In *Caro v. Court of Appeals*, we said that this provision should be read in conjunction with Article 1456 of the Civil Code, which provides:

> Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

The law creates the obligation of the trustee to reconvey the property and its title in favor of the true owner. Correlating Section 53, paragraph 3 of PD No. 1529 and Article 1456 of the Civil Code with Article 1144 (2) of the Civil Code, **the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of the issuance of the certificate of title. This ten-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land**. An exception to this rule is when the party seeking reconveyance based on implied or constructive trust is in actual, continuous and peaceful possession of the property involved. Prescription does not commence to run against him because the action would be in the nature of a suit for quieting of title, an action that is imprescriptible.

The foregoing cases on the prescriptibility of actions for reconveyance apply when the action is based on fraud, or when the contract used as basis for the action is voidable. Under Article 1390 of the Civil Code, a contract is voidable when the consent of one of the contracting parties is vitiated by mistake, violence, intimidation, undue influence or fraud. **When the consent is totally absent and not merely vitiated, the contract is void**. **An action for reconveyance may also be based on a void contract. When the action for reconveyance is based on a void contract, as when there was no consent on the part of the alleged vendor, the action is imprescriptible.** The property may be reconveyed to the true owner, notwithstanding the TCTs already issued in another's name. The issuance of a certificate

of title in the latter's favor could not vest upon him or her ownership of the property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale produces no legal effects whatsoever.

Whether an action for reconveyance prescribes or not is therefore determined by the nature of the action, that is, whether it is founded on a claim of the existence of an implied or constructive trust, or one based on the existence of a void or inexistent contract. This is evident in several of our past decisions. In *Casipit v. Court of Appeals*, we rejected the claim of imprescriptibility and applied the 10-year prescription where the action filed was based on fraud:

> There is no dispute that an action for reconveyance based on a void contract is imprescriptible x x x. However, We simply cannot apply this principle to the present case because the action filed by petitioner before the trial court was 1) for reconveyance based on fraud since the ownership of private respondents over the questioned property was allegedly established on "false assertions, misrepresentations and deceptive allegations" x x x; and 2) for rescission of the "Kasulatan ng Pagmamana at Paghahati x x x." x x x

On the other hand, in *Daclag v. Macahilig*, we rejected the claim of petitioners that prescription is applicable because the action was based on fraud. **We ruled that the action was not subject to prescription because it was, in fact, based on a deed of sale that was null and void**. Thus:

> However, a review of the factual antecedents of the case shows that respondents' action for reconveyance was not even subject to prescription.
>
> The deed of sale executed by Maxima in favor of petitioners was null and void, since Maxima was not the owner of the land she sold to petitioners, and the one-half northern portion of such land was owned by respondents. Being an absolute nullity, the deed is subject to attack anytime, in accordance with Article 1410 of the Civil Code that an action to declare the inexistence of a void contract does not prescribe. x x x **An action for reconveyance based on a void contract is imprescriptible**. **As long as the land wrongfully registered under the Torrens system is still**

> **in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner**. x x x

In *Santos v. Heirs of Dominga Lustre,* the complaint alleged that the deed of sale was simulated by forging the signature of the original registered owner. We ruled in favor of imprescriptibility applying the doctrine that the action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe.[49] (Emphasis and underscoring supplied; italics and citations omitted)

Proceeding from the foregoing, Petitioners' action should be characterized primarily as one for reconveyance based on a void contract, and thus, imprescriptible. This is evident from the following allegations of the Complaint with respect to the 1996 DOAS:

> 1.8 This feigned second sale by the Spouses [Garcia] purportedly to DAA Realty was downright void, ineffective and fraudulent in that:
>
> (a) By virtue of [Petitioners'] prior purchase, the Spouses [Garcia] had no more title, hence could not validly sell the subject property to DAA Realty.
>
> (b) On its face, the purported signature of [Cidra Garcia] in the [1996 DOAS] appears even to the naked eye, to be forged and/or falsified for which [DAA Realty and MLI] as beneficiaries are *prima facie* presumed to be the forgers.
>
> (c) Per its SEC Articles of Incorporation x x x DAA Realty appears to have been incorporated only on [January 22, 1999], or three (3) years after its purported second purchase of the subject property on [February 21, 1996].
>
> (d) On top of all *(sic)*, based on [Petitioners'] clear and subsisting annotation as early as [April 6, 1992] under Entry No. 4145 of their prior purchase on both the original RD Albay

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[49] *Id.* at 719-722.

> and Spouses [Garcia's] Owner's copy of TCT No. T-77703, [DAA Realty] and MLI, being real estate companies reposed with a higher degree of prudence, due care and utmost diligence, very well knew or ought to have known, directly or indirectly as to put them on due notice or inquiry, about [Petitioners'] prior purchase thereof from Spouses [Garcia].
>
> (e) This is especially so since the Spouses [Garcia's] Owner's Copy of TCT No. T-77703 was, at all time to date, in the actual possession and control of [Petitioners] upon their purchase from [Spouses Garcia]. That said, x x x DAA Realty and MLI could not have possibly obtained a new TCT in DAA Realty's name without possessing and surrendering the Owner's copy of the Spouses [Garcia's] TCT No. T-77703 to the RD Albay. The Spouses [Garcia's] failure to surrender their Owner's Copy of TCT No. [T-]77703 makes MLI and DAA Realty purchaser[s] in bad faith *vis-à-vis* [Petitioners].[50]

In essence, Petitioners assert that the 1996 DOAS is void and inexistent, as: (i) the purported sellers were no longer the owners of the disputed lot at the time of execution; (ii) the signature of one of the sellers therein had been forged; and (iii) the buyer-corporation was legally inexistent at the time of execution.

Here, recovery of ownership is not restricted to the mere fact that a Torrens title had been issued in favor of DAA Realty, and later, MLI. The above allegations show that the recovery of ownership is predicated on the nullification of the underlying mode of transfer of title of the disputed lot — the issuance of the Torrens titles to DAA Realty and then to MLI being merely the result of the 1996 DOAS sought to be nullified.

While the Complaint admittedly alleged fraud on the part of DAA Realty and MLI, this allegation of fraud was essential in attacking the Torrens titles resulting from the underlying transactions in question — the 1996 DOAS in favor of DAA Realty, and subsequently, the 2005 DOAS in favor of MLI.

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[50] *Rollo*, pp. 75-76.

Here, Petitioners allege in their Complaint that the owner's duplicate title of Spouses Garcia was surrendered to them upon the execution of the 1991 DOAS,[51] and that because such owner's duplicate title never left their possession, DAA Realty's Torrens title was necessarily issued in violation of Section 53 of PD 1529[52] which sets forth the requirements for registration of voluntary instruments affecting registered land, thus:

SEC. 53. *Presentation of owner's duplicate upon entry of new certificate.* — **No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.**

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in

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[51] Paragraph 1.8 (e) of the Complaint states:

(e) This is especially so since the **Spouses [Garcia's] Owner's Copy of TCT No. T-77703 was, at all times to date, in the actual possession and control of the plaintiffs upon their purchase from the [Spouses Garcia]**. That said, defendants DAA Realty and MLI could not have possibly obtained a new TCT in DAA Realty's name without possessing and surrendering the Owner's copy of the Spouses [Garcia's] TCT No. T-77703 to the RD Albay. The Spouses [Garcia's] failure to surrender their Owner's Copy of TCT No. [T-]77703 makes MLI and DAA Realty purchaser[s] in bad faith *vis-á-vis* (Petitioners]. *Id.* at 76.

[52] Petitioners' Complaint alleged that:

1.8 This feigned second sale by the Spouses [Garcia] purportedly to DAA Realty was downright void, ineffective and fraudulent in that:

x x x **[T]he Spouses [Garcia's owner's duplicate] of TCT No. T-77703 was, at all times to date, in the actual possession and control of [Petitioners] upon their purchase from [Spouses Garcia].** That said, [DAA Realty and MLI] could not have possibly obtained a new TCT in DAA Realty's name without possessing and surrendering the [owner's duplicate of the Spouses Garcia's] TCT No. T-77703 to the [RD]. The Spouses [Garcia's] failure to surrender their [owner's duplicate] of TCT No. [T-]77703 makes MLI and DAA Realty purchaser[s] in bad faith *vis-à-vis* [Petitioners]. *Id.* at 75-76.

accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void. (Emphasis and underscoring supplied)

In addition, both DAA Realty and MLI may be deemed to have been constructively notified of the 1991 DOAS in favor of Petitioners, as it was duly annotated on Spouses Garcia's TCT No. T-77703. Hence, contrary to MLI's assertions, it may not be considered an innocent purchaser for value in this case.

It must be noted that MLI filed a Motion for Preliminary Hearing on Affirmative Defenses[53] (Motion for Preliminary Hearing) invoking the defenses of prescription and lack of jurisdiction for failure of Petitioners to allege in their Complaint the assessed value of the disputed lot.[54] In asserting these affirmative defenses, MLI hypothetically admitted the material allegations in Petitioners' Complaint, pursuant to Section 5, Rule 6 of the Rules of Court, thus:

SEC. 5. *Defenses*. — Defenses may either be negative or affirmative.

(a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action.

(b) **An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him**. The affirmative defenses include fraud, statute of limitations, release,

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[53] *Rollo*, pp. 201-208.

[54] *Id.* at 201.

payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance. (Emphasis supplied)

Hence, the material allegations in Petitioners' Complaint, including the possession by Petitioners of the owner's duplicate title of Spouses Garcia's TCT No. T-77703 and the annotation of the 1991 DOAS in both original and owner's duplicate title covering the disputed lot, are deemed hypothetically admitted.

Since the nullity of DAA Realty's Torrens title may be anchored on the non-presentation of Spouses Garcia's owner's duplicate title, and MLI may not be considered an innocent purchaser for value, then Petitioners' allegation for reconveyance based on the nullity of the 1996 DOAS and the Torrens titles resulting therefrom was sufficiently made.

Moreover, Petitioners' action for reconveyance can also be viewed from the law on sales. Petitioners alleged that a prior sale had been consummated in their favor. It must be noted that the copy of the 1991 DOAS forming part of the records shows that it is a public document. That the 1991 DOAS is a public document is further confirmed by the fact that Petitioners were successful in having the 1991 DOAS duly annotated on TCT No. T-77703, and that the only reason they were unable to cause the transfer of the Torrens title in their name was because they lacked the DAR clearance necessary to do so.[55] According to Article 1498[56] of the Civil Code, the execution of this public document may partake constructive delivery of the

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[55] *Id.* at 27.

[56] Article 1498 states:

ART. 1498. 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.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.

property so as to constitute the Petitioners as full owners thereof. In turn, the validity of this sale, documented through the 1991 DOAS, was hypothetically admitted by MLI through its Motion for Preliminary Hearing. In other words, the second sale to DAA Realty, documented through the 1996 DOAS, may be considered void, since Spouses Garcia would no longer be the owners of the disputed lot at such time. As early as 1991, Petitioners may be considered full owners of the property covered by TCT No. T-77703. This means that DAA Realty could not have acquired anything in 1996. It follows that MLI purchased nothing from DAA Realty in 2005.[57] Clearly, Petitioners have alleged a sufficient cause of action in this regard.

What is then the applicable period in Petitioners' action for reconveyance? **Being based on the allegation of nullity of the 1996 DOAS in favor of DAA Realty, said action should be deemed <u>imprescriptible</u>.**

In this connection, it should again be stressed that limiting the characterization of Petitioners' action for reconveyance to one solely based on an implied constructive trust, as was done by the RTC is a grievous error. To do so is to unwarrantedly view the Complaint solely through the assertions made by MLI in its Motion for Preliminary Hearing — and not through the allegations of the Complaint, which, as discussed, are deemed hypothetically admitted.

Since the allegations **<u>in the Complaint</u>** point to the nullity of the 1996 DOAS — which is the underlying transaction from which MLI derives its alleged right of ownership over the disputed lot — such issue should have been resolved by the RTC instead of ordering the Complaint's outright dismissal. The mere issuance of a Torrens title in favor of DAA Realty, which the Complaint alleges as void, cannot, by itself, without the requisite determination of the factual circumstances surrounding it, be accorded any probative weight to justify the dismissal of the Complaint given that in addition to the invalidity of said Torrens title, Petitioners

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[57] See generally *Miranda v. Spouses Mallari*, G.R. No. 218343, November 28, 2018.

also made allegations relating to the nullity of the underlying sale, which is the substantive basis for its issuance.

Quieting of Title

Under Article 476 of the Civil Code, an action for quieting of title may be filed "[w]henever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title." This action may be brought by one who has legal or equitable title to, or interest in the real property which is the subject matter of the action, whether or not such party is in possession.[58] As a general rule, an action for quieting of title, being a real action, prescribes thirty (30) years after accrual.[59] However, by way of exception, an action to quiet title involving property in the possession of the plaintiff is imprescriptible.[60]

For an action for quieting of title to prosper: (i) the plaintiff or complainant must have a legal or an equitable title to or interest in the real property subject of the action; and (ii) 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.[61]

Here, Petitioners claim to have equitable title over the disputed lot based on the 1991 DOAS registered with the RD and annotated on the original and owner's duplicate of Spouses Garcia's TCT No. T-77703. In addition, they allege that the 1996 DOAS purportedly executed between Spouses Garcia and DAA Realty, and all transactions subsequent thereto, cast a

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[58] See CIVIL CODE, Art. 477.

[59] *Id.*, Art. 1141.

[60] *Heirs of Segundo Uberas v. Court of First Instance of Negros Occidental*, 175 Phil. 334, 341 (1978).

[61] See generally *Residents of Lower Atab & Teachers' Village v. Sta. Monica Industrial & Development Corp.*, 745 Phil. 554, 563 (2014).

cloud of doubt on such equitable title. Hence, the two requisites to sustain an action for quieting of title have been met.

As stated, an action for quieting of title involving property *not* in the possession of the plaintiff prescribes thirty (30) years after the cause of action accrues, which, in this case, appears to have taken place on February 22, 1996, upon issuance of DAA Realty's Torrens title. Hence, Petitioners' action for quieting of title has *not* prescribed, as the Complaint was filed only eighteen (18) years thereafter, on December 10, 2014.

The outright dismissal of the Complaint is unwarranted

Instead of conducting a full-blown hearing as necessitated by the nature of the allegations in the Complaint, the RTC erroneously dismissed the Complaint on the ground of prescription. The relevant portions of the First RTC Order read:

> x x x [B]ased upon the allegations of [Petitioners] in the [C]omplaint an implied or constructive trusts *(sic)* has been created in favor of [Petitioners] when [DAA Realty] and [MLI] acquired the [disputed lot] allegedly by fraud. This conclusion is consistent with the ruling of the Supreme Court in *Estate of the late Mercedes Jacob vs. Court of Appeals*.
>
> x x x x x x x x x
>
> [MLI] proceeded [to state] that unfortunately for [Petitioners], at the time they filed their [C]omplaint on [December] 10, 2014, their cause of action for reconveyance based on an implied trust has already prescribed, as more than ten (10) years had lapsed already from the time of the issuance of title to [DAA Realty] on February 22, 1996.[62]

In ruling that Petitioners' action had already prescribed, it is clear that the RTC treated the Complaint as an action for reconveyance based solely on implied constructive trust. **This is clearly grievous error, if not grave abuse of discretion, as the Complaint clearly alleged Petitioners' other causes of action.**

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[62] *Rollo*, pp. 63-64.

In any case, even if the Complaint were to be treated, for the sake of argument, as an action for reconveyance based solely on an implied constructive trust, the Complaint should still be allowed to proceed, having been timely filed.

Under Article 1456 of the Civil Code, "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." The law thus creates the obligation of the trustee to reconvey the property and its title in favor of the true owner.[63] An action for reconveyance of property based on an implied constructive trust prescribes in ten (10) years, in accordance with Article 1144 (2) of the Civil Code, which states that an action involving an obligation created by law must be brought within ten (10) years from the time the right of action accrues.

However, in cases where fraud is specifically alleged to have been attendant in the trustee's registration of the subject property in his/her own name, the prescriptive period is ten (10) years counted from the true owner's discovery of the fraud.[64]

When is the fraud deemed discovered in the context of registered property? *Adille v. Court of Appeals*[65] *(Adille)* lends guidance:

> It is true that registration under the Torrens system is constructive notice of title, but it has likewise been our holding that the Torrens title does not furnish a shield for fraud.
>
> x x x x x x x x x
>
> x x x Accordingly, we hold that the right of the private respondents commenced from the time they actually discovered the petitioner's act of defraudation. x x x[66]

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[63] *Uy v. Court of Appeals*, *supra* note 47, at 719.

[64] Desiderio P. Jurado, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS,* 1987 9th Revised Ed., p. 647.

[65] 241 Phil. 487 (1988).

[66] *Id.* at 495-496.

The Court's ruling in *Adille*, reiterated in *Samonte v. Court of Appeals*[67] and *Government Service Insurance System v. Santiago*,[68] is in congruence with Section 53 of PD 1529, which states that in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud **and that registration procured by the presentation of a forged deed or other instrument shall be null and void**.

Among the allegations hypothetically admitted by MLI are those concerning DAA Realty's failure to present Spouses Garcia's owner's duplicate copy of TCT No. T-77703 upon issuance of TCT No. T-97059 in its name, as required by Section 53 of PD 1529.

In *Levin v. Bass*[69] *(Levin)* the Court *en banc* unanimously held that failure to comply with the registration requirements of the Torrens system **averts the registration process, and prevents the underlying transaction from affecting the land subject of the registration**, hence:

> x x x Under the Torrens system the act of registration is the operative act to convey and affect the land. [Does] the entry in the day book of a deed of sale which was presented and filed together with the owner's duplicate certificate of title with the office of the Registrar of Deeds and full payment of registration fees constitute a complete act of registration which operates to convey and affect the land? **In voluntary registration, such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within [fifteen (15)] days, entry in the day book of the deed of sale does not operate to convey and affect the land sold**. x x x[70] (Emphasis and underscoring supplied)

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[67] 413 Phil. 487, 497 (2001).

[68] 460 Phil. 763, 773-774 (2003).

[69] 91 Phil. 419 (1952).

[70] *Id.* at 436-437.

Levin thus teaches that a Torrens title issued without prior presentation and cancellation of the existing owner's duplicate title does not bind the property to which it pertains. The title so issued does not produce the effects of a Torrens title contemplated under PD 1529, *including* the effects of constructive notice. It is literally a scrap of paper.

On this basis, coupled with the fact that they were always in possession of the owner's duplicate copy of TCT No. T-77703, Petitioners cannot be deemed to have been constructively notified of the issuance of DAA Realty's TCT No. T-97059. The ten (10)-year prescriptive period thus referred to in Article 1144(2) of the Civil Code must be reckoned *not* from the issuance of DAA Realty's Torrens title, but rather, from Petitioners' actual discovery of the fraud in 2010. The Complaint, having been filed barely four (4) years after, or on December 10, 2014, was therefore timely filed.

Belated payment of docket fees may still be permitted

Apart from prescription, the RTC also anchored the outright dismissal of the Complaint on Petitioners' alleged failure to pay the correct docket fees.[71] Again, this is error.

Assuming that the payment made by Petitioners is in fact deficient, belated payment of the difference may still be permitted consistent with the Court's ruling in *Sun Insurance Office, Ltd. v. Asuncion*:[72]

> x x x It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.[73]

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[71] *Rollo*, p. 69.

[72] 252 Phil. 280 (1989).

[73] *Id.* at 291.

Accordingly, in determining whether belated payment of the deficiency of Petitioners' docket fees may still be allowed, the prescriptive periods applicable to Petitioners' alternative causes of action, as discussed above, should be considered. As already explained, Petitioners' Complaint should be characterized primarily as an action for reconveyance based on a void contract which is imprescriptible, and alternatively, as an action for quieting of title which prescribes thirty (30) years after the cause of action accrues, which, in this case, occurred on February 22, 1996 when the issuance of DAA Realty's Torrens title cast a cloud on Petitioners' claim of ownership over the disputed lot. As none of Petitioners' alternative causes of action has prescribed, payment of the deficiency in the docket fees paid, if any, should still be permitted.

The 1991 DOAS in favor of Petitioners cannot be declared void without trial

Finally, the Court is not unaware of certain discrepancies between the allegations in the Complaint and the statements appearing on the face of the supporting documents attached thereto. These discrepancies appear from the following allegations, thus:

> 1.3 On or about [December 9, 1991], [Petitioners] purchased from [Spouses Garcia], for and in consideration of Php70,000.00, a parcel of land located at Misibis, Cagraray Island, Albay, consisting of 6.4868 has., duly evidenced and covered by TCT No. T-77703, Registry of Deeds for the Province of Albay x x x, the technical descriptions of which are:
>
> x x x x x x x x x
>
> photocopies of the Deed of Absolute Sale of Real Property dated [December 9, 1991] [(1991 DOAS)] and [Spouses Garcia's] Owner's copy of TCT No. T-77703 as surrendered to [Petitioners] are attached hereto as Annexes "A" and "A-1".[74]

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[74] *Rollo*, pp. 73-74.

The documents referred to as Annexes "A" and "A-1" above appear to show that: (i) while the 1991 DOAS names Cidra Garcia as vendor, her signature does not appear on the document; (ii) only Oscar Garcia's signature appears on the 1991 DOAS; and (iii) TCT No. T-77703 is registered in the name of "Cidra R. Garcia x x x married to Oscar G. Garcia." These discrepancies, if taken as fact, may cast doubt on the validity of the 1991 DOAS.

However, and precisely to the point, matters relating to the validity of the 1991 DOAS cannot be resolved without presentation of evidence. Any finding to be made by the Court here would amount to a prejudgment of the merits of the Complaint without trial, and would constitute a violation of Petitioners' right to due process. To treat the 1991 DOAS as void without the benefit of trial will contradict the hypothetical admissions made by MLI when it filed its Motion for Preliminary Hearing.

In this regard, established jurisprudence dictates that in cases where there is a conflict between the allegations in a complaint and its supporting documents, the complainant must be given the opportunity to reconcile the same, consistent with the fundamental principle of due process. The Court's ruling in *World Wide Insurance & Surety Co., Inc. v. Manuel*[75] is thus *apropos*:

> x x x To determine whether a complaint states a cause of action one must accept its allegations as true. One may not go beyond and outside the complaint for data or facts, especially contrary to the allegations of the complaint, to determine whether there is cause of action. **Of course, there are cases where there may be a conflict or contradiction between the allegations of a complaint and a document or exhibit attached to and made part of it. In that case, instead of dismissing the complaint, defendant should be made to answer the same so as to establish an issue and then the parties will be given an opportunity, the plaintiff to reconcile any apparent conflict between the allegations in his complaint and a document attached to support the same, and the defendant an equal opportunity to refute the**

[75] 98 Phil. 46 (1955).

allegations of the complaint and to show that the conflict between its allegation and the document attached to it is real, material and decisive.[76] (Emphasis and underscoring supplied)

In sum, the resolution of the substantive issues raised in the Complaint, as discussed herein, requires a full-blown trial. The issuance of the First and Second RTC Orders directing the outright dismissal of the Complaint are not only grievously erroneous, but amount to grave abuse of discretion, as they deprive Petitioners of the right to due process.

Final Note

The factual and legal conclusions expressed herein are mainly based on the allegations of the Complaint which have been hypothetically admitted by MLI through its Motion for Preliminary Hearing. These conclusions are made only for the purpose of resolving the basic issue before the Court, that is, whether the allegations in the Complaint are sufficient to sustain *any* of the alternative causes of action asserted therein.

This Decision does not resolve with finality or conclusiveness the factual and legal issues that the parties have raised in their respective pleadings filed before the trial court. Such factual and legal issues should be resolved before said court, after reception of evidence on the merits. Lest there be any confusion, this Decision should not be interpreted as a prejudgment of the factual and substantive issues raised in the Complaint or in the Answer. Precisely, this Decision seeks to afford the parties their day in court with due regard to their right to due process, given that the resolution of their conflict may entail deprivation of property.

WHEREFORE, the Petition is **GRANTED**. Accordingly, the Orders dated October 22, 2015 and December 28, 2015 issued by the Regional Trial Court of Tabaco City, Branch 15, in Civil Case No. T-2820 are **REVERSED.**

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

This case is **REMANDED** to the Regional Trial Court of Tabaco City, Branch 15 for trial on the merits. Said court is **DIRECTED** to resolve the case with dispatch.

SO ORDERED.

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

Lazaro-Javier, J., dissents, see dissenting opinion.

DISSENTING OPINION

LAZARO-JAVIER, *J.:*

The Case

This Petition for Review on *Certiorari* assails the following dispositions of the Regional Trial Court—Branch 15, Tabaco City, Albay in Civil Case No. T-2820 entitled "*Mercedes S. Gatmaytan and Erlinda V. Valdellon v. Misibis Land, Inc., et al.*":

1) Order[1] dated October 22, 2015 dismissing petitioners' complaint on ground that their cause of action was already barred by prescription, and for failure to pay the proper docket fees; and

2) Order[2] dated December 28, 2015 denying petitioners' motion for reconsideration.

Antecedents

Under Complaint[3] dated December 10, 2014, petitioners Mercedes S. Gatmaytan and Erlinda V. Valdellon sued respondent Misibis Land, Inc., DAA Realty Corporation (DAA Realty), Philippine National Bank, Spouses Oscar and Cidra Garcia, *et al.*, alleging the following facts:

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[1] Penned by Judge Alben Casimiro Rabe; *rollo*, p. 7.

[2] *Rollo*, p. 15.

[3] *Id.* at 72.

x x x x x x x x x

1.3 On or about 09 December 1991, plaintiffs purchased from the Spouses Garcias, for and in consideration of ₱70,000.00, a parcel of land located at Misibis, Cagraray Island, Albay, consisting of 6.4846 has., duly evidenced and covered by TCT No. T-77703, Registry of Deeds for the Province of Albay ("RD Albay") x x x

1.3.1 Accordingly, plaintiffs paid the accruing Capital Gains and Documentary Taxes for which the BIR issued the corresponding Certificate Authorizing Registration ("CAR") No. 338686 dated 03 April 1992, x x x

1.3.2 Meanwhile, on 06 April 1992, plaintiffs registered and annotated their Deed of Absolute Sale dated 09 December 1991, per Entry No. 4145, on both the Original RD copy and Owner's copy of TCT No. T-77703.

1.4 For apparent lack of DAR Clearance, however, plaintiffs inadvertently failed to complete and consummate the registration and obtain a new TCT in their names.

1.5 Sometime in 2010, however, when plaintiffs resumed processing the transfer of their title, plaintiffs were aghast to learn, upon their representative's verification with the RD Albay, that their subject property had been consolidated by defendant MLI with its other lots in Misibis, and in turn subdivided anew into smaller lots for evident commercial gain. Plaintiffs' subject property now appears to be covered by new TCT Nos. 138330 to T-138337, T-138347 to T-138512, T-138521 to T-138600, and T-138619 to T-138640.

1.6 Worse, plaintiffs discovered that defendants MLI, DAA Realty and the Spouses Garcias had conspired, confederated and cooperated with each other to defraud plaintiffs of their subject property. Defendants MLI and DAA Realty made it appear, contrary to the truth, that they were *bona fide* buyers in good faith of the subject property without knowledge or notice of plaintiffs' prior purchase thereof from the Spouses Garcias.

1.7 In truth, defendants MLI and DAA Realty, with the apparent cooperation of the Spouses Garcias, had methodically and systematically undertaken a scheme to defraud and deprive plaintiffs of their purchased property, despite their actual notice and/or constructive knowledge thereof, as shown by the following:

a. The original RD Copy of the Spouses Oscar and Cidra Garcia's TCT No. T-77703 duly reflects an annotation dated 06 April 1992 under Entry No. 4145 respecting plaintiffs' prior purchase thereof on 09 December 1991.

b. Initially, defendants MLI and DAA Realty, despite their actual notice and/or constructive knowledge of its previous sale to plaintiffs, made it appear that on 21 February 1996, the defendant Spouses Garcias, had purportedly sold plaintiffs' property to DAA Realty x x x

1.8 This feigned second sale by the Spouses Garcias purportedly to DAA Realty was downright void, ineffective and fraudulent in that:

(a) By virtue of plaintiffs' prior purchase, the Spouses Garcias had no more title, hence could not validly sell the subject property to DAA Realty.

(b) On its face, the purported signature of defendant Cidra in the Deed of Absolute Sale dated 21 February 1996 appears even to the naked eye, to be forged and/or falsified for which the defendants DAA Realty and MLI as beneficiaries are *prima facie* presumed to be the forgers.

(c) Per its SEC Articles of Incorporation, Annex "B-1" hereof, DAA Realty appears to have been incorporated only on 22 January 1999, or three (3) years after its purported second purchase of the subject property on 21 February 1996.

(d) On top of all, based on plaintiffs' clear and subsisting annotation as early as 06 April 1992 under Entry No. 4145 of their prior purchase on both the original RD Albay and the Spouses Garcias' Owner's copy of TCT No. T-77703, defendants DAA Realty and MLI, being real estate companies reposed with a higher degree of prudence, due care and utmost diligence, very well knew or ought to have known, directly or indirectly as to put them on due notice or inquiry, about plaintiffs' prior purchase thereof from the Spouses Garcias.

(e) This is especially so since the Spouses Garcias' Owner's Copy of TCT No. T-77703 was, at all times to date, in the actual possession and control of the plaintiffs upon their purchase from the Sps. Garcias. That said, defendants DAA Realty and MLI could not have possibly obtained a new TCT in DAA Realty's name without possessing and surrendering the Owner's copy of the Spouses

Garcias' TCT No. T-77703 to the RD Albay. The Spouses Garcias' failure to surrender their Owner's Copy of TCT No. 77703 makes MLI and DAA Realty purchasers in bad faith *vis-á-vis* plaintiffs.

(f) Neither did the defendants MLI and DAA Realty, in the exercise of higher prudence, utmost due care and diligence as real estate companies, ever file any petition for issuance of a new Owner's Copy of TCT No. T-77703. This, they could not as defendants MLI and DAA Realty very well knew that such Owner's Copy of TCT No. T-77703 was with plaintiffs by virtue of their prior purchase.

(g) Neither did DAA Realty or Spouses Garcias present any DAR Clearance as a pre-requisite to the registration of the transfer and obtention of their new title to the subject property x x x,

1.9 Yet, despite their actual notice and/or constructive knowledge of plaintiffs' prior purchase, on or about 22 February 1996, DAA Realty fraudulently secured and smoothly obtained a bogus and void TCT No. T-97059 in its name from the RD Albay x x x

1.10 Worst of all, DAA Realty's fraudulent obtention of TCT No. T-97059 was facilitated by them, by simply causing baselessly the RD Albay to merely stamp as "CANCELLED," without any requisite explanation of the basis therefor, plaintiffs' annotated Entry 4145 concerning their prior Deed of Sale dated 09 December 1991 at the back of the Original RD Albay copy of TCT No. T-77703 x x x

1.11 To ice this fraud, DAA Realty, if it was in good faith, ought to have derived its tax declaration from the Spouses Garcias' Tax Declaration No. 55 x x x Instead, DAA Realty with obvious arrogance of power, merely applied and declared for a NEW ORIGINAL real property tax declaration, the subject property in its own name, and thereby obtained a NEW Original Tax Declaration No. 96-0059 on 04 November 1998 x x x

1.12 Despite their actual knowledge and/or constructive notice, directly and/or indirectly, of plaintiffs' prior purchase prescinding from their status as real estate entities who are charged and reposed with higher degree of prudence, due care and diligence, on or about 21 April 2005, defendants MLI and DAA Realty then made it appear contrary to the truth that defendant MLI had purchased the subject property in good faith from DAA Realty, for which defendant MLI was purportedly issued a new TCT No. T-138212 x x x

1.13 Subsequently, plaintiffs additionally discovered, and so allege, that defendant MLI with apparent concealment of their fraudulent taking of plaintiffs' property, inveigled, cajoled, enticed and duped the defendant PNB, to grant it a commercial loan, duly secured by mortgage of plaintiffs' subject property, among others. As a banking institution, defendant PNB is also charged with a much higher degree of prudence, due care and diligence for which it is also guilty of actual knowledge and/or constructive notice, directly or indirectly, of such fraud and defects. Defendant MLI, together with its other affiliate corporations, had loaned and mortgaged to defendant PNB, among others, its alleged parcels of land located in Misibis, including the subject property, initially for the amount of ₱210 Million, and then to ₱500 Million x x x

1.14 *[sic]* Based on their startling discoveries of the above defraudation, on 01 September 2010, plaintiff Gatmaytan then immediately executed an Affidavit of Adverse Claim and registered on defendant MLI's TCTs x x x

1.14 Presently, plaintiffs' subject property is now a vital part of defendant MLI's prime commercial and residential projects popularly known as Misibis Residential Resort, and the Misibis Vacation Villa and Retirement Village-for tourism, lease and/or sale to the general unwary public, both local and international.[4]

x x x x x x x x x

Based on the foregoing factual allegations, petitioners raised three (3) causes of action, *viz.*:

i. Reconveyance of property since defendants were all allegedly guilty of fraud in transferring and obtaining the property;[5]

ii. Nullity of the Deed of Absolute Sale dated February 21, 1996 in favor of DAA Realty since Spouses Garcias could not have sold a property that no longer belonged to them;[6]

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[4] *Id.* at 73-78.

[5] *Id.* at 79-81.

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

iii. Quieting of title since the Deed of Absolute Sale dated February 21, 1996 created a cloud of doubt on their title which needed to be dispersed.[7]

Petitioners ultimately sought to be declared the true and rightful owner of subject property; to nullify the Deed of Absolute Sale dated February 21, 1996 between Spouses Garcias and DAA Realty and all transactions subsequent thereto, including the Deed of Absolute Sale dated April 21, 2005 between DAA Realty and respondent; to cancel DAA Realty and respondent's Transfer Certificate of Title (TCT) Nos. 97059 and T-138212, respectively, and all titles prescinding therefrom; to issue a new title in their favor, subject to submission of the required registration documents; and to obtain from defendants moral damages, exemplary damages, and attorney's fees at ₱500,000.00 each.[8]

In its Answer,[9] respondent denied the allegations and insisted it was an innocent purchaser for value of the property. It relied on DAA Realty's TCT No. 97059 which allegedly did not bear notice of any defect or prior sale in favor of petitioners.

More, petitioners never acquired ownership of the property since Cidra Garcia did not sign the Deed of Absolute Sale of Real Property dated December 9, 1991 in their favor, neither was possession of the property delivered to them. Considering that respondent was the first to register the property under its name, it had a better right thereto compared to petitioners.[10]

At any rate, petitioners' cause of action was already barred by prescription. Under Article 1456 of the New Civil Code,[11] when

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

[8] *Id.* at 85-88.

[9] *Id.* at 145.

[10] *Id.* at 145-153.

[11] **Article 1456.** If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

a person acquires property through fraud, an implied trust is created in favor of the defrauded party. An action for reconveyance of property based on an implied trust created by operation of law prescribes after ten (10) years from issuance of title to the trustee.[12] Here, TCT-97509 was issued to DAA Realty in 1996 while petitioners initiated the complaint only on December 10, 2014, more than ten (10) years later.[13]

Too, petitioners' failure to allege the assessed value of subject property in their Complaint was fatal to their case. Because of this omission, it could not be determined whether the Regional Trial Court or the Municipal Trial Court had jurisdiction over the suit.[14]

Finally, whatever cause of action petitioners may have had was already barred by laches. Petitioners had been sleeping on their rights from the time they allegedly bought the property on December 9, 1991 until they filed the Affidavit of Adverse Claim on September 8, 2010 and the Complaint on December 10, 2014. They did not even pay the real property taxes due thereon. Their failure to protect their alleged right, as they were negligently silent and inactive, converted their claim to a stale demand.[15]

In its compulsory counterclaim, respondent sought payment from petitioners for attorney's fees of ₱300,000.00, claiming it was compelled to litigate despite the Complaint's utter lack of basis.[16] It also filed a cross-claim against DAA Realty for reimbursement of the purchase price of the property should the trial court rule in petitioners' favor.[17]

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[12] *Rollo*, p. 160.

[13] *Id.* at 163.

[14] *Id.* at 163-164.

[15] *Id.* at 165-166.

[16] *Id.* at 168.

[17] *Id.* at 169.

In their Reply,[18] petitioners argued that whether they lacked a cause of action is an issue that should be threshed out in the trial proper.[19] In any event, records showed that not only did they have valid causes of action,[20] they also have a better right to the property compared to respondent.[21]

As for the issues of prescription and failure to allege the assessed value of the property, petitioners riposted:

Under Article 1410 of the New Civil Code,[22] a suit for the nullity of the fraudulent sales and titles was imprescriptible. Further, the alternative cause of action for quieting of title would only prescribe after thirty (30) years since respondent did not acquire the property in good faith.[23]

Their failure to declare the assessed value of the property in their Complaint was immaterial. The suit was for the nullity of the sale between Spouses Garcias to DAA Realty, and from DAA Realty to respondent, hence, it was an action incapable of pecuniary estimation falling within the exclusive original jurisdiction of the Regional Trial Court regardless of the value of the property involved.[24]

Finally, the equitable defense of laches could not be raised too early in the proceedings. The defense, too, was unavailing since petitioners discovered the fraudulent transfer only in 2010.[25]

Respondent filed a Motion for Preliminary Hearing[26] dated July 6, 2015, urging the trial court to hear and rule on its defenses

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[18] *Id.* at 175.

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

[20] *Id.* at 178.

[21] *Id.* at 195-196.

[22] **Article 1410.** The action or defense for the declaration of the inexistence of a contract does not prescribe.

[23] *Rollo*, pp. 186-191.

[24] *Id.* at 191-193.

[25] *Id.* at 194.

[26] *Id.* at 201.

of prescription and lack of jurisdiction. Petitioners filed their Comment/Opposition[27] thereto, repleading the counter-arguments in their Reply. Both parties essentially reiterated their arguments in their respective memoranda.[28]

The Trial Court's Ruling

Through its assailed Order[29] dated October 22, 2015, the trial court dismissed the Complaint due to prescription and lack of jurisdiction.

It held that under Art. 1456 of the New Civil Code, an implied trust is created by operation of law when property is acquired through fraud. The offended party may recover the property from the trustee through an action for reconveyance which prescribes in ten (10) years from the time the implied trust was constituted. Here, petitioners filed the Complaint on December 10, 2014, more than ten (10) years after the implied trust was constituted on February 22, 1996 when DAA Realty acquired title over the property. Hence, their cause of action had already prescribed.

More, petitioners' failure to indicate the assessed value of the property in their Complaint resulted in their failure to be assessed of, and pay for, the proper docket fees. Their non-payment of proper docket fees was a jurisdictional defect that led to the dismissal of the Complaint.

Petitioners' motion for reconsideration was denied on December 28, 2015.[30]

The Present Petition

In this Petition for Review on *Certiorari*, petitioners fault the trial court for ruling that their action for reconveyance was based on fraud which prescribes, rather than on nullity of the

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[27] *Id.* at 209.

[28] *Id.* at 217 and 229.

[29] *Id.* at 7.

[30] *Id.* at 15.

Deed of Absolute Sale dated February 21, 1996 which is imprescriptible. The trial court allegedly read matters not pleaded in their Complaint in ascertaining what their cause of action was, thus, improperly resulting in the dismissal of the suit.[31]

They never avoided payment of docket fees. In fact, they paid based on the assessed value of the property under DAA Realty's Tax Declaration No. 0059. Same tax declaration reveals that as early as 1998, the assessed value of the property was already ₱52,140.00, clearly placing the case within the jurisdiction of the Regional Trial Court.[32]

In its Comment,[33] respondent counters that the assailed Orders dismissed the complaint without prejudice. Hence, no appeal can be taken therefrom;[34] the proper remedy available to petitioners is a Petition for *Certiorari* under Rule 65 of the Rules of Court.[35] Even assuming that petitioners properly filed an appeal, it cannot be given due course since it involves questions of fact which the Court cannot try and resolve.[36]

At any rate, the trial court did not err in classifying petitioners' cause of action as one for reconveyance of property based on fraud.[37] The material allegations in the Complaint and the relief sought reveal that the primary objective of the suit was to recover the property and to have the trial court declare petitioners as the true and rightful owners thereof.[38] Although the Complaint also sought to nullify the sales in favor of DAA Realty and respondent, this did not efface the fundamental and prime objective of the suit which was to recover the property.[39] As

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[31] *Id.* at 37.

[32] *Id.* at 45.

[33] *Id.* at 100.

[34] Citing Section 1, Rule 41 of the Rules of Court; *rollo*, p. 401.

[35] *Rollo*, p. 402.

[36] *Id.* at 402-403.

[37] *Id.* at 403.

[38] *Id.* at 404.

[39] *Id.* at 406.

such, petitioners' cause of action had already prescribed ten (10) years after DAA Realty acquired title over the property.

The trial court also correctly dismissed the action for reconveyance for petitioners' failure to allege the value of the subject property. For it prevented the clerk of court from computing the proper docket fees. Consequently, petitioners could not have paid for the correct amount[40] which, in turn, prevented the trial court from acquiring jurisdiction over the case.

In their Reply,[41] petitioners argue that the present petition raises pure question of law; their cause of action is for the nullity of deeds of sale in favor of DAA Realty and respondent, thus, the same is incapable of pecuniary estimation falling within the jurisdiction of the Regional Trial Court; and the trial court may direct petitioners to pay additional docket fees if their earlier payment is deficient.

Threshold Issues

1. Did petitioners avail of the proper remedy when they filed the present Petition for Review on *Certiorari* with the Supreme Court?
2. Has petitioners' cause of action already prescribed?
3. Was petitioners' alleged failure to pay the correct docket fees fatal to their case?

Discussion

Petitioners availed of the proper remedy

In assailing the trial court's dispositions, petitioners availed of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Section 1 of the Rule allows such recourse to be filed with the Supreme Court, provided that purely legal questions are raised, *viz.*:

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[40] *Id.* at 409-410.

[41] *Id.* at 417.

Section 1. *Filing of petition with Supreme Court.* — **A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the** Court of Appeals, the Sandiganbayan, the **Regional Trial Court** or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law** which must be distinctly set forth. (emphases added)

As held in the landmark case of ***Gios-Samar, Inc. v. Department of Transportation and Communication***,[42] direct recourse to this Court is allowed only to resolve questions of law. Otherwise, the doctrine of hierarchy of courts should strictly be observed. The doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land.

Respondent, nevertheless, claims that the proper remedy for petitioners was a Petition for *Certiorari* under Rule 65 based on Section 1, Rule 41 of the Rules of Court, *viz.*:

Section 1. *Subject of appeal.* — x x x

No appeal may be taken from:

x x x x x x x x x

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Too, petitioners allegedly violated Section 1, Rule 45 of the Rules of Court when they purportedly raised questions of fact in their petition, *i.e.*, whether the trial court read into the Complaint a cause of action which petitioners did not allege, and whether the trial court erred in dismissing the complaint.

I disagree.

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[42] G.R. No. 217158, March 12, 2019.

For one, respondent misleads the Court in claiming that the trial court's dismissal was without prejudice. Although the order of dismissal did not expressly bar petitioners from refiling the case, it is deemed written since the ground for dismissal was prescription. Sections 1 and 5, Rule 16 of the Rules of Court read:

> **Section 1.** *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> x x x x x x x x x
>
> (f) **That the cause of action is barred** by a prior judgment or **by the statute of limitations**;
>
> x x x x x x x x x
>
> **Section 5.** *Effect of dismissal.* — Subject to the right of appeal, **an order granting a motion to dismiss based on paragraphs (f)**, (h) and (i) of Section 1 hereof **shall bar the refiling of the same action or claim**. (emphases added)

Hence, the dismissal of petitioners' complaint below was not "without prejudice." Consequently, the prohibition against the filing of appeal under Section 1, Rule 41 of the Rules of Court does not apply, and a Petition for *Certiorari* under Rule 65 becomes unavailable.

For another, respondent is mistaken in claiming that the present petition raises questions of fact, not pure questions of law. ***Tongonan Holdings and Development Corporation v. Escaño, Jr.***[43] distinguished the two concepts, thus:

> x x x A question of law arises when there is doubt as to what the law is on a certain state of facts, while **there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts**. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented,

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[43] 672 Phil. 747, 756 (2011).

the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is **whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.** (emphases added)

Here, respondent invoked the affirmative defenses of prescription and lack of jurisdiction in seeking the immediate dismissal of the Complaint. Under Section 6, Rule 16 of the Rues of Court,[44] invoking these affirmative defenses is akin to filing a Motion to Dismiss wherein the movant hypothetically admits the truth of the material facts alleged and pleaded in the complaint.[45]

True to form, respondent, as in a motion to dismiss, hypothetically admitted the allegations in petitioners' Complaint but countered that their cause of action had prescribed ten (10) years after the issuance of Certificate of Title No. T-97059 in favor of DAA Realty in 1996. Petitioners, for their part, also admitted that more than ten (10) years had elapsed from the issuance of Certificate of Title No. T-97059 but nevertheless argue that their cause of action is imprescriptible.

Too, petitioners never denied failing to allege the assessed value of the property involved when they filed the Complaint. They claim, however, that such failure is immaterial since their cause of action is incapable of pecuniary estimation. The assessed value of the property, therefore, is not jurisdictional

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[44] **Section 6.** *Pleading grounds as affirmative defenses.* — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. (5a)

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (n)

[45] *Aquino v. Quiazon*, 755 Phil. 793, 808-809 (2015).

and should not be used as basis for computing the docket fees they had to pay.

By virtue of these admissions from the parties themselves, both express and implied, hypothetical and otherwise, no factual issue remains insofar as prescription and non-payment of the proper docket fees are concerned. Whether petitioners' cause of action had already prescribed and whether the Complaint required an allegation on the assessed value of the property — are pure legal questions which the Court may resolve on the basis of the allegations in the Complaint. Nothing more.

Petitioners' action for reconveyance of property on ground of fraud had already prescribed

Petitioners essentially alleged three (3) causes of action in their Complaint, *viz.*:

i. Reconveyance of property based on bad faith;[46]

ii. Reconveyance of property based on nullity of contract;[47] and

iii. Quieting of title.[48]

A complaint for reconveyance is an action which admits the registration of title of another party but claims that such registration was erroneous or wrongful. It seeks the transfer of the title to the rightful and legal owner, or to the party who has a superior right over it, without prejudice to innocent purchasers in good faith.[49]

The relief prayed for may be granted on the basis of intrinsic fraud — fraud committed on the true owner.[50] In such a case, an implied trust is constituted in favor of the offended party,[51] and

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[46] *Rollo*, pp. 79-81.

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

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

[49] *Sps. Aboitiz and Cabarrus v. Sps. Po*, 810 Phil. 123, 137 (2017).

[50] *Id.*

[51] Art. 1456, New Civil Code:

the action for reconveyance and cancellation of title prescribes in ten (10) years from issuance of the Torrens title to the property in favor of the trustee.[52]

By way of exception, the Court has permitted the filing of an action for reconveyance of property despite the lapse of more than ten (10) years from issuance of title where plaintiff is in possession of the disputed property, converting the action from reconveyance of property into one for quieting of title. These cases are imprescriptible since the plaintiff has the right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right.[53]

The action for reconveyance, however, may also be premised on a void or inexistent contract. Being an absolute nullity, the transfer instrument is subject to attack anytime, in accordance with Article 1410 of the Civil Code.[54] In other words, an action for reconveyance based on a void contract is imprescriptible. So long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner.[55]

Whether an action for reconveyance prescribes, therefore, depends on two (2) criteria:

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[52] Article 1144, New Civil Code: Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[53] *Ocampo v. Ocampo, Sr.*, 813 Phil. 390, 401 (2017).

[54] **Article 1410**. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[55] *Uy v. Court of Appeals*, 769 Phil. 705, 722 (2015).

First. Whether it is founded on a claim of fraud resulting in an implied or constructive trust, or one based on a void or inexistent contract;[56] and

Second. Whether plaintiff is in possession of the disputed property.

Petitioners' allegation of three (3) alternative causes of action notwithstanding, I agree with the trial court's finding that petitioners' main thrust is to recover the property which respondent allegedly acquired through fraud.

The allegations in the complaint, including the character of the relief sought, determines its cause of action.[57] Here, the Complaint essentially alleged that respondent, DAA Realty and Spouses Garcias conspired and schemed to methodically defraud and deprive petitioners of the property they bought. Despite actual knowledge of such prior sale to petitioners, respondent, *et al*., made it appear that respondent had purchased the property in good faith from DAA Realty. Subsequently, they fraudulently secured and smoothly obtained a bogus and void TCT No. T-97059 in its name from the RD Albay, and applied for a new tax declaration instead of deriving one from the Tax Declaration No. 55 under the name of Spouses Garcias. Meanwhile, the other circumstances mentioned pertain to whether respondent was a purchaser in good faith.

As for the remedies prayed for in the Complaint, petitioners sought to be declared the true and rightful owner of the property and to have a new title issued in their favor, subject to the submission of the required registration documents. Notably, although they also sought to cancel DAA Realty and respondent's titles, this relief was merely incidental to their main cause. As held in ***Heirs of Spouses Ramiro and Llamada v. Spouses Bacaron***, thus:[58]

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[56] *Id.*

[57] *Sps. Pajares v. Remarkable Laundry and Dry Cleaning*, 806 Phil. 39, 45 (2017).

[58] G.R. No. 196874, February 6, 2019.

The ultimate relief sought by respondents is for the recovery of the property through the enforcement of its sale in their favor by the late spouses Ramiro. Their other causes of action for the cancellation of the original title and the issuance of a new one in their name, as well as for injunction and damages, are merely incidental to the recovery of the property. Before any of the other reliefs respondents prayed for in their complaint can be granted, the issue of who between them and petitioners has the valid title to the lot must first be determined.

On this score, the trial court correctly ruled that petitioners' cause of action is actually for reconveyance of property on ground of fraud.

This brings to fore the second criterion. Indeed, whether petitioners are in possession of the disputed land determines whether their cause of action for reconveyance is converted to an action for quieting of title which is imprescriptible. As it was, however, the Complaint here did not bear any allegation that petitioners have been in possession of the property for the purpose of excluding the case from the ten (10) year prescriptive period. In fact, the Complaint itself contained petitioners' admission that they filed it on December 10, 2014, more than ten (10) years from the time TCT No. T-97509 was issued in favor of DAA Realty in 1996. Consequently, the trial court did not err in dismissing petitioners' Complaint on ground of prescription.

Petitioners do not bear the requisite legal or equitable title to or interest in the property to sustain an action for quieting of title

Indeed, petitioners' cause of action could not have been one for quieting of title which requires the following elements: (1) the plaintiff or complainant has legal or 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.[59]

The first element is sorely missing in this case. For although petitioners claim that Spouses Cidra and Oscar Garcia sold them the disputed property through a Deed of Absolute Sale dated December 9, 1991,[60] this is belied by evidence that petitioners themselves submitted to this Court.

Attached to petitioners' Complaint is copy of TCT T-77703[61] covering the disputed property. The title bears the name of the registered owner as "Cidra Garcia married to Oscar Garcia." Curiously, though, the Deed of Absolute Sale dated December 9, 1991 was executed by Oscar Garcia only.

Under the Family Code, the consent of both spouses is indispensable for purposes of disposing either conjugal or community property, *viz.*:

> Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. **In the absence of such authority or consent, the disposition or encumbrance shall be void.** However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by

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[59] *Residents of Lower Atab & Teachers' Village, Sto. Tomas Proper Barangay, Baguio City v. Sta. Monica Industrial & Development Corporation*, 745 Phil. 554, 563 (2014).

[60] *Rollo*, p. 90.

[61] *Id.* at 93.

the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

x x x x x x x x x

Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. **In the absence of such authority or consent, the disposition or encumbrance shall be void.** However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (emphases added)

Here, it does not appear that Cidra consented to the sale of the disputed property in favor of petitioners. The Deed of Absolute Sale dated December 9, 1991 bears no indication whatsoever regarding Oscar's authority to sign the deed of conveyance in her behalf. Hence, the sale of the property in favor of petitioners is **void**. Petitioners never acquired ownership over the disputed property. Their complaint, therefore, failed to sustain a valid cause of action for quieting of title, let alone one that has yet to prescribe.

TCT No. 97059 cannot be subject to collateral attack; DAA Realty is an indispensable party in assailing its validity

Neither could petitioners' complaint sustain a cause of action for reconveyance of property against respondent based on the alleged nullity of the Deed of Absolute Sale dated February 21, 1996 and TCT No. 97059. Said deed was executed by both Cidra and Oscar Garcia in favor of DAA Realty, not respondent. Thus, if petitioners wish to challenge the validity of the

conveyance and the consequent title, they should have impleaded DAA Realty in the present petition, being an indispensable party to the case.

Section 3, Rule 7 of the Rules of Court defines an "indispensable party" thus:

Section 7. *Compulsory joinder of indispensable parties.* — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Cagatao v. Almonte elucidates:[62]

The validity of TCT No. 12159-A cannot be attacked collaterally; Carlos is an indispensable party

From the arguments of Cagatao, it is clear that he is assailing the validity of the title of Carlos over the land in question. Section 48 of P.D. No. 1529 clearly states that "a certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." An attack on the validity of the title is considered to be a collateral attack when, in an action to obtain a different relief and as an incident of the said action, an attack is made against the judgment granting the title. Cagatao's original complaint before the RTC was for the cancellation of TCT No. T-249437 in the name of the Fernandez Siblings and the nullification of the deeds of sale between the Fernandez Siblings and Spouses Fernandez, and the earlier one between the latter and Almonte and Aguilar. Nowhere in his complaint did Cagatao mention that he sought to invalidate TCT No. 12159-A. It was only during the course of the proceedings, when Spouses Fernandez disclosed that they had purchased the property from Carlos, that Cagatao thought of questioning the validity of TCT No. 12159-A.

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Moreover, Carlos, as the registered owner of the lot whose title Cagatao seeks to nullify, should have been impleaded as an indispensable party. Section 7, Rule 3 of the 1997 Rules of Civil Procedure defines indispensable parties to be "parties in interest without whom no final determination can be had of an action." It is

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[62] 719 Phil. 241, 252-254 (2013).

clear in this case that Cagatao failed to include Carlos in his action for the annulment of TCT No. 12159-A. Basic is the rule in procedural law that no man can be affected by any proceeding to which he is a stranger and strangers to a case cannot be bound by a judgment rendered by the court. It would be the height of injustice to entertain an action for the annulment of Carlos' title without giving her the opportunity to present evidence to support her claim of ownership through title. In addition, it is without question a violation of the constitutional guarantee that no person shall be deprived of property without due process of law.

Thus, should Cagatao wish to question the ownership of the subject lot of Carlos and Spouses Fernandez, he should institute a direct action before the proper courts for the cancellation or modification of the titles in the name of the latter two. He cannot do so now because it is tantamount to a collateral attack on Carlos' title, which is expressly prohibited by law and jurisprudence.

Here, petitioners impleaded respondent Misibis Land, DAA Realty, Philippine National Bank, Spouses Oscar and Cidra Garcia, Hector Cledera in his capacity as Registrar of Deeds of Albay, and John and Jane Does as party-respondents in their complaint below. Subsequently, the trial court dismissed the complaint through its assailed Order dated October 22, 2015. But for reasons known only to petitioners, they appealed the order of dismissal against respondent Misibis Land alone. This allowed the dismissal of the Complaint against DAA Realty, *et al.*, to lapse into finality. Unfortunately, Misibis Land is not the proper party against whom the complaint for nullifying the Deed of Absolute Sale dated February 21, 1996 ought to proceed. It was not privy to the contract of sale and is therefore in no position to defend its validity.

In view of the finality of the dismissal of the complaint as against DAA Realty, petitioners can no longer assail the validity of Deed of Absolute Sale dated February 21, 1996 and TCT No. 97059. Consequently, TCT No. 138212 which resulted from respondent's purchase of the property from DAA Realty may no longer be challenged based on the latter's purported null title. Otherwise, the case would be nothing more than a collateral

attack on respondent's title which violates Section 48 of Presidential Decree (PD) 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 canceled except in a direct proceeding in accordance with law.

In the same vein, the alleged violation of Section 53, PD 1529[63] — for failure to surrender Spouses Garcia's duplicate owner's copy of TCT No. T-77703—cannot be raised against Misibis Land. For it was DAA Realty, not respondent Misibis Land which was required to surrender TCT No. T-77703 when it registered the Deed of Absolute Sale dated February 21, 1996 in its favor. When respondent registered the Deed of Absolute Sale dated April 21, 2005, it was only required to present TCT No. 97059 under the name of DAA Realty.

Petitioners failed to pay the correct docket fees

Under Section 7(a), Rule 141, the docket fees in cases involving real property such as an action for reconveyance based on fraud, depend on the assessed value of the subject property at the time the complaint was filed. The higher the assessed value, the higher the docket fees.

Here, respondent has never refuted that petitioners paid docket fees based on the assessed value of the property under DAA Realty's Tax Declaration No. 0059 dated 1998, albeit the case

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[63] **Section 53.** *Presentation of owner's duplicate upon entry of new certificate*. No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

was filed in 2014 when the assessed value of the property had definitely increased.

In the landmark case of ***Sun Insurance Office, Ltd. v. Asuncion***,[64] the Court held that although belated payment of docket fees may still be allowed within a reasonable time, it cannot be extended beyond the applicable prescriptive or reglementary period. Thus, contrary to petitioners' claim, their failure to pay the correct docket fees here can no longer be cured. Ordering them to pay any deficiency will simply serve no purpose since their cause of action had already prescribed.

ACCORDINGLY, I vote to **DENY** the present appeal and **AFFIRM** the Orders dated October 22, 2015 and December 28, 2015 of the Regional Trial Court—Branch 15, Tabaco City, Albay in Civil Case No. T-2820.

THIRD DIVISION

[G.R. No. 223377. June 10, 2020]

2100 CUSTOMS BROKERS, INC., *petitioner, vs.* **PHILAM INSURANCE COMPANY [now AIG PHILIPPINES INSURANCE INC.],** *respondent.*

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

[64] 252 Phil. 280 (1989).

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED ONLY TO QUESTIONS OF LAW; EXCEPTIONS. —** [A] petition for review on *certiorari* under Rule 45 is limited only to questions of law. As a rule, We do not review factual questions raised under Rule 45 as it is not Our function to analyze or weigh evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In the case of *Microsoft Corp. v. Farajallah*, the Court declared that a review of the factual findings of the CA is proper in the following instances: (1) when the factual findings of the Court of Appeals and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is a grave abuse of discretion in the appreciation of facts; (5) when the Appellate Court, in making its findings, went beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts; **(7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;** (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

2. **MERCANTILE LAW; REPUBLIC ACT NO. 9280 (THE CUSTOMS BROKERS ACT OF 2002); CUSTOMS BROKER; REGARDED AS A COMMON CARRIER BECAUSE IT UNDERTAKES TO DELIVER GOODS FOR A PECUNIARY CONSIDERATION. —** A careful study of the scope of the practice of customs brokers reveals that the acts enumerated x x x [in Section 6 of RA No. 9280, otherwise known as "Customs Brokers Act of 2004] clearly pertain to acts incidental and necessary for the transportation of goods to the consignee. The participation of a customs broker, through the acts listed x x x, are essential to an entity engaged in the business of transporting goods. A customs broker has

been regarded as a common carrier because transportation of goods is an integral part of its business. We have already settled in a number of cases that a customs broker is a common carrier because it undertakes to deliver goods for a pecuniary consideration. The fact that 2100 CBI is a common carrier is buttressed by the testimony of its own witness, Ildefonso Magnawa (Magnawa), the Night Operations Manager of 2100 CBI x x x. No matter how minimal or short the period the goods are placed in the custody of 2100 CBI, it remains settled that the participation of 2100 CBI is indispensable to the delivery of the goods to TSPIC. For undertaking the transport of the cargo from Paircargo warehouse to TSPIC's warehouse for a fee, 2100 CBI is considered a common carrier.

3. ID.; INSURANCE LAW; REPUBLIC ACT NO. 10607 (THE INSURANCE CODE); MARINE INSURANCE; THE SCOPE OF MARINE INSURANCE INCLUDES INLAND MARINE INSURANCE AND COVERS OVER THE LAND TRANSPORTATION PERILS OF PROPERTY SHIPPED BY AIRPLANE. — Simply because the word "marine" was used in Marine Cargo Certificate does not mean that TSPIC availed the wrong insurance policy for its cargo transported through airplane.[Pursuant to] Section 101(a)(2) of Republic Act No. (R.A.) 10607[,] x x x the scope of marine insurance includes inland marine insurance and covers over the land transportation perils of property shipped by airplanes.

4. ID.; ID.; ID.; INSURANCE POLICY; THE ORIGINAL COPY OF THE INSURANCE POLICY IS THE BEST PROOF OF ITS CONTENTS, AND AS AN ACTIONABLE DOCUMENT, THE INSURANCE POLICY MUST BE PRESENTED IN ORDER TO DETERMINE WHETHER THE DAMAGE SUSTAINED BY THE GOODS IS CAUSED BY A PERIL OR RISK COVERED BY THE POLICY. — Marine Cargo Certificate No. 0801012154 certifies that Philam received the premium for Open Policy Number 9595292 and details the clauses, warranties, and special conditions of the policy. Noticeably, Open Policy Number 9595292 was not presented during trial nor on appeal. From the start, 2100 CBI had already raised the issue of non-presentation of the insurance policy yet it was never produced by Philam. The issue was also repeatedly raised on appeal. x x x The original copy of the insurance policy is the best proof of its contents. The contract of insurance must be

presented in evidence to indicate the extent of its coverage. At most, Marine Cargo Certificate No. 0801012154 and the subrogation receipt may be used to establish the relationship between the insurer and the consignee and the amount paid to settle the claim. The subrogation receipt, by itself, is not sufficient to prove a claim holding an insurer liable for damage sustained by an insured item. These documents are not sufficient to prove that the damage to the cargo is compensable under the insurance policy chargeable against 2100 CBI. x x x As an actionable document, the insurance policy must be presented in order to determine whether the damage sustained by the cargo of TSPIC is caused by a peril or risk covered by the policy. In the absence of proof of the contents of the policy confirming that the damage to the cargo is covered by the insurance policy chargeable against 2100 CBI, Philam cannot hold 2100 CBI responsible for the damage to the cargo. Philam's failure to present the original copy, which was presumably in its possession, or even a copy of it, for unknown reasons, is fatal to its claim against 2100 CBI as this document is the primary basis for its claim of right to subrogation. Had a copy of the insurance policy been presented by Philam, it would have clearly delineated the scope of its coverage. We cannot ignore the possibility that the insurance policy did not cover all phases of handling the shipment.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEASE; COMMON CARRIERS; THERE IS NO NEED TO RELY ON THE PRESUMPTION OF LAW THAT A COMMON CARRIER IS PRESUMED TO HAVE BEEN AT FAULT OR HAVE ACTED NEGLIGENTLY IN CASE OF DAMAGED GOODS IF IT IS NOT NEGLIGENT IN HANDLING THE SHIPMENT. — We find that 2100 CBI was not negligent in handling the shipment of TSPIC. x x x [I]t is clear that there is no need to rely on the presumption of the law that a common carrier is presumed to have been at fault or have acted negligently in case of damaged goods. This is because the delay in the release of the goods was through no fault of 2100 CBI. The damage was caused by the late payment of the funds needed for the release of the goods from the custody of BOC which was originally TSPIC's responsibility. It must be noted that while waiting for the freight charges to be settled, 2100 CBI did not have custody over the shipment. The *pro-forma* stipulation in DR No. 659556 that TSPIC received the

cargo in good order and condition from 2100 CBI does not disprove the claim of 2100 CBI that the cargo may have been damaged while it was in the possession of BOC. It is important to note that at the time the cargo was released to 2100 CBI from BOC and delivered to TSPIC, the cargo remained sealed. Thus, said *pro-forma* stipulation did not accurately describe the condition of the cargo at the time delivery was made to TSPIC and cannot be used as basis for holding 2100 CBI accountable for the damaged goods.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
C.E. Cruz Law Office for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Rules), assailing the Decision[2] dated October 12, 2015 and the Resolution[3] dated March 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138302 filed by petitioner 2100 Customs Brokers, Inc. (2100 CBI).

The Antecedents

On February 27, 2001, Ablestik Laboratories (Ablestik) placed two (2) cardboard boxes containing 63 jars of Ablebond Adhesive on board Japan Airlines (JAL) Flight No. JL 5261 in Los Angeles, California, United States of America[4] covered by Airway Bill No. 131-66081842[5] for consignee TSPIC Corporation (TSPIC).

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[1] *Rollo*, pp. 3-39.

[2] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Myra V. Garcia-Fernandez, concurring; *id*. at 47-59.

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

[4] *Id*. at 5.

[5] *Id*. at 93.

After transshipment in Japan, the goods were expected to arrive in Manila aboard JAL Flight No. JL 745 on March 1, 2001.[6] Ablestik issued a handling instruction[7] addressed to its freight forwarding agent, U-Freight America Inc., stating the following:

SHIPMENTS CONTAINING DRY ICE ARE PERISHABLE AND MUST DELIVER TO OUR CUSTOMER WITHIN 72 HOURS. DO NOT DELAY.

x x x x x x x x x

5. Frozen products must maintain temperatures of -40F. 6. If transit is to be longer than 72 hours[,] total shipment must be reiced [sic] in transit or at broker's import destination, depending on flight schedule.

7. Shipment must be stored upon arrival in destination broker's freezer with temperatures of 32F or colder.[8] (Emphasis and italics in the original)

The goods were insured with respondent Philam Insurance Company (Philam; now AIG PHILIPPINES INSURANCE, INC.) against all risks per Marine Cargo Certificate 0801012154[9] and Open Policy Number 9595292.[10]

At 1:30 a.m. on March 1, 2001 (Thursday), the goods arrived at the Ninoy Aquino International Airport (NAIA) and were subsequently stored at the Paircargo warehouse located in NAIA Complex, Parañaque City.[11]

At 2:47 p.m. on March 2, 2001 (Friday), TSPIC notified 2100 CBI that the shipment had arrived.[12] TSPIC allegedly forwarded to 2100 CBI the Packing List from Ablestik indicating

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[6] *Id.* at 6.

[7] *Id.* at 415.

[8] *Id.*

[9] *Id.* at 413.

[10] *Id.* at 48.

[11] *Id.* at 6.

[12] *Id.*

"1 Year @-40C or colder/ Dry ice shipment"[13] and the Shipment Handling Instructions[14] from Ablestik stating "SHIPMENTS CONTAINING DRY ICE ARE PERISHABLE AND MUST DELIVER TO OUR CUSTOMER WITHIN 72 HOURS. DO NOT DELAY." It is further stated in the Shipment Handling Instructions that:

> Frozen products must maintain temperatures of-40F.
> If transit is to be longer than 72 hours total shipment must be re-iced in transit or at broker's import destination, depending on flight schedule.
> Shipment must be stored upon arrival in destination broker's freezer with temperatures of 32F or colder.[15]

TSPIC also sent an extra copy[16] of Airway Bill No. 131-66081842 with "freight collect" stamped on its face which meant that freight charges must be paid to JAL before it could release the original copy of Airway Bill No. 131-66081842. This is required to process the discharge of the shipment from the custody of the Bureau of Customs (BOC).[17] TSPIC informed 2100 CBI that the latter will advance the necessary funds for the freight charges in the amount of ₱14,672.00. Since it was already past 3 p.m. on a Friday, the banks were already closed, and there were no available signatories to sign the checks. The freight charges were only settled on March 5, 2001.[18]

At around 2:00 a.m. on March 6, 2001 (Tuesday) or five (5) days after the date of arrival of the shipment in Manila, 2100 CBI delivered the cargo to TSPIC.[19] Upon receipt of the goods, TSPIC's representatives found that the dry ice stuffed inside

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[13] *Id*. at 48.

[14] *Id*. at 415.

[15] *Id*.

[16] *Id*. at 93.

[17] *Id*. at 6.

[18] *Id*. at 48, 131; TSN dated October 4, 2019, p. 15.

[19] *Id*. at 134, 127.

the boxes have melted due to the delay in the delivery as shown in the Damage Report[20] and photographs taken by the Manila Adjusters Surveyors Company (MASCO).[21]

TSPIC filed a claim[22] against 2100 CBI for the value of the shipment but the latter refused to pay. 2100 CBI contended that the delay in the delivery of the goods was due to TSPIC's failure to give pre-alerts as to the expected arrival thereof and TSPIC's failure to pay the freight charges on time.[23]

TSPIC then filed a formal claim for the recovery of the value of the damaged goods against Philam. After the survey conducted by the MASCO,[24] payment in the amount of ₱391,917.69 was recommended.[25] Philam paid the insurance claim of TSPIC. On July 30, 2001, a subrogation receipt for Claim No. 200140080A was executed certifying that Philam paid the insurance claim of TSPIC.[26]

Thereafter, Philam filed a claim for reimbursement against 2100 CBI but its claim was denied. Hence, Philam filed a complaint for damages docketed as Civil Case No. 78072 in the Metropolitan Trial Court of Makati City (MeTC).[27]

In 2100 CBI's Answer with Counterclaim,[28] it denied the allegations against it and maintained that it has no liability to pay consignee TSPIC because it had exercised the diligence and care required by law in the vigilance and custody over the shipment. 2100 CBI claimed that the alleged damage, if there is any, did not occur when the shipment was under its custody.

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[20] *Id*. at 238.

[21] *Id*. at 239-241.

[22] *Id*. at 135.

[23] *Id*. at 136.

[24] *Id*. at 228.

[25] *Id*. at 233.

[26] *Id*. at 227.

[27] *Id*. at 137-141.

[28] *Id*. at 142-146.

2100 CBI also argued that it was just a mere customs broker or a commercial agent in the transaction specifically tasked to release the shipment from the BOC only after the receipt of the original import documents from the consignees or freight forwarder or at least a pre-alert advice about the arrival of the shipment from the consignee.[29] In the letter attached to its Answer with Counterclaim, 2100 CBI insisted that it received from TSPIC the shipment documents late in the afternoon of Friday March 2, 2001. Freight payment was advanced by 2100 CBI on March 5, 2001 (Monday) because freight payment is not accepted on Saturdays and Sundays and TSPIC's funds were not sufficient.[30]

For its counterclaim, 2100 CBI maintained that because of the unfounded suit, it was exposed to litigation and was constrained to hire the services of a lawyer in the amount of ₱50,000.00.[31]

Ruling of the Metropolitan Trial Court

In a Decision[32] dated June 6, 2013, the MeTC ordered 2100 CBI to pay Philam the following: (1) ₱391,917.69 as actual damages; (2) ₱10,000.00 as attorney's fees; and (3) costs of suit.[33] The MeTC held that, as customs broker, 2100 CBI is regarded as a common carrier because transportation of goods is an integral part of its business. It is mandated by law to exercise extraordinary diligence in handling TSPIC's shipment.[34]

The MeTC explained that because of the nature of 2100 CBI's business, it should have devised ways to prevent the damage to the cargo under its custody and to deliver the same to the consignee with extraordinary care and diligence. Even if the cargo was not released immediately by the BOC due to

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[29] *Id*. at 143.

[30] *Id*. at 136.

[31] *Id*. at 144.

[32] Penned by Presiding Judge Barbara Aleli H. Briones; *id*. at 359-364.

[33] *Id*. at 364.

[34] *Id*. at 363.

insufficient funds for the freight payment, 2100 CBI knew from the start that the cargo contained perishable materials and had to be stored in a cool place and required re-icing beyond 72 hours in transit. The packing list clearly indicated that the items are "1 Year @-40C or colder/ Dry ice shipment."[35] For the MeTC, 2100 CBI should have undertaken precautionary measures to avoid or lessen the cargo's possible deterioration.[36]

The MeTC noted that in 2100 CBI's DR No. 659556,[37] "the defendant [2100 CBI] accepted the items in good order and condition, noting the carton of frozen adhesive."[38] The MeTC concluded that the goods "went from good order to bad order condition while in the custody of the defendant [2100 CBI]"[39] and that it "failed to adduce evidence that it exerted extraordinary diligence to prevent the same from occurring.[40]

In an Order[41] dated January 8, 2014, the MeTC denied the Motion for Reconsideration of 2100 CBI.[42]

Ruling of the Regional Trial Court

In a Decision[43] dated May 23, 2014, the Regional Trial Court (RTC) affirmed the ruling of the MeTC. In sustaining the ruling of the MeTC, the RTC found that the cargo deteriorated while inside the Paircargo warehouse because of the delay in the release and withdrawal to TSPIC, as stated in the Certificate of Survey and Material Status Report. The RTC explained that although the cargo was not released immediately by the BOC

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[35] *Id*. at 364.

[36] *Id*. at 363-364.

[37] *Id*. at 134.

[38] *Id*. at 364.

[39] *Id*.

[40] *Id*.

[41] Penned by Presiding Judge Barbara Aleli H. Briones; *id*. at 365.

[42] *Id*.

[43] Penned by Judge Marryann E. Corpus-Mañalac; *id*. at 366-374.

due to the insufficient freight payment, 2100 CBI knew at the outset that the cargo contained perishable material which had to be stored in cool places and re-iced after 72 hours in transit.[44] The RTC found that 2100 CBI failed to prove that it exerted extraordinary diligence while the cargo was in its custody.

Ruling of the Court of Appeals

In a Decision[45] dated October 12, 2015, the CA denied the petition of 2100 CBI and affirmed the ruling of the RTC ordering 2100 CBI to pay ₱391,917.69 as actual damages, ₱10,000.00 as attorney's fees, and costs of suit.[46]

In affirming the ruling of the RTC, the CA held that 2100 CBI, as a common carrier, failed to exercise extraordinary diligence over the goods. The CA observed that 2100 CBI already knew that the goods cannot be released on March 2, 2001 yet it did not take precautionary measures to avoid damage to the cargo. It received the Ablestik packing list which stipulated "1 Year @ -40C or colder/ Dry Ice shipment"[47] on March 2, 2001. Considering that the transit has exceeded 72 hours, 2100 CBI should have re-iced the goods to maintain its required temperature at -40C or colder.[48]

Moreover, the CA found no merit in 2100 CBI's contention that there was no valid subrogation. The goods were insured with Philam against all risks pursuant to Marine Cargo Certificate 0801012154 and Open Policy Number 9595292. When the shipment was damaged, TSPIC filed a claim for recovery of the value against Philam. The CA concluded that since Philam paid the insurance claim of TSPIC, it is only but proper that Philam be subrogated to the rights of TSPIC.[49]

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[44] *Id*. at 364.

[45] *Supra* note 2.

[46] *Rollo*, p. 59.

[47] *Id*. at 58.

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

[49] *Id*. at 58.

In a Resolution[50] dated March 7, 2016, the CA denied the Motion for Reconsideration[51] of 2100 CBI.

In the present petition,[52] 2100 CBI insists that Philam failed to show that it was negligent in handling the subject goods from the time the BOC released the goods on March 6, 2001 at 2:00 a.m. until they were delivered to TSPIC in good order and condition on March 6, 2001 at 3:44 a.m., or approximately two hours. It would be physically impossible and contrary to logic and experience for 2100 CBI to implement any control or handling instructions over goods not in its possession or custody. Even assuming that it is a common carrier, 2100 CBI suggests that it is excused from liability as it did not cause the delay in the delivery of the goods to TSPIC. The delay in the release of the goods was due to TSPIC's failure to provide sufficient money for the freight charges to be paid.[53]

2100 CBI also alleges that TSPIC failed to give a copy of the handling instruction. The Shipment Handling Instruction presented was addressed to U-Freight America, Inc., not 2100 CBI.[54]

In addition, 2100 CBI argues that it was incumbent upon Philam to show that the alleged damage was within the coverage of the supposed insurance with TSPIC. 2100 CBI posits that the Marine Cargo Certificate, by itself, does not show the scope of coverage over the subject goods. The contract of insurance must be presented to prove the extent of its coverage.[55] 2100 CBI also points out that as the name "Marine Cargo Certificate" implies, it covers goods transported by sea, and not through air such as the shipment of TSPIC placed onboard JAL Flight

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[50] *Supra* note 3.

[51] *Rollo*, pp. 63-91.

[52] *Id*. at 3-38.

[53] *Id*. at 21-22.

[54] *Id*. at 18.

[55] *Id*. at 14-15.

No. JL 5261.[56] Even if the Marine Cargo Certificate covers shipment of goods by air, the Insurance Declaration Report attached to the Marine Cargo Certificate only covers Ablestik's shipment on JL Flight No. 745 from Narita, Japan. Shipment of goods aboard JL Flight No. 5621 from USA was allegedly not included.[57]

2100 CBI claims that an insurer who pays the insured for loss or liability not covered by the policy is not subrogated to rights of the latter.[58]

In its Comment,[59] Philam argues that the present petition only raised questions of fact which, as a general rule, are not reviewable under Rule 45 of the Rules.[60] Philam also claims that there was a valid subrogation in its favor by virtue of its payment of TSPIC's insurance claim.[61] Philam also insists that 2100 CBI is a common carrier whose liability is governed by Article 1735 of the Civil Code.[62]

Issues

The issues to be resolved are:

1. Whether 2100 CBI is a common carrier engaged in the transportation of goods;

2. Whether a Marine Cargo Certificate may include goods transported by air;

3. Whether the insurance policy must be presented to establish the liability of the common carrier to Philam; and

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[56] *Id*. at 15.

[57] *Id*. at 16.

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

[59] *Id*. at 554-568.

[60] *Id*. at 564.

[61] *Id*. at 565.

[62] *Id*. at 566-567.

4. Whether 2100 CBI was negligent in handling the shipment of TSPIC, thus making it liable for damages.

The Court's Ruling

At the outset, We deem it necessary to emphasize that a petition for review on *certiorari* under Rule 45 is limited only to questions of law. As a rule, We do not review factual questions raised under Rule 45 as it is not Our function to analyze or weigh evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In the case of *Microsoft Corp. v. Farajallah,*[63] the Court declared that a review of the factual findings of the CA is proper in the following instances:

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;

(2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures;

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is a grave abuse of discretion in the appreciation of facts;

(5) when the Appellate Court, in making its findings, went beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

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[63] 742 Phil. 775 (2014).

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[64] (Emphasis supplied)

In this case, a careful re-examination of the evidence on record will reveal that the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion. There is a need to review the factual findings of the lower court to determine when 2100 CBI acquired possession over the goods, an issue that is crucial in determining the rights and liabilities of the parties.

2100 CBI, a customs broker, is a common carrier.

2100 CBI claims that it is not a common earner because it is not engaged in the transportation or delivery of goods and is primarily engaged in the business of customs brokerage, as reflected in its Amended Articles of Incorporation.[65]

To support 2100 CBI's position, it cited Section 6 of RA No. 9280, otherwise known as "Customs Brokers Act of 2004" the pertinent portion of which states:

Sec. 6. *Scope of the Practice of Customs Brokers*. — Customs Broker Profession involves services consisting of consultation, preparation of customs requisite documents for imports and exports, declaration of customs duties and taxes, preparation, signing, filing, lodging and processing of import and export entries; representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles and rendering of other professional services in matters relating to customs and tariff laws, its procedures and practices.[66]

The contention of 2100 CBI is untenable. A careful study of the scope of the practice of customs brokers reveals that the acts enumerated above clearly pertain to acts incidental

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[64] *Id.* at 785.

[65] *Rollo*, pp. 33, 243.

[66] Republic Act No. 9280, Sec. 6.

and necessary for the transportation of goods to the consignee. The participation of a customs broker, through the acts listed above, are essential to an entity engaged in the business of transporting goods. A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business. We have already settled in a number of cases that a customs broker is a common carrier because it undertakes to deliver goods for a pecuniary consideration.[67]

The fact that 2100 CBI is a common carrier is buttressed by the testimony of its own witness, Ildefonso Magnawa (Magnawa), the Night Operations Manager of 2100 CBI, in the following exchange:

Q Can you describe what is the procedure of 2100 Customs Brokers, Inc. for shipment clearances with the Customs?

A Normally, we have to **receive the original airway bill copy and then we have to prepare the import documents which has import entry and other supporting papers like the Bureau of Customs and then proceed to releasing the cargo from the warehouse and delivery of the cargo to the consignee.**

Q Mr. Witness, during this process of shipment clearance, where is the shipment or the goods covered by the transaction?

A The cargo is stored at the warehouse.

Q And who has custody of this cargo?

A The cargo is in the custody of the warehouse who was under the control of the Bureau of Customs.

Q How about the customs broker like 2100 Customs Brokers, Inc, has it having [sic] custody of this cargo at the time of the shipment clearance?

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[67] *Schmitz Transport & Brokerage Corp. v. Transport Venture, Inc.*, 496 Phil. 437, 450 (2005), citing *A.F. Sanchez Brokerage Inc. v. Court of Appeals*, 488 Phil. 430, 441.

A The custody of 2100 was that if it was already released from the warehouse. It was during delivery of the cargo from the warehouse to the consignee. That is the time the cargo is under their custody.[68] (Emphasis supplied)

No matter how minimal or short the period the goods are placed in the custody of 2100 CBI, it remains settled that the participation of 2100 CBI is indispensable to the delivery of the goods to TSPIC. For undertaking the transport of the cargo from Paircargo warehouse to TSPIC's warehouse for a fee, 2100 CBI is considered a common carrier.

A Marine Cargo Certificate may include goods transported by air.

2100 CBI posits that, as the name "Marine Cargo Certificate" implies, it covers goods transported by sea, and not through air such as the shipment of TSPIC.[69]

2100 CBI is mistaken. Simply because the word "marine" was used in Marine Cargo Certificate does not mean that TSPIC availed the wrong insurance policy for its cargo transported through airplane. Section 101(a)(2) of Republic Act No. (R.A.) 10607 states:

Sec. 101. Marine Insurance includes:

(a) Insurance against loss of or damage to:

x x x x x x x x x

2) Person or property in connection with or appertaining to a marine, **inland marine**, transit or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to

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[68] *Rollo*, pp. 104-105; TSN dated August 27, 2009, pp. 7-8.

[69] *Id*. at 15.

> any person arising out of ownership, maintenance, or use of automobiles); x x x[70] (Emphasis supplied)

Thus, the scope of marine insurance includes inland marine insurance and covers over the land transportation perils of property shipped by airplanes.[71]

Presentation of the insurance policy is necessary.

Marine Cargo Certificate No. 0801012154 certifies that Philam received the premium for Open Policy Number 9595292 and details the clauses, warranties, and special conditions of the policy.[72]

Noticeably, Open Policy Number 9595292 was not presented during trial nor on appeal. From the start, 2100 CBI had already raised the issue of non-presentation of the insurance policy yet it was never produced by Philam. The issue was also repeatedly raised on appeal.[73]

Rule 130, Section 3, of the Rules states:

> Sec. 3. *Original document must be produced; exceptions*.— When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

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[70] Republic Act No. 10607, Sec. 101.

[71] De Leon, H., *The Insurance Code of the Philippines Annotated* (2006), p. 306.

[72] *Rollo*, p. 413.

[73] *Id*. at 336-337, 386-388.

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The original copy of the insurance policy is the best proof of its contents. The contract of insurance must be presented in evidence to indicate the extent of its coverage.[74] At most, Marine Cargo Certificate No. 0801012154[75] and the subrogation receipt[76] may be used to establish the relationship between the insurer and the consignee and the amount paid to settle the claim. The subrogation receipt, by itself, is not sufficient to prove a claim holding an insurer liable for damage sustained by an insured item.[77] These documents are not sufficient to prove that the damage to the cargo is compensable under the insurance policy chargeable against 2100 CBI.

In addition, Section 7, Rule 8 of the Rules provides:

Sec. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.[78]

As an actionable document, the insurance policy must be presented in order to determine whether the damage sustained

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[74] See *Wallem Philippines Shipping, Inc. v. Prudential Guarantee & Assurance, Inc.*, 445 Phil. 136 (2003).

[75] *Rollo*, pp. 336-337, 386-388.

[76] *Id.* at 227.

[77] *Home Insurance Corp. v. Court of Appeals*, 296-A Phil. 421, 424 (1993).

[78] RULES OF COURT, Rule 8, Sec. 7.

by the cargo of TSPIC is caused by a peril or risk covered by the policy.

In the absence of proof of the contents of the policy confirming that the damage to the cargo is covered by the insurance policy chargeable against 2100 CBI, Philam cannot hold 2100 CBI responsible for the damage to the cargo. Philam's failure to present the original copy, which was presumably in its possession, or even a copy of it, for unknown reasons, is fatal to its claim against 2100 CBI as this document is the primary basis for its claim of right to subrogation. Had a copy of the insurance policy been presented by Philam, it would have clearly delineated the scope of its coverage. We cannot ignore the possibility that the insurance policy did not cover all phases of handling the shipment.

2100 CBI is not negligent in handling the shipment of TSPIC.

Assuming *arguendo* that the risk or peril that caused the damage to the cargo is covered by the insurance policy, We find that 2100 CBI was not negligent in handling the shipment of TSPIC.

It must be pointed out that the arrangement for the payment of the freight charges is on a "Freight Collect" basis which means that the consignee or receiver of the goods will be responsible for paying the freight and other charges[79] in the total amount of ₱14,672.00. This is confirmed by Magnawa in his testimony, the relevant portion of which is reproduced below:

Q What is freight collect means [*sic*]?
A It is the freight collect of the shipment from origin to Philippines.
Q And who is supposed to pay that?
A TSPIC.

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[79] *MOF Co., Inc. v. Shin Yang Brokerage Corp.*, 623 Phil. 424, 426 (2009).

Q And how much freight or how much fund would TSPIC provided [sic] for this cargo?
A The freight is Php 14,672.00 and there is a requirement for importer that they have to post a fund deposited to the bank that is for the import processing fee for every shipment and it so **happened that it is insufficient.**
Q After finding out that there was insufficient fund, what did you do next?
A We informed TSPIC that they are insufficient in fund.
Q What happened after you informed TSPIC of the insufficient fund?
A We kept waiting until they advised us March 5 in the afternoon almost 5:00 o'clock. We started processing on backdoor procedure.[80] (Emphasis supplied)

2100 CBI's customs representative, Elmer Remo (Remo) also corroborated Magnawa's testimony, as revealed in the following exchange:

Q Mr. Witness, the defendant here mentioned that there were handling instructions forwarded to the freight forwarders, can you confirm if [2100] Customs Brokers, Inc. received this shipment handling instructions [*sic*].
A No, ma'am.
Q For the record, I am showing to the witness Exhibit "H" which was also previously marked as defendant's Exhibit "8". Mr. Witness, the clearance of these goods and the delivery from the time it arrived took five (5) days, to what do you attribute the length of period it took for the goods to be delivered?
A We were informed on March 2 by the consignee TSPIC that they received an adhesive shipment and it was **freight collect,** ma'am. Then **on Saturday - Sunday, March 3 and 4, the Japan Airlines do not accept payment on weekends.**
Q What time did you received [*sic*] the notice on Friday, March 2?
A Late it [sic] the afternoon, ma'am.
Q Approximately what time are you referring to?
A Past three (3), ma'am.
Q And why do you consider that late already?

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[80] *Rollo*, pp. 110-111; TSN dated August 27, 2009, pp. 13-14.

A Because **if we were going to advance the freight charges, the banks are already closed and no one will sign the checks, ma'am.**

COURT:
Were you able to pay the freight collect charges on March 5, Monday?

WITNESS:
Yes, Your Honor, March 5.
Q You were able to pay Japan Airlines on March 5?
A Yes, Your Honor, March 5.
Q But the shipment was released to you early morning of March 6?
A Yes ma'am, we paid them on March 5 then nagkaproblema yung import processing fee then hapon na po nila naayos sa Customs yung payment. That is the only time we continue with the processing, Your Honor.
Q That is why you received this shipment early morning on March 6.
A Yes, Your Honor.[81] [Emphasis supplied]

From the foregoing, it is clear that there is no need to rely on the presumption of the law that a common carrier is presumed to have been at fault or have acted negligently in case of damaged goods. This is because the delay in the release of the goods was through no fault of 2100 CBI. The damage was caused by the late payment of the funds needed for the release of the goods from the custody of BOC which was originally TSPIC's responsibility. It must be noted that while waiting for the freight charges to be settled, 2100 CBI did not have custody over the shipment.

The *pro-forma* stipulation in DR No. 659556[82] that TSPIC received the cargo in good order and condition from 2100 CBI does not disprove the claim of 2100 CBI that the cargo may have been damaged while it was in the possession of BOC. It is important to note that at the time the cargo was released to

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[81] *Id*. at 130-132; TSN dated October 4, 2011, pp. 14-17.

[82] *Id*. at 134.

2100 CBI from BOC and delivered to TSPIC, the cargo remained sealed. Thus, said *pro-forma* stipulation did not accurately describe the condition of the cargo at the time delivery was made to TSPIC and cannot be used as basis for holding 2100 CBI accountable for the damaged goods.

As aptly pointed out by 2100 CBI in its Reply,[83] there is no basis to conclude that it was apprised of Ablestik's specific handling instructions and could have taken precautionary measures to avoid damage to the cargo.[84] 2100 CBI, through the testimony of Remo, denied receiving handling instructions from TSPIC.[85] The respective testimonies of Elmer Dumo (Dumo), Philam's Senior Claims Examiner and Renato Layug, former Assistant Manager for Cargo Survey of MASCO confirm that they do not have personal knowledge that the subject goods were damaged as none of them personally examined the goods nor prepared any of the documents presented to establish the damage.[86] Thus, their testimonies are hearsay and do not have any probative value.

It is clear that the only handling instruction 2100 CBI received was to "PLS. PUT INTO (*sic*) COOL ROOM UPON ARRIVAL," which was stated in Airway Bill No. 131-66081842.[87] 2100 CBI could not have undertaken precautionary measures nor implement handling instructions because it did not have possession of the cargo until 2:00 a.m. of March 6, 2001 — when the goods were released by the BOC. It must be emphasized that, until the freight charges are paid, JAL cannot release the original copy of Airway Bill No. 131-66081842 and the goods to 2100 CBI. Payment of the freight charges is required to process the release of the goods in the custody of the BOC. At 2:47 p.m. on

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[83] *Id*. at 583-584.

[84] *Id*. at 584.

[85] *Id*. at 128-129; TSN dated October 4, 2011, pp. 12-13.

[86] *Id*. at 178-179, 216-218; TSN dated May 10, 2007, pp. 17-18; TSN dated August 28, 2008, p. 2.

[87] *Rollo*, p. 93.

March 2, 2001, 2100 CBI only received a duplicate copy of Airway Bill No. 131-66081842.[88] Therefore, without the original copy of the Airway Bill No. 131-66081842, the goods remained in the possession of the BOC and were not released to 2100 CBI.

Moreover, 2100 CBI may only be expected to implement the handling instructions when the shipment was in the Paircargo warehouse which was under the control of the BOC. It would be physically impossible and unreasonable for 2100 CBI to implement any control or handling instructions over goods not in its custody. Based on the evidence presented, Philam failed to establish that negligence in the handling of the shipment could be attributed to 2100 CBI from the time the BOC released the goods to the custody of 2100 CBI at 2:00 a.m. on March 6, 2001 until they were delivered to TSPIC in good order and condition at 3:44 a.m. on March 6, 2001.

Accordingly, as an insurer who pays the insured for loss or liability not proven to be compensable under the subject policy, Philam is not subrogated to the rights of TSPIC.

WHEREFORE, premises considered, the petition is **GRANTED**. Civil Case No. 78072 filed against petitioner 2100 Customs Brokers, Inc. is hereby **DISMISSED**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Zalameda,* and *Gaerlan, JJ.*, concur.

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[88] *Id.* at 122-124; *Id.* at 104-105; TSN dated August 27, 2009, pp. 7-8.

THIRD DIVISION

[G.R. No. 223621. June 10, 2020]

FATHER SATURNINO URIOS UNIVERSITY (FSUU), INC., and/or REV. FR. JOHN CHRISTIAN U. YOUNG-PRESIDENT, *petitioners*, *vs*. **ATTY. RUBEN B. CURAZA**, *respondent*. **CATHOLIC EDUCATIONAL ASSOCIATION OF THE PHILIPPINES**, *petitioner-in-intervention*.

SYLLABUS

LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7641 (THE RETIREMENT PAY LAW); ALL PRIVATE SECTOR EMPLOYEES, SAVE FOR THOSE SPECIFICALLY EXEMPTED, AND PART-TIME EMPLOYEES, NOT BEING AMONG THOSE EXEMPTED FROM COVERAGE, MAY QUALIFY FOR RETIREMENT BENEFITS UNDER THE LAW. — Republic Act No. 7641 specifically states that "any employee may be retired upon reaching the retirement age[,]" and that in case of retirement, in the absence of a retirement agreement, an employee who reaches the retirement age "who has served at least five (5) years . . . may retire and shall be entitled to retirement pay[.]" No exception is made for part-time employees. In *De La Salle Araneta University v. Bernardo*, this Court saliently outlined and analyzed the legal provisions which lead to this sound conclusion. It pointed out that Republic Act No. 7641 enumerates certain exemptions from coverage, and that this enumeration provides no basis to exempt petitioners from paying retirement benefits to qualified part-time employees. This Court noted that the coverage of the law and exemptions thereto were further elaborated upon by the Rules Implementing the Labor Code and an October 24, 1996 Labor Advisory, neither of which suggest that part-time employees could be considered excluded from being entitled to retirement pay x x x. [T]his Court held that Republic Act No. 7641 encompasses all private sector employees, save for those specifically exempted. This Court also invoked the principle of *expressio unius est exclusio alterius* and concluded that part-time employees, not being among those

> exempted from coverage, may qualify for retirement benefits under Republic Act No. 7641. The same reasoning used in *De La Salle Araneta University* applies to respondent, who is entitled to retirement benefits notwithstanding his status as a part-time employee. x x x [T]he text of the law as passed x x x makes no distinction between permanent and non-permanent employees. Thus, the exclusion of non-permanent employees from the coverage of Republic Act No. 7641 has no legal basis.

APPEARANCES OF COUNSEL

ATO Law Office for petitioners.
Estrada & Aquino Law for Intervenor CEAP.

D E C I S I O N

LEONEN, *J.*:

This Court resolves the Petition for Review on *Certiorari*[1] filed by Father Saturnino Urios University, Inc. and Rev. Fr. John Christian U. Young, assailing the Court of Appeals Decision[2] with regard to part-time employee Atty. Ruben B. Curaza's (Atty. Curaza) eligibility for retirement benefits under Republic Act No. 7641.

Father Saturnino Urios University (the University) hired Atty. Curaza to teach commercial law subjects in the Commerce Department during the second semester of school year 1979 to 1980. He was subsequently given teaching loads in the College of Engineering and the College of Arts and Sciences. He later taught subjects as a pioneering professor in the College of Law.[3]

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[1] *Rollo*, pp. 15-33.

[2] *Rollo*, pp. 37-48. The Decision dated June 5, 2015 was penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Romulo V. Borja (Chair) and Oscar V. Badelles of the Twenty-First Division of the Court of Appeals, Cagayan de Oro City.

[3] *Id.* at 19.

On November 21, 2008, Atty. Curaza wrote a letter applying for early retirement, pursuant to the University's Personnel Policy and Procedure and the Retirement Pay Law.[4] Having received no response, he followed-up his request with the University's Human Resource Management and Development Office, where he was informed that his retirement application could not be approved as the University did not grant retirement benefits to its part-time teachers. Atty. Curaza thus wrote another letter on March 5, 2009, reiterating his application, together with a copy of the Labor Advisory on Retirement Pay Law. By the time Atty. Curaza had turned 60 years old, the application remained unacted upon.[5]

Thus, on June 25, 2010, Atty. Curaza filed a complaint against the University, its president and vice president for retirement benefits, damages, and attorney's fees before the National Labor Relations Commission Regional Arbitration Branch XIII in Butuan City.[6]

The University then submitted a position paper asserting that Atty. Curaza was only a part-time instructor, and not a permanent employee. He was paid monthly, on a per hour, per teaching load, and per semester basis. His last teaching load was only a three-unit subject in the College of Engineering, during the second semester of school year 2008 to 2009, and his last gross salary was ₱1,400.00.[7]

It was pointed out in the position paper that the Collective Bargaining Agreement between the University and its Faculty and Employees Association expressly excludes part-time faculty from its coverage. The University further argued that Republic Act No. 7641, or the Retirement Pay Law, similarly excludes

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[4] *Id.* at 19.

[5] *Id.* at 38.

[6] *Id.* at 20.

[7] *Id.* at 38.

part-time instructors in private educational institutions from its coverage.[8]

Moreover, the University officials remarked in the position paper that even if part-time instructors were entitled to retirement benefits under Republic Act No. 7641, Atty. Curaza was still not entitled to the same benefits, considering that he had no teaching load during the school years 1991 to 1992 and 1992 to 1993, and did not teach at all from school years 1990 to 1991 until 2000 to 2001, as well as school years 2002 to 2003 until 2008 to 2009. Finally, Atty. Curaza was not entitled to damages, as he had not been illegally dismissed.[9]

In a December 28, 2010 Decision, the Executive Labor Arbiter held that under Republic Act No. 7641, part-time employees are entitled to retirement benefits. He held that the law prevails over provisions of company policy. Thus, having reached 60 years of age, and having rendered more than five (5) years of service with the University, Atty. Curaza is entitled to retirement benefits under the law.[10] The dispositive portion of the Decision states:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent Father Saturnino Urios University (FSUU) to pay complainant his retirement benefits to be computed based on his average monthly pay for the last five (5) years of his employment with respondent multiplied by twenty four (24) years.
>
> Plus 10% of whatever amount that may be computed as attorney's fees.
>
> All other claims are hereby ordered dismissed for lack of merit.
>
> SO ORDERED.[11]

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

[9] *Id.* at 39.

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

[11] *Id.*

On appeal, the National Labor Relations Commission affirmed the Labor Arbiter's Decision in its December 29, 2011 Resolution.[12]

In turn, the Court of Appeals[13] affirmed the National Labor Relations Commission and the Labor Arbiter's rulings. It found that the National Labor Relations Commission correctly held that Republic Act No. 7641 applies. As a part-time employee, Atty. Curaza is not among the employees exempted from the coverage of the law, and since the University does not have an applicable agreement or retirement plan intended for part-time employees, the provisions of Republic Act No. 7641 apply to him.[14]

The Court of Appeals reasoned that although parties to a Collective Bargaining Agreement may establish such stipulations, clauses, terms, and conditions as they may deem convenient, these must not be contrary to law. It held that the exclusion of part-time faculty from the coverage of the Collective Bargaining Agreement is contrary to the provisions and intendment of Republic Act No. 7641 and its Implementing Rules.[15]

Thus, it was correct to apply the Labor Advisory on Retirement Pay issued on October 24, 1996, which specifically provides that the coverage of Republic Act No. 7641 "shall include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another."[16]

However, the Court of Appeals modified the computation of the length of service to be credited in computing Atty. Curaza's retirement pay, and decreased it to 22 years, based on his teaching

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[12] *Id.* at 40.

[13] *Id.* at 37-48.

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

[15] *Id.* at 45-46.

[16] *Id.* at 46. Citing *De La Salle v. Bernardo*, 805 Phil. 580, 599 (2017), [Per J. Leonardo-de Castro, First Division].

load. The Court of Appeals discussed the basis on record for this figure:

> On the other hand, since the teaching load summary of Curaza that FSUU submitted as evidence covers only the period from S.Y. 1990-1991 to S.Y. 2008-2009, FSUU is already estopped from denying that Curaza had rendered service for more than six (6) months during S.Y. 1979-1980 until S.Y. 1989-1990, or for a period of 11 years. In addition, his teaching load summary shows that he was able to teach for two (2) semesters or a period of more than six (6) months during S.Y. 1996-1997, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2006-2007, 2007-2008 and 2008-2009, which is equivalent to 11 years. Thus, Curaza's total creditable years of service for the purpose of computing his retirement pay is 22 years.[17]

The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, the petition is DENIED and the Resolutions dated December 29, 2011 and March 30, 2012 in NLRC MAC-03-011932-2011 (RAB-XIII-06-00164-2010) are hereby AFFIRMED with the MODIFICATION that private respondent Atty. Ruben B. Curaza shall be entitled to retirement pay for 22 years of service to petitioner Father Saturnino Urios University.
>
> SO ORDERED.[18]

Thus, the University, together with its president, Rev. Fr. John Christian U. Young, filed a Petition for Review on *Certiorari*, which this Court initially denied for failure to show any reversible error in the Court of Appeals Decision and Resolution.[19]

Petitioners then filed a Motion for Reconsideration,[20] to which respondent filed an Opposition and Comment,[21] responding to both the Motion for Reconsideration and the Petition.

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[17] *Id.* at 47.

[18] *Id.* at 48.

[19] *Id.* at 62.

[20] *Id.* at 73-84.

[21] *Id.* at 64-71.

This Court reinstated petitioners' Petition for Review on *Certiorari*, after which the Catholic Educational Association of the Philippines filed a Motion for Leave to Intervene[22] together with an attached Petition-in-Intervention.[23] Respondent then filed a Comment to the Petition-in-Intervention,[24] and both petitioners and the Catholic Educational Association of the Philippines (Petitioner-Intervenor) filed their respective Replies.[25]

To justify its interest in this case, petitioner-intervenor explains that it is a national association of 1,252 Catholic educational institutions in the Philippines, of which the University is a member.[26] Petitioner-intervenor has a Retirement Plan, in which 667 member schools are enrolled, with more than 35,000 personnel. Petitioner-intervenor asserts that the intention of the Retirement Plan was to cover only "regular full-time employees, who have reached the age of sixty years old, in conjunction with relevant administrative policies in view of the special employment status of the teaching and academic non-teaching personnel."[27]

Petitioner-intervenor maintains that it will be adversely affected by a precedent declaring that part-time faculty are entitled to retirement benefits, which "would be the death knell to most" of its member schools.[28]

As for the substance of the case, petitioners and petitioner-intervenor insist that Republic Act No. 7641 does not apply to part-time teachers, because they cannot acquire regular permanent status. They maintain that "regular permanent status" is a precondition to being entitled to retirement benefits.[29]

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[22] *Id.* at 86-90.

[23] *Id.* at 91-119.

[24] *Id.* at 154.

[25] *Id.* at 170-186 and 202-213.

[26] *Id.* at 91.

[27] *Id.* at 92.

[28] *Id.* at 93.

[29] *Id.* at 96.

Petitioners point out that in *Lacuesta v. Ateneo de Manila University*,[30] this Court held that the Manual of Regulations for Private Schools determines whether a faculty member has attained regular or permanent status. They cite Section 117 of the Manual of Regulations for Private Higher Education of 2008, which states that a "part-time employee cannot acquire regular permanent status." They point out that in *UST v. NLRC*,[31] this Court cited the Manual of Regulations as basis to find that a teacher had not become a permanent employee despite three (3) years of service.[32]

Petitioner-intervenor argues that it is impossible for part-time teachers to meet the number of years necessary to qualify for retirement pay,[33] and that expanding the coverage of Republic Act No. 7641 to include part-time teachers is contrary to the purpose of the law, which is to "reward the loyalty, dedication and hard work of employees."[34]

Petitioner-intervenor further asserts that the intention of the legislators was to provide benefits for permanent employees who have rendered continued service to the company and not to employees who merely work as part-timers, citing legislative deliberations.[35] It also cites a book on the Employee Retirement Income Security Act of 1974 to explain the pension system in the United States of America, wherein "retirement pay is intended to benefit the employee who spent most of their prime years giving their employer a 'proper career.'"[36]

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[30] 513 Phil. 329 (2005) [Per J. Quisumbing, First Division].

[31] 266 Phil. 441 (1990) [Per J. Gancayco, First Division].

[32] *Rollo*, p. 22.

[33] *Id.* at 176.

[34] *Id.* at 180.

[35] *Id.* at 180-181.

[36] *Id.* at 182.

Petitioner-intervenor also argues that the five-year service requirement must be interpreted to mean five (5) continuous years. It maintains that because schools are not required to re-hire part-time teachers after the period of their fixed contracts, each separate semester of employment must stand on its own without relation to any other previous contract.[37] It insists that to interpret it otherwise would lead to absurd situations, and that it is ludicrous to require an employer to "reward" an employee who renders service for several employers, or who may pursue other businesses.[38]

Furthermore, petitioner-intervenor asserts that the formula used to compute respondent's retirement benefits is baseless, and that he cannot claim to have served petitioners for 29 years.[39]

The main issue for this Court's resolution is whether or not part-time employees may be entitled to retirement benefits under Republic Act No. 7641.

The Petition and Petition-in-Intervention are denied.

The Court of Appeals correctly held that part-time employees with fixed-term employment are among the employees entitled to retirement benefits under Republic Act No. 7641.

Republic Act No. 7641 specifically states that "any employee may be retired upon reaching the retirement age[,]" and that in case of retirement, in the absence of a retirement agreement, an employee who reaches the retirement age "who has served at least five (5) years . . . may retire and shall be entitled to retirement pay[.]" No exception is made for part-time employees.

In *De La Salle Araneta University v. Bernardo*,[40] this Court saliently outlined and analyzed the legal provisions which lead to this sound conclusion. It pointed out that Republic Act

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[37] *Id.* at 178.

[38] *Id.* at 183.

[39] *Id.* at 183-185.

[40] 805 Phil. 580 (2017) [Per J. Leonardo-De Castro, First Division].

No. 7641 enumerates certain exemptions from coverage, and that this enumeration provides no basis to exempt petitioners from paying retirement benefits to qualified part-time employees. This Court noted that the coverage of the law and exemptions thereto were further elaborated upon by the Rules Implementing the Labor Code and an October 24, 1996 Labor Advisory, neither of which suggest that part-time employees could be considered excluded from being entitled to retirement pay:

> Book VI, Rule II of the Rules Implementing the Labor Code clearly describes the coverage of Republic Act No. 7641 and specifically identifies the exemptions from the same, to wit:
>
> > Sec. 1. *General Statement on Coverage*. — This Rule shall apply to **all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2 hereof**. As used herein, the term "Act" shall refer to Republic Act No. 7641, which took effect on January 7, 1993.
> >
> > Section 2. ***Exemptions***. — This Rule shall not apply to the following employees:
> >
> > 2.1 **Employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.**
> >
> > 2.2 Domestic helpers and persons in the personal service of another. (Deleted by Department Order No. 20 issued by Secretary Ma. Nieves R. Confessor on May 31, 1994.)
> >
> > 2.3 **Employees of retail, service and agricultural establishments or operations regularly employing not more than ten (10) employees. As used in this sub-section:**
> >
> > > (a) "*Retail establishment*" is one principally engaged in the sale of goods to end-users for personal or household use. It shall lose its retail character qualified for exemption if it is engaged in both retail and wholesale of goods.

> (b) "*Service establishment*" is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such.
>
> (c) "*Agricultural establishment/operation*" refers to an employer which is engaged in agriculture. This term refers to all farming activities in all its branches and includes, among others, the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunctions with such farming operations, but does not include the manufacture and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products. (Emphases ours.)

Through a Labor Advisory dated October 24, 1996, then Secretary of Labor, and later Supreme Court Justice, Leonardo A. Quisumbing (Secretary Quisumbing), provided Guidelines for the Effective Implementation of Republic Act No. 7641, The Retirement Pay Law, addressed to all employers in the private sector. Pertinent portions of said Labor Advisory are reproduced below:

> A. COVERAGE
>
> RA 7641 or the Retirement Pay Law shall apply to all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid. **They shall include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another.**
>
> The law does not cover employees of retail, service and agricultural establishments or operations employing not more than [ten] (10) employees or workers and employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.
>
> x x x x x x x x x

C. SUBSTITUTE RETIREMENT PLAN

> Qualified workers shall be entitled to the retirement benefit under RA 7641 in the absence of any individual or collective agreement, company policy or practice. . . (Emphasis ours.)

Republic Act No. 7641 states that "any employee may be retired upon reaching the retirement age . . .;" and "[i]n 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." The Implementing Rules provide that Republic Act No. 7641 applies to "all employees in the private sector, regardless of their position, designation or status and irrespective of the method by which their wages are paid, except to those specifically exempted . . ." And Secretary Quisumbing's Labor Advisory further clarifies that the employees covered by Republic Act No. 7641 shall "include part-time employees, employees of service and other job contractors and domestic helpers or persons in the personal service of another."

The only exemptions specifically identified by Republic Act No. 7641 and its Implementing Rules are: (1) employees of the National Government and its political subdivisions, including government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations; and (2) employees of retail, service and agricultural establishments or operations regularly employing not more than 10 employees.[41]

Relying on the foregoing provisions, this Court held that Republic Act No. 7641 encompasses all private sector employees, save for those specifically exempted. This Court also invoked the principle of *expressio unius est exclusio alterius* and concluded that part-time employees, not being among those exempted from coverage, may qualify for retirement benefits under Republic Act No. 7641.

The same reasoning used in *De La Salle Araneta University*[42] applies to respondent, who is entitled to retirement benefits notwithstanding his status as a part-time employee.

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[41] *Id.* at 598-600.

[42] 805 Phil. 580 (2017) [Per J. Leonardo-De Castro, First Division].

Citing legislative deliberations, petitioner-intervenor insists that the legislative intent was for the law to cover only permanent and continuous employees,[43] that a distinction must be made in the law between part-time employees and regular, permanent employees. It asserts that retirement benefits are a reward for loyalty, and that part-time employees are not as loyal as regular, permanent employees, and thus not deserving of the reward.

This is unconvincing. The cited deliberations were not as clear and unequivocal as petitioner-intervenor maintains. However, even granting that one legislator mentioned "permanent employment" during deliberations, and granting that part-time employees do not attain permanent status, the text of the law as passed nonetheless makes no distinction between permanent and non-permanent employees. Thus, the exclusion of non-permanent employees from the coverage of Republic Act No. 7641 has no legal basis.

On the issue of the computation, the Court of Appeals explained its basis for reducing the number of years of service, for which respondent is entitled to retirement benefits to 22 years instead of 24 years, as concluded by the Labor Arbiter, and instead of 29 years as insisted by respondent, as follows:

> A perusal of Curaza's teaching load summary from S.Y. 1990-1991 to S.Y. 2008-2009 shows that he had not rendered teaching services at FSUU during S.Y. 1991-1992 and 1992-1993 and only taught for one (1) semester or a period of five (5) months during S.Y. 1990-1991, 1993-1994, 1994-1995, 1995-1996 and 2005-2006. Also, in S.Y. 1997-1998, he only taught summer classes. Consequently, such school years cannot be included in the computation of his length of service.
>
> On the other hand, since the teaching load summary of Curaza that FSUU submitted as evidence covers only the period from S.Y. 1990-1991 to S.Y. 2008-2009, FSUU is already estopped from denying that Curaza had rendered service for more than six (6) months during S.Y. 1979-1980 until S.Y. 1989-1990, or for a period of 11 years. In

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[43] *Rollo*, p. 180.

addition, his teaching load summary shows that he was able to teach for two (2) semesters or a period of more than six (6) months during S.Y. 1996-1997, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2006-2007, 2007-2008 and 2008-2009, which is equivalent to 11 years. Thus, Curaza's total creditable years of service for the purpose of computing his retirement pay is 22 years.[44]

Although petitioner-intervenor insists that respondent did not work for 22 years for petitioners,[45] it failed to show how the Court of Appeals committed an error in the foregoing computation, or to submit a sound formula for computing his length of service. Petitioner-intervenor relied mainly on its assertion that each semester of respondent's employment must be considered independent of the other, and not cumulative. Again, this Court must reject this assertion for lack of legal basis. Since no cogent reason has been submitted to revisit the computation of the number of respondent's creditable years of service, the Court of Appeals' findings must be affirmed.

WHEREFORE, the Petition and the Petition-in-Intervention are **DENIED**. The Court of Appeals' Decision and Resolution in CA-G.R. SP No. 04973-MIN are **AFFIRMED.**

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[44] *Id.* at 47.

[45] *Id.* at 105.

FIRST DIVISION

[G.R. No. 224170. June 10, 2020]

UNIVERSITY OF ST. LA SALLE, *petitioner, vs.* **JOSEPHINE L. GLARAGA, MARICAR C. MANAAY, LEO G. LOZANA, QUEENIE M. JARDER, ERWIN S. PONDEVIDA, ARLENE T. CONLU, JO-ANN P. SALDAJENO, TRISTAN JULIAN J. TERUEL, JEAN C. ARGEL and SHEILA CORDERO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY PERIOD FOR TEACHERS; DISCUSSED. — [T]he Court has resolved the question of the probationary period of teachers who, given the nature of their profession, can only render service during fixed academic terms. The Court has held that the Labor Code provision on the general probationary period of six months does not apply to teachers; rather, special regulations of the Department of Education provide that, unless a shorter period is expressly adopted by their institution, the probationary period of teachers will be for a maximum of three years, even if within that period they render service under fixed short-term contracts. The probationary period has been further clarified to mean full-time teaching for three consecutive academic rather than calendar years or six consecutive regular semesters or nine consecutive trimesters.

2. ID.; ID.; ID.; THREE-YEAR PROBATIONARY PERIOD FOR TEACHERS RECONCILED WITH THE FIXED SHORT-TERMS OF THEIR EMPLOYMENT CONTRACTS. — The three-year probationary period of teachers has been reconciled with the fixed short-terms of their employment contracts. If the main object of the employment contract of a teacher is a fixed term, as when the latter is merely a substitute teacher, then the non-extension of the contract validly terminates the latter's employment; the rules on probationary employment

are not relevant. However, if the fixed term is intended to run simultaneously with the probationary period of employment, then the fixed term is not to be considered the probationary period, unless a shorter probationary period is expressly adopted by the institution. In this situation, if the non-renewal of the fixed term employment contract takes place after the expiration of the probationary period, then the termination of employment can be characterized as a dismissal, for which the Labor Code provisions on just and authorized causes shall apply. Likewise, if the non-renewal takes place prior to the expiration of the probationary period, then the termination of employment is characterized as a dismissal for which the same provisions of the Labor Code on just and authorized causes shall apply. It is only when the non-renewal of the fixed term employment contract coincides with the expiration of the probationary period that the termination of employment is deemed an exercise of management prerogative of the institution not to regularize the probationary teacher for failure to meet established standards. While the parties are at liberty to agree to a short probationary period, the decision to do so must be unmistakable, otherwise the presumption is that a three-year period was adopted. In this case, in view of the vagueness in the parties' documents of agreements, the CA was justified in relying on the presumption that the probationary period was for three years as set by law. The probationary period of respondents being three years, the non-renewal of their fixed term contracts during that probationary period amounted to a dismissal rather than a mere lapse of their probationary period.

APPEARANCES OF COUNSEL

Rolando G. Ravina for petitioner.
Manlapao & Manlapao Law Office for respondents.

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari* from the Decision[1] dated June 30, 2015 and the Resolution[2] dated March 10, 2016 of the Court of Appeals-Cebu City (CA) in CA-G.R. SP No. 07256 reversing the March 30, 2012 Decision[3] and June 29, 2012 Resolution[4] of the National Labor Relations Commission (NLRC) and reinstating, with modifications, the September 30, 2011 Decision[5] of the Labor Arbiter (LA).

Facts and Issues

Petitioner University of St. La Salle (petitioner) engaged respondents Josephine L. Glaraga, Maricar C. Manaay, Leo G. Lozana, Queenie M. Jarder, Erwin S. Pondevida, Arlene T. Conlu, Jo-Ann P. Saldajeno, Tristan Julian J. Teruel, Jean C. Argel and Sheila A. Cordero (respondents), as probationary full-time faculty, each with a teaching load 24 to 25 units.[6] Beginning in the first semester of 2010-2011, respondents were engaged as probationary part-time faculty members each with a teaching load of 5 units.[7] The letter notifying respondents of the reduction in load and schedule merely cites decline in enrolment as the underlying reason.[8] Moreover, in its petition, petitioner

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[1] Penned by Associate Justice Renato C. Francisco, with Associate Justices Edgardo L. Delos Santos (now a Member of the Court) and Edward B. Contreras, concurring; *rollo*, pp. 28-37.

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

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

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

[5] *Id.* at 105-133.

[6] *Id.* at 50-53, 55-91.

[7] *Id.* at 54, 57-58, 63-64, 67-68, 71-72, 77, 82, 85, 89, 92-93.

[8] *Id.* at 94-101.

states that this arrangement was only "until things would get better for the nursing course."[9]

From the first semester of 2008-2009 through the second semester of 2010-2011, respondents' engagements were covered by Documents of Agreement covering five-month periods at a time and containing the following standard clause:

> This contract covers only the specific period stated and will not require any other written notice of expiry. Renewal of probationary fulltime faculty will be based on both the annual minimum performance evaluation score of 85 and a positive evaluation of behavioral conduct, interpersonal relationships, commitment and loyalty to the institution and other moral and ethical considerations.
>
> In addition to the above, as a condition for continued employment, one should manifest seriousness of purpose by binding himself/herself to the mission, policies, procedures and behavioral expectations of the University as contained in (but not limited to) the Administrative and Faculty Manual. To be eligible for permanency, one must have earned his/her masteral degree within the 3 year probationary period.[10]

In the summer and first semester of 2011, respondents were not offered any teaching load, and they were not issued any new documents of agreement.[11] Thus, they filed a complaint for illegal dismissal, salary differential due to diminution of benefits, damages and attorneys' fees,[12] which the LA granted in its September 30, 2011 Decision:

> WHEREFORE, premises considered, judgment is hereby rendered finding complainants JOSEPHINE L. GLARAGA, JO-ANN P. SALDAJENO, JEAN C. ARGEL, ARLENE T. CONLU, TRISTAN TERUEL, SHEILA CORDERO MARICAR MANAAY, LEO G. LOZANA, QUEENIE M. JARDER, ERWIN S. PONDEVIDA, to have been dismissed from their probationary employment for authorized

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[9] Petition for Review on *Certiorari*, *rollo*, p. 7.

[10] *Id.* at 50-93.

[11] Labor Arbiter Decision, *rollo*, p. 114.

[12] *Id.* at 105-106.

cause as contemplated under Article 283 of the Labor Code of the Philippines, however, the terminations of their services were done without the observance of procedural due process. Accordingly, respondent University of St. La Salle is hereby ordered to pay each complainant separation pay and nominal damages in the amount of ₱10,000.00.[13]

On appeal by petitioner, the NLRC reversed the LA decision:

WHEREFORE, premises considered, the decision of the Labor Arbiter is REVERSED and SET ASIDE and a NEW ONE ENTERED declaring that complainants' period of probationary employment simply expired. Consequently, there is no basis to grant complainants separation pay and nominal damages.

SO ORDERED.[14]

The NLRC denied respondents' Motion for Reconsideration.[15]

These proceedings led to the decision and resolution of the CA that are now before the Court for review. The CA reversed the NLRC, to wit:

WHEREFORE, the Petition is **PARTLY GRANTED**. The assailed Decision dated March 30, 2012 and the Resolution dated June 29, 2012 of the National Labor Relations Commission are hereby **REVERSED** and **SET ASIDE**, and the Decision dated September 30, 2011 of the Labor Arbiter is hereby **REINSTATED** with **MODIFICATION** in that in addition to the award of separation pay to each petitioner, nominal damages is awarded to the petitioners fixed at ₱50,000.00 each, due to private respondent University's failure to give notice to the petitioners and to the DOLE.

Let this case be **REMANDED** to the Labor Arbiter for the computation of the total amount to be awarded, within thirty (30) days from receipt hereof.

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[13] *Id.* at 132.

[14] NLRC Decision, *id.* at 147.

[15] NLRC Resolution, *id.* at 153.

SO ORDERED.[16]

It denied petitioner's motion for reconsideration in a Resolution, dated March 10, 2016.[17]

Hence, petitioner raises the following issues to the Court:

WHETHER OR NOT THE CA ERRED IN FINDING THAT RESPONDENTS WERE ILLEGALLY TERMINATED FROM EMPLOYMENT INSTEAD OF DECLARING THAT THEIR TERM MERELY EXPIRED.

WHETHER OR NOT THE CA ERRED IN AWARDING MONEY CLAIMS AND NOMINAL DAMAGES TO THE RESPONDENT PLUS NOMINAL DAMAGES [SIC].

Ruling of the Court

The petition lacks merit.

Citing the ruling in *Mercado v. AMA Computer College*,[18] the CA sustained the finding of the LA that respondents' probationary period was for three years, notwithstanding that their contracts were for fixed short periods of five months.[19] During their probationary period, respondents were entitled to security of tenure in that they may be validly dismissed only for just or authorized causes; expiration of their fixed short term contracts was not just or authorized cause.[20] Based on the petitioner's allegations and evidence, however, the CA ruled that the respondents were lawfully dismissed due to redundancy.[21] Redundancy being the cause of termination, payment of separation benefits was validly ordered by the Labor Arbiter.[22]

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

[17] CA Resolution, *id.* at 48-49.

[18] *Mercado v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228 (2010).

[19] CA Decision, *rollo*, pp. 32-34.

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

[21] *Id.* at 35.

[22] *Id.*

The CA noted that while petitioner may have validly terminated respondents' employment due to redundancy, petitioner failed to comply with the procedural requirement of prior notice under the Labor Code. Accordingly, the CA added nominal damages to the monetary award granted by the LA.

Petitioner argued that the CA erred in glossing over the express provision in respondents' contracts that their probationary period is for a "fixed period of five (5) months for every term or semester," as indicated in the first sentence of the aforequoted standard clause that respondents' contracts cover "only the specific period stated and will not require any other written notice of expiry." The termination of the employment of respondents was due to expiration of their probationary period, rather than to dismissal for just or authorized cause. Consequently, respondents are not entitled to any money claim.

In their Comment, respondents point to a long line of cases stating that expiration of contract is not a valid ground to terminate the probationary employment of teachers.[23]

Indeed, the Court has resolved the question of the probationary period of teachers who, given the nature of their profession, can only render service during fixed academic terms.[24] The Court has held that the Labor Code provision on the general probationary period of six months does not apply to teachers;[25] rather, special regulations of the Department of Education provide that, unless a shorter period is expressly adopted by their institution,[26] the probationary period of teachers will be for a maximum of three years, even if within that period they render service under fixed short-term contracts.[27] The probationary

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[23] Comment, *id.* at 281-287.

[24] *Brent School, Inc. v. Ronaldo Zamora*, 260 Phil. 747 (1990).

[25] *Labajo v. Alejandro*, 248 Phil. 194 (1988).

[26] *Espiritu Santo Parochial School v. National Labor Relations Commission*, 258 Phil. 600 (1989).

[27] *Escudero v. Office of the President of the Philippines*, 254 Phil. 789-798 (1989). See, for example, Article 24, 2008 Commission on Higher Education (CHED) Manual of Regulation for Private Higher Education.

period has been further clarified to mean full-time teaching[28] for three consecutive[29] academic rather than calendar years[30] or six consecutive regular semesters or nine consecutive trimesters.[31]

Though not raised as an issue, the Court deems it necessary to address the point of whether respondents are merely part-time teachers. We have held in *Spouses Lim v. Legazpi Hope Christian School*[32] and *De La Salle Araneta University, Inc. v. Dr. Eloisa G. Magdurulang*,[33] that part-time teachers do not even qualify for probationary status. In contrast, in this case, the starting point of respondents' employment are that of full-time probationary teachers. Even as respondents are given part-time schedules and reduced teaching loads, they are not advised by petitioner that their full-time probationary status are being materially altered. Rather, the letter of petitioner advising them of their reduced loads and part-time schedules merely state that this was due to "the impending decline in enrolment."[34] More importantly, petitioner expressly alleges that

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[28] *De La Salle Araneta University, Inc. v. Dr. Eloisa G. Magdurulang*, G.R. No. 224319, November 20, 2017; *Son v. University of Santo Tomas*, G.R. No. 211273, April 18, 2018.

[29] *Lacuesta v. Ateneo de Manila University*, 513 Phil. 329 (2005); *University of Sto. Tomas v. National Labor Relations Commission*, 261 Phil. 483 (1990).

[30] *Magis Young Achievers' Learning Center v. Manalo*, 598 Phil. 886 (2009).

[31] *Brazil v. STI Education Service Group, Inc.*, G.R. No. 233314, November 21, 2018.

[32] G.R. No. 172818, March 31, 2009.

[33] *De La Salle Araneta University, Inc. v. Dr. Eloisa G. Magdurulang;* citing Sec. 117, 2010 Manual of Regulations for Private Schools. Sec. 117 reads: An academic teaching personnel who does not possess the minimum academic qualifications prescribed under Sections 35 and 36 of this Manual shall be considered as part-time employee, and therefore, cannot avail of the status and privileges of a probationary employment.

[34] *Rollo*, p. 94.

this arrangement is intended to be temporary or until the university's enrolment picks up.[35]

Verily, the theory of petitioner is that "as probationary full-time teachers, respondents' rights to security of tenure expire upon termination of their employment contracts."[36] It would have been inconsistent with this theory had petitioner argued that respondents were, from the beginning, part-time teachers, for then they would not have been on probationary status at all.

It is the foregoing theory of petitioner that must be addressed.

The three-year probationary period of teachers has been reconciled with the fixed short-terms of their employment contracts.[37] If the main object of the employment contract of a teacher is a fixed term, as when the latter is merely a substitute teacher, then the non-extension of the contract validly terminates the latter's employment; the rules on probationary employment are not relevant.[38] However, if the fixed term is intended to run simultaneously with the probationary period of employment, then the fixed term is not to be considered the probationary period, unless a shorter probationary period is expressly adopted by the institution.[39] In this situation, if the non-renewal of the fixed term employment contract takes place after the expiration of the probationary period, then the termination of employment can be characterized as a dismissal, for which the Labor Code provisions on just and authorized causes shall apply.[40] Likewise, if the non-renewal takes place prior to the expiration of the probationary period, then the termination of employment is

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[35] *Id.* at 7.

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

[37] *Supra* note 26.

[38] *La Consolacion College v. National Labor Relations Commission*, 418 Phil. 503 (2001).

[39] *Supra* note 25.

[40] *Colegio del Santisimo Rosario v. Rojo*, 717 Phil. 265 (2013).

characterized as a dismissal for which the same provisions of the Labor Code on just and authorized causes shall apply.[41] It is only when the non-renewal of the fixed term employment contract coincides with the expiration of the probationary period that the termination of employment is deemed an exercise of management prerogative of the institution not to regularize the probationary teacher for failure to meet established standards.[42]

While the parties are at liberty to agree to a short probationary period, the decision to do so must be unmistakable, otherwise the presumption is that a three-year period was adopted.[43] In this case, in view of the vagueness in the parties' documents of agreements, the CA was justified in relying on the presumption that the probationary period was for three years as set by law.

The probationary period of respondents being three years, the non-renewal of their fixed term contracts during that probationary period amounted to a dismissal rather than a mere lapse of their probationary period.

There is neither allegation nor evidence of dismissal for just cause. Instead, the allegations and the evidence, particularly the letters of petitioner about the reduction of respondents' teaching loads and schedules, indicate that dismissal was due to redundancy. This conclusion is reasonable given the admitted financial difficulties of petitioner. Therefore, the CA did not err in its concurrence with the findings of the LA that the dismissal was for the authorized cause of redundancy. The consequent monetary awards were likewise proper.

As to the nominal damages of ₱50,000.00 that the CA awarded to each respondent, the same is supported by jurisprudence.[44]

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[41] *Supra* note 18.

[42] *Colegio San Agustin v. National Labor Relations Commission*, 278 Phil. 414 (1991).

[43] *Universidad de Sta. Isabel v. Sambajon, Jr.*, 731 Phil. 235 (2014).

[44] *Mejila v. Wrigley Philippines, Inc.*, G.R. Nos. 199469 & 199505, September 11, 2019.

Petitioner's invocation of honest mistake did not move the Court to abandon a settled jurisprudence.

WHEREFORE, premises considered, the instant Petition is **DENIED** for lack of merit. The assailed Decision dated June 30, 2015 and the Resolution dated March 10, 2016 of the Court of Appeals-Cebu City in CA-G.R. SP No. 07256 are **AFFIRMED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 227419. June 10, 2020]

HENRY ESPIRITU PASTRANA, *petitioner, vs.* **BAHIA SHIPPING SERVICES, CARNIVAL CRUISE LINES, NORTH SEA MARINE SERVICES CORPORATION, V. SHIP LEISURE, INC., ELIZABETH MOYA and FERDINAND ESPINO**, *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUE IS LIMITED TO QUESTIONS OF LAW. — It is settled that a petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law. As such, the Court will not review the factual findings of the lower tribunals, or re-examine the evidence already passed upon in the proceedings below. This is especially true when the findings of facts of the labor tribunals were affirmed by the CA.

2. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; DISABILITY BENEFITS FOR WORK-RELATED ILLNESS OR INJURY; PERIOD WITHIN WHICH THE COMPANY-DESIGNATED PHYSICIAN MUST ISSUE A FINAL AND DEFINITIVE ASSESSMENT; DISCUSSED. — The seafarer's entitlement to disability benefits for work-related illness or injury is governed by the Labor Code, its implementing rules and regulation (IRR), the POEA-SEC, and prevailing jurisprudence. x x x In *Elburg Shipmanagement, Inc. v. Quiogue, Jr.* (*Elburg*), the Court outlined the rules with respect to the period within which the company-designated physician must issue a final and definitive disability assessment, x x x While *Elburg* states that the 120 or 240-day periods shall be reckoned "from the time the seafarer reported to [the company-designated physician]," subsequent cases consistently counted said periods from the date of the seafarer's repatriation for medical treatment. This is true even in cases where the date of repatriation of the seafarer does not coincide with the date of his first consultation with the company-designated physician. x x x Thus, *Elburg* should be read as requiring the company-designated physician to issue a final and definitive disability assessment within 120 or 240 days **from the date of the seafarer's repatriation**. As held by the Court in *Vergara* and *Elburg*, the initial 120 days within which the company-designated physician must issue a final and definitive disability assessment may be extended for another 120 days. The extended period, however, may only be availed of by the company-designated physician under justifiable circumstances. x x x The Court stressed, however, that to avail of the extended 240-day period, the company-designated physician must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond 120 days, but not to exceed 240 days. The employer bears the burden of proving that the company-designated physician had a reasonable justification to invoke the 240-day period. x x x The duty of the company-designated physician to issue a final and definitive assessment of the seafarer's disability within the prescribed periods is imperative. His failure to do so will render his findings nugatory and transform the disability suffered by the seafarer to one that is permanent and total.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo Law Offices for petitioner.
Tillman & Marquez Law Offices for respondents.

D E C I S I O N

CAGUIOA, *J.:*

Assailed in this Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court are the Decision[1] dated May 5, 2016 and Resolution[2] dated September 5, 2016 of the Court of Appeals, Eighth Division (CA), in CA-G.R. SP No. 136109.

Facts

Petitioner Henry Espiritu Pastrana (Pastrana) entered into a Contract of Employment dated September 6, 2012 with respondent Bahia Shipping Services (BSS) as an Environmental Team Leader on board the vessel Carnival Fascination.[3] He received a basic monthly salary of $1,000.00 exclusive of overtime pay and other benefits.[4]

Prior to his engagement, Pastrana underwent the required pre-employment medical examination and was declared fit to work.[5]

Sometime in November 2012, while on board the vessel, Pastrana lifted a red bin full of food waste to free up space for other bins.[6] However, he miscalculated the weight of the

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[1] *Rollo*, pp. 8-27. Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

[2] *Id.* at 29-31.

[3] *Id.* at 9.

[4] *Id.*

[5] *Id.*

[6] *Id.*

bin and dropped it midway.[7] After said incident, Pastrana experienced lower back pain which radiated to his right buttock.[8] He visited the infirmary where he was injected with steroid and advised to take pain relievers.[9] However, he became alarmed of his condition when the pain extended from his right buttock down to his right leg, and it became difficult for him to get up from a sitting position.[10]

On November 7, 2012, Pastrana went back to the infirmary to consult his worsening condition.[11] He was examined by Dr. Edward Dees who diagnosed him with *sciatiform pain/plantar fasciitis* and prescribed him medicines.[12] Despite the medication and physiotherapy, the pain persisted and even worsened.[13] Thus, on December 10, 2012, Pastrana was repatriated to the Philippines for medical treatment.[14]

Two days after his repatriation, on December 12, 2012, Pastrana reported to the company-designated physician, Dr. Robert Lim (Dr. Lim), and underwent magnetic resonance imaging (MRI) scan of his *lumbo sacral* spine.[15]

On December 18, 2012, Pastrana had his second consultation with Dr. Lim.[16] He was given medication and advised to undergo rehabilitation.[17] He underwent physical therapy sessions for almost four months, but this only resulted to minimal improvement.[18]

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[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

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

[16] *Id.* at 10.

[17] *Id.*

[18] *Id.*

On April 2, 2013, Dr. Lim advised Pastrana that he is already fit to work.[19] Trusting the assessment of the company-designated physician and eager to resume sea duty, Pastrana signed the fit to work declaration.[20] However, the Medical Director of respondent Carnival Cruise Lines declared him unfit to return to his usual work on board the vessel after observing that he still has stiff trunk and painful gait.[21]

On April 11, 2013, the company-designated physician issued a final assessment which states as follows:

> "This is regarding the case of Environmental Team Leader Henry E. Pastrana who was initially seen here at Metropolitan Medical Center on December 12, 2012 and was diagnosed to have Herniated Disc, L4-L5, L5-S1.
>
> If patient is entitled to a disability, his suggested disability grading is Grade 11 — 1/3 loss of lifting power."[22]

In view of the foregoing medical assessment, respondents offered to pay Pastrana $7,000.00 as disability benefit corresponding to a Grade 11 disability rating.[23] Pastrana refused the offer and instead sought the opinion of his personal doctor, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who declared him "permanently unfit in any capacity to resume his duties as a Seaman."[24]

On the basis of the medical assessment of Dr. Magtira, Pastrana demanded total and permanent disability benefits from respondents, but his demand went unheeded.[25] Thus, Pastrana filed a Complaint dated May 7, 2013 for payment of total and

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[19] *Id.*

[20] *Id.*

[21] *Id.*

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

[23] *Id.* at 11.

[24] *Id.*

[25] *Id.*

permanent disability benefits, moral and exemplary damages, and attorney's fees, with the Labor Arbiter (LA).[26]

Ruling of the LA

In a Decision[27] dated November 25, 2013, the LA ruled in favor of Pastrana. The dispositive portion of the Decision reads as follows:

> **WHEREFORE**, responsive to the foregoing, judgment is hereby rendered declaring complainant's claim for disability benefits based on the permanent total disability compensation category meritorious. Accordingly, respondents are hereby ordered jointly and severally liable:
>
> 1) To pay complainant the amount of USD60,000.00, or its equivalent in Philippine Currency prevailing at the exchange rate at the time of payment, representing his payment and total disability benefits;
>
> 2) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.
>
> Other claims are dismissed for lack of merit.
>
> **SO ORDERED.** [28]

In so ruling, the LA disregarded the medical assessment and grading given by the company-designated physician. According to the LA, Pastrana is entitled to total and permanent disability benefits given that his condition "has rendered him unfit to continue working as a seafarer, which is his primary source of gainful employment."[29] The LA further held that there is no evidence showing that Pastrana had already resumed his sea duties, or was declared fit to work.[30] Thus, he is considered to be suffering from a Grade 1 Disability and entitled to permanent and total disability benefits.[31]

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[26] *Id.*

[27] *Id.* at 227-242.

[28] *Id.* at 241-242; emphasis in the original.

[29] *Id.* at 237.

[30] *Id.* at 241.

[31] *Id.*

The LA also awarded Pastrana attorney's fees in an amount equivalent to 10% of the total judgment award for securing the services of a counsel to protect his rights and interests.[32]

Aggrieved, respondents filed a Memorandum of Appeal with the National Labor Relations Commission (NLRC).[33]

Ruling of the NLRC

The NLRC dismissed respondents' appeal and affirmed the LA's ruling in a Decision[34] dated April 8, 2014, *viz.*:

> **IN VIEW WHEREOF**, the respondents' appeal is **DISMISSED** for lack of merit. The Decision of the Labor Arbiter is hereby **AFFIRMED**.
>
> **SO ORDERED.** [35]

The NLRC held that Pastrana is deemed permanently and totally disabled considering that he could no longer return to his work as a seafarer on account of his medical condition.[36] After all, in disability compensation, it is the incapacity to work resulting in the impairment of one's earning capacity that is being compensated and not the injury.[37] In addition, while the diagnosis of the company-designated physician bears vital significance in claims for disability benefits, his assessment is not irrefutable and conclusive.[38] No less than the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) recognizes the right of seafarers to seek a second opinion from a physician of their choice.[39] Finally, the NLRC also applied the "120-day rule" which states that a seafarer

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[32] *Id.*

[33] *Id.* at 12.

[34] *Id.* at 331-342.

[35] *Id.* at 341; emphasis in the original.

[36] *Id.* at 338.

[37] *Id.*

[38] *Id.* at 340.

[39] *Id.*

who is unable to perform his job for 120 days is deemed permanently disabled.[40]

Respondents sought reconsideration of the NLRC Decision, but was denied in a Resolution[41] dated May 9, 2014. Thus, they filed a petition for *certiorari*[42] before the CA and prayed for the issuance of injunctive relief to enjoin the execution of the NLRC Decision.

Before the CA could act on respondents' application for injunctive relief, the NLRC issued a Writ of Execution dated September 24, 2014.[43] Thus, respondents moved for the inclusion of restitution as part of the reliefs prayed for before the CA.[44]

Ruling of the CA

In a Decision[45] dated May 5, 2016, the CA granted respondents' petition for *certiorari*. The dispositive portion of the CA Decision reads as follows:

WHEREFORE, premises considered, the Petition is **GRANTED**. The *Decision* dated 8 April 2014 and *Resolution* dated 9 May 2014 issued by the National Labor Relations Commission (NLRC) in NLRC Case No. LAC 02-000149-14 are hereby **SET ASIDE**. Private respondent is ordered to return to petitioners the amount of Two Million Nine Hundred Forty Three Thousand Six Hundred Pesos (Php2,943,600.00) less the equivalent of $7,465.00 in Philippine currency as of 16 October 2014, the date of receipt of payment by private respondent, as compensation for Grade 11 disability.

SO ORDERED.[46]

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[40] *Id.* at 340-341.

[41] *Id.* at 344-345.

[42] *Id.* at 346-404.

[43] *Id.* at 14.

[44] *Id.*

[45] *Supra* note 1.

[46] *Id.* at 26; emphasis supplied; citation omitted.

The CA found grave abuse of discretion on the part of NLRC in issuing the assailed NLRC Decision and Resolution, and held that the conclusions of the NLRC are unsupported by substantial evidence and contrary to the provisions of the POEA-SEC.[47]

The CA found that Pastrana failed to observe the procedure outlined in Section 20(A)(3) of the POEA-SEC, which requires the referral to and appointment of a third doctor whose medical assessment shall be binding on both parties.[48] Thus, the complaint is dismissible for being premature, and the opinion of the company-designated physician becomes controlling.[49] The CA further noted that the company-designated physician timely issued a final disability grading on April 11, 2013, or 120 days from the date of the commencement of Pastrana's treatment. Based on the foregoing, the CA held that Pastrana's disability is only partial, and that he is only entitled to disability benefits corresponding to Grade 11 disability rating in the amount of $7,465.00.[50]

Hence, this Petition.[51]

Pastrana invites the Court to revisit a piece of evidence — the April 11, 2013 medical assessment issued by the company-designated physician — which he claims was neither presented nor furnished to him at the time of the discontinuation of his treatment.[52] He contends that he was only verbally advised by the company-designated physician on April 2, 2013 that he is fit to return to his sea duties, and was later on offered disability benefits amounting to $7,000.00.[53] At any rate, Pastrana argues that the medical assessment dated April 11, 2013 is not valid

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[47] *Id.* at 17.

[48] *Id.*

[49] *Id.* at 20.

[50] *Id.* at 25.

[51] *Id.* at 38-65.

[52] *Id.* at 50.

[53] *Id.* at 47-48.

and binding for it lacked any categorical statement as to his fitness to return to work, and it failed to comply with guidelines on the assessment of seafarers issued by the Department of Health and the International Labor Organization.[54] Thus, in effect, there is failure to issue a final medical assessment within the periods provided by law.[55] It also follows that he is under no obligation to comply with the conflict-resolution procedure under Section 20(B)(3) of the POEA-SEC which mandates the referral of the matter to a third doctor.[56]

In their Comment,[57] respondents maintain that the company-designated physician timely issued a final medical assessment on April 11, 2013, and that it was misleading for Pastrana to claim otherwise.[58] Respondents also fault Pastrana for his failure to move for the referral of the conflicting medical assessments to a third doctor, which militates against Pastrana's claim.[59] Thus, the medical assessment issued by the company-designated physician shall prevail, and accordingly, Pastrana is only entitled to partial disability benefit amounting to $7,465.00.[60]

Petitioner reiterates his position in his Reply.[61]

Issues

The issue for resolution of the Court is whether the CA erred in reversing the NLRC, and in holding that Pastrana is only entitled to partial disability benefit.

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[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.* at 472-521.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* at 523-541.

The Court's Ruling

It is settled that a petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law.[62] As such, the Court will not review the factual findings of the lower tribunals, or re-examine the evidence already passed upon in the proceedings below. This is especially true when the findings of facts of the labor tribunals were affirmed by the CA.[63]

In this case, the labor tribunals and the CA consistently found that the company-designated physician issued a disability assessment on April 11, 2013, and this became the basis of the partial disability assessment that was offered by respondents to Pastrana. Thus, Pastrana cannot, for the first time and at this stage of the proceedings, assert that the April 11, 2013 disability assessment was not presented nor furnished to him prior to his filing of the complaint. The factual findings of the labor tribunals and the CA with respect to the issuance of said disability assessment shall remain undisturbed.

Nonetheless, the Court still finds merit in the Petition.

The seafarer's entitlement to disability benefits for work-related illness or injury is governed by the Labor Code, its implementing rules and regulations (IRR), the POEA-SEC, and prevailing jurisprudence.

In *Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*[64] *(Vergara)*, the Court explained how the pertinent provisions in the Labor Code, its IRR, and the POEA-SEC operate, *viz.*:

In this respect and in the context of the present case, Article 192(c)(1) of the Labor Code provides that:

> x x x The following disabilities shall be deemed **total and permanent:**

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[62] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).

[63] *Sarona v. NLRC*, 679 Phil. 394, 414 (2012).

[64] 588 Phil. 895 (2008).

(1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules**;

[x x x x x x x x x]

The rule referred to — Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code — states:

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

These provisions are to be read hand in hand with the POEA Standard Employment Contract whose Section 20 (3) states:

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

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

of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[65]

In *Elburg Shipmanagement, Inc. v. Quiogue, Jr.*[66] *(Elburg)*, the Court supplanted *Vergara* and outlined the rules with respect to the period within which the company-designated physician must issue a final and definitive disability assessment, *viz.*:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules *(rules)* shall govern:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[67]

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[65] *Id.* at 911-912; underscoring and emphasis in the original; citations omitted.

[66] 765 Phil. 341 (2015).

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

While *Elburg* states that the 120 or 240-day periods shall be reckoned "from the time the seafarer reported to [the company-designated physician]," subsequent cases consistently counted said periods from the date of the seafarer's repatriation for medical treatment. This is true even in cases where the date of repatriation of the seafarer does not coincide with the date of his first consultation with the company-designated physician. This will be observed, for instance, in *Jebsens Maritime, Inc. v. Pasamba*[68] and *Teekay Shipping Philippines, Inc. v. Ramoga, Jr.*[69] This is consistent with Section 20(A)(3) which provides for the repatriation of the seafarer in case of work-related illness or injury, and the obligation of the employer to give the seafarer sickness allowance from the time he signed off until he is declared fit to work or the degree of his or her disability has been assessed, but not exceeding 120 days, *viz.*:

SECTION 20. COMPENSATION AND BENEFITS.

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount

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[68] G.R. No. 220904, September 25, 2019.

[69] G.R. No. 209582, January 19, 2018, 852 SCRA 158.

> equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

Thus, *Elburg* should be read as requiring the company-designated physician to issue a final and definitive disability assessment within 120 or 240 days **from the date of the seafarer's repatriation**.

As held by the Court in *Vergara* and *Elburg*, the initial 120 days within which the company-designated physician must issue a final and definitive disability assessment may be extended for another 120 days. The extended period, however, may only be availed of by the company-designated physician under justifiable circumstances.

In *Marlow Navigation Philippines, Inc. v. Osias*,[70] the Court held that the seafarer's uncooperativeness with his medical treatment justified the extension of the period of the medical treatment and assessment to 240 days.

In *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura*,[71] the Court found that the extension of the initial 120-day period was justified by the seafarer's need for further treatment, as in fact, the seafarer underwent therapy and rehabilitation beyond the 120-day period. The need for further medical treatment also justified the application of the 240-day period in *Rickmers Marine Agency Phils., Inc. v. San Jose*[72] and *Magsaysay Maritime Corp. v. Simbajon*.[73]

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[70] 733 Phil. 428 (2015).

[71] G.R. No. 195878, January 10, 2018, 850 SCRA 256.

[72] G.R. No. 220949, July 23, 2018, 872 SCRA 557.

[73] 738 Phil. 824 (2014).

The Court stressed, however, that to avail of the extended 240-day period, the company-designated physician must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond 120 days, but not to exceed 240 days.[74] The employer bears the burden of proving that the company-designated physician had a reasonable justification to invoke the 240-day period.[75] Thus, in *Hanseatic Shipping Philippines, Inc. v. Ballon*,[76] the Court did not give credence to the employer's belated and unsubstantiated invocation of the 240-day period.

The duty of the company-designated physician to issue a final and definitive assessment of the seafarer's disability within the prescribed periods is imperative. His failure to do so will render his findings nugatory and transform the disability suffered by the seafarer to one that is permanent and total. As explained by the Court in *Pelagio v. Philippine Transmarine Carriers, Inc.*:[77]

> Otherwise stated, the company-designated physician is required to issue a ***final and definite assessment*** of the seafarer's disability rating within the aforesaid 120/240-day period; otherwise, the opinions of the company-designated and the independent physicians are ***rendered irrelevant*** because the seafarer is already conclusively presumed to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto.[78]

Similarly, in *Olidana v. Jebsens Maritime, Inc.*,[79] the Court declared as follows:

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[74] *Talaroc v. Arpaphil Shipping Corp.*, 817 Phil. 598, 611-612 (2017).

[75] *Hanseatic Shipping Philippines, Inc. v. Ballon*, 769 Phil. 567, 588 (2015).

[76] *Id.*

[77] G.R. No. 231773, March 11, 2019.

[78] *Id.*; emphasis in the original; citations omitted.

[79] 722 Phil. 234 (2015).

x x x The Court in *Kestrel Shipping Co., Inc. v. Munar*, held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, *viz.*:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing 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 the case may be, he shall be deemed totally and permanently disabled.
>
> Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[80]

Applying the foregoing rules in the present case, the Court finds that Dr. Lim was unable to timely issue a final assessment of Pastrana's disability.

Pastrana was repatriated on December 10, 2012. He reported to Dr. Lim two days thereafter, or on December 12, 2012. After a series of treatment and consultations, Dr. Lim issued his final

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[80] *Id.* at 251.

assessment of Pastrana's disability on April 11, 2013. At the time of its issuance, 122 days had already lapsed since Pastrana's repatriation. Clearly, the assessment dated April 11, 2013 was issued beyond the mandated 120-day period.

While this initial 120-day period may be extended to 240 days, the Court finds no sufficient justification to apply the extended period in this case. The records of the case are bereft of any indication that such extension was needed, or even intended, to provide Pastrana further medical treatment. On the contrary, it was found below that his treatment was discontinued and he was given a partial disability grading.

Dr. Lim was bound to issue a final disability assessment within 120 days from Pastrana's repatriation — but, he failed to do so. Such failure rendered his opinion on Pastrana's disability irrelevant. The law had already stepped in, and considered Pastrana permanently and totally disabled. He is, therefore, entitled to disability benefits corresponding to Grade 1 disability rating.

Pastrana is also entitled to attorney's fees equivalent to 10% of the total monetary awards following Article 2208 of the New Civil Code, which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Decision dated May 5, 2016 and Resolution dated September 5, 2016 of the Court of Appeals, Eighth Division in CA-G.R. SP No. 136109 are hereby **ANNULLED** and **SET ASIDE**. The Decision dated November 25, 2013 of the Labor Arbiter is hereby **REINSTATED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 228407. June 10, 2020]

JULIAN TUNGCUL TUPPIL, JR., DIOSDADO D. BATERNA, NICANOR M. MAPA, DEMETRIO B. BAUTISTA, JR., NORBERTO Y. NAVARRO, MARLO A. MERCED, ROLDAN P. RAMACULA, RAYMUND E. ALENTAJAN, FERDINAND M. HOSANA, ROEL L. SOLIS, RICARDO D. FLORES, LARRY T. BORJA, RIZALDY S. DE LEON, RICO D. ESPEÑA, MARCOS L. VASQUEZ, ZALDY V. PEDRO, JOSEPH R. REYES, and ARIEL S. RAMOS, *petitioners, vs.* **LBP SERVICE CORPORATION**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT IS NOT ALLOWED. — Tuppil, *et al.* and Borja, *et al.* raised a question regarding the CA and labor tribunals' appreciation of the evidence which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the evidence presented below to ascertain if they were appreciated and weighed correctly, most especially when the CA, NLRC and Labor Arbiter speak as one in their findings and conclusions. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; FIXED TERM-EMPLOYMENT; CRITERIA FOR VALIDITY.— Contracts of employment for a fixed term are not unlawful unless it is apparent from the circumstances that the periods have been imposed to circumvent the laws on security of tenure. The case of *Pure Foods Corporation v. NLRC* laid down the criteria of a valid fixed-term employment, to wit: 1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other

circumstances vitiating his consent; or 2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

3. **ID.; ID.; ID.; NOT PROHIBITED IN ACTIVITIES NECESSARY AND DESIRABLE IN THE USUAL BUSINESS OF THE EMPLOYER. —**The fact that an employee is engaged to perform activities that are necessary and desirable in the usual business of the employer does not prohibit the fixing of employment for a definite period. As elucidated in *St. Theresa's School of Novaliches Foundation v. NLRC*: Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period provided the same is entered into by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstance vitiating consent. **It does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities.**

APPEARANCES OF COUNSEL

Salvador D. Estabillo for petitioners.
Laguesma Magsalin Consulta & Gastardo for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

The validity of fixed-term employment and the legality of dismissal are the main issues in this petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeal's Decision dated July 1, 2016[1] in CA-G.R. SP

[1] *Rollo*, pp. 29-38; penned by Associate Justice Agnes Reyes-Carpio, with the concurrence of Presiding Justice Andres B. Reyes, Jr. (retired member of this Court) and Associate Justice Romeo F. Barza.

No. 142370, which affirmed the findings of the National Labor Relations Commission.

ANTECEDENTS

LBP Service Corporation entered into a manpower services agreement[2] with Land Bank of the Philippines and deployed janitors, messengers and utility persons[3] in its different branches in Metro Manila.[4] These workers are Julian Tuppil, Jr., Diosdado Baterna, Nicanor Mapa, Demetrio Bautista, Jr., Norberto Navarro, Roldan Ramacula, Raymund Alentajan, Roel Solis, Ricardo Flores, Rizaldy De Leon, Zaldy Pedro, Joseph Reyes, and Ariel Ramos (Tuppil, *et al.*); and Larry Borja, Marlo Merced, Ferdinand Hosana, Rico Espeña and Marcos Vasquez (Borja, *et al.*).[5]

In 2014, the contract between LBP Service and Land Bank expired resulting in the recall of affected employees which included Tuppil, *et al.* and Borja, *et al.*[6] Upon receipt of notices of recall,[7] Tuppil, *et al.* resigned.[8] Thereafter, Tuppil, *et al.* and Borja, *et al.* filed a complaint for illegal dismissal against LBP Service before the Labor Arbiter.[9] Allegedly, they are regular employees performing services necessary and desirable to LBP Service's business. For its part, LBP Service countered that the recalled workers are supposed to be reassigned but Tuppil, *et al.* opted to resign.[10]

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[2] *Id.* at 704-709; 710-713; and 714-716.

[3] *Id.* at 562-563.

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

[5] *Id.* at 639-701.

[6] *Id.* at 717-725.

[7] *Id.* at 726-741.

[8] *Id.* at 742-751.

[9] *Id.* at 82-86.

[10] *Id.* at 48-53.

On December 10, 2014, the Labor Arbiter dismissed the complaint on the ground that Tuppil, *et al.* and Borja, *et al.* are fixed-term contractual employees. Moreover, there is no evidence that LBP Service terminated their contracts. The notice of recall did not amount to termination of services. Accordingly, Borja, *et al.* were ordered to report for work because their engagement merely lapsed when the contract between LBP Service and Land Bank expired. They are still in LBP Service's workforce and may be deployed to its other clients. However, the arbiter declared that Tuppil, *et al.* voluntary resigned from their work,[11] *viz.*:

> WHEREFORE, judgment is hereby rendered, as follows:
>
> 1. DISMISSING the Complaint as against complainants Tuppil, Alentajan, Baterna, Bautista, De Leon, Flores, Mapa, Navarro, Pedro, Ramacula, Ramos, Reyes and Solis for lack of merit;
>
> 2. ORDERING complainants Borja, Espena, Hosan, Merced and Vasquez to report back to work but without the payment of backwages. It must be clarified, however, that this return-to-work order is NOT a reinstatement order contemplated under Article 279 of the Labor Code for the simple reason that there is NO findings of dismissal, much less illegal.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[12]

Aggrieved, Tuppil, *et al.* and Borja, *et al.* appealed to the National Labor Relations Commission. On May 31, 2015, the NLRC affirmed the Labor Arbiter's findings that Tuppil, *et al.* and Borja, *et al.* are contractual employees and that they failed to prove the fact of dismissal. It reiterated that Tuppil, *et al.*'s resignation letters were voluntarily executed.[13] Unsuccessful at a reconsideration,[14] Tuppil, *et al.* and Borja, *et al.* filed a

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[11] *Id.* at 53-57.

[12] *Id.* at 58.

[13] *Id.* at 62-66.

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

petition for *certiorari* before the Court of Appeals. In its Decision dated July 1, 2016, the CA affirmed the ruling of the NLRC,[15] thus:

> In the instant case, the facts and the evidence do not establish a *prima facie* case that petitioners were dismissed from employment. As aptly found by the Labor Arbiter, no termination took place, instead, the petitioners' respective contractual employments merely lapsed as a result of Land Bank's decision not to renew its manpower services with LBPSC.
>
> There is no dispute as to the fact that LBPSC is an independent contractor and petitioners were deployed to different Land Bank branches as janitors, messengers and utility workers. The contract they knowingly and voluntarily signed assigning them to various Land Bank branches fixed the duration of their respective employment and specifically noted that one of the causes for their recall or termination is "non-renewal or termination of [our] contract with the client Company [where you are assigned]." Significantly, no allegations were made that petitioners were forced or pressured into affixing their signatures on the contract. There was also no evidence extant on records showing that petitioners were duped into signing the contract or forced to accept the conditions set forth therein.
>
> x x x x x x x x x
>
> With respect to the Tuppil group, just like the Borja group, the issuance of the notice of recall did not result to their termination from employment. What actually caused their severance from employment with LBPSC was their voluntary resignation from service.
> x x x
>
> WHEREFORE, premises considered, the instant petition is DISMISSED. The May 31, 2015 Decision and the subsequent July 29, 2015 Resolution of the National Labor Relations Commission in NLRC LAC No. 03-000695-15 [and] NLRC NCR Case No. 07-09196-14 are hereby AFFIRMED.
>
> SO ORDERED.[16]

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

[16] *Id.* at 35-37.

Tuppil, *et al.* and Borja, *et al.* sought reconsideration but was denied.[17] Hence, this petition alleging that the CA committed serious error in the appreciation of evidence and that its decision has no factual and legal bases. Tuppil, *et al.* and Borja, *et al.* maintained that they are regular employees and were illegally dismissed.[18]

RULING

Tuppil, *et al.* and Borja, *et al.* raised a question regarding the CA and labor tribunals' appreciation of the evidence which is one of fact and is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the evidence presented below to ascertain if they were appreciated and weighed correctly, most especially when the CA, NLRC and Labor Arbiter speak as one in their findings and conclusions.[19] While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists in the instant case. At any rate, the Court agrees with the CA and labor tribunals that Tuppil, *et al.* and Borja, *et al.* are fixed-term contractual employees.

Contracts of employment for a fixed term are not unlawful unless it is apparent from the circumstances that the periods have been imposed to circumvent the laws on security of tenure. The case of *Pure Foods Corporation v. NLRC*[20] laid down the criteria of a valid fixed-term employment, to wit:

1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or

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

[18] *Id.* at 14-15.

[19] *Edith Salindog Agayan v. Kital Philippines Corporation, Inc.*, G.R. No. 229703, December 4, 2019; *Pascual v. Burgos, et al.*, 776 Phil. 167 (2016); *Bacsasar v. Civil Service Commission*, 596 Phil. 858 (2009).

[20] 347 Phil. 434 (1997).

2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.

Here, Tuppil, *et al.* and Borja, *et al.* were employed on a contract basis to meet the LBP Service's commitment to its client. At the time of their hiring, they were informed that their engagement was for a specific period. To be sure, their employment contracts expressly stipulated the duration of their services, to wit:

> Causes for Recall or End of Employment/Termination — **You should also understand and agree that your employment with us shall be considered ended/terminated or you may be the subject of a recall** under any of the following conditions:
>
> **Your voluntary resignation**. x x x
>
> x x x x x x x x x
>
> **Non-renewal or termination of our contract with the Client Company where you are assigned.**
>
> When your company of assignment no longer needs your services. **LBPSC however shall keep your name in its roster of reserves for future referral and employment with other client company**.[21] (Emphases Supplied)

Moreover, there was no evidence indicating that Tuppil, *et al.* and Borja, *et al.* were pressured into signing their fixed-term contracts or that LBP Service exhibited dominance over them. They had the chance to refuse but they consciously accepted their contracts. The periods and conditions stipulated in their contracts were likewise not intended to deny them from acquiring security of tenure. Inarguably, Tuppil, *et al.* and Borja, *et al.* are fixed-term employees. As such, the employment contract governs the relationship of the parties.

Similarly, Tuppil, *et al.* and Borja, *et al.*'s claim that they are regular employees are untenable. The fact that an employee is engaged to perform activities that are necessary and desirable

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[21] *Rollo*, pp. 639-701.

in the usual business of the employer does not prohibit the fixing of employment for a definite period.[22] As elucidated in *St. Theresa's School of Novaliches Foundation v. NLRC*:[23]

> Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period provided the same is entered into by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstance vitiating consent. **It does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities.** There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties. (Emphasis Supplied).

Consequently, there was no illegal dismissal when Tuppil, *et al.* and Borja, *et al.*'s services were terminated after the contract between LBP Service and Land Bank expired. There was even no need for a notice of termination because they knew exactly when their contracts would end. Contracts of employment for a fixed period terminate on their own at the end of such period.[24] Notably, Tuppil, *et al.* and Borja, *et al.* can still be deployed to other clients. Yet, Tuppil, *et al*. opted not to wait for the reassignments and submitted their resignation letters. On this point, we quote with approval the Labor Arbiter's discussion as to the voluntariness of their resignation, thus:

> Since they submitted resignation letters, it is incumbent upon complainants to prove that their resignation was, in fact, involuntary. In the case at bench, complainants failed to substantiate their bare allegations that their resignation[s] were involuntary. In fact, they even admitted during the mandatory conference on September 16, 2014 that they are already working for another manpower agency which in turn deployed them to Land Bank. The intention of Tuppil's group is clear: they resigned from LBPSC simply because they want

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[22] *Caparoso v. Court of Appeals*, 544 Phil. 721 (2007).

[23] 351 Phil. 1038 (1998).

[24] *Labayog v. M.Y. San Biscuits, Inc.*, 527 Phil. 67 (2006).

to continue being deployed to Land Bank. Such overt act is a manifestation of their intention to sever their employment relationship with LBPSC. Indeed, the voluntariness of complainants' resignation is unmistakable. In their resignation letters, it can clearly be deduced that complainants' resignation[s] were moved by personal and professional reasons, wherein they even expressed gratitude to LBPSC with Ramacula specifically stating that he is transferring to LBPRDC, which is presumably the new manpower agency of Land Bank. Certainly, these statements of complainants cannot be construed as an indication that they were forced to resign from service. Moreover, complainants even gave thanks and wished LBPSC good luck in its endeavors. As correctly pointed out by [respondent], these expressions of gratitude could not have come from employees who were forced by their employer to resign from service.[25]

Notably, Tuppil, *et al.*'s intention to leave their posts became more evident when they refused to accept LBP Service's offer to report back for work so they would be deployed to other clients.[26] Neither did the filing of a complaint for illegal dismissal suggest the involuntariness of their resignation since it did not include a prayer for reinstatement.

In sum, the CA and the labor tribunals did not commit grave abuse of discretion in denying the complaint for illegal dismissal. Grave abuse of discretion refers to the arbitrary, capricious, whimsical, or despotic exercise of judgment as when the assailed order is bereft of any factual and legal justification.[27] There is none in this case.

FOR THESE REASONS, the petition is **DENIED**. The Court of Appeal's Decision dated July 1, 2016 in CA-G.R. SP No. 142370 is **AFFIRMED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

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[25] *Rollo*, p. 53.

[26] *Id.* at 37.

[27] *Senate Blue Ribbon Committee v. Majaducon*, 455 Phil. 61 (2003).

THIRD DIVISION

[G.R. No. 230825. June 10, 2020]

PASCASIO DUROPAN and RAYMOND NIXER COLOMA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; UNLAWFUL ARREST; ELEMENTS. — The crime of unlawful arrest punishes an offender's act of *arresting or detaining another to deliver him or her to the proper authorities*, when the arrest or detention is not authorized, or that there is no reasonable ground to arrest or detain the other. x x x [*A]ny person* may be indicted for the crime of unlawful arrest. x x x In the crime of unlawful arrest, the offender who arrested or detained another intended to deliver the apprehended person to the proper authorities, considering he or she does not have the authority. This act of conducting the apprehended persons to the proper authorities takes the offense out of the crime of illegal detention. x x x [T]o prosecute accused of the crime of unlawful arrest successfully, the following elements must be proved: (1) that the offender arrests or detains another person; (2) that the arrest or detention is to deliver the person to the proper authorities; and (3) that the arrest or detention is not authorized by law or that there is no reasonable ground to.

2. ID.; KIDNAPPING OR SERIOUS ILLEGAL DETENTION OR SLIGHT ILLEGAL DETENTION; PUBLIC OFFICERS WHO HAVE NO DUTY TO ARREST OR DETAIN A PERSON, OR THOSE WHO HAVE SUCH AUTHORITY BUT FAIL TO JUSTIFY THE ARREST OR DETENTION MAY BE INDICTED FOR KIDNAPPING OR SERIOUS ILLEGAL DETENTION OR SLIGHT ILLEGAL DETENTION. — A public officer whose official duty does not involve the authority to arrest may be liable for illegal detention. Illegal detention, defined under Articles 267 and 268 of the Revised Penal Code penalizes "*any private individual* who shall kidnap or detain another, or in any other manner deprive him [or her] of his [or her] liberty[.]" A public officer who has no duty to arrest or detain a person

is deemed a private individual, in contemplation of Articles 267 and 268 of the Revised Penal Code. Even when a public officer has the legal duty to arrest or detain another, but he or she fails to show legal grounds for detention, "the public officer is deemed to have acted in a private capacity and is considered a 'private individual."' x x x Thus, public officers who have no duty to arrest or detain a person, or those who may have such authority but fail to justify the arrest or detention, may be indicted for kidnapping or serious illegal detention or slight illegal detention. x x x Rule 113, Section 5 of the Revised Rules of Criminal Procedure permits warrantless arrests in certain instances. A public officer who does not have the official duty to arrest or detain may lawfully do so, and effect a citizen's arrest.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROSECUTORIAL DISCRETION; THE PROSECUTOR DECIDES WHAT FELONY OR OFFENSE TO CHARGE BASED ON THE EVIDENCE PRESENTED TO ITS OFFICE. — [C]ourts convict or acquit based on what the information charges and the evidence presented during trial. This is called *prosecutorial discretion* in charging the offense. It is the prosecutor who decides what felony or offense to charge based on the evidence presented to its office. Here, it was entirely left for prosecutorial discretion to charge either illegal detention or unlawful arrest. For unlawful arrest, the added element to be proved is whether from the overt facts of the case, there was a clear intent to submit the persons arrested or detained for the purpose of prosecution. The prosecutor could have also charged illegal detention, which means that the intent to present for legal detention and prosecution need not be proven. However, in this case, the prosecutors decided to charge unlawful arrest only, with a significantly lower penalty.

4. ID.; ID.; ARREST; THERE NEED NOT BE AN ACTUAL RESTRAINT FOR CURTAILMENT OF LIBERTY TO BE CHARACTERIZED AS AN ARREST, AND THE INTENT TO ARREST BY THE ARRESTING PERSON OR OFFICER, WHETHER THROUGH ACTUAL RESTRAINT OR OTHER MEANS, MUST BE CLEARLY ESTABLISHED. — [T]he prosecution established that petitioners *arrested* Pacis *to bring him to the proper authorities.* x x x Whatever the reason for the apprehension, it is apparently conceded that Pacis was

brought to the Maribojoc police station, the *proper authorities* contemplated in Article 269 of the Revised Penal Code. Moreover, he was *arrested*, within the meaning of the same article. Arrest is defined in the Revised Rules of Criminal Procedure as "the taking of a person into custody in order that he may be bound to answer for the commission of an offense." It is "an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest." However, jurisprudence instructs that there need not be an actual restraint for curtailment of liberty to be characterized as an "arrest." x x x Although denominated as requests, invitations from high-ranking officials to a hearing in a military camp were deemed arrests. This Court characterized them as authoritative commands which may not be reasonably expected to be defied. When the accused is in an environment made hostile by the presence and actuations of law enforcers where it can be reasonably inferred that they had no choice except to willingly go with them, then there is an arrest. The subjective view of the accused will be relevant—which includes among others—their station in life and degree of education. Intent to arrest by the arresting person or officer, whether through actual restraint or other means, must also be clearly established. x x x [I]t was evident that Pacis was taken into the barangay officials' custody based on their belief that he committed a crime, either because he was allegedly committing theft, or because he became violent. Their intent to arrest Pacis was clearly established.

5. CRIMINAL LAW; UNLAWFUL ARREST; THE *BARANGAY KAGAWAD* AND *BARANGAY TANOD* ARE NOT THE PUBLIC OFFICERS WHOSE OFFICIAL DUTY IS TO ARREST OR DETAIN PERSONS CONTEMPLATED WITHIN THE PURVIEW OF ARTICLE 269 OF THE REVISED PENAL CODE. — [P]etitioner Duropan was a *barangay kagawad*, while petitioner Coloma was a *barangay tanod* of Lincod, Maribojoc, Bohol. A *barangay kagawad* is a member of the legislative council of the *sangguniang barangay*, which enacts laws of local application. He or she is a person in authority, per Section 388 of the Local Government Code. Meanwhile, a *barangay tanod* is deemed as an agent of persons in authority whose duties are described in Section 388 of the Local Government Code x x x. While deemed as persons in authority and agents of persons in authority, respectively, the *barangay kagawad*

and *barangay tanod* are not the public officers whose official duty is to arrest or detain persons contemplated within the purview of Article 269 of the Revised Penal Code.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; STOP AND FRISK SEARCH; TO SUSTAIN THE VALIDITY THEREOF, THE ARRESTING OFFICER SHOULD HAVE PERSONALLY OBSERVED TWO 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. — It is undisputed that Pacis' apprehension was not pursuant to an arrest warrant. Rule 113, Section 5 of the Revised Rules of Criminal Procedure enumerates instances when warrantless arrests are lawful x x x. *Manibog v. People* distinguished between the arresting officer's "probable cause to believe that the person to be arrested committed an offense[,]" leading to a warrantless arrest, and a reasonable suspicion that entails a "stop and frisk" search x x x**.** 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: "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. 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. 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. Even granting that petitioners may have had the authority to inquire into the surrounding circumstances, and that what transpired was a stop and frisk search, petitioners failed to cite any suspicious circumstance that warranted Pacis' immediate arrest.

7. ID.; ID.; ARREST; WARRANTLESS ARRESTS; *IN FLAGRANTE DELICTO* ARRESTS; ELEMENTS; FAILURE TO COMPLY WITH THE OVERT ACT TEST RENDERS AN *IN FLAGRANTE DELICTO* ARREST CONSTITUTIONALLY INFIRM. — *People v. Cogaed* requires compliance with the "overt act" test in *in flagrante delicto* arrests: [F]or a warrantless arrest of *in flagrante delicto* to be [e]ffected, two elements must concur: (1) the person to be 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 (2) such overt act is done in the presence or within the view of the arresting officer. "Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm." Both elements that justify an *in flagrante delicto* arrest were absent in this case. x x x There was no overt act within petitioners' plain view which hinted that Pacis was committing a crime. During his apprehension, Pacis has not committed, was not committing, nor was he about to commit a crime. The warrantless arrest in this case was unlawful.

APPEARANCES OF COUNSEL

Alona A. Cristal for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

An *in flagrante delicto* arrest that does not comply with the overt act test is constitutionally infirm.[1] Two elements must

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[1] *Veridiano v. People*, 810 Phil. 658 (2017) [Per *J.* Leonen, Second Division].

concur, the person to be 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 that such overt act is done in the presence or within the view of the arresting officer.[2]

This resolves a Petition for Review on *Certiorari*[3] assailing the Court of Appeals Decision[4] and Resolution.[5] The Court of Appeals upheld the Regional Trial Court Decision,[6] which affirmed the Municipal Circuit Trial Court Decision[7] finding Pascasio Duropan (Duropan) and Raymond Nixer Coloma (Coloma) guilty beyond reasonable doubt of Unlawful Arrest under Article 269 of the Revised Penal Code.

Duropan and Coloma were charged in an Information which read:

That on or about the evening of the 7th day of March 2009, in Barangay Lincod, Municipality of Maribojoc, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping

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[2] *Id*. citing *People v. Cogaed*, G.R. No. 200334, July 30, 2014 [Per J. Leonen, Third Division].

[3] *Rollo*, pp. 3-16.

[4] *Id*. at 23-33. The Decision dated October 23, 2015 docketed as CA-G.R. CR No. 02182 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (Chairperson) and Renato C. Francisco of the Nineteenth Division, Court of Appeals, Cebu City.

[5] *Id*. at 19-20. The Resolution dated February 1, 2017 docketed as CA-G.R. CR No. 02182 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (Chairperson) (now Associate Justice of the Supreme Court) and Pamela Ann Abella Maxino of the Special Former Nineteenth Division, Court of Appeals, Cebu City.

[6] *Id*. at 34-40. The Decision dated May 17, 2013 docketed as Criminal Case No. 15504 was penned by Presiding Judge Sisinio C. Virtudazo of Branch 4, Regional Trial Court, Tagbilaran.

[7] *Id*. at 42-48. The Decision dated November 23, 2011 in Criminal Case No. M-1467 was penned by Presiding Judge Maria Elisa Ello-Ochoco of 1st Municipal Circuit Trial Court, Cortes, Bohol.

each other, did then and there willfully, unlawfully, feloniously, and not having authorized by law, arrest a certain WILLIAM PACIS without reasonable ground, for the purpose of delivering him to the proper authority; to the damage and prejudice of the offended victim in the amount to be proved during the trial.

Acts committed contrary to the provision of Article 269 of the Revised Penal Code.[8]

On arraignment, Duropan and Coloma pleaded not guilty to the crime charged. Trial then ensued. As the Rule on Summary Procedure governed the case, witnesses' affidavits were presented in lieu of their direct testimonies.[9]

According to the prosecution, Duropan and Coloma were Barangay Kagawad and Barangay Tanod, respectively, of Lincod, Maribojoc, Bohol.[10]

The Abatan Lincod Mangroves Nipa Growers Organization or simply, "ALIMANGO" is a cooperative duly registered with the Cooperative Development Authority. Since 1998, it was authorized to develop, utilize, and protect the Mangrove-Nipa Area in Lincod, Maribojoc, Bohol. Its members cut, gather, and weave nipa palms.[11]

On March 7, 2009 at 11:30 a.m., Duropan, Coloma, and another barangay official saw William Pacis (Pacis), Lino Baldoza Jr., Jeremias Moquila, Melvin Magbanua, and Ronnel Zambra harvesting nipa palm in a plantation.[12] Coloma approached them and asked who gave them authority to harvest. Pacis replied that they were ALIMANGO members.[13]

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[8] *Rollo*, p. 24. The Information was quoted in the Decision of the Court of Appeals.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 42.

[13] *Id*. at 24.

Doubting Pacis' claim, Duropan and Coloma pushed Pacis and his companions on board two (2) paddle boats. Pacis then protested and inquired whether Duropan and Coloma can arrest them without a warrant. Despite their objections, Pacis' group was brought to the Police Station of Maribojoc, Bohol.[14]

Upon investigation, Pacis and his companions were released. The Maribojoc Chief of Police determined that the barangay officials had no legal basis to arrest Pacis.[15]

In their affidavits, Duropan and Coloma claimed that the arrest was pursuant to Barangay Resolution No. 2, which was enacted the day prior to the incident. It ordered the barangay officials to conduct "surveillance on the mangrove/nipa area due to several complaints of illegal cutting of mangroves and nipa leaves."[16]

They narrated that they were conducting a surveillance operation when they saw Pacis and his group cutting nipa leaves. Duropan believed that Pacis was committing theft because he knew that the nipa plantation belonged to Calvin Cabalit (Cabalit).[17]

Duropan and Coloma averred that Pacis' claim that he was a member of the "ALIMANGO Association" was doubtful. According to them, ALIMANGO is an *organization*, not an association.[18] While questioning the group, Pacis allegedly lost his temper and punched Duropan's shoulder.[19] In light of his violent outburst, they brought him to the police station.[20]

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[14] *Id*. at 25.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 44.

[19] *Id*. at 25.

[20] *Id*. The defense claimed that only Pacis was arrested.

In its Decision,[21] the Municipal Circuit Trial Court of Cortes found Duropan and Coloma guilty of Unlawful Arrest. It found that all the essential elements of the crime were present[22] and noted that both accused admitted to knowing Pacis prior to the arrest.[23] It reasoned that instead of immediately arresting them, Duropan and Coloma should have given them time to prove their claim. It noted that this is relevant since "the accuseds [sic] themselves had no proof that a certain Calvin Cabalit owns the area where Pacis and his group cut nipas."[24] It dismissed the contention that Pacis assaulted Duropan.[25] The dispositive portion of the Decision read:

> WHEREFORE, finding accuseds [*sic*] Pascasio Duropan and Raymond Nixer Coloma GUILTY beyond reasonable ground of the crime of Unlawful Arrest, each of them is hereby sentenced to the penalty of imprisonment of from [*sic*] TWO (2) MONTHS AND ONE (1) DAY TO FOUR (4) MONTHS of *arresto mayor* and a fine of ₱500.00 each, with subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.[26]

On May 17, 2013, the Regional Trial Court, Tagbilaran City rendered its Decision[27] affirming Duropan and Coloma's guilt. It found that Pacis and his companions did not manifest any suspicious behavior that justified an *in flagrante delicto* arrest.[28] It affirmed the Municipal Circuit Trial Court's conclusion that the warrantless arrest was illegal.[29]

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[21] *Id*. at 42-48.

[22] *Id*. at 48.

[23] *Id*. at 47.

[24] *Id*. at 47.

[25] *Id*. at 48.

[26] *Id*. at 48.

[27] *Id*. at 34-40.

[28] *Id*. at 39.

[29] *Id*. at 39.

The Regional Trial Court modified the imposed penalty, thus:

> WHEREFORE, the DECISION rendered by the 1st Municipal Circuit Trial Court, Cortes-Antequera-Maribojoc, Cortes, Bohol dated November 23, 2011 in Criminal Case No. M-1467 for Unlawful Arrest is **AFFIRMED with MODIFICATION**. Accused-appellant PASCASIO DUROPAN and RAYMOND NIXER COLOMA are found guilty beyond reasonable doubt for the crime of Unlawful Arrest penalized under Article 269 of the Revised Penal Code and hereby imposes a penalty of imprisonment of Two (2) months and One (1) Day of *arresto mayor* medium and fine of ₱500.00 each plus costs.
>
> SO ORDERED.[30]

Duropan and Coloma's Motion for Reconsideration was denied. Thus, they filed a Petition for Review before the Court of Appeals.[31]

In its October 23, 2015 Decision,[32] the Court of Appeals denied the appeal and affirmed the trial court's Decision:

> WHEREFORE, the appeal is hereby DENIED. The Decision of the RTC, Branch 4, Tagbilaran City, Bohol, in Criminal Case No. 15504 is hereby AFFIRMED with modification that the payment of the fine shall earn 6% interest rate *per annum* commencing from the finality of this decision until fully paid.
>
> SO ORDERED.[33]

The Court of Appeals held that there was no sufficient basis for Duropan and Coloma to effect a warrantless arrest.[34] There was no overt act which indicated that Pacis "had just committed, was committing, or was about to commit a crime[.]"[35]

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

[31] *Id*. at 27.

[32] *Id*. at 23-33.

[33] *Id*. at 32.

[34] *Id*. at 31.

[35] *Id*. at 30.

Duropan and Coloma moved for reconsideration, but the motion was denied in the Court of Appeals Resolution.[36]

Thus, on March 10, 2017, Duropan and Coloma filed this Petition for Review on *Certiorari*.[37]

Petitioners posit that not all elements of the crime were present. They argue that complainant Pacis was not arrested, but was merely invited to the police station.[38] They contend that it was their duty to investigate whether he was authorized to harvest the nipa leaves. They argue that they had reasons to doubt his claim, considering that he referred to ALIMANGO Organization as "ALIMANGO Association." Moreover, they believed in good faith that the land he was harvesting from belonged to Cabalit.[39]

Petitioners maintain that complainant attacked them, which is why he was invited to the police station.[40] In the alternative, they argue that if he was indeed arrested, there was a reasonable ground for it.[41]

In its June 28, 2017 Resolution,[42] this Court required respondent to comment on the petition within 10 days from notice. On August 23, 2017, respondent filed a Motion for Extension.[43] Thereafter, on October 23, 2017, it filed its Comment.[44]

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

[37] *Id*. at 3-16.

[38] *Id*. at 8.

[39] *Id*. at 7.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 50-51.

[43] *Id*. at 54-63.

[44] *Id*. at 74-89.

Respondent counters that petitioners' guilt was sufficiently proved,[45] as all the elements of the crime were present.[46] It reasons that despite reports of rampant illegal cutting of mangrove and nipa, petitioners ought to be diligent in verifying reports rather than surreptitiously arresting a private person.[47] Further, contrary to petitioners' claim, they acted in bad faith in opting to arrest complainant despite no genuine inquiry into the circumstances.[48]

In its January 10, 2018 Resolution,[49] this Court granted the motion for extension, noted respondent's Comment on the petition, and required petitioners to file a reply within 10 days from notice.

On March 2, 2018, petitioners filed their Reply.[50] This Court noted this in its June 6, 2018 Resolution.[51]

In their Reply, petitioners reiterate that not all elements of the crime of unlawful arrest were attendant in this case,[52] since complainant was neither arrested nor detained for the purpose of delivering him to the proper authorities.[53] Petitioners assert that holding them liable for the crime of unlawful arrest is tantamount to requiring them "to be as sophisticated as the court [in] determining [with] absolute certainty beyond reasonable doubt the *ground* for the arrest of persons[.]"[54]

The issues for resolution are:

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[45] *Id*. at 78.

[46] *Id*. at 79.

[47] *Id*. at 83.

[48] *Id*. at 85.

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

[50] *Id*. at 92-96.

[51] *Id*. at 100.

[52] *Id*. at 92.

[53] *Id*. at 93.

[54] *Id*. at 94-95.

First, whether or not petitioners Pascasio Duropan and Raymond Nixer Coloma arrested William Pacis.

Second, whether or not there was reasonable ground to arrest Pacis, which warrants petitioners' acquittal from the charge of unlawful arrest.

This Court denies the Petition.

I

The Municipal Circuit Trial Court charged and convicted petitioners with the crime of unlawful arrest penalized under Article 269 of the Revised Penal Code, which states:

> ARTICLE 269. *Unlawful Arrest*. — The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.[55]

The crime of unlawful arrest punishes an offender's act of *arresting or detaining another to deliver him or her to the proper authorities*, when the arrest or detention is not authorized, or that there is no reasonable ground to arrest or detain the other.

As worded, *any person* may be indicted for the crime of unlawful arrest. This was affirmed in *People v. Malasugui*,[56] where this Court considered whether a public officer may be held liable under this crime.

Malasugui explained that a public officer may be exculpated from the crime of unlawful arrest under specific circumstances:

> [U]nder the law, members of the Insular Police or Constabulary as well as those of the municipal police and of chartered cities like Manila and Baguio, and even of townships (Secs. 848, 2463, 2564, 2165 and 2383 of the Revised Administrative Code) may make arrests without judicial warrant, not only when a crime is committed or about to be

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[55] REV. PEN. CODE, Art. 269.

[56] 63 Phil. 221 (1936) [Per *J.* Diaz, *En Banc*].

committed in their presence, but also when there is reason to believe or sufficient ground to suspect that one has been committed and that it was committed by the person arrested by them. . . An arrest made under said circumstances is not unlawful but perfectly justified[.][57]

Malasugui inferred that a public officer who does not have the authority to arrest shall be criminally liable. Even when a public officer is authorized to arrest, he or she must have a judicial warrant. However, when the enumerated circumstances exist, the absence of a judicial warrant is justified and does not expose the public officer to criminal liability.

I (A)

There are several crimes defined in the Revised Penal Code pertaining to the curtailment of a person's liberty. The crimes against the fundamental laws of the state[58] and the crimes against personal liberty[59] are differentiated, thus:

> Failure to judicially charge within the prescribed period renders the public officer effecting the arrest liable for the crime of *delay in the delivery of detained persons under Article 125 of the Revised Penal Code*. Further, if the warrantless arrest was without any legal ground, the arresting officers become liable for *arbitrary detention under Article 124*. However, ***if the arresting officers are not among those whose official duty gives them the authority to arrest***, they become liable for *illegal detention under Article 267 or 268*. If the arrest is for the purpose of delivering the person arrested to the proper authorities, but it is done without any reasonable ground or any of the circumstances for a valid warrantless arrest, the arresting persons become liable for *unlawful arrest under Article 269*.[60] (Citations omitted, emphasis supplied)

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[57] *Id*. at 226-227.

[58] REV. PEN. CODE, Title II.

[59] REV. PEN. CODE, Title IX.

[60] Dissenting Opinion of Former Chief Justice Sereno in *Lagman v. Medialdea*, 812 Phil. 628 (2017) [Per *J*. Del Castillo, *En Banc*].

A public officer whose official duty does not involve the authority to arrest may be liable for illegal detention. Illegal detention, defined under Articles 267[61] and 268[62] of the Revised Penal Code penalizes "*any private individual* who shall kidnap or detain another, or in any other manner deprive him [or her] of his [or her] liberty[.]"[63]

A public officer who has no duty to arrest or detain a person is deemed a private individual, in contemplation of Articles 267 and 268 of the Revised Penal Code. Even when a public officer has the legal duty to arrest or detain another, but he or she fails to show legal grounds for detention, "the public officer is deemed to have acted in a private capacity and is considered a 'private individual."'[64]

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[61] REV. PEN. CODE, Art. 267 provides:

Article 267. *Kidnapping and serious illegal detention*. — *Any private individual* who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than five days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense. (Emphasis supplied)

[62] REV. PEN. CODE, Article 268 provides:

Article 268. *Slight illegal detention*. — The penalty of *reclusion temporal* shall be imposed upon *any private individual* who shall commit the crimes described in the next preceding article without the attendance of any of circumstances enumerated therein... (Emphasis supplied)

[63] REV. PEN. CODE, Article 267.

[64] *Osorio v. Navera*, G.R. No. 223272, February 26, 2018, 856 SCRA 435, [Per *J.* Leonen, Third Division].

In *Osorio v. Navera*,[65] Staff Sergeant Osorio, a ranking officer of the Armed Forces of the Philippines, filed a Petition for Issuance of Writ of *Habeas Corpus* before the Court of Appeals. He argued that he may not be charged with kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, considering that the felony penalizes private individuals only. In rejecting this contention and affirming the Court of Appeals' denial of his petition, this Court explained:

> SSgt. Osorio was charged with kidnapping, a crime punishable under Article 267 of the Revised Penal Code. Applying Republic Act No. 7055, Section 1, the case shall be tried by a civil court, specifically by the Regional Trial Court, which has jurisdiction over the crime of kidnapping. The processes which the trial court issued, therefore, were valid.
>
> Contrary to SSgt. Osorio's claim, the offense he committed was not service-connected. The case filed against him is none of those enumerated under Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War.
>
> Further, kidnapping is not part of the functions of a soldier. Even if a public officer has the legal duty to detain a person, the public officer must be able to show the existence of legal grounds for the detention. Without these legal grounds, the public officer is deemed to have acted in a private capacity and is considered a "private individual." The public officer becomes liable for kidnapping and serious illegal detention punishable by *reclusion perpetua*, not with arbitrary detention punished with significantly lower penalties.
>
> The cases cited by respondents are on point. In *People v. Santiano*, members of the Philippine National Police were convicted of kidnapping with murder. On appeal, they contended that they cannot be charged with kidnapping considering that they were public officers. This Court rejected the argument and said that "in abducting and taking away the victim, [the accused] did so neither in furtherance of official function nor in the pursuit of authority vested in them. It is not, in fine, in relation to their office, but in purely private capacity, that they [committed the crime]." This Court thus, affirmed the conviction of the accused in *Santiano*.

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[65] *Id*.

In *People v. PO1 Trestiza*, members of the Philippine National Police were initially charged with kidnapping for ransom. The public prosecutor, however, filed a motion to withdraw information before the trial court and filed a new one for robbery. According to the public prosecutor, the accused cannot be charged with kidnapping because the crime may only be committed by private individuals. Moreover, the accused argued that the detention was allegedly part of a "legitimate police operation."

The trial court denied the motion to withdraw. It examined the Pre- Operation/Coordination Sheet presented by the defense and found that it was neither authenticated nor its signatories presented in court. The defense failed to show proof of a "legitimate police operation" and, based on *Santiano*, the accused were deemed to have acted in a private capacity in detaining the victims. This Court affirmed the conviction of the police officers for kidnapping.

It is not impossible for a public officer to be charged with and be convicted of kidnapping as *Santiano* and *Trestiza* illustrated. SSgt. Osorio's claim that he was charged with an "inexistent crime" because he is a public officer is, therefore, incorrect.[66] (Citations omitted, emphasis in the original)

Thus, public officers who have no duty to arrest or detain a person, or those who may have such authority but fail to justify the arrest or detention, may be indicted for kidnapping or serious illegal detention or slight illegal detention.

I (B)

Inquiry is incumbent on whether the person implementing the arrest has the official duty to arrest or detain, and whether he or she had reasonable ground to effect the apprehension in that instance.

In the crime of unlawful arrest, the offender who arrested or detained another intended to deliver the apprehended person to the proper authorities, considering he or she does not have the authority. This act of conducting the apprehended persons to the proper authorities takes the offense out of the crime of illegal detention.[67]

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[66] *Id*. at 455-456.

[67] See *U.S. v. Fontanilla*, 11 Phil. 233 (1908) [Per *J.* Carson, *En Banc*].

As early as 1908, in *United States v. Fontanilla*,[68] this Court had differentiated unlawful arrest from illegal detention. Santiago Fontanilla (Fontanilla) found Apolonio de Peralta (de Peralta), Emeterio Navalta (Navalta), and several laborers tilling his land. De Peralta insisted that the land was his brother's. A fight ensued, which ended when Fontanilla captured and tied de Peralta and Navalta with a rope. He then brought them to the municipal jail.

The trial court ruled that Fontanilla was guilty of illegal detention under Article 481 of the old Penal Code.[69] This Court modified the ruling, and held that Fontanilla was not guilty of illegal detention, but of unlawful detention under Article 483 of the Penal Code,[70] the precursor to unlawful arrest under Article 269 of the Revised Penal Code:

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[68] *Id*.

[69] THE OLD PENAL CODE, Art. 481 provides:

ARTICLE 481. Any private individual who shall lock up or detain another, or in any manner deprive him of his liberty, shall suffer the penalty of *prisión mayor*.

The same penalty shall be imposed upon any person who shall provide a place for the commission of the crime.

If the offender shall release the person so locked up or detained, within three days after the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prisión correccional* in its minimum and medium degrees and a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas.

[70] THE OLD PENAL CODE, Art. 483 provides:

ARTICLE 483. Any person who in any case other than that permitted by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of taking the latter before the authorities shall suffer the penalties of *arresto menor* and a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas.

Any person who shall unlawfully detain any other person and shall fail to give account of his whereabouts, or to prove that he has set such person at liberty, shall suffer a penalty from *cadena temporal* in its maximum degree to *cadena perpetua*.

It does not appear that the persons whom the accused arrested committed any crime which would justify their arrest without warrant by a peace officer, and the evidence of record leaves no room for doubt that there was no justification whatever for their arrest by a private person. The *accused was not a peace officer, and was not exercising any public function when he made the arrest, nor did he have any authority to seize trespassers upon his land and commit them to the public jail*, yet the fact remains that he did apprehend and detain these parties, and turn them over to the authorities.

Article 483 of the Penal Code provides that any person who, cases permitted by law being excepted, shall without sufficient reason, apprehend or detain another, in order to turn him over to the authorities, shall be punished with the penalties of *arresto menor* and the fine of 325 to 3,250 pesetas, and the offense committed by the accused clearly falls under the provisions of this article. The trial court was of opinion that the offense committed is that prescribed by Article 481, which provides that any private person who shall lock up or detain another, or in any way deprive him of his liberty shall be punished with the penalty of *prision mayor*. We think, however, that ***the fact that the accused, after he had apprehended the complaining witnesses, immediately conducted them to the municipal jail, and thus turned them over to the authorities, takes the offense out of that article and brings it within the purview of Article 483***.[71] (Emphasis supplied.)

Rule 113, Section 5 of the Revised Rules of Criminal Procedure[72] permits warrantless arrests in certain instances.

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[71] *U.S. v. Fontanilla*, 11 Phil. 233, 235 (1908) [Per *J*. Carson, *En Banc*].

[72] RULES OF COURT, Rule 113, Sec. 5 provides:

Section 5. *Arrest Without Warrant; When Lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

A public officer who does not have the official duty to arrest or detain may lawfully do so, and effect a citizen's arrest. Petitioners admittedly attempted this here.

Finally, courts convict or acquit based on what the information charges and the evidence presented during trial. This is called *prosecutorial discretion* in charging the offense. It is the prosecutor who decides what felony or offense to charge based on the evidence presented to its office.

Here, it was entirely left for prosecutorial discretion to charge either illegal detention or unlawful arrest. For unlawful arrest, the added element to be proved is whether from the overt facts of the case, there was a clear intent to submit the persons arrested or detained for the purpose of prosecution. The prosecutor could have also charged illegal detention, which means that the intent to present for legal detention and prosecution need not be proven. However, in this case, the prosecutors decided to charge unlawful arrest only, with a significantly lower penalty.

Thus, to prosecute accused of the crime of unlawful arrest successfully, the following elements must be proved:

(1) that the offender arrests or detains another person;

(2) that the arrest or detention is to deliver the person to the proper authorities; and

(3) that the arrest or detention is not authorized by law or that there is no reasonable ground to.

We affirm the findings of the three tribunals that all the elements constituting the crime of unlawful arrest are present in this case. Hence, petitioners' guilt beyond reasonable doubt is likewise affirmed.

II

Despite petitioners' challenge, the prosecution established that petitioners *arrested* Pacis *to bring him to the proper authorities.*

On one hand, the petitioners' claim that they merely invited Pacis to the police station to investigate whether he had the authority to harvest nipa. On the other, they contend that he got violent which led them to arrest him.

Whatever the reason for the apprehension, it is apparently conceded that Pacis was brought to the Maribojoc police station, the *proper authorities* contemplated in Article 269 of the Revised Penal Code. Moreover, he was *arrested*, within the meaning of the same article.

Arrest is defined in the Revised Rules of Criminal Procedure as "the taking of a person into custody in order that he may be bound to answer for the commission of an offense."[73] It is "an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest."[74]

However, jurisprudence instructs that there need not be an actual restraint for curtailment of liberty to be characterized as an "arrest."

Babst v. National Intelligence Board[75] involved the National Intelligence Board's invitations to and subsequent interrogations of several journalists. There, this Court declared:

> The assailed proceedings have come to an end. The acts sought to be prohibited (*i.e.*, the issuance of letters of invitation and subsequent interrogations) have therefore been abated, thereby rendering the petition moot and academic as regards the aforesaid matters.
>
> Be that as it may, it is not idle to note that ordinarily, an invitation to attend a hearing and answer some questions, which the person invited may heed or refuse at his pleasure, is not illegal or constitutionally objectionable. Under certain circumstances, however, such an invitation can easily assume a different appearance. Thus,

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[73] RULES OF COURT, Rule 113, Sec. 1.

[74] RULES OF COURT, Rule 113, Sec. 2.

[75] 217 Phil. 302 (1984) [Per *J.* Plana, *En Banc*].

where the invitation comes from a powerful group composed predominantly of ranking military officers issued at a time when the country has just emerged from martial rule and when the suspension of the privilege of the writ of *habeas corpus* has not entirely been lifted, and the designated interrogation site is a military camp, the same can easily be taken, not as a strictly voluntary invitation which it purports to be, but as an authoritative command which one can only defy at his peril, especially where, as in the instant case, the invitation carries the ominous warning that "failure to appear . . . shall be considered as a waiver . . . and this Committee will be constrained to proceed in accordance with law." Fortunately, the NIB director general and chairman saw the wisdom of terminating the proceedings and the unwelcome interrogation.[76]

Similarly, in *Sanchez v. Demetriou*,[77] among the issues discussed was whether then Mayor Antonio L. Sanchez (Sanchez) was arrested. Commander Rex Piad of the Philippine National Police invited Sanchez to appear at Camp Vicente Lim for investigation. This Court explained what may be deemed an arrest:

> Application of actual force, manual touching of the body, physical restraint or a formal declaration of arrest is *not* required. It is enough that there be an intent on the part of one of the parties to arrest the other and an intent on the part of the other to submit, under the belief and impression that submission is necessary.[78] (Citation omitted)

Although denominated as requests, invitations from high-ranking officials to a hearing in a military camp were deemed arrests. This Court characterized them as authoritative commands which may not be reasonably expected to be defied.

When the accused is in an environment made hostile by the presence and actuations of law enforcers where it can be reasonably inferred that they had no choice except to willingly go with them, then there is an arrest. The subjective view of

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[76] *Id.* at 311.

[77] 298 Phil. 421 (1993) [Per *J.* Cruz, *En Banc*].

[78] *Id.* at 432.

the accused will be relevant—which includes among others—their station in life and degree of education.

Intent to arrest by the arresting person or officer, whether through actual restraint or other means, must also be clearly established.[79]

In *People v. Milado*,[80] Rogelio P. Milado (Milado) was carrying bricks of marijuana in his backpack aboard a jeepney, on the way to Bontoc, Mountain Province. Acting upon an information that there was a person transporting marijuana in the jeepney, the police officers set up a checkpoint. In the checkpoint, the police identified Milado and told him to stay inside the jeepney. They subsequently brought him to the police station, where they ordered him to open his bag where the marijuana was kept. In order to determine whether or not there was a lawful search incidental to an arrest, this Court first resolved whether there was an arrest, and whether the arrest was lawfully made:

> [I]t cannot be denied that when the policemen saw appellant, and that he matched the description given to them by the asset, they were certain that he was the person they were looking for. It was based on this conclusion that appellant was brought to the police station. *Although no "formal arrest" had yet been made , it is clear that appellant had already been deprived of his liberty and taken into custody after the policemen told him to stay inside the jeepney and instructed the driver to drive them to the police station. The term "invited" may have been used by the police, but it was obviously a command coming from three law enforcers who appellant could hardly be expected to defy.*
>
> Thus, as a consequence of appellant's arrest, the policemen were authorized to look at the contents of the black bag, on the ground that a contemporaneous search of a person arrested[.][81]
>
> (Emphasis supplied)

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[79] *Homar v. People*, 768 Phil. 195, 208 (2015) [Per *J.* Brion, Second Division].

[80] 462 Phil. 411 (2003) [Per *J.* Azcuna, First Division].

[81] *Id.* at 417.

Homar v. People[82] also involved the legality of a search incidental to a lawful arrest. Ongcoma Hadji Homar (Homar) was jaywalking when the police accosted him and directed him where to properly cross the street. However, they noticed that Bomar was uneasy, searched him, and found in his possession a sachet of *shabu*. This Court ruled that there was no lawful arrest and reasoned as follows:

> Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. **It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.**
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> . . . . . .
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> The indispensability of the intent to arrest an accused in a warrantless search incident to a lawful arrest was emphasized in *Luz vs. People of the Philippines*. The Court held that the shabu confiscated from the accused in that case was inadmissible as evidence when the police officer who flagged him for traffic violation had no intent to arrest him. According to the Court, due to the lack of intent to arrest, the subsequent search was unlawful. This is notwithstanding the fact that the accused, being caught in flagrante delicto for violating an ordinance, could have been therefore lawfully stopped or arrested by the apprehending officers.[83]

Petitioners' defense fails as it merely argues on semantics. However they opt to call it, it was evident that Pacis was taken into the barangay officials' custody based on their belief that he committed a crime, either because he was allegedly committing

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[82] 768 Phil. 195 (2015) [Per *J.* Brion, Second Division].

[83] *Id.* at 206-208.

theft, or because he became violent. Their intent to arrest Pacis was clearly established.

In any case, these were undisputed and non-issues before the trial courts, as the Court of Appeals found:

> First, the records would reveal that the petitioners arrested the private complainant as this fact was ***admitted*** by both of them. Second, they arrested him ***for the purpose of bringing him to the proper authorities,*** in this case, the police station in Maribojoc, Bohol.[84] (Emphasis supplied)

II (A)

At this juncture, this Court is tasked to determine whether petitioners were authorized to arrest Pacis, and whether there was a reasonable ground to do so.

To recall, petitioner Duropan was a *barangay kagawad*, while petitioner Coloma was a *barangay tanod* of Lincod, Maribojoc, Bohol. A *barangay kagawad* is a member of the legislative council of the *sangguniang barangay*, which enacts laws of local application. He or she is a person in authority, per Section 388 of the Local Government Code. Meanwhile, a *barangay tanod* is deemed as an agent of persons in authority whose duties are described in Section 388 of the Local Government Code:

> SECTION 388. *Persons in Authority*. — For purposes of the Revised Penal Code, the *punong barangay*, ***sangguniang barangay*** **members**, and members of the *lupong tagapamayapa* in each *barangay* **shall be deemed as persons in authority in their jurisdictions**, while other barangay officials and members who may be designated by law or ordinance and *charged with the maintenance of public order, protection and security of life and property, or the maintenance of a desirable and balanced environment*, and any barangay member who comes to the aid of persons in authority, shall be deemed agents of persons in authority. (Emphasis supplied)

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[84] *Rollo*, p. 28.

While deemed as persons in authority and agents of persons in authority, respectively, the *barangay kagawad* and *barangay tanod* are not the public officers whose official duty is to arrest or detain persons contemplated within the purview of Article 269 of the Revised Penal Code.

It is undisputed that Pacis' apprehension was not pursuant to an arrest warrant. Rule 113, Section 5 of the Revised Rules of Criminal Procedure enumerates instances when warrantless arrests are lawful:

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

Manibog v. People[85] distinguished between the arresting officer's "probable cause to believe that the person to be arrested committed an offense[,]" leading to a warrantless arrest, and a reasonable suspicion that entails a "stop and frisk" search:

> 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.

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[85] G.R. No. 211214, March 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65164> [Per *J.* Leonen, Third Division].

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:

> "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.
>
> 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.

Posadas v. Court of Appeals 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 to him, amounted to a reasonable suspicion that he was concealing something illegal in his buri bag. 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.

. . . . . .

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

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*, 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. 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.

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. The dissent read:

> 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. (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" 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.[86] (Emphasis supplied, citations omitted)

Even granting that petitioners may have had the authority to inquire into the surrounding circumstances, and that what transpired was a stop and frisk search, petitioners failed to cite any suspicious circumstance that warranted Pacis' immediate arrest.

Petitioners argue that due to the numerous reports of stealing nipa leaves, it was reasonable for them to suspect that Pacis violated the law. This argument falls short in light of three (3) things: (1) they were aware that ALIMANGO existed, whose members were authorized to harvest *nipa*; (2) they personally knew Pacis; and (3) they were uncertain that Cabalit owns the land where they found Pacis and his group. We elaborate.

Upon hearing a reasonable explanation as to why Pacis was harvesting the nipa leaves, petitioners had no reason to suspect any wrongdoing. Petitioners knew Pacis and are familiar with ALIMANGO. Since it was easy to verify if he was indeed a member of the group, prudence dictated that they first investigate. Had it turned out that he was not a member and was indeed stealing from Cabalit, a warrant of arrest could have been obtained as they witnessed the commission of the crime.

In addition, they were uncertain that Pacis and his companions were harvesting on Cabalit's land. Petitioners admit that "there

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[86] *Id*.

[were] no demarcation lines showing the exact boundaries"[87] of the two (2) plantations. Apart from Pacis mistakenly stating "association," instead of "organization," there was no apparent irregularity. There was no reason to believe Pacis and his group were breaking the law.

Petitioners invoke paragraph (a) to justify their warrantless arrest.[88] *People v. Cogaed*[89] requires compliance with the "overt act" test in *in flagrante delicto* arrests:

> [F]or a warrantless arrest of *in flagrante delicto* to be affected, two elements must concur: (1) the person to be 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 (2) such overt act is done in the presence or within the view of the arresting officer.[90] (Citations omitted)

"Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm."[91] Both elements that justify an *in flagrante delicto* arrest were absent in this case.

In arguing that they had reasonable ground to arrest Pacis, petitioners contend that they believed in good faith that he was stealing nipa leaves from Cabalit's land. We are not convinced.

First, Pacis was merely cutting nipa leaves when petitioners came across him. This act by itself is not a crime.

Second, the group displayed no signs of suspicious behavior. The only overt act they saw Pacis and his companions do was harvesting nipa leaves from a plantation in plain view and in broad daylight.

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[87] *Rollo*, p. 7.

[88] *Id.* at 8.

[89] 740 Phil. 212 (2014) [Per *J.* Leonen, Third Division].

[90] *Id.* at 238.

[91] *Veridiano v. People*, 810 Phil. 642, 658 (2017) [Per *J.* Leonen, Second Division].

As the Court of Appeals explained:

> Petitioners' defense will not hold water in light of the fact that the nipa palms cut by the private complainant and his group belonged to an organization called [ALIMANGO], of which the private complainant and his group are duly registered members. As aptly pointed out by the [Regional Trial Court], the prudent act that should have been done by the petitioners, as barangay officials, was to conduct a thorough investigation on the reports of illegal cutting of mangroves or nipa leaves in the area rather than resorting to the drastic move of arresting the private complainant who had identified himself as a member of [ALlMANGO]. The decision of the [Municipal Circuit Trial Court] also correctly pointed out that if petitioners were doubtful of the private complainant's membership with [ALIMANGO], they should have required him to furnish the proper documents to prove his membership. The acts of petitioners in maliciously ignoring the claim of membership of the private complainant, arresting the latter without reasonable ground, and forcibly bringing the latter to the police station in Maribojoc, Bohol, sufficiently constitutes bad faith. All these factual circumstances are enough to rebut the presumption of good faith and regularity in the performance of official duties in petitioners' favor.[92]

There was no overt act within petitioners' plain view which hinted that Pacis was committing a crime. During his apprehension, Pacis has not committed, was not committing, nor was he about to commit a crime. The warrantless arrest in this case was unlawful.

III

As found by all three (3) tribunals, this Court affirms the ruling that petitioners are guilty of unlawful arrest under Article 269 of the Revised Penal Code.

There being no aggravating or mitigating circumstance, the penalty for unlawful arrest should be taken from the medium period of *arresto mayor*, which is two (2) months and (1) day to four (4) months. Contrary to the penalty imposed by the

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[92] *Rollo*, p. 29.

Municipal Circuit Trial Court, the Indeterminate Sentence Law finds no application in this case. It does not apply to "those whose maximum term of imprisonment does not exceed one year."[93]

Thus, the Regional Trial Court correctly modified the penalty of imprisonment to two (2) months and one (1) day, which is within the range of the imposable penalty, and affirmed the tine of ₱500.00 each. The Court of Appeals correctly modified it to state that the payment of the fine shall earn 6% interest rate per annum commencing from the finality of the decision until fully paid.

We are not averse to the aggressive protection of our environment, especially of our diminishing mangroves. The zeal displayed by the accused as barangay officials to comply with their duties is, to some degree, commendable. However, there is a delicate line between zeal in enforcement and disregard for the fundamental rights of our citizens. Unfortunately, the accused clearly and unequivocally crossed that line.

Harvesting nipa indeed may be a leading cause for the deterioration of our mangroves. Both the offended parties and the accused however are fully aware that for many of our citizens in rural areas, the humble nipa is still the affordable option to build their shelters that will protect many of those who still live in poverty against the harsh realities of our steadily deteriorating climate conditions.

It is the poor who will harvest the *nipa*, not the rich.

Therefore, our laws and regulations are humane enough to grant licenses to some associations allowing them to harvest sustainably and always mindful of the carrying capacity of our shared ecology.

The accused should have been mindful of this reality. After all, they are from the same locality. Their restraint could have

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[93] Act No. 4225 (1935), Sec. 2.

been an expressive gesture of social justice. As public officers, inquiry into their authority would have been sufficient. Accosting the offended parties was uncalled for under the circumstances. Justice is better served often by tempering it with mercy and a humble dose of common sense.

We affirm their conviction.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Court of Appeals October 23, 2015 Decision and February 1, 2017 Resolution in CA-G.R. CR No. 02182 are **AFFIRMED.**

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ*., concur.

FIRST DIVISION

[G.R. No. 237997. June 10, 2020]

PETE GERALD L. JAVIER and DANILO B. TUMAMAO, *petitioners*, *vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES**, *respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY DISPOSITION OF CASES; WHEN THE DELAY IS BEYOND THE TIME PERIODS PROVIDED IN THE RULES TO DECIDE THE CASE, THE BURDEN OF PROOF SHIFTS TOWARD THE PROSECUTION TO PROVE THAT THE DELAY IS NOT UNREASONABLE. — In resolving questions involving the right to speedy

disposition of cases, the Court is guided by its ruling in *Cagang v. Sandiganbayan, Fifth Division (Cagang)* x x x. [F]or purposes of computing the length of delay in the present case, the *Cagang* guidelines will be followed, and the case against Javier and Tumamao would be deemed initiated only upon the filing of the complaint, or on April 27, 2011. Javier and Tumamao were given the opportunity to be heard, and were therefore able to file their counter-affidavits on November 15, 2011 and November 22, 2011, respectively. After these dates, it appears from the record that the case had become dormant until December 5, 2016 when the Ombudsman approved the resolution finding probable cause against Javier and Tumamao. There is thus an unexplained delay of five years from the time the counter-affidavits were filed to the termination of the preliminary investigation through the approval of the Ombudsman's resolution finding probable cause. x x x According to *Cagang*, if the delay is beyond the time periods provided in the rules to decide the case, the burden of proof shifts to the State. The Rules of Procedure of the Ombudsman, however, do not provide for specific time periods to conclude preliminary investigations. Thus, as the Rules of Court finds suppletory application to proceedings in the Ombudsman, the time periods provided therein would be deemed applicable. Accordingly, Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides that the investigating prosecutor has 10 days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial." This 10-day period may seem short or unreasonable from an administrative standpoint. However, given the Court's duty to balance the right of the State — to prosecute violations of its laws — *vis-à-vis* the rights of citizens to speedy disposition of cases, the Court rules that citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure. Thus, as the preliminary investigation was terminated beyond the 10-day period provided in the Revised Rules of Criminal Procedure, the burden of proof thus shifted towards the prosecution to prove that the delay was not unreasonable. In any event, the period of delay in this case — five years — was extraordinarily long that there could conceivably be no procedural rule that would justify said delay. Undoubtedly, therefore, the burden was on the prosecution to provide justifications for the delay.

2. ID.; ID.; ID.; ID.; THE STEADY STREAM OF CASES AND CLOGGED DOCKETS MAY NOT BE INVOKED AT WHIM TO JUSTIFY EVERY CASE OF LONG DELAYS IN THE DISPOSITION OF CASES AND SHOULD STILL BE SUBJECT TO PROOF AS TO THE EFFECTS THEREOF ON A PARTICULAR CASE TAKING INTO CONSIDERATION THE IMPORTANCE OF THE RIGHT TO SPEEDY DISPOSITION OF CASES AS A FUNDAMENTAL RIGHT. — In *Cagang*, the Court held that in cases where the burden of proof has shifted to the prosecution, the prosecution must be able to prove the following: *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay. In stark contrast, however, the prosecution, in its *Comment/Opposition* to the Motion to Quash, justified the delay of five years by merely claiming that the case had voluminous records, without offering any proof as to the said assertion or at least specifying how voluminous such records were. The prosecution basically relied on such unsubstantiated claim, and rested on the Court's recognition in a previous case that there is a steady stream of cases that reaches their office. x x x Despite the Ombudsman's bare assertions above, the Sandiganbayan still denied Javier and Tumamao's Motion to Quash x x x. Notably, the Sandiganbayan provided its own justification for the delay, *i.e.*, the number of respondents and the number of charges against them, even if the Ombudsman itself did not claim that these factors caused the delay. It bears reiterating that, following *Cagang*, the prosecution has the burden of proof in this case to prove that Javier and Tumamao's right to speedy disposition of cases was not violated. The duty was therefore on the prosecution, not the Sandiganbayan — whose mandate was to act as an impartial court — to offer the necessary proof and discharge the said burden. **To the mind of the Court, the Sandiganbayan committed grave abuse of discretion not only when it gave credence to the Ombudsman's unsubstantiated claims, but more so when it offered its own justifications for the delay**. At this juncture, it is well to point out that the Ombudsman cannot repeatedly hide behind the "steady stream of cases that reach their office" despite the Court's recognition of such reality. The Court understands the reality

of clogged dockets — from which it suffers as well — and recognizes the current inevitability of institutional delays. However, "steady stream of cases" and "clogged dockets" are not talismanic phrases that may be invoked at whim to magically justify each and every case of long delays in the disposition of cases. Like all other facts that courts take into consideration in each case, the "steady stream of cases" should still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right.

3. ID.; ID.; ID.; ID.; SHOULD BE ASSERTED IN A TIMELY MANNER TO PREVENT CONSTRUING THE ACCUSED'S ACTS OR HIS INACTION, AS ACQUIESCENCE TO THE DELAY. — Another requisite provided for in *Cagang* is the timely assertion of the right. x x x The reason why the Court requires the accused to assert his right in a timely manner is to prevent construing the accused's acts, or to be more apt, his inaction, as acquiescence to the delay. x x x Here, the Court holds that Javier and Tumamao's acts, or their inaction, did not amount to acquiescence. While it is true that the records are bereft of any indication that Javier and/or Tumamao "followed-up" on the resolution of their case, the same could not be construed to mean that they acquiesced to the delay of five years. For one, the case of *Coscolluela v. Sandiganbayan (Coscolluela)* provides that respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case. x x x The Court in *Cagang* did not explicitly abandon *Coscolluela* — considering that it explicitly abandoned *People v. Sandiganbayan* in the said case — and even cited it in one of its discussions. Thus, the pronouncements in *Coscolluela* remain good law, and may still be considered in determining whether the right to speedy disposition of cases was properly invoked. Moreover, the Court is not unreasonable in its requirements. The Ombudsman's own Rules of Procedure provides that motions to dismiss, except on the ground of lack of jurisdiction, are prohibited. Thus, respondents like Javier and Tumamao have no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level. It would be unreasonable to hold against them — and treat it as acquiescence — the fact that they never followed-up or asserted their right in a motion duly filed. Lastly, the Court holds that Javier and

> Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases. To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay.

APPEARANCES OF COUNSEL

Carpio & Bello Law Offices for petitioners.
Office of the Special Prosecutor for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for *Certiorari*[1] (Petition) filed by petitioners Pete Gerald L. Javier (Javier) and Danilo B. Tumamao (Tumamao) assailing the Resolution[2] dated January 25, 2018 and Resolution[3] dated March 1, 2018 of the Sandiganbayan Sixth Division in Crim. Case No. SB-17-CRM-1781, both of which denied their Motion to Quash on Grounds of Inordinate Delay (Motion to Quash) for lack of merit.

The Facts

In 2004, the Province of Isabela procured, by direct contracting, 15,333 bottles of liquid organic fertilizer.[4] The Commission on Audit (COA), in its Audit Observation Memorandum No. 2004-14

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[1] *Rollo*, pp. 3-16.

[2] *Id.* at 20-27. Penned by Sandiganbayan Associate Justice Sarah Jane T. Fernandez, with Associate Justices Karl B. Miranda and Bernelito R. Fernandez concurring.

[3] *Id.* at 28-32.

[4] *Id.* at 20.

dated October 12, 2004, found that the procurement was done without open competitive bidding, and that the procured items were overpriced.[5]

On July 4, 2011, the Task Force Abono of the Office of the Ombudsman (Ombudsman) filed a complaint against the public officers involved in the subject transaction,[6] including Javier and Tumamao, who were the Provincial Accountant and Provincial Agriculturist of Isabela, respectively.

On August 5, 2011, the Ombudsman directed the public officers to file their respective counter affidavits. Javier filed his counter affidavit on November 14, 2011, while Tumamao filed his on November 23, 2011.[7]

After almost five years, or on September 19, 2016, the Special Panel on Fertilizer Fund Scam of the Ombudsman issued its Resolution finding probable cause to indict Javier and Tumamao, along with Provincial Vice-Governor Santiago P. Respicio (Respicio), for violation of Section 3(e), of Republic Act No. 3019 (R.A. No. 3019).[8] The Ombudsman approved the Resolution on November 22, 2016.[9]

Thereafter, on October 3, 2017, an information dated June 14, 2017 was filed against Javier and Tumamao for violation of Section 3(e) of R.A. No. 3019, the accusatory portion of which reads:

> That on 26 March 2004, or sometime prior or subsequent thereto, in the Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, accused Provincial Accountant **PETE GERALD L. JAVIER** a high-ranking public officer being then a provincial department head, and Provincial Agriculturist **DANILO B. TUMAMAO**, together with the late Provincial Vice-Governor Santiago P. Respicio,

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

[6] *Id.* at 21.

[7] *Id.*

[8] *Id.*

[9] *Id.*

while in the performance of their administrative and/or official functions and committing the crime in relation to office, taking advantage of their official position, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully, and/or criminally cause undue injury to the government for in the amount of as *(sic)* Nine Million Four Hundred Seventy Five Thousand Seven Hundred Ninety Four Pesos (₱9,475,794.00), more or less, representing the overpriced amount in the purchase of 15,333 bottles of Bio Nature Liquid Fertilizer at ₱750.00 per bottle or a total payment of Eleven million four hundred ninety-nine thousand and seven hundred fifty pesos (₱11,499,750.00), despite the absence of a public bidding in the procurement process and failure of the supplier, Feshan Philippines (Feshan), to meet the mandated requirements specified in Section 8(a) of Presidential Decree No. 1144 which prohibits the sale and distribution of fertilizers and pesticide without securing from the Fertilizer and Pesticide Authority the necessary license, which defects accused knew fully well, were in violation of Republic Act No. 9184 (The Government Procurement Reform Act) and other pertinent existing rules and regulations, thereby giving unwarranted benefits, advantage or preference to Feshan, to the damage and prejudice of the government.

CONTRARY TO LAW.[10]

The Sandiganbayan set the date of the supposed arraignment. Javier and Tumamao, however, manifested that they were not ready for arraignment as they intended to file a motion to quash on the ground of inordinate delay.[11] They then filed the Motion to Quash[12] on November 24, 2017, arguing that the period constituting five years and four months from the filing of the complaint to the approval of the resolution finding probable cause constituted delay which violated their right to speedy disposition of cases. Javier and Tumamao cited the following jurisprudence wherein the cases were dismissed on the ground

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

[11] *Id.* at 7.

[12] *Id.* at 42-48.

of inordinate delay: (a) *Tatad v. Sandiganbayan*,[13] where the delay was close to three years; (b) *Duterte v. Sandiganbayan*,[14] where the delay was more than four years; and (c) *People v. Sandiganbayan, First Division, et al.* and *People v. Sandiganbayan, Second Division, et al*.[15] *(People v. Sandiganbayan)*, where the delay was around five years and five months.

The Sandiganbayan ordered the Ombudsman to file a Comment on the Motion to Quash. The Ombudsman filed its Comment[16] on November 29, 2017, wherein it prayed for the dismissal of the motion, arguing that the case had voluminous records, and that there were an endless number of cases being filed in their office.

RULING OF THE SANDIGANBAYAN

In its Resolution[17] dated January 25, 2018, the Sandiganbayan denied the Motion to Quash. While the Sandiganbayan conceded the amount of time which constituted the delay, it simply held that the Ombudsman had valid justifications for such delay. The Sandiganbayan adopted the Ombudsman's justifications, despite the latter's failure to substantiate its claims.

Javier and Tumamao sought reconsideration of the Sandiganbayan's Resolution. The Sandiganbayan, however, denied the motion for reconsideration in a Resolution[18] dated March 1, 2018.

Hence, the instant Petition.

Issue

For resolution of the Court is the issue of whether the Sandiganbayan committed grave abuse of discretion amounting

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[13] 242 Phil. 563 (1988).

[14] 352 Phil. 557 (1998).

[15] 723 Phil. 444 (2013).

[16] *Rollo*, pp. 66-69.

[17] *Supra* note 2.

[18] *Supra* note 3.

to lack or excess of jurisdiction in denying the Motion to Quash filed by Javier and Tumamao.

The Court's Ruling

The petition is granted. The Court rules that the Sandiganbayan gravely abused its discretion in denying the Motion to Quash.

In resolving questions involving the right to speedy disposition of cases, the Court is guided by its ruling in *Cagang v. Sandiganbayan, Fifth Division*[19] *(Cagang)*, wherein the following guidelines were laid down:

> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
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> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.
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> *Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

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[19] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581>.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.[20]

From the foregoing guidelines, the Court concludes that, as will be explained below, the right to speedy disposition of cases of both Javier and Tumamao were violated by the Ombudsman's delay in concluding the preliminary investigation.

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[20] *Id.*

There was inordinate delay in the preliminary investigation

Despite the *ponente*'s reservations as regards the conclusion reached in *Cagang* "that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation,"[21] the *ponente* respects that *Cagang* is the standing doctrine. Thus, for purposes of computing the length of delay in the present case, the *Cagang* guidelines will be followed, and the case against Javier and Tumamao would be deemed initiated only upon the filing of the complaint, or on April 27, 2011. Javier and Tumamao were given the opportunity to be heard, and were therefore able to file their counter-affidavits on November 15, 2011 and November 22, 2011, respectively. After these dates, it appears from the record that the case had become dormant until December 5, 2016 when the Ombudsman approved the resolution finding probable cause against Javier and Tumamao.[22]

There is thus an unexplained delay of five years from the time the counter-affidavits were filed to the termination of the preliminary investigation through the approval of the Ombudsman's resolution finding probable cause.

The prosecution had the burden to explain the delay in the preliminary investigation

According to *Cagang*, if the delay is beyond the time periods provided in the rules to decide the case, the burden of proof shifts to the State.[23] The Rules of Procedure of the Ombudsman,[24] however, do not provide for specific time periods to conclude preliminary

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[21] See Dissenting Opinion of Justice Caguioa in *Cagang v. Sandiganbayan, Fifth Division, supra* note 19.

[22] *Rollo*, p. 24.

[23] "If it has been alleged that there was delay beyond the given time periods, the burden of proof *shifts*." (*Cagang v. Sandiganbayan, Fifth Division, supra* note 19)

[24] Ombudsman Administrative Order No. 07, April 10, 1990.

investigations. Thus, as the Rules of Court finds suppletory application to proceedings in the Ombudsman,[25] the time periods provided therein would be deemed applicable. Accordingly, Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides that the investigating prosecutor has 10 days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial."[26]

This 10-day period may seem short or unreasonable from an administrative standpoint. However, given the Court's duty to balance the right of the State to — prosecute violations of its laws — *vis-à-vis* the rights of citizens to speedy disposition of cases, the Court rules that citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure.

Thus, as the preliminary investigation was terminated beyond the 10-day period provided in the Revised Rules of Criminal Procedure, the burden of proof thus shifted towards the prosecution to prove that the delay was not unreasonable. In any event, the period of delay in this case — five years — was extraordinarily long that there could conceivably be no procedural rule that would justify said delay. Undoubtedly, therefore, the burden was on the prosecution to provide justifications for the delay.

The Sandiganbayan gravely abused its discretion in giving credence to the prosecution's bare assertions

In *Cagang*, the Court held that in cases where the burden of proof has shifted to the prosecution, the prosecution must be able to prove the following:

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[25] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule V, Sec. 3 provides:

Sec. 3. *Rules of Court, application.* — In all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient.

[26] REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Section 3(f).

first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.[27]

In stark contrast, however, the prosecution, in its *Comment/Opposition*[28] to the Motion to Quash, justified the delay of five years by merely claiming that the case had voluminous records, without offering any proof as to the said assertion or at least specifying how voluminous such records were. The prosecution basically relied on such unsubstantiated claim, and rested on the Court's recognition in a previous case that there is a steady stream of cases that reaches their office. The Ombudsman simply argued:

> x x x Accused-movants' assertion that the issues relating to the instant case are not complicated as would justify more than 5 years of preliminary investigation deserves scant consideration. It must be noted that the case at hand has voluminous records, thus each document demands careful scrutiny to ensure that justice is fairly served.
>
> x x x Let it also be emphasized that the complaints lodged before the Office of the Ombudsman are endless. **Thus, the Supreme Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.** As held in *Dansal v. Judge Fernandez, Sr.*, the Supreme Court held that: "(j)udicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in steady stream of cases reaching the Office of the Ombudsman."[29] (Emphasis in the original)

Despite the Ombudsman's bare assertions above, the Sandiganbayan still denied Javier and Tumamao's Motion to Quash, reasoning as follows:

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[27] *Cagang v. Sandiganbayan, Fifth Division, supra* note 19.

[28] *Rollo*, pp. 66-70.

[29] *Id.* at 68-69.

According to the prosecution, it took a long time to terminate the preliminary investigation because the Office of the Ombudsman had to go through voluminous records in properly evaluating and resolving the Complaint filed before it. Aside from the present case, the Office of the Ombudsman also handled other cases. Inevitably, the termination of the preliminary investigation took some time.

The Court finds that the prosecution provided a valid justification for the delay.

The Court notes that the Information filed is only for violation of Sec. 3(e) of R.A. No. 3019. However, a reading of the Complaint filed by Task Force Abono would show that the same was for the following offenses:

1. Violation of Sec. 3(e) of R.A. No. 3019;

2. Violation of Sec. 3(g) of R.A. No. 3019;

3. Malversation through Falsification under Art. 217 in relation to Article 171 of the Revised Penal Code; and

4. Violation of Section 65.2(4) of the Implementing Rules and Regulations of R.A. No. 9184.

Furthermore, although only accused Javier and Tumamao ended up being charged in Court for violation of Sec. 3(e) of R.A. No. 3019, it must be noted that there were ten (10) respondents involved.

Because of the number of charges against the respondents, the Office of the Ombudsman had to evaluate more documents. Some documents relevant to one or some of the charges may not be relevant to the others. On the other hand, all ten (10) respondents had to be given an opportunity to explain their side, in view of their right to due process. This means that the Office of the Ombudsman had to evaluate their respective counter-affidavits, as well as their respective countervailing evidence.

The preliminary investigation in the present case necessarily took more time to conduct than in a simpler case involving fewer respondents and fewer charges. Be it noted that aside from the present case, the Office of the Ombudsman also handled other cases.[30]

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

Notably, the Sandiganbayan provided its own justification for the delay, *i.e.*, the number of respondents and the number of charges against them, even if the Ombudsman itself did not claim that these factors caused the delay.

It bears reiterating that, following *Cagang*, the prosecution has the burden of proof in this case to prove that Javier and Tumamao's right to speedy disposition of cases was not violated. The duty was therefore on the prosecution, not the Sandiganbayan — whose mandate was to act as an impartial court — to offer the necessary proof and discharge the said burden. **To the mind of the Court, the Sandiganbayan committed grave abuse of discretion not only when it gave credence to the Ombudsman's unsubstantiated claims, but more so when it offered its own justifications for the delay**.

At this juncture, it is well to point out that the Ombudsman cannot repeatedly hide behind the "steady stream of cases that reach their office" despite the Court's recognition of such reality. The Court understands the reality of clogged dockets — from which it suffers as well — and recognizes the current inevitability of institutional delays. However, "steady stream of cases" and "clogged dockets" are not talismanic phrases that may be invoked at whim to magically justify each and every case of long delays in the disposition of cases. Like all other facts that courts take into consideration in each case, the "steady stream of cases" should still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right.

The petitioners timely asserted their right to speedy disposition of cases

Another requisite provided for in *Cagang* is the timely assertion of the right. Once again, despite the *ponente*'s reservation regarding the said requirement,[31] the same would nevertheless be applied in this case.

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[31] See Dissenting Opinion of Justice Caguioa in *Cagang v. Sandiganbayan, Fifth Division, supra* note 19.

The reason why the Court requires the accused to assert his right in a timely manner is to prevent construing the accused's acts, or to be more apt, his inaction, as acquiescence to the delay. As the Court stated in *Cagang*:

> The defense must also prove that it exerted meaningful efforts to protect accused's constitutional rights. In *Alvizo v. Sandiganbayan*, the failure of the accused to timely invoke the right to speedy disposition of cases may work to his or her disadvantage, since this could indicate his or her acquiescence to the delay[.]

Here, the Court holds that Javier and Tumamao's acts, or their inaction, did not amount to acquiescence. While it is true that the records are bereft of any indication that Javier and/or Tumamao "followed-up" on the resolution of their case, the same could not be construed to mean that they acquiesced to the delay of five years.

For one, the case of *Coscolluela v. Sandiganbayan*[32] *(Coscolluela)* provides that respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case. The Court categorically stated:

> Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.[33]

The Court in *Cagang* did not explicitly abandon *Coscolluela* — considering that it explicitly abandoned *People v. Sandiganbayan* in the said case — and even cited it in one of its discussions. Thus, the pronouncements in *Coscolluela* remain good law, and may still be considered in determining whether the right to speedy disposition of cases was properly invoked.

Moreover, the Court is not unreasonable in its requirements. The Ombudsman's own Rules of Procedure provides that motions to dismiss, except on the ground of lack of jurisdiction, are

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[32] 714 Phil. 55 (2013).

[33] *Id.* at 64.

prohibited.[34] Thus, respondents like Javier and Tumamao have no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level. It would be unreasonable to hold against them — and treat it as acquiescence — the fact that they never followed-up or asserted their right in a motion duly filed.

Lastly, the Court holds that Javier and Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases.[35] To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay.

Considering the prosecution's failure to discharge its burden of proof, along with Javier and Tumamao's timely assertion of their rights, the Sandiganbayan thus committed grave abuse of discretion in denying the Motion to Quash.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Resolutions dated January 25, 2018 and March 1, 2018 of Sandiganbayan Sixth Division are **ANNULLED** and **SET ASIDE**. The Sandiganbayan is likewise ordered to **DISMISS** Crim. Case No. SB-17-CRM-1781 for violation of the Constitutional right to speedy disposition of cases of petitioners Pete Gerald L. Javier and Danilo B. Tumamao.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[34] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 4(d).

[35] *Rollo,* p. 7.

FIRST DIVISION

[G.R. No. 238774. June 10, 2020]

CIVIL SERVICE COMMISSION, *petitioner*, *vs.* **HILARIO J. DAMPILAG,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE CIVIL SERVICE COMMISSION (CSC), RESPECTED; ONE OF THE EXCEPTIONS IS WHEN THE COURT OF APPEALS MADE CONTRARY FINDINGS. — Prefatorily, findings of facts of administrative agencies, such as the CSC, if based on substantial evidence, are controlling on the reviewing court. The CSC are better-equipped in handling cases involving the employment status of employees in the Civil Service since it is within the field of their expertise. Moreover, it is not the function of the Supreme Court in a Rule 45 petition to analyze and weigh all over again the evidence presented before the lower court, tribunal or office. One of the recognized exceptions to this rule is when the findings of the CA are contrary to those of the lower court, tribunal or office, as in this case.

2. ID.; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; CASE AT BAR. — The evidence on record is overwhelming to support the finding of the CSC that Dampilag employed another person to take the December 1, 1996 CSPE held in Baguio City for and in his behalf and claimed the result as his own in his PDS accomplished on March 3, 1999. We are one with the CSC that the differences in the facial features of the person appearing on the PSP *vis-a-vis* the PDS are evident in the shapes of the face, nose, lips and eyes of Dampilag. To be sure, Dampilag admitted that the person in the picture pasted in the PSP is not him. We find it, however, improbable that it was due to mere inadvertence that Dampilag gave the picture of his former board mate instead of his own picture during the day of examination. The CSC officials who supervise civil service examinations enjoy the presumption of regularity in the performance of their official duties.

3. ID.; ID.; RULES OF ADMISSIBILITY; OPINION OF EXPERT WITNESS (HANDWRITING EXPERT IN CASE AT BAR) IS PERMISSIVE, NOT MANDATORY. — As to the absence of a handwriting expert, Section 49, Rule 130 of the Rules of Court uses the word "may," which signifies that the use of opinion of expert witness is permissive and not mandatory. In *Heirs of Severa P. Gregorio v. Court of Appeals*, we held that due to the technicality of the procedure involved in the examination of the forged documents, the expertise of questioned document examiners is usually helpful; however, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting. Besides, when the dissimilarity between the genuine and false specimens of writing is visible to the naked eye, resort to technical rules is no longer necessary. We quote the instructive rule of comparison in the examination of forged documents, thus: As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery.

4. POLITICAL LAW; ADMINISTRATIVE LAW; RULES ON THE ADMINISTRATIVE OFFENSE OF DISHONESTY; TWO COUNTS OF SERIOUS DISHONESTY COMMITTED IN CASE AT BAR. — The CSC modified the decision of the CSC-CAR and found Dampilag guilty instead for two counts of serious dishonesty based on the following grounds: (1) he committed an examination irregularity of impersonation when he connived and colluded with somebody to take the December 1, 1996 CSPE for and in his behalf; and (2) he employed fraud and falsification of official documents in the commission of the dishonest act when he misrepresented in his PDS dated March 3, 1999 that he passed the December 1, 1996 CSPE when he did not. The CSC concluded that these acts separately constitute the offense of serious dishonesty under Sections 3(e) and (g) of CSC

Resolution No. 06-0538, otherwise known as the Rules on the Administrative Offense of Dishonesty, x x x Dishonesty means the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It is "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." For dishonesty to be considered serious, the presence of *any one* of the circumstances enumerated in Section 3 of CSC Resolution No. 06-0538 must be present.

5. ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; FOR TWO COUNTS OF SERIOUS DISHONESTY, FALSIFICATION OF OFFICIAL DOCUMENT AND GRAVE MISCONDUCT, RESPONDENT IS METED THE PENALTY OF DIMISSAL FROM THE SERVICE WITH THE ATTENDING ACCESSORY PENALTIES. — Section 50 of CSC Resolution No. 1101502, or the Revised Uniform Rules on Administrative Cases in the Civil Service, provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. x x x [Here,] this Court finds Dampilag administratively liable for two counts of serious dishonesty, falsification of official document, and grave misconduct[all punishable by the penalty of dismissal from the service under Section 46. Thus, [h]e is meted the penalty of dismissal with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, except accrued leave credits, disqualification from re-employment in the government service, and bar from taking civil service examinations.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rafael Rufino Palasi for respondent.

D E C I S I O N

LOPEZ, *J.*:

This Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court seeks to set aside the Decision dated March 20, 2018[2] of the Court of Appeals (CA) in CA-G.R. SP No. 147131. The CA reversed the Decision No. 160324[3] dated February 29, 2016 and Resolution No. 1600574[4] dated June 6, 2016 of the Civil Service Commission (CSC), and exonerated Hilario J. Dampilag of two counts of serious dishonesty.

Facts

On November 27, 2014, an anonymous complaint[5] was filed before the Examination Services Division of the CSC-Cordillera Administrative Region (CSC-CAR) alleging that Dampilag committed an examination irregularity.[6]

Acting on the complaint, the CSC-CAR requested from the CSC Field Office-Baguio City a copy of Dampilag's Personal Data Sheet (PDS).[7] The PDS[8] accomplished on March 3, 1999 showed that Dampilag passed the Career Service Professional Examination (CSPE) held in Baguio City on December 1, 1996

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[1] *Rollo*, pp. 3-17.

[2] *Id.* at 20-28; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion concurring.

[3] *Id.* at 29-36; penned by Commissioner Nieves L. Osorio with Commissioners Alicia dela Rosa-Bala and Robert S. Martinez concurring, and attested by Director Dolores B. Bonifacio of the Commission Secretariat and Liaison Office.

[4] *Id.* at 37-41.

[5] See *id.* at 42-43.

[6] *Id.* at 32.

[7] *Id.*

[8] *Id.* at 46.

with a rating of 81.89.[9] However, the CSC-CAR noted glaring disparities as to Dampilag's facial features and signatures in the Picture Seat Plan[10] (PSP) for the December 1, 1996 CSPE with those of Dampilag's PDS. Thus, in an Order dated December 2, 2014, the CSC-CAR directed Dampilag to comment to its findings.[11] Dampilag submitted his Affidavit of Explanation on February 5, 2015.[12]

After preliminary investigation, the CSC-CAR issued Resolution No. 15-00007 charging Dampilag with Serious Dishonesty, Falsification of Official Documents, and Grave Misconduct.[13] In the resolution, Dampilag was accused of allowing somebody to apply and take in his behalf the CSPE held on December 1, 1996 in Baguio City and reflected the result in his PDS, thereby misleading the appointing authority to appoint him as Special Investigator I of the Department of Environment and Natural Resources-CAR (DENR-CAR), and the CSC to approve his appointment.[14]

In his Answer, Dampilag admitted that he was not the person in the picture pasted in the PSP but his former board mate, a certain Bong Martin.[15] He explained that on the day of the examination, he had in his possession an improvised envelope containing his and Bong's photos.[16] Pressed for time, he indiscriminately brought out the photographs, affixed his signature at the back of one of the photos, and submitted it to the exam proctor without verifying the actual photograph submitted.[17]

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[9] *Id.* at 32.

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

[11] *Id.* at 32.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 22.

[15] *Id.*

[16] *Id.*

[17] *Id.*

As to the alleged variation in the signatures in the PDS and PSP, Dampilag claimed that the two signatures have notable similarities, and that any perceived disparities were accepted norm because of the considerable lapse of time from the date of examination to the accomplishment of the PDS.[18] In all, Dampilag argued lack of evidence of bad faith and lack of intent to mislead the appointing authority.[19]

In lieu of the scheduled pre-hearing conference and formal hearing, the CSC-CAR allowed Dampilag to submit his position paper.[20] In his position paper, Dampilag insisted that the handwriting and signature style appearing in the PDS and PSP were his own.[21] He submitted additional documents bearing his signature and executed on different dates to prove his varying signatures and handwriting over the years.[22]

On September 11, 2015, the CSC-CAR issued Decision No. 15-0058 finding Dampilag guilty of the offenses charged and imposed upon him the penalty of dismissal from the service.[23]

The CSC-CAR noted that the features of the person in the photograph pasted over the name Hilario J. Dampilag in the

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[18] *Id.*

[19] *Id.*

[20] *Id.* at 23.

[21] *Id.*

[22] *Id.* The documents submitted are the following:

1. Affidavit of Mandy Doney, executed on January 9, 2002;
2. Dampilag's Personal Data Sheet, executed on May 7, 2007;
3. Certification issued by the DENR-CAR, Land Management Services, executed on November 29, 2008;
4. Certification of Land Investigation issued by the DENR-CAR, Land Management Services, executed on February 11, 2009;
5. Certification pertaining to a free patent application, executed on October 8, 2013; and
6. Joint Affidavit in support of free patent application, executed on August 11, 1999.

[23] *Id.* at 29-30, 33.

PSP were not similar with the features of Dampilag in the photograph pasted in his PDS accomplished on March 3, 1999. The CSC-CAR did not consider Dampilag's defense that it was pure inadvertence when he gave the picture of his former board mate instead of his own during the examination. The CSC-CAR was convinced that room examiners will not let any person take the examination if he did not look like the person in the picture submitted. Further, a comparison of the signature of Dampilag in the PDS against the signature of the purported examinee Hilario J. Dampilag in the PSP revealed immense disparities. The CSC-CAR concluded that another person took the CSPE for and in behalf of Dampilag. Since the prescribed forms for government examinations, such as the PSP and the PDS, once duly accomplished are considered official documents, by intentionally making false narration of material facts in these documents, Dampilag committed Serious Dishonesty, Falsification of Official Documents, and Grave Misconduct.

Dampilag's motion for reconsideration was denied by the CSC-CAR in its Resolution No. 15-00023 dated October 28, 2015.[24]

Aggrieved, Dampilag filed his appeal memorandum to the CSC, reiterating that his submission of a different photograph was due to pure inadvertence and may be considered as excusable negligence.[25] He insisted that the alleged discrepancies between the signatures in the PSP and the PDS were not substantial and any slight variation was an accepted norm because handwriting and signatures of a person vary over time.[26]

On February 29, 2016, the CSC affirmed the findings of the CSC-CAR but found Dampilag guilty instead of two counts of serious dishonesty.[27]

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[24] *Id.* at 30, 33.

[25] *Id.* at 31.

[26] *Id.*

[27] *Id.* at 20-28.

The CSC found the dissimilarities and disparities in the photographs and signatures in the PSP and the PDS sufficient to conclude that another person took the examination for and in behalf of Dampilag. Further, Dampilag committed falsification of official document when he intentionally and consciously misrepresented in his PDS that he was a CSPE passer, and allowed another person to take the examination and sign in the PSP as him.

However, the CSC modified the decision of the CSC-CAR and found Dampilag liable instead for two counts of Serious Dishonesty pursuant to Section 3[28] of CSC Resolution No. 06-0538[29] dated April 4, 2006. The CSC ruled that Dampilag: (1) committed examination irregularity of impersonation by conniving and colluding with somebody to take the December 1, 1996 CSPE, and (2) employed fraud and falsification of official document by stating in his PDS dated March 3, 1999 that he passed the December 1, 1996 CSPE when he did not.

The dispositive portion of the February 29, 2016 decision reads:[30]

WHEREFORE, the petition for review of Hilario J. Dampilag Special Investigator I, City Environment and Natural Resources Office (CENRO), [DENR-CAR], Baguio City, is hereby **DISMISSED**. Accordingly, the Decision No. 15-0058 dated September 11, 2015 and Resolution No. 15-00023 dated October 28, 2015 of the [CSC-CAR],

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[28] Section 3. The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty; x x x

e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.

x x x x x x x x x

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

[29] Rules on the Administrative Offense of Dishonesty.

[30] *Rollo*, p. 36.

Baguio City, finding him guilty of Serious Dishonesty, Falsification of Official Documents, and Grave Misconduct and imposing upon him the penalty of dismissal from the service with all the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, except terminal/accrued leave benefits and personal contributions to the GSIS if any, perpetual disqualification from holding public office and bar from taking civil service examinations; and denying his Motion for Reconsideration, respectively, are hereby **MODIFIED** as he is found **GUILTY** of two (2) counts of Serious Dishonesty and imposed upon him the penalty of dismissal from the service with all the accessory penalties aforestated.

Copies of this Decision shall be furnished the Commission on Audit-DENR-CAR and the Government Service Insurance System (GSIS), for their reference and appropriate action.

Quezon City.[31]

On reconsideration, Dampilag averred that the CSC failed to consider certain documents showing varying style of his signature and handwriting.[32] He insisted that he inadvertently submitted the wrong picture and the act was not attended by malice.[33]

On June 6, 2016, the CSC denied the motion and ruled:

WHEREFORE, the Motion for Reconsideration of Hilario J. Dampilag, Special Investigator I, [CENRO], [DENR-CAR] is hereby **DENIED**. Accordingly, CSC Decision No. 160324 dated February 29, 2016 which modified the Decision No. 15-0058 dated September 11, 2015 and Resolution No. 15-00023 dated October 28, 2015 of the [CSC-CAR], Baguio City, finding him guilty of two (2) counts of Serious Dishonesty and imposing upon him the penalty of dismissal from the service with all the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, except terminal/accrued leave benefits and personal contribution to the GSIS, if any, perpetual disqualification from holding public office, and bar from taking Civil Service Examination, **STANDS**.

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[31] Emphasis retained.

[32] *Rollo*, p. 39.

[33] *Id.* at 40.

Quezon City.[34]

On appeal, the CA reversed the CSC and exonerated Dampilag of the offense. The CA noted that a copy of the PSP and PDS were not made part of the records of the CA.[35] With the absence of possible reference to find the existence of the alleged dissimilarities between the photograph and the signature in the PSP and PDS, the CA based its decision solely on the pieces of evidence submitted before it (*i.e.*, Affidavit of Mandy Doney, executed on January 9, 2002; Certification issued by the DENR-CAR, Land Management Services, executed on November 29, 2008; Certification of Land Investigation issued by the DENR-CAR, Land Management Services, executed on February 11, 2009; Certification pertaining to a free patent application, executed on October 8, 2013; Joint Affidavit in support of free patent application, executed on August 11, 1999).[36] Based on these documents, the CA concluded that Dampilag's signature indeed exhibited minor deviations from the manner in which he had affixed his signature in the past.[37] Accordingly, the CA exonerated Dampilag, *viz.*:[38]

> x x x, [Dampilag] has consistently contested the findings of the CSC-CAR and CSC regarding the perceived differences in his signature all throughout its proceedings. And while We would generally afford weight to these findings, in the absence of substantial evidence in support thereof and in light of the questions of fact raised by [Dampilag] in the instant petition. We deem it prudent to consider the evidence on record in which this Decision is based, and rule in favor of exonerating him for the offense charged.
>
> **WHEREFORE**, premises considered, the instant Petition is hereby **GRANTED**. The assailed Decision and Resolution of the CSC dated

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[34] Emphasis retained.

[35] *Rollo*, p. 26.

[36] *Id.*

[37] *Id.* at 26-27.

[38] *Id.* at 27.

February 29, 2016 and June 6, 2016 are **REVERSED** and **SET ASIDE**. Accordingly, the petitioner Hilario J. Dampilag is **EXONERATED** of the offense charged.

SO ORDERED.[39]

Hence, the CSC, through the Office of the Solicitor General (OSG), filed the instant petition before this Court.[40]

The OSG avers that the CA erroneously reversed the decision of the CSC despite being supported by substantial evidence. A comparison of the PDS and PSP showed glaring disparities as to Dampilag's signature that even a layman, using his naked eye, can readily see.

In compliance with this Court's Resolution[41] dated July 9, 2018, Dampilag filed his comment[42] on November 7, 2018.

Dampilag counters that there are no substantial discrepancies between his handwriting and signature in the PDS and in the PSP. He posits that he has the tendency of constantly changing the style of his signature as year passes by. This was supported by various documents that he submitted before the CA. Further, the CSC's conclusion that another person took the CSPE for and in his behalf is not supported by substantial evidence, but mere conjectures and speculations considering that no handwriting expert was presented to render his opinion on the matter. As to the photograph in the PSP, Dampilag already explained that he inadvertently submitted the picture of his former board mate which was mixed with his in an improvised envelope that he had in his possession on the day of examination. The circumstances do not indicate malice to commit fraud on his part and can be considered as excusable negligence.

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[39] Emphasis retained.

[40] *Supra*, note 1.

[41] *Rollo*, pp. 54-55.

[42] *Id.* at 67-76.

In its Reply,[43] the OSG avers that the submission of a different photograph in an examination cannot be considered as excusable negligence. As a matter of procedure, room examiners closely examine the pictures submitted and attached on the PSP, and compare the appearance of each of the examinees with the person in the picture submitted and affixed on the PSP. Further, the CSC examiners enjoy a presumption of regularity in the administration of civil service examinations. The OSG insists the stark differences between the handwriting and signatures of Dampilag in the PSP and in the PDS.

Ruling

Prefatorily, findings of facts of administrative agencies, such as the CSC, if based on substantial evidence, are controlling on the reviewing court. The CSC are better-equipped in handling cases involving the employment status of employees in the Civil Service since it is within the field of their expertise.[44] Moreover, it is not the function of the Supreme Court in a Rule 45 petition to analyze and weigh all over again the evidence presented before the lower court, tribunal or office. One of the recognized exceptions to this rule is when the findings of the CA are contrary to those of the lower court, tribunal or office, as in this case.

The CA exonerated Dampilag on the basis of absence of evidence on the records that will support the CSC's conclusion that there exists significant differences between the signatures of Dampilag in the PSP and in the PDS. According to the CA, since a copy of the PSP and the PDS were not made part of the records, "the alleged differences remain a mystery to th[e] [c]ourt."[45] Thus, the CA decided on Dampilag's guilt based on the evidence presented before it — the several affidavits and certifications which bore Dampilag's signature and executed

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[43] *Id.* at 80-86.

[44] *Hadji-Sirad v. Civil Service Commission*, G.R. No. 182267, August 28, 2009.

[45] *Rollo*, p. 26.

over different dates. After careful examination, the CA concluded that Dampilag's signatures indeed vary over time.

In this petition, the CSC implores this Court to reverse the CA because the charges against Dampilag are well substantiated by evidence.

We rule in favor of the CSC.

The evidence on record is overwhelming to support the finding of the CSC that Dampilag employed another person to take the December 1, 1996 CSPE held in Baguio City for and in his behalf and claimed the result as his own in his PDS accomplished on March 3, 1999. We are one with the CSC that the differences in the facial features of the person appearing on the PSP *vis-à-vis* the PDS are evident in the shapes of the face, nose, lips and eyes of Dampilag. To be sure, Dampilag admitted that the person in the picture pasted in the PSP is not him. We find it, however, improbable that it was due to mere inadvertence that Dampilag gave the picture of his former board mate instead of his own picture during the day of examination. The CSC officials who supervise civil service examinations enjoy the presumption of regularity in the performance of their official duties.[46] If only to stress, we quote the findings of the CSC:

> The lame justification of Dampilag cannot prevail over the overwhelming documentary evidence of the prosecution as regards the discrepancies in the facial features of the pictures attached to the subject PSP and his PDS dated March [3], 1999. It should be stressed that as a matter of procedure, the room examiners assigned to supervise the conduct of a civil service examination closely examine the pictures submitted and affixed on the PSP. The legal presumption that exists under the Civil Service Law and Rules is that the person whose picture appears in the PSP is the person who took the examination. The CSC officials who conducted the examination and ensured that it is the actual examinee's picture which is attached in the PSP are presumed to be regularly performing their duties and strong evidence is necessary to rebut this presumption.

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[46] *Donato, Jr. v. Civil Service Commission,* G.R. No. 165788, February 7, 2007.

In cases where the examinee does not look like the person in the picture submitted and attached to the PSP, the examiner will not allow said examinee to take the examination. Surely, Dampilag's impersonator was allowed by the Room and Supervising Examiners to take the examination because he pasted his own picture in the PSP. On the contrary, had the impersonator pasted in the PSP the true picture of Dampilag, he would have been disallowed by the examiners to take the examination.[47]

Dampilag failed to controvert the presumption of regularity in the performance of duties of the room examiners. Thus, the CSC examiners are conclusively deemed to have regularly performed their duties in relation to the administration of the CSPE held in Baguio City on December 1, 1996.[48]

As to the absence of a handwriting expert, Section 49,[49] Rule 130 of the Rules of Court uses the word "may," which signifies that the use of opinion of expert witness is permissive and not mandatory.[50] In *Heirs of Severa P. Gregorio v. Court of Appeals*,[51] we held that due to the technicality of the procedure involved in the examination of the forged documents, the expertise of questioned document examiners is usually helpful; however, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting.[52] Besides, when the dissimilarity between the genuine and false specimens of writing is visible to the naked eye, resort to technical rules is no longer necessary.[53]

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[47] *Rollo*, p. 34; citations omitted.

[48] See *Civil Service Commission v. Vergel de Dios*, G.R. No. 203536, February 4, 2015.

[49] SEC. 49. Opinion of expert witness. — 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.

[50] See *Marcos v. Heirs of Navarro, Jr.*, G.R. No. 198240, July 3, 2013.

[51] G.R. No. 117609, December 29, 1998.

[52] *Bautista v. Court of Appeals*, G.R. No. 158015, August 11, 2004.

[53] *Espino v. Espino*, G.R. No. 219563, June 27, 2018, quoting *Mendoza v. Fermin*, 738 Phil. 429 (2014).

We quote the instructive rule of comparison in the examination of forged documents, thus:

> As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery.[54]

Here, the evidence presented includes certified true copy of the PSP and the PDS. After a careful comparison, we noted stark differences in the structure, strokes, form and general appearance of Dampilag's signatures and handwriting in the PDS and in the PSP. The letters "M," "J," and "N" were written differently and the strokes of the signatures were not similar. It cannot also escape our attention that the purported examinee wrote his name as "HILARIO **D.** DAMPILAG" in the PSP and not "HILARIO **J.** DAMPILAG." In the circumstances and based on the evidence on record, there is no doubt that the person who took the December 1, 1996 CSPE is not Dampilag. Someone impersonated Dampilag and took the examination in behalf of him.

In fine, we hold that the evidence presented before the CSC sufficiently proved that Dampilag is guilty of the offenses charged against him. To be sure, in administrative proceedings, the quantum of evidence required is only substantial, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[55] Here, the records bear more

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[54] *Heirs of Gregorio v. Court of Appeals*, *supra* note 51. See also *Gepulle-Garbo v. Spouses Garabato*, G.R. No. 200013, January 14, 2015, quoted in *Espino v. Espino*, *id.*

[55] *Civil Service Commission v. Bumogas*, G.R. No. 174693, August 31, 2007.

than substantial evidence to support a finding of guilt against Dampilag.

Offense and penalty

The CSC modified the decision of the CSC-CAR and found Dampilag guilty instead for two counts of serious dishonesty based on the following grounds: (1) he committed an examination irregularity of impersonation when he connived and colluded with somebody to take the December 1, 1996 CSPE for and in his behalf; and (2) he employed fraud and falsification of official documents in the commission of the dishonest act when he misrepresented in his PDS dated March 3, 1999 that he passed the December 1, 1996 CSPE when he did not.[56] The CSC concluded that these acts separately constitute the offense of serious dishonesty under Section 3(e) and (g) of CSC Resolution No. 06-0538, otherwise known as the Rules on the Administrative Offense of Dishonesty, *viz.*:

> Section 3. The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:
>
> x x x x x x x x x
>
> e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.
>
> x x x x x x x x x
>
> g. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.

Dishonesty means the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.[57] It is "a disposition to lie, cheat, deceive

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[56] *Rollo*, p. 35.

[57] *Civil Service Commission v. Cayobit*, G.R. No. 145737, September 3, 2003, citing F. Moreno, *Philippine Law Dictionary* 276 (3rd ed., 1988).

or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[58]

For dishonesty to be considered serious, the presence of *any one* of the circumstances enumerated in Section 3 of CSC Resolution No. 06-0538 must be present.[59] In this case, Dampilag falsified the PDS, an official document,[60] by misrepresenting that he passed the December 1, 1996 CSPE when he did not. In addition, he connived and colluded with someone to impersonate him and take the December 1, 1996 CSPE for and on his behalf. More importantly, Dampilag has been benefiting from the passing result in the said examination. Clearly, Dampilag committed two counts of serious dishonesty under Section 3(e) and (g) of CSC Resolution No. 06-0538, respectively.

Dampilag is also liable for falsification of official document. It is a settled rule in this jurisdiction that the duly accomplished form of the Civil Service is an official document of the Commission.[61] Dampilag falsified his PDS accomplished on March 3, 1999 when he indicated therein that he took and passed the CSPE on December 1, 1996 in Baguio City, with a rating of 81.89%, when in truth and in fact, somebody took the examination for him.

Moreover, under CSC Memorandum Circular No. 15, Series of 1991, any "act which includes the procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, cheating, collusion, impersonation, or any other anomalous act which amounts to any violation of the Civil Service examination has

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[58] *Villordon v. Avila*, A.M. No. P-10-2809, August 10, 2012.

[59] Section 3. The presence of **any one** of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty: x x x. (Emphasis supplied)

[60] *Re: Chulyao*, A.M. No. P-07-2292, September 28, 2010.

[61] *Id.*

been categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service." Verily, by colluding and conniving with someone to impersonate him in taking the December 1, 1996 CSPE, and making untruthful statement in his PDS of his civil service eligibility, Dampilag is liable for grave misconduct.[62]

Section 50 of CSC Resolution No. 1101502, or the Revised Uniform Rules on Administrative Cases in the Civil Service, provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.[63] Under Section 46, the offenses of serious dishonesty, falsification of official documents, and grave misconduct are all punishable by the penalty of dismissal from the service.[64]

In view of Dampilag's misrepresentation in the PDS that he took and passed the CSPE on December 1, 1996, and collusion with someone to take the December 1, 1996 CSPE for and in his behalf, this Court finds Dampilag administratively liable for two counts of serious dishonesty, falsification of official documents, and grave misconduct. He is meted the penalty of dismissal with the accessory penalties of cancellation of eligibility,

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[62] See *Civil Service Commission v. Vergel de Dios*, *supra* note 48.

[63] SECTION 50. Penalty for the Most Serious Offense. — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

[64] SECTION 46. Classification of Offenses. — x x x

A. The following grave offenses shall be **punishable by dismissal from the service**:

1. Serious Dishonesty;

x x x x x x x x x

3. Grave Misconduct;

x x x x x x x x x

6. Falsification of official document; (Emphasis supplied)

forfeiture of retirement benefits, except accrued leave credits,[65] disqualification from re-employment in the government service,[66] and bar from taking civil service examinations.[67]

FOR THESE REASONS, the Petition for Review on *Certiorari* is **GRANTED**. The decision of the Court of Appeals in CA-G.R. SP No. 147131 is **REVERSED** and the Decision No. 160324 dated February 29, 2016 and Resolution No. 1600574 dated June 6, 2016 of the Civil Service Commission are **AFFIRMED** with **MODIFICATIONS** in that Hilario J. Dampilag is **GUILTY** of two counts of Serious Dishonesty, Falsification of Official Document, and Grave Misconduct. He is **DISMISSED** from the service, with the forfeiture of his retirement benefits, except terminal/accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including any government-owned or controlled corporations.

Let a copy of this Decision be furnished to the Civil Service Commission.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

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[65] See *Cabanatan v. Molina*, A.M. No. P-01-1520, November 21, 2001.

[66] See *Re: Samuel R. Ruñez, Jr.*, A.M. No. 2019-18-SC, January 28, 2020 and *Civil Service Commission v. Sta. Ana*, A.M. No. P-03-1696, April 30, 2003.

[67] SECTION 52. Administrative Disabilities Inherent in Certain Penalties.—

a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

FIRST DIVISION

[G.R. No. 239892. June 10, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER MENDOZA *y* GASPAR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; WELL-ENTRENCHED PRINCIPLES IN THE REVIEW OF RAPE CASES, ENUMERATED. — In reviewing rape cases, we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove, but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL GENERALLY NOT DISTURB THE FINDINGS OF THE TRIAL COURT; EXCEPTIONS TO THE RULE, CITED. — The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.

3. ID.; ID.; ID.; DELAY IN REPORTING THE FIRST INCIDENT OF THE ALLEGED RAPE AND FAILURE TO SHOUT FOR HELP

DO NOT AFFECT THE VICTIM'S CREDIBILITY. — This Court also finds no merit as to the contention of appellant that the victim's credibility has been tarnished by her failure to immediately report the first incident of the alleged rape. The delay in reporting the incident is not a factor in diminishing the value of AAA's testimony. x x x Also, as to appellant's claim that the victim's failure to shout for help affects her credibility, such deserves scant consideration. This Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Behavioral psychology teaches that people react to similar situations dissimilarly. The range of emotions shown by rape victims is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims. Indeed, we have not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.

4. **ID.; ID.; EVIDENCE OF PENILE PENETRATION AND THE PRESENCE OF FORCE, INTIMIDATION, OR THREAT IS INCONSEQUENTIAL IN RAPE. —** As to appellant's argument that there was no evidence of penile penetration in the victim's genitalia, such is worthless. In *People v. Teodoro*, this Court held that: In objective terms, carnal knowledge, the other essential element in consummated statutory rape, **does not require full penile penetration of the female**. x x x It is also argued that the prosecution was not able to prove the presence of force, intimidation or threat. The absence of external signs of physical injuries does not necessarily negate rape. In rape, force need not always produce physical injuries. What is important is that the victim was able to give a credible and clear testimony as to the presence of the intimidation that was employed. Thus, the argument of appellant is inconsequential.

5. **ID.; ID.; DENIAL IS INHERENTLY WEAK ESPECIALLY IN LIGHT OF PRIVATE COMPLAINANT'S POSITIVE AND STRAIGHTFORWARD DECLARATIONS. —** Appellant

reiterates his defense of denial. Denial and alibi are viewed by this Court with disfavor, considering these are inherently weak defenses, especially in light of private complainant's positive and straightforward declarations identifying accused-appellant as the one who committed the bastardly act against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape. In this instance, appellant offered nothing but denial without further proof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

This is an appeal of the Decision[1] dated January 22, 2018 of the Court of Appeals (*CA*), affirming the Judgment[2] dated November 17, 2016 of the Regional Trial Court (*RTC*), National Capital Judicial Region, Branch 102, Quezon City in Criminal Case Nos. GL-Q-13-180860-61, and finding Roger Mendoza *y* Gaspar, guilty beyond reasonable doubt of two (2) counts of Rape under Article 266-A, par. 1(a) of the Revised Penal Code (*RPC*), as amended by Republic Act (*R.A.*) No. 8353.

The facts follow.

On December 25, 2011, around 7:00 p.m., private complainant AAA,[3] a thirteen (13)-year-old girl, went out to urinate in the

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[1] Penned by Associate Justice Normandie B. Pizzaro, with Associate Justices Ramon A. Cruz and Pablito A. Perez concurring; *rollo*, pp. 2-18.

[2] *Rollo*, pp. 45-55.

[3] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, *"An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act*

restroom with no light therein, located at the back of a three (3)-storey house where she lived with her father, brother, grandmother, and uncles. While inside the restroom, she was not able to lift the makeshift door of the cubicle to cover herself. After urinating, she was about to pull up her underwear when appellant Mendoza, her neighbor, suddenly went inside the cubicle where she was in and prevented her from raising her underwear and pants. Appellant told her that he will give her One Hundred Pesos (₱100.00). Appellant then proceeded to remove his shorts, inserted the tip of his penis into AAA's vagina, and kissed her neck, breasts, and lips. AAA tried to push appellant away, but failed to do so. The entire incident lasted about ten (10) minutes, and thereafter, appellant gave AAA One Hundred Pesos (₱100.00) and left. AAA went back to the house and did not tell anyone about what happened.

Then on January 1, 2012, around 7:00 p.m., AAA was alone in the third floor of the house watching television while her father BBB went out to throw the garbage. It was then that appellant suddenly appeared inside the house and found AAA in the third floor. Appellant placed himself on top of AAA and kissed her neck and breasts, and eventually removed his shorts and AAA's underwear and jogging pants. Appellant, thereafter, inserted the tip of his penis in AAA's vagina. AAA tried to fight, back to no avail. Appellant also told AAA that he loved her, but the former did not respond.

AAA's father arrived at the house and caught appellant lying beside his daughter with the zipper of his pants opened. When appellant saw AAA's father, the former stood up and told the

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No. 9262. "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

father, "*aaregluhin na lang*" and "*nagmamahalan kami*." The father asked AAA if what appellant said was true, but AAA denied it. AAA's father immediately called CCC, AAA's grandmother, and asked her to call the police and barangay officials. When CCC learned of what happened, she slapped appellant's face. There was tension in the house when appellant challenged AAA's father into a fight. When the police arrived, appellant could no longer be found. The incident was reported to the barangay and it was only then that AAA divulged what happened to her and appellant on December 25, 2011.

AAA was then examined by Dr. Paul Ed C. Ortiz at the police station on January 2, 2012 wherein the genital examination result turned out to be "grossly normal."

On May 15, 2013, or more than one (1) year after the incident, appellant was arrested somewhere in Nueva Ecija.

Thus, two (2) Informations were filed against appellant for the crime of Rape which reads as follows:

Criminal Case No. GL-Q-13-180860:

That on or about the 25th day of December 2011, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, with lewd design, did[,] then and there[,] willfully, unlawfully[,] and feloniously have carnal knowledge with one [AAA], a minor, 13 years old, against her will and without her consent, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.

Criminal Case No. GL-Q-13-180861:

That on or about the 1st day of January 2012, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, with lewd designs, did[,] then and there[,] willfully, unlawfully[,] and feloniously have carnal knowledge with one [AAA], a minor, 13 years old, against her will and without her consent, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.

Appellant, during his arraignment on June 26, 2013, with the assistance of counsel, pleaded not guilty to the crime charged. After pre-trial, trial on the merits ensued.

The prosecution presented the testimonies of the victim AAA, BBB, CCC, and Dr. Paul Ed C. Ortiz, the Medico-Legal Officer who examined the victim.

In his defense, appellant denied raping AAA. According to him, on December 25, 2011, around 7:00 p.m., he was in a drinking spree at the house of his best friend located about three (3) houses away from his place of residence. Appellant claimed that he was only able to go home the following day at around 5:00 to 6:00 a.m. and did not see AAA or any of her relatives.

Appellant claimed that he was cooking at his house with his mother and siblings on January 1, 2012, around 7:00 p.m. Thereafter, around 9:00 p.m., he went to the house of his "*kumpare*" for a drink and left there around 10:30 p.m. to go home. Appellant, before going inside his house, urinated. While urinating, AAA saw him and called him. Appellant then went inside AAA's house and saw that AAA's father was there, too. Appellant gave AAA One Hundred Pesos (₱100.00) as Christmas gift, and before leaving, AAA thanked appellant and told him that his zipper was open.

Sometime in May 2013, appellant was then arrested in Nueva Ecija where he claimed to have already resided for more than a year, and it was only then that he learned about the charged against him.

On November 17, 2016, the RTC rendered its judgment finding appellant guilty beyond reasonable doubt of two (2) counts of rape. The dispositive portion of the RTC's Decision reads, as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused ROGER MENDOZA *y* GASPAR, GUILTY beyond reasonable doubt of the crime of two (2) counts of rape penalized under [Article] 266-A, paragraph 1(a) of the Revised Penal Code as amended by R.A. No. 8353.

Accordingly, said accused is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole and to indemnify private complainant [AAA] the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages. and interest at the rate of 6% per annum shall also be imposed on all damages awarded from the finality of this judgment until fully paid for each count.

SO ORDERED.[4]

Appellant elevated the case to the CA, and on January 22, 2018, the appellate court dismissed appellant's appeal and affirmed his conviction of two (2) counts of Rape in a Decision that has the following dispositive portion:

WHEREFORE, the appeal is DENIED. The assailed RTC Judgment dated November 17, 2016 is AFFIRMED with MODIFICATIONS in that the award of civil indemnity is increased from Fifty Thousand Pesos (PhP50,000.00) to Seventy-Five Thousand Pesos (PhP75,000.00), the award of moral damages is increased from Fifty Thousand Pesos (PhP50,000.00) to Seventy-Five Thousand Pesos (PhP75,000.00), and the award of exemplary damages is increased from Thirty Thousand Pesos (PhP30,000.00) to Seventy-Five Thousand Pesos (PhP75,000.00). Costs against the Accused-Appellant.

SO ORDERED.[5]

Appellant now comes to this Court for the resolution of his appeal pointing out the following issues:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE, DESPITE THE CLEAR IMPROBABILITIES AND INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION'S WITNESSES.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE, DESPITE

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[4] CA *rollo*, p. 55.

[5] *Rollo*, p. 17.

THE PROSECUTION'S FAILURE TO ESTABLISH THE ELEMENTS THEREOF.[6]

According to appellant, the testimony of the victim is full of inconsistencies and improbabilities, therefore, it should not have been accorded full faith and credit. Appellant further claims that in both incidents of the alleged rape, the victim did not scream or shout for help. He also argues that there is no evidence to show that there was even a slight penetration of the victim's genitalia and that force, threat, or intimidation was employed by appellant to the victim.

The appeal has no merit.

In reviewing rape cases, we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove, but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[7]

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction.[8] As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment

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[6] CA *rollo*, pp. 29 and 33.

[7] *People v. Padilla*, 617 Phil. 170, 182-183 (2009); *People v. Ramos*, 577 Phil. 297, 304 (2008).

[8] *People v. Peralta*, 619 Phil. 268, 273 (2009).

and manner of testifying during trial.[9] The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.[10]

Here, appellant insists that in the victim's testimony in court and in the *Sinumpaang Salaysay*, she mentioned that appellant inserted the tip of his penis into her vagina, while in the Sexual Crime Protocol Form of the Medico-Legal Officer, the victim wrote that appellant inserted his penis into her vagina. Appellant also claims that it was highly improbable that it took more or less ten (10) minutes to insert the tip of his penis in her vagina. Such assertions of appellant are inconsequential because such inconsistencies or discrepancies are just minor details. As aptly ruled by the CA:

> x x x The alleged inconsistencies and improbabilities do not negate the statement and narration of the Private Complainant that the Accused-Appellant inserted his organ into her vagina. Moreover, since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness. This, coupled with the fact that the victim is a thirteen (13)-year-old girl, innocent and unfamiliar with sexual congress, belies the Accused-Appellant's claim.[11]

This Court has consistently ruled that inconsistencies of witnesses with respect to minor details and collateral matters do not affect the substance of their declarations, their veracity or the weight of their testimonies. It would be unfair to expect a flawless recollection from one who is forced to relieve the gruesome details of a painful and humiliating experience such as rape.[12] More so, the minor inconsistencies signified that the

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[9] *Remiendo v. People*, 618 Phil. 273, 287 (2009).

[10] *People v. Panganiban*, 412 Phil. 98, 108-109 (2001).

[11] *Rollo*, p. 12.

[12] *People v. Bautista*, 474 Phil. 531, 555 (2004).

witness was neither coached nor lying on the witness stand. What is important is her complete and vivid narration of the rape itself, which the trial court herein found to be truthful and credible.[13]

This Court also finds no merit as to the contention of appellant that the victim's credibility has been tarnished by her failure to immediately report the first incident of the alleged rape. The delay in reporting the incident is not a factor in diminishing the value of AAA's testimony. In *People v. Ogarte*,[14] this Court ruled that the rape victim's deferral in reporting the crime does not equate to falsification of the accusation, thus:

> The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[15]

Also, as to appellant's claim that the victim's failure to shout for help affects her credibility, such deserves scant consideration. This Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape.[16] Behavioral psychology teaches that people react to similar situations dissimilarly.[17] The range of emotions shown by rape victims is yet to be captured even by

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[13] *People v. Santos*, 420 Phil. 620, 631 (2001).

[14] 664 Phil. 642 (2011).

[15] *Id.* at 661.

[16] *People v. Pareja*, 724 Phil. 759, 778 (2014).

[17] *People v. Ibay*, 303 Phil. 16, 26 (1994).

calculus. It is, thus, unrealistic to expect uniform reactions from rape victims.[18] Indeed, we have not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[19]

As to appellant's argument that there was no evidence of penile penetration in the victim's genitalia, such is worthless. In *People v. Teodoro*,[20] this Court held that:

> In objective terms, carnal knowledge, the other essential element in consummated statutory rape, **does not require full penile penetration of the female**. The Court has clarified in *People v. Campuhan* that the mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act touches either labia of the pudendum. As the Court has explained in *People v. Bali-balita*, the touching that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, but rather the erect penis touching the *labias* or sliding into the female genitalia. Accordingly, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape proceeds from the physical fact that the *labias* are physically situated beneath the mons pubis or the

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[18] *People v. Montemayor*, 444 Phil. 169, 186 (2003).

[19] *People v. Talaboc*, 326 Phil. 451, 464 (1996).

[20] 704 Phil. 335 (2013), as cited in *People v. Baguion*, G.R. No. 223553, July 4, 2018.

vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the *labias* must be sufficiently and convincingly established.[21]

Thus, the CA did not err when it thus ruled:

> x x x Penetration of a woman's sex organ is not an element of the crime of Rape. Penile invasion of and contact with the labia would suffice. Note that even the briefest of contacts under circumstances of force, intimidation, or unconsciousness is already Rape. In order to sustain a conviction of Rape, penetration of the female genital organ by the male is not indispensable. Neither rupture nor laceration of any part of the woman's genitalia is required. Thus, the fact that there is no sign of laceration will not negate a finding that Rape was committed. In addition, a medical certificate is not necessary to prove the commission of Rape, as even a medical examination of the victim is not indispensable in a prosecution for Rape. Expert testimony is merely corroborative in character and not essential to conviction.[22]

It is also argued that the prosecution was not able to prove the presence of force, intimidation or threat. The absence of external signs of physical injuries does not necessarily negate rape.[23] In rape, force need not always produce physical injuries. What is important is that the victim was able to give a credible and clear testimony as to the presence of the intimidation that was employed. Thus, the argument of appellant is inconsequential.

Appellant reiterates his defense of denial. Denial and alibi are viewed by this Court with disfavor,[24] considering these are inherently weak defenses,[25] especially in light of private complainant's positive and straightforward declarations identifying

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[21] *Id.* (Emphasis supplied).

[22] *Rollo*, p. 13.

[23] *People v. Malones*, 469 Phil. 301, 325 (2004), citing *People v. Manrique*, 432 Phil. 801, 809 (2002).

[24] *People v. Malana*, 646 Phil. 290, 308 (2010), citing *People v. Peralta*, *supra* note 6, at 274.

[25] *People v. Estrada*, 624 Phil. 211, 217 (2010).

accused-appellant[26] as the one who committed the bastardly act against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape.[27] In this instance, appellant offered nothing but denial without further proof.

WHEREFORE, the appeal of Roger Mendoza *y* Gaspar is **DISMISSED** for lack of merit. Consequently, the Decision dated January 22, 2018 of the Court of Appeals finding the same appellant guilty beyond reasonable doubt of two (2) counts of Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by R.A. No. 8353, is **AFFIRMED.**

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 241674. June 10, 2020]

ZALDY C. RAZONABLE, *petitioner, vs.* **MAERSK-FILIPINAS CREWING, INC. and/or A.P. MOLLER A/S**, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-

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[26] *People v. Paculba*, 628 Phil. 662, 676 (2010); *People v. Achas*, 612 Phil. 652, 666 (2009).

[27] *Id.*

STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; CONTROVERSIES REGARDING THE SEAFARER'S ENTITLEMENT TO DISABILITY BENEFITS ARE GOVERNED BY THE LAW, THE PARTIES' CONTRACTS, AND MEDICAL FINDINGS. — Controversies regarding the seafarers' entitlement to disability benefits are governed by the law, the parties' contracts, and medical findings. Since Razonable's contract of employment with respondents was executed in 2015, the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) governs the procedure for his claim of disability benefits and provides for the period when the company-designated physician must issue a final medical assessment.

2. ID.; ID.; ID.; CONFLICT RESOLUTION MECHANISM; TAKES EFFECT ONLY IF THE COMPANY-DESIGNATED PHYSICIAN HAD ISSUED A VALID AND DEFINITE MEDICAL ASSESSMENT AND WITHOUT WHICH, THE LAW STEPS IN TO CONSIDER THE SEAFARER'S DISABILITY AS TOTAL AND PERMANENT. — [A]n examination of the medical assessment by the company-designated physicians — that is, the follow-up report (Medical Report) given by Dr. Cruz-Balbon and the disability grading (Disability Report) given by Dr. Bergonio, the orthopedic surgeon — would reveal that said assessment was neither final nor definite because it required Razonable to return for further treatment. x x x Noteworthy is the fact that, despite the issuance of a purportedly "final disability grading" in the Disability Report, Razonable was still required to return almost a month later for "re-evaluation with results" in the Medical Report issued on the same day. Taking these two documents together, the medical assessment was clearly not a final one because it still required further action on the part of the company-designated physicians. Further, a cursory reading of the Disability Report would reveal that it was not definitive and was, in fact, conflicting. While it indicated the supposed disability grading of Razonable, it likewise stated that he was unfit for work. This cannot be deemed as a valid and definite medical assessment. x x x Thus, taking the two reports together — the Medical Report, which required Razonable to return at a later date, and the Disability Report, which was in itself unclear and contradictory — the company-designated physicians indeed failed to discharge their obligation

of issuing a valid and final medical assessment within the prescribed periods. Given this, it was unnecessary for Razonable to even refer the findings of the company-designated doctors to his own doctor. Such conflict resolution mechanism only takes into effect if the company-designated physician had issued a valid and definite medical assessment. Without such valid final and definitive assessment from the company-designated physicians, the law already steps in to consider the seafarer's disability as total and permanent.

APPEARANCES OF COUNSEL

A.M. Burigsay & Associates Law Office for petitioner.
Alton C. Durban for respondents.

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 seeking the reversal of the Decision[2] and Resolution[3] of the Court of Appeals (CA) dated May 4, 2018 and August 20, 2018, respectively, in CA-G.R. SP No. 148086.

Facts

Respondents Maersk-Filipinas Crewing, Inc. (Maersk) and A.P. Moller A/S (A.P. Moller) are corporations involved in the maritime industry, with Maersk acting as the manning agency of the shipper, A.P. Moller.[4]

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[1] *Rollo*, pp. 10-32.

[2] *Id.* at 92-108. Penned by Associate Justice Ronaldo Roberto B. Martin, with Associate Justices Ricardo R. Rosario and Eduardo B. Peralta, Jr. concurring.

[3] *Id.* at 118-119.

[4] *Id.* at 93.

On March 24, 2015, Zaldy C. Razonable (Razonable) signed a Contract of Employment[5] with A.P. Moller through Maersk to work as an Ordinary Seaman on board the vessel M/V Maren Maersk.[6] His employment for the said vessel, covered by the Associated Marine Officers' and Seamen's Union of the Philippines PTGWO-ITF (AMOSUP-PTGWO-ITF) and Danish Shipowners' Association (DSA) Collective Bargaining Agreement (CBA), was for a duration of six (6) months with a basic monthly salary of US$450.00.[7]

On May 6, 2015, after Razonable suddenly felt a click on his back accompanied by mild to moderate pain while carrying a heavy ripper motor aboard the vessel, he was given first aid and was confined to his cabin.[8]

On June 11, 2015, he was brought to a hospital where he was diagnosed with "Prolapse Lumbar Disc L4-L5 and L5-S1, back pain with Sciatica". The foreign doctor also reported that Razonable needed further treatment, might need surgery if there was no improvement, and should be advised light duty.[9]

After Razonable's repatriation on June 17, 2015 and upon his arrival in Manila, he was placed in the care of company-designated physicians at respondents' accredited medical facility, Marine Medical Services, where he was given a full physical examination.[10] Razonable was also referred to a company-designated orthopedic surgeon, Dr. Rodolfo P. Bergonio (Dr. Bergonio), among others.[11]

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[5] CA *rollo*, p. 113.

[6] *Rollo*, p. 93.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 93-94.

[11] *Id.* at 94.

It was recommended that Razonable undergo Laminectomy L-4 L-5 and Discectomy L-5 for his back.[12] The recommended procedure was carried out by Dr. Bergonio on July 27, 2015 and Razonable was thereafter given a lumbar corset for back support,[13] as well as continued regular physical therapy and rehabilitation until October 9, 2015.[14] Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon) gave a follow-up report.[15] Dr. Bergonio gave a final disability assessment,[16] finding Razonable unfit for work with Disability Grade 11 - 1/3 loss of lifting power of the trunk.

Respondents informed Razonable of the final disability assessment and offered to him the commensurate disability benefits. However, Razonable refused and insisted on obtaining total and permanent disability benefits.[17] Thus, Razonable consulted another orthopedic expert, Dr. Manuel Fidel Magtira (Dr. Magtira), who issued a Medical Report[18] dated December 14, 2015 concluding that Razonable was permanently unfit in any capacity to resume his sea duties as a seaman.[19]

In a letter[20] dated February 2, 2016, Razonable's counsel informed the respondents about Dr. Magtira's opinion and that (1) Razonable was willing to be referred to a third doctor to confirm his present disability which had incapacitated him from resuming work as a seaman; and (2) Razonable was claiming total and permanent disability benefits in accordance with the law and the CBA. Respondents, however, ignored this letter and did not initiate the process of seeking the opinion of a third

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[12] *Id.*

[13] *Id.*

[14] *Id.* at 95.

[15] CA *rollo*, p. 576.

[16] *Id.* at 577.

[17] *Rollo*, p. 95.

[18] CA *rollo*, pp. 148-149.

[19] *Id.* at 149.

[20] *Id.* at 147.

doctor as required by law.[21] Thus, Razonable filed a complaint before the National Conciliation and Mediation Board (NCMB), claiming total and permanent disability benefits in the amount of US$80,000.00 as well as the payment of moral damages and attorney's fees.[22] Respondents, on the other hand, argued that Razonable's claim was limited only to Disability Grade 11 benefits.[23]

NCMB Ruling

On August 19, 2016, the NCMB rendered a Decision[24] ordering respondents to jointly and solidarily pay Razonable permanent and total disability benefits amounting to US$80,000.00 pursuant to the CBA or its peso equivalent at the time of payment plus attorney's fees equivalent to 10% of the total monetary award.[25]

Respondents filed a Motion for Reconsideration[26] dated September 26, 2016, but this was denied by the NCMB.[27] Aggrieved, respondents filed a petition for review under Rule 43 with the CA.

CA Ruling

In a Decision[28] dated May 4, 2018, the CA granted respondents' petition and set aside the NCMB Decision based on the following grounds: (1) contrary to the NCMB findings, Razonable's injury was not due to an accident; (2) the award of US$80,000.00 as total and permanent disability benefits was

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[21] *Rollo*, p. 95.

[22] *Id.*

[23] *Id.*

[24] CA *rollo*, pp. 391-398. Signed by MVA Romeo C. Cruz, Jr. and MVA Jesus S. Silo, with a Dissenting Opinion by MVA Leonardo Saulog (*id.* at 399-402).

[25] *Id.* at 398.

[26] *Id.* at 403-416.

[27] *Rollo*, p. 96.

[28] *Supra* note 2.

erroneous and without legal basis because this amount pertained to the CBA for Filipino ship officers and not the CBA for Filipino crew members or "ratings," which only awarded a maximum of US$60,000.00; (3) the opinion of the company-designated physician deserved more credence; (4) Razonable was only entitled to Disability Grade 11 benefits, as assessed by the company-designated physician; and (5) Razonable was not entitled to attorney's fees. The dispositive portion of the Decision reads:

> **WHEREFORE**, the Petition is **GRANTED**. The Decision of the NCMB dated 19 August 2016 is **SET ASIDE**. Razonable is only entitled to compensation corresponding to an Impediment Grade 11 compensation equivalent to **USD 7,465**.
>
> **SO ORDERED.**[29]

Razonable filed a Motion for Reconsideration[30] dated May 31, 2018, but this was denied by the CA in a Resolution[31] dated August 20, 2018.

Thus, Razonable filed the instant Rule 45 Petition. Respondents filed their Comment[32] dated April 5, 2018 and Razonable thereafter filed his Reply on the Comment on the Petition for Review[33] dated August 28, 2019.

Issue

The main issue for the Court's resolution is whether Razonable is entitled to total and permanent disability benefits.

The Ruling of the Court

The Petition is meritorious. Razonable is entitled to total and permanent disability benefits.

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[29] *Id.* at 107.

[30] *Id.* at 109-116.

[31] *Supra* note 3.

[32] *Id.* at 286-305.

[33] *Id.* at 308-314.

The company-designated physicians failed to issue a valid medical assessment within the prescribed periods

Controversies regarding the seafarers' entitlement to disability benefits are governed by the law, the parties' contracts, and medical findings. Since Razonable's contract of employment with respondents was executed in 2015, the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) governs the procedure for his claim of disability benefits and provides for the period when the company-designated physician must issue a final medical assessment. Section 20(A) of the POEA-SEC reads:

> **SECTION 20. COMPENSATION AND BENEFITS**
>
> **A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS**
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> 2. x x x However, **if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed **from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days**. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month. (Emphasis Supplied)

In the case of *Jebsens Maritime, Inc. v. Mirasol*,[34] the Court succinctly summarized the rules governing the seafarers' claim for disability benefits, the nature of the company-designated physician's medical assessment, and the prescribed periods for its issuance, thus:

> In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr. (Elburg)*, the Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows:
>
> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.
>
> **A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all**

[34] G.R. No. 213874, June 19, 2019.

possible treatment options within the periods allowed by law.[35] (Emphasis and underscoring supplied; citations omitted)

Here, the CA gave more credence to the findings of the company-designated physicians. However, an examination of the medical assessment by the company-designated physicians — that is, the follow-up report[36] (Medical Report) given by Dr. Cruz-Balbon and the disability grading[37] (Disability Report) given by Dr. Bergonio, the orthopedic surgeon — would reveal that said assessment was neither final nor definite because it required Razonable to return for further treatment. The pertinent contents of the Medical Report and the Disability Report are reproduced below:

[*MEDICAL REPORT DATED OCTOBER 9, 2015*]

This is a follow-up report on OS Zaldy C. Razonable who was initially seen here at Marine Medical Services on June 17, 2015 and was diagnosed to have Sinusitis; Herniated Nucleus Pulposus, L4 -L5 and L5 — S1; S/P Laminotomy L5, Right with L5 Discectomy; Foraminotomy L4; Left on July 27, 2015.

He was seen by the Orthopedic Surgeon.

Patient still complains of pain on the low back area.

Repeat EMG-NCV study showed there is electrophysiologic evidence of bilateral L5 radiculopathies with signs of acute exacerbation.

He was advised to continue his medication (Alanerv) and rehabilitation.

He is to come back on November 5, 2015 for re-evaluation with results.[38] (Emphasis supplied)

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[35] *Id.* at 5-6.

[36] CA *rollo*, p. 576.

[37] *Id.* at 577.

[38] *Id.* at 576.

[*DISABILITY REPORT DATED OCTOBER 9, 2015*]

Re: Mr. Zaldy C. Razonable

Mr. Razonable is now 2½ months out since his Spine Decompression. I reviewed his intra operative notes and I am reiterating the findings that I decompressed the L5 interspace, freed the S1 nerve root from any impingement and I even decompressed the L5 nerve root.

Since the patient still claims back pain, he is not ready to go back to work at this point.

Final disability grading: Grade 11 — 1/3 loss of lifting power of the trunk.

Unfit for work.

Thank you.[39] (Emphasis supplied)

Noteworthy is the fact that, despite the issuance of a purportedly "final disability grading" in the Disability Report, Razonable was still required to return almost a month later for "re-evaluation with results" in the Medical Report issued on the same day. Taking these two documents together, the medical assessment was clearly not a final one because it still required further action on the part of the company-designated physicians.[40]

Further, a cursory reading of the Disability Report would reveal that it was not definitive and was, in fact, conflicting. While it indicated the supposed disability grading of Razonable, it likewise stated that he was unfit for work. This cannot be deemed as a valid and definite medical assessment.

The Court's ruling in *Olidana v. Jebsens Maritime, Inc.*[41] (*Olidana*) is instructive. In *Olidana*, the company-designated physicians issued two medical reports, one stated that the seafarer's disability grading is Grade 10 and the other stated

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[39] *Id.* at 577.

[40] See *Jebsens Maritime, Inc. v. Mirasol*, *supra* note 34.

[41] 772 Phil. 234 (2015).

that the seafarer was "not fit for duty". The Court pointed out that the company-designated physicians had issued conflicting medical reports and discussed the instances where the Court had struck down medical reports of company-designated physicians for being tardy, incomplete, and doubtful, *viz.*:

In *Carcedo v. Maine Marine Phils., Inc.*, the seafarer's foot was wounded while on duty. When he was repatriated, the company-designated physician subjected him to a medical examination. Subsequently, the latter issued a disability assessment stating that the seafarer merely had an "[i]mpediment disability grading of 8% Loss of first toe (big toe) and some of its metatarsal bone." Yet, the seafarer required further medical treatments, underwent amputation, and subsequently passed away. **The Court concluded that the company-designated physician's disability assessment was not definitive and, because it failed to issue a final assessment, the seafarer therein was certainly under permanent total disability**.

In *Maunlad Trans, Inc. v. Camoral*, which has a similar factual milieu with the present case, the seafarer therein suffered from a cervical disc herniation and radiculopathy while on the ship. Upon disembarkation and after 150 days of treatment, the company-designated physician therein issued a medical report indicating that the seafarer **only suffered a Grade 10 disability**. Curiously, a separate medical report of the company-designated physician stated that the seafarer was **unfit for sea duty**. The Court disregarded the belated medical assessment containing the partial disability grading, and declared that the seafarer suffered permanent and total disability. Undoubtedly, he was round unfit to work by the company-designated physician and the seafarer's doctor of choice.

In the case at bench, the company-designated physicians issued two medical reports, both dated March 27, 2012. The disability report, on one hand, stated that Olidana only suffered loss of grasping power for small objects between the fold of the finger of one hand, which was a Grade 10 disability or a partial disability rating. The company-designated physicians' final medical report, on the other hand, recommended that Olidana was unfit for duty. Glaringly, these two medical reports **contradicted** each other.

As observed in *Maunlad Trans, Inc. v. Camoral*, **it cannot be conclusively stated that a seafarer merely suffered a partial permanent disability when, at the same time, he was declared unfit**

for duty. A partial disability, which signifies a continuing capacity to perform his customary tasks, is starkly incompatible with the finding that a seafarer is unfit for duty. Evidently, the partial disability rating provided by the company-designated physician's disability report could not be given weight as its credibility has been tarnished by a contrary report issued by the same doctors on the same date. Jebsens did not even bother to validly explain the reports' obvious discrepancies.

Interestingly, the final medical report, which stated that Olidana was unfit for duty, concurred with Dr. Runas' medical evaluation report. The latter report stated that Olidana was physically unfit to continue with his job as a seaman or cook, or in whatever capacity, due to his permanent disability.

Between the Grade 10 disability rating, arising from the contradicted disability report, and the declaration of unfitness for duty, as noted in the substantiated final medical report, **the Court is more inclined to uphold that Olidana suffered from a permanent total disability as he is not fit for duty**.

x x x x x x x x x

In addition, **it must be reiterated that the company-designated physicians' disability report should be set aside for being contradictory. Necessarily, it cannot be said that the company-designated physicians issued a valid and final medical assessment within the 120-day or 240-day period.** The Court in *Kestrel Shipping Co., Inc. v. Munar* held that the declaration by the company-designated physician is an obligation, the abdication of which **transforms the temporary total disability to permanent total disability, regardless of the disability grade** x x x.[42] (Emphasis and underscoring supplied; citations omitted)

Thus, taking the two reports together — the Medical Report, which required Razonable to return at a later date, and the Disability Report, which was in itself unclear and contradictory — the company-designated physicians indeed failed to discharge their obligation of issuing a valid and final medical assessment within the prescribed periods.

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[42] *Id.* at 246-250.

Given this, it was unnecessary for Razonable to even refer the findings of the company-designated doctors to his own doctor. Such conflict resolution mechanism only takes into effect if the company-designated physician had issued a valid and definite medical assessment. Without such valid final and definitive assessment from the company-designated physicians, the law already steps in to consider the seafarer's disability as total and permanent.[43]

Razonable is entitled to total and permanent disability benefits and attorney's fees

As correctly pointed out by the CA, there were two CBAs between AMOSUP-PTGWO-ITF and DSA, one for Filipino ship officers[44] and one for certain Filipino crew members called "ratings."[45] In the CBA for officers, the covered employees are entitled to payment of a maximum of US$80,000.00 in case of disability.[46] In the CBA for "ratings," Filipino crew members are entitled to a maximum of US$60,000.00 in case of disability.[47]

As mentioned above, however, the CA ruled that Razonable was only entitled to Grade 11 disability benefits equivalent to US$7,465.00 and that there was no basis to award attorney's fees in his favor. The Court disagrees with the CA on these points.

Instead of awarding partial disability benefits, the CA should have awarded total and permanent disability benefits to Razonable in the amount of US$60,000.00, in accordance with the POEA-

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[43] *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64848>.

[44] *Rollo*, pp. 142-152.

[45] *Id.* at 141, 153-163.

[46] *Id.* at 146 (back page)- 147.

[47] *Id.* at 157 (front and back pages).

SEC and the CBA pertaining to Filipino crew members or "ratings" because the company-designated physicians failed to issue a final and definitive medical assessment.

Further, contrary to the ruling of the CA, Razonable is also entitled to ten percent (10%) attorney's fees. As the Court ruled in *Cariño v. Maine Marine Phils., Inc.*,[48] attorney's fees may be recovered by an employee in actions for indemnity under the employer's liability laws.

WHEREFORE, the Petition is **GRANTED**. The Decision and Resolution of the Court of Appeals dated May 4, 2018 and August 20, 2018, respectively, in CA-G.R. SP No. 148086 are **REVERSED** and **SET ASIDE**. Respondents are jointly and severally liable to pay Zaldy C. Razonable the amount of US$60,000.00 plus ten percent (10%) as attorney's fees.

Respondents are also **ORDERED** to pay interest on the monetary awards in favor of Zaldy C. Razonable at the rate of six percent (6%) *per annum* from the date of finality of the Decision until full payment.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[48] G.R. No. 231111, October 17, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64770>.

THIRD DIVISION

[G.R. No. 242486. June 10, 2020]

PHILIPPINE COLLEGE OF CRIMINOLOGY, INC., MA. CECILIA BAUTISTA-LIM, RODOLFO VALENTINO F. BAUTISTA, MA. ELENA F. BAUTISTA, JEAN-PAUL BAUTISTA LIM, MARCO ANGELO BAUTISTA LIM, EDUARDO F. BAUTISTA, JR., CORAZON BAUTISTA-JAVIER, SABRINA BAUTISTA-PANLILIO, MA. INES V. ALMEDA, ROSARIO R. DIAZ, and ATTY. RAMIL G. GABAO, *petitioners*, *vs.* **GREGORY ALAN F. BAUTISTA**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; CONCERNS SIMILARITY IN PARTIES, RIGHTS OR CAUSES OF ACTION, AND RELIEFS SOUGHT BUT IT IS NOT NECESSARY THAT THERE BE ABSOLUTE IDENTITY AS TO THESE. — *City of Taguig v. City of Makati* explained the standards for evaluating forum shopping: The test for determining forum shopping is settled. In *Yap v. Chua, et al.*: To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. x x x Forum shopping x x x concerns similarity in parties, rights or causes of action, and reliefs sought. It is not necessary that there be absolute identity as to these.

2. ID.; ID.; ID.; IDENTITY OF PARTIES; ABSOLUTE IDENTITY OF PARTIES IS NOT REQUIRED AND THAT IT IS ENOUGH THAT THERE IS SUBSTANTIAL IDENTITY OF PARTIES. — Concerning identity of parties, *Aboitiz Equity Ventures, Inc. v. Chiongbian* explained: While it is true that the parties to the first and second complaints are not absolutely identical,

this court has clarified that, for purposes of forum shopping, *absolute identity of parties is not required and that it is enough that there is substantial identity of parties*.

3. ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; DOES NOT MEAN ABSOLUTE IDENTITY AND IN ASCERTAINING WHETHER MULTIPLE SUITS RELATE TO A SINGLE CAUSE OF ACTION, THE TEST IS WHETHER THERE IS THE POSSIBILITY THAT COURTS WILL, IN DIFFERENT PROCEEDINGS, CONSIDER SUBSTANTIALLY THE SAME EVIDENCE SUCH THAT THERE IS THE POSSIBILITY OF DIVERGING INTERPRETATIONS. — Cause of Action is the basis for invoking legal reliefs. It concerns the right allegedly violated and the act or omission that breaches the right or the duty implicit in it. x x x In ascertaining whether multiple suits relate to a single cause of action, the test is whether there is the possibility that courts will, in different proceedings, consider substantially the same evidence such that there is the possibility of diverging interpretations. This engenders needless conflict, confusion, and duplication of judicial resources. x x x Identity of causes of action, like identity of parties, does not mean absolute identity.

4. ID.; ID.; ID.; THE RULE AGAINST FORUM SHOPPING SEEKS TO PREVENT DIVERGING INTERPRETATION ON FUNDAMENTALLY THE SAME INCIDENTS, AND UNNECESSARY CONFLICT, DUPLICATION, AND EXPENDING OF JUDICIAL RESOURCES. — Respondent here pursued two (2) successive actions: first, an action for *quo warranto* (docketed as Civil Case No. 11-125408); and second, an action for specific performance (docketed as Civil Case No. 12-127276). The *Quo Warranto* Petition sought petitioner Cecilia's ouster and respondent's restoration as President and Board Chairperson. The Complaint for specific performance sought respondent's restoration as Board Member. Both actions arose from the same larger narrative of respondent's conflict with his siblings and other relatives. They involve substantially the same set of facts, parties, and causes of action. Both actions are anchored on respondent's supposed rights arising from the Certificate of Acquiescence that he and his petitioner-siblings executed *vis-à-vis* their father's Presidential Order No. 1, and those same petitioner-siblings' supposed default on their commitment. Thus, they involve the same right-duty correlative,

> and are both premised on his ouster as a supposed violation of his rights and a breach of petitioners' duty. x x x Both actions were instituted by respondent against his siblings and those who, along with them, he claims to have acted in such a manner as to deny him of positions which he insists are due to him. As the same basic factual considerations are involved, the same pieces of evidence will need to be considered to ascertain the extent of rights and duties accruing to each party, and whatever violation may have ensued. It is true that the *Quo Warranto* Petition and the Complaint for specific performance ask for two (2) distinct reliefs. However, the grant of relief in every action is rooted in its cause of action. The nature of the right and duty involved, and the ensuing manner of breach are ultimately the bases of whatever succor a court can extend. The causes of action in both proceedings initiated by respondent are predominantly similar. x x x A supervening event may very well have ensued—respondent's ouster as Board Member—inciting respondent to seek further legal relief. But his proper remedy was not to imprudently initiate a nominally distinct proceeding, but rather, to manifest new facts while the appeal emanating from his *Quo Warranto* Petition was being considered and, eventually, to file supplemental pleadings, if warranted. Rather than this, the course that respondent pursued toyed — whether wittingly or unwittingly — with the very dangers which our rules against forum shopping seek to prevent: diverging interpretation on fundamentally the same incidents, and unnecessary conflict, duplication, and expending of judicial resources.

APPEARANCES OF COUNSEL

Santos Santos & Santos Law Offices for petitioners.
Lazaro Law Firm for respondent.

D E C I S I O N

LEONEN, *J.*:

There is forum shopping when, between two (2) actions, there is identity of parties, causes of action, and reliefs sought.

Absolute identity is not required. Identity of causes of action ensues when actions involve fundamentally similar breaches of the same right-duty correlative. In such instances, separate proceedings will have to consider substantially the same evidence, engendering possibly conflicting interpretations on fundamentally the same incidents and unnecessarily expending judicial resources.

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Decision[2] and Resolution[3] of the Court of Appeals, which granted the appeal of Gregory Alan F. Bautista (Gregory) be reversed and set aside.

The assailed Court of Appeals Decision granted respondent Gregory's appeal, set aside the Regional Trial Court's ruling, which dismissed the Complaint for Specific Performance filed by Gregory on account of forum shopping and for lack of merit, and remanded the case to the Regional Trial Court for the continuation of the proceedings. The assailed Court of Appeals Resolution denied petitioners' Motion for Reconsideration.

Petitioner Philippine College of Criminology was founded in 1953 by Supreme Court Associate Justice Felix Angelo Bautista. He served as its President and Board Chairperson until his death in 1985. Thereafter, his son, Eduardo J. Bautista (Eduardo Sr.) took over as President and Chairperson. Five (5) of the parties to this case are Eduardo Sr.'s children: Gregory, and petitioners Ma. Cecilia Bautista-Lim (Cecilia), Rodolfo Valentino

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[1] *Rollo,* pp. 8-28.

[2] *Id.* at 37-58. The April 12, 2018 Decision was penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Ramon A. Cruz and Socorro B. Inting of the Special Twelfth Division of the Court of Appeals, Manila.

[3] *Id.* at 29-36. The October 8, 2013 Resolution was penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Mario V. Lopez (now a member of this Court) and Ramon A. Cruz of the Special Former Special Twelfth Division of the Court of Appeals, Manila.

F. Bautista (Rodolfo), Ma. Elena F. Bautista (Elena), and Eduardo F. Bautista, Jr. (Eduardo Jr.).[4]

On May 18, 2006 Eduardo Sr. issued Presidential Order No. 1, which provided that "[i]n the event of [his] demise or permanent incapacity to act as President and Board Chairperson or whenever [he] choose[s] to relinquish [his] position, [respondent] EVP Gregory Alan F. Bautista shall become President and Board Chair[person]."[5] It further stipulated that Gregory's siblings "shall render full and unconditional support to the incumbent in accordance with the above-stated line of succession[.]"[6]

In conformity with Presidential Order No. 1, Gregory, Cecilia, Rodolfo, Elena, and Eduardo Jr. signed a Certificate of Acquiescence, which stated:

> We, the undersigned hereby certify that we have read, understood and we are in full accord with the above. Likewise we hereby obligate ourselves to obey and follow the provisions thereof under the pain of sanctions above provided as well as other sanctions which the President/Board Chairman has the legal authority to impose.[7]

On September 26, 2006, Eduardo Sr. issued a Memorandum Order indicating that on September 13, 2006, he had relinquished the position of President in favor of Gregory.

No one opposed this. What merely followed was the execution of the Bautista Family's Memorandum of Agreement on July 30, 2007. This Memorandum of Agreement stated that: first, the management of the Philippine College of Criminology and Manila Law College shall remain with Eduardo Sr.'s family; second, majority of the members of the Philippine College of Criminology-Manila Law College Board of Trustees shall be members of Eduardo Sr.'s family; and third, Guia Bautista, Ma. Rosario B.

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[4] *Id.* at 39.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 40.

Villegas, Cesar J. Bautista, and Carmen Bautista shall be members of the Board, with their direct descendants taking their respective places in the event of their demise or permanent incapacity.[8]

On July 26, 2008, Eduardo Sr. passed away. Gregory then took over as Chairperson of the Board of Trustees.[9]

On January 12, 2010, Rodolfo wrote to Gregory inquiring on when a general membership and/or board meeting shall be called. On January 21, 2011, Rodolfo and Cecilia again wrote to Gregory impressing the need for meetings. The same letter informed Gregory that they were calling for a Special Joint General Membership, Board of Trustees, and Organizational Meeting on January 31, 2011.[10]

The special meeting proceeded but Gregory did not attend. In that meeting, the Board of Trustees was reorganized, as follows: first, the incumbent board memberships of the siblings Gregory, Cecilia, Rodolfo, and Elena, as well as of petitioners Jean-Paul Bautista Lim (Jean-Paul) and Marco Angelo Bautista Lim (Marco), were confirmed; second, four (4) new board members were elected — petitioners Eduardo Jr., Corazon Bautista Javier (Corazon), Sabrina Bautista-Panlilio (Sabrina), and Ma. Ines V. Almeda (Ines).[11]

The same meeting called for the election of executive officers, including the position of President. The minutes of the meeting indicated that Cecilia was elected President, in lieu of Gregory. Cecilia likewise took as over as Board Chairperson.[12]

Gregory took issue with Cecilia's takeover and, on March 25, 2011, filed a Petition for *Quo Warranto*.[13] Gregory alleged

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

[9] *Id.* at 41.

[10] *Id.* at 41 and 65.

[11] *Id.* at 42-43.

[12] *Id.* at 43.

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

that his removal was "not valid since the attendance of the board members did not meet the required quorum and [petitioners] violated his right over [the position of Chairperson of the Board of Trustees and President] as mandated by Presidential Order No. 1."[14] This action was docketed as Civil Case No. 11-125408 and was raffled to the Regional Trial Court, Manila, Branch 24.[15]

Gregory's *Quo Warranto* Petition was subsequently dismissed by the Regional Trial Court "for being insufficient in form and substance."[16] This dismissal was, however, appealed to the Court of Appeals, and subsequently to this Court.[17]

In the meantime, Cecilia caused the audit of the Philippine College of Criminology's books. The findings of the special audit suggested that several sums had been unduly disbursed to Gregory.[18] Acting on the special audit, a resolution authorizing Cecilia to undertake legal action against Gregory was passed in the Board's June 1, 2011 meeting.[19]

At another Board meeting scheduled on August 10, 2011, the Board was due to discuss Gregory's suspension or expulsion as board member. This matter was, however, shelved as the Board opted to negotiate with Gregory in the interim. The Board then maintained that Gregory should return the amounts that were noted to have been unduly disbursed to him. Gregory, however, did not comply.[20]

Thus, in a November 17, 2011 meeting, the Board resolved to file actions against Gregory. At another meeting on January 11,

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

[15] *Id.* at 68.

[16] *Id.* at 44.

[17] *Id.*

[18] *Id.* at 45 and 67.

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

[20] *Id.* at 45.

2012, the Board passed Resolution No. 25 expelling Gregory from the Board of Trustees.[21]

In response to Resolution No. 25, on February 9, 2012, Gregory filed a Complaint against petitioners which was identified as an action for "Specific Performance, Intra-Corporate Controversy, and Damages."[22] This Complaint expressly acknowledged the pendency of the *quo warranto* case.[23] Asking that petitioners honor the commitment made in the Certificate of Acquiescence *vis-à-vis* Presidential Order No. 1, this Complaint specifically prayed for the invalidation of Resolution No. 25 and a declaration that Gregory was still a Board Member.[24]

This Complaint was docketed as Civil Case No. 12-127276, and was raffled to the Regional Trial Court, Manila, Branch 24, the same branch that had earlier dismissed Gregory's *Quo Warranto* Petition.[25]

Petitioners filed an Answer which, apart from raising substantive arguments, sought the Complaint's dismissal on account of forum shopping.[26]

On June 10, 2016, the Regional Trial Court rendered a Decision by way of a summary judgment.[27] It dismissed Gregory's Complaint on account of forum shopping and lack of merit. According to it, considering its prior dismissal of Gregory's original *Quo Warranto* Petition, nothing stood in the way of the Board's exercise of its prerogatives, including the selection

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[21] *Id.* at 45-46.

[22] *Id.* at 46.

[23] *Id.* at 53.

[24] *Id.* at 47.

[25] *Id.* at 38 and 68.

[26] *Id.* at 47.

[27] *Id.* at 59-81. The Decision was penned by Judge Maria Victoria A. Soriano-Villadolid of the Regional Trial Court of Manila, Branch 24.

of its members. Thus, the Board was supposedly well within its competence to issue Resolution No. 25.[28]

In its assailed April 12, 2018 Decision,[29] the Court of Appeals granted Gregory's appeal, set aside the Regional Trial Court's ruling, and remanded the case to the Regional Trial Court for the continuation of the proceedings.

Following the Court of Appeals' October 8, 2018 Resolution[30] which denied their Motion for Reconsideration, petitioners filed the present Petition.[31]

In a February 13, 2019 Resolution,[32] this Court required Gregory to file a comment.

In his Comment,[33] Gregory maintains that he did not engage in forum shopping.[34] He also maintains that Presidential Order No. 1, coupled with his petitioner-siblings' acquiescence to it, as embodied in the Certificate of Acquiescence they signed, created a valid obligation on petitioners' part to honor his right over the positions of Chairperson of the Board of Trustees and President.[35] He also maintains that his removal as Board Member violated the Philippine College of Criminology's Articles of Incorporation and the July 30, 2007 Memorandum of Agreement.[36]

For resolution is the issue of whether or not the Court of Appeals erred in reinstating respondent Gregory Alan F.

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[28] *Id.* at 72-80.

[29] *Id.* at 37-58.

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

[31] *Id.* at 8-28.

[32] *Id.* at 122.

[33] *Id.* at 157-159.

[34] *Id.* at 140-149.

[35] *Id.* at 149-151.

[36] *Id.* at 152-155.

Bautista's Complaint as he supposedly did not engage in forum shopping.

The Court of Appeals erred in ruling that respondent did not engage in forum shopping and in remanding the case to the Regional Trial Court for further proceedings.

City of Taguig v. City of Makati[37] explained the standards for evaluating forum shopping:

> The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:
>
> > To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.
>
> For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:
>
> > The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.
>
> On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:
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> > (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between

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[37] 787 Phil. 367 (2016) [Per *J.* Leonen, Second Division].

> the first and the second actions — identity of parties, of subject matter, and of causes of action.[38] (Citations omitted)

Forum shopping, then, concerns similarity in parties, rights or causes of action, and reliefs sought. It is not necessary that there be absolute identity as to these.

Concerning identity of parties, *Aboitiz Equity Ventures, Inc. v. Chiongbian*[39] explained:

> While it is true that the parties to the first and second complaints are not absolutely identical, this court has clarified that, for purposes of forum shopping, *absolute identity of parties is not required and that it is enough that there is substantial identity of parties.*[40] (Emphasis supplied, citation omitted)

Cause of Action is the basis for invoking legal reliefs. It concerns the right allegedly violated and the act or omission that breaches the right or the duty implicit in it. In *Swagman Hotels & Travel, Inc. v. Court of Appeals*:[41]

> Cause of action, as defined in Section 2, Rule 2 of the 1997 Rules of Civil Procedure, is the act or omission by which a party violates the right of another. Its essential elements are as follows:
>
> 1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
> 2. An obligation on the part of the named defendant to respect or not to violate such right; and
> 3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[42] (Citation omitted)

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[38] *Id.* at 387-388.

[39] 738 Phil. 773 (2014) [Per *J.* Leonen, Third Division].

[40] *Id.* at 797.

[41] 495 Phil. 161 (2005) [Per *C.J.* Davide, Jr., First Division].

[42] *Id.* at 169.

In ascertaining whether multiple suits relate to a single cause of action, the test is whether there is the possibility that courts will, in different proceedings, consider substantially the same evidence such that there is the possibility of diverging interpretations. This engenders needless conflict, confusion, and duplication of judicial resources. *Umale v. Canoga Park Development Corporation*[43] explained:

> Generally, a suit may only be instituted for a single cause of action. If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment on the merits in any one is ground for the dismissal of the others.
>
> Several texts exist to ascertain whether two suits relate to a single or common cause of action, such as whether the same evidence would support and sustain both the first and second causes of action (also known as the "*same evidence" test*), or whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining the cause of action in the second case existed at the time of the filing of the first complaint.[44] (Emphasis supplied, citations omitted)

Riviera Golf Club, Inc. v. CCA Holdings, B.V. further elaborated on the "ultimate test" for ascertaining identity of cause of action:

> It is a settled rule that the application of the doctrine of *res judicata* to identical causes of action does not depend on the similarity or differences in the forms of the two actions. A party cannot, by varying the form of the action or by adopting a different method of presenting his case, escape the operation of the doctrine of *res judicata*. The test of identity of causes of action rests on whether the same evidence would support and establish the former and the present causes of action.
>
> We held in *Esperas v. The Court of Appeals* that the ***ultimate test*** in determining the presence of identity of cause of action is to consider whether the same evidence would support the cause of

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[43] 669 Phil. 427 (2011) [Per *J.* Brion, Second Division].

[44] *Id.* at 435.

action in both the first and the second cases. Under the **same evidence test**, when the same evidence support and establish both the present and the former causes of action, there is likely an identity of causes of action.[45] (Emphasis in the original, citations omitted)

Identity of causes of action, like identity of parties, does not mean absolute identity. As discussed in *Heirs of Arania v. Intestate Estate of Sangalang*:[46]

"*Identity of causes of action does not mean absolute identity. Otherwise, a party could easily escape the operation of res judicata by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions*. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action." In this case, the same evidence will be necessary to sustain the causes of action in the two cases which are unequivocally based on the same set of facts. While it may be true that the respondents raised as an additional assignment of error in the petition for *certiorari* the DARAB's issuance of the writ of execution pending appeal, they nevertheless sought the nullification of the DARAB decision. Hence, in truth and in fact, the two petitions are based on the same cause of action.[47] (Emphasis supplied, citation omitted)

Respondent here pursued two (2) successive actions: first, an action for *quo warranto* (docketed as Civil Case No. 11-125408); and second, an action for specific performance (docketed as Civil Case No. 12-127276). The *Quo Warranto* Petition sought petitioner Cecilia's ouster and respondent's restoration as President and Board Chairperson. The Complaint for specific performance sought respondent's restoration as Board Member.

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[45] *Id.* at 666-667.

[46] G.R. No. 193208, December 13, 2017, 848 SCRA 474 [Per *J.* Martires, Third Division].

[47] *Id.* at 498-499.

Both actions arose from the same larger narrative of respondent's conflict with his siblings and other relatives. They involve substantially the same set of facts, parties, and causes of action.

Both actions are anchored on respondent's supposed rights arising from the Certificate of Acquiescence that he and his petitioner-siblings executed *vis-à-vis* their father's Presidential Order No. 1, and those same petitioner-siblings' supposed default on their commitment. Thus, they involve the same right-duty correlative, and are both premised on his ouster as a supposed violation of his rights and a breach of petitioners' duty. Even in the present Petition, which was spurred by his ouster as Board Member, respondent still harps on how Presidential Order No. 1, along with his petitioner-siblings' acquiescence to it, created an obligation on petitioners' part to honor his right over the positions of Chairperson of the Board of Trustees and President.[48] Both actions were instituted by respondent against his siblings and those who, along with them, he claims to have acted in such a manner as to deny him of positions which he insists are due to him.

As the same basic factual considerations are involved, the same pieces of evidence will need to be considered to ascertain the extent of rights and duties accruing to each party, and whatever violation may have ensued.

It is true that the *Quo Warranto* Petition and the Complaint for specific performance ask for two (2) distinct reliefs. However, the grant of relief in every action is rooted in its cause of action. The nature of the right and duty involved, and the ensuing manner of breach are ultimately the bases of whatever succor a court can extend.

The causes of action in both proceedings initiated by respondent are predominantly similar. They will ultimately concern the same questions: whether Presidential Order No. 1 should

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[48] *Rollo*, p. 137.

be upheld; whether the new Board is legitimate; and whether its actions are legitimate. The reliefs that will extend to respondent in the event of a favorable resolution in either action ultimately depend on a consideration of these same bases.

A supervening event may very well have ensued—respondent's ouster as Board Member—inciting respondent to seek further legal relief. But his proper remedy was not to imprudently initiate a nominally distinct proceeding, but rather, to manifest new facts while the appeal emanating from his *Quo Warranto* Petition was being considered and, eventually, to file supplemental pleadings, if warranted.

Rather than this, the course that respondent pursued toyed—whether wittingly or unwittingly—with the very dangers which our rules against forum shopping seek to prevent: diverging interpretation on fundamentally the same incidents, and unnecessary conflict, duplication, and expending of judicial resources.

WHEREFORE, the Petition is **GRANTED**. The assailed April 12, 2018 Decision and October 8, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 107477 are **REVERSED** and **SET ASIDE**. The Regional Trial Court's June 10, 2016 Decision in Civil Case No. 12-127276 is **REINSTATED.**

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 246565. June 10, 2020]

RICARDO S. SCHULZE, SR., substituted by his wife, ANA MARIA L. SCHULZE as President of ELARIS INVESTMENT CO., INC., JOSE LUIS S. VALDES, SPOUSES MARIA ELENA S. VALDES AND ANTONIO VALDES, and ELARIS INVESTMENT CO., INC., *petitioners, vs.* **NATIONAL POWER CORPORATION and PHILIPPINE NATIONAL BANK,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED AND RESOLVED THEREIN; EXCEPTION. — [O]nly questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, and that, as a rule, factual findings of the lower courts are generally considered final and binding on this Court. As an exception, however, when there is a misapprehension of facts or when inferences drawn from the facts are manifestly mistaken, the Court is empowered to pass upon factual issues, as in this case.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; WHEN ONLY A PORTION OF A CERTAIN PROPERTY IS TO BE ACQUIRED, THE OWNER IS NOT RESTRICTED TO RECOVER CONSEQUENTIAL DAMAGES FOR THE REMAINDER OF THE PROPERTY, WHICH MAY SUFFER AN IMPAIRMENT OR DECREASE IN VALUE AS AN INCIDENTAL RESULT OF THE EXPROPRIATION, PROVIDED SUCH FACT IS PROVEN BY SUFFICIENT EVIDENCE. — Case law provides that the amount of just compensation an owner is entitled to receive is equivalent to the fair market value of the property to be expropriated. Nevertheless, where only a portion of a certain property is to be acquired, the owner is not restricted only to compensation for the part actually taken, but is **likewise entitled to recover**

consequential damages for the remainder of the property, which may suffer an impairment or decrease in value as an incidental result of the expropriation, provided such fact is proven by sufficient evidence. The award of consequential damages is recognized under Section 6, Rule 67 of the Rules of Court x x x. In this case, records show that the value of the affected lots was impaired on account of their close proximity to the power posts, transmission lines, and other facilities installed on the subject lots, which constrained the use of the properties, and created a perceived fear of radiation, electrocution, and other health risks in the minds of prospective buyers.

3. **ID.; ID.; ID.; ID.; ID.; CONSEQUENTIAL DAMAGES; THE PROPER AMOUNT OF CONSEQUENTIAL DAMAGES IS FIXED AT THE RATE OF FIFTY PERCENT OF THE BUREAU OF INTERNAL REVENUE ZONAL VALUATION OF THE AFFECTED PROPERTY, AND BEING A COMPONENT OF JUST COMPENSATION, IT SHOULD BE DETERMINED BASED ON THE VALUE OF THE PROPERTY AS OF THE DATE OF THE TAKING OR THE FILING OF THE COMPLAINT FOR EXPROPRIATION, WHICHEVER COMES FIRST. —** [T]he Court finds it unnecessary to order the remand of the case to determine the proper amount of consequential damages since jurisprudence has already provided for a reasonable basis to compute the same in similar cases. In *NAPOCOR v. Marasigan (Marasigan)*, the Court had fixed the amount of consequential damages at the rate of 50% of the BIR zonal valuation of the affected property. Notably, *Marasigan* similarly involved the expropriation of an easement of right of way brought about by the installation of transmission lines, as in this case. As observed by the Court, the said amount was derived from the recommendation of the appraisal committee which, after ocular inspection, had evaluated the effects of installing transmission lines to the value of the properties, *i.e.*, that they may no longer be used either for commercial or residential purposes x x x. The foregoing formula was then adopted in the fairly recent case of *National Transmission Corporation v. Lacson-De Leon (Lacson- De Leon)*, wherein it was held that "the more reasonable computation is the one laid down in *NAPOCOR v. Marasigan*, which is 50% of the BIR zonal valuation of the affected property," x x x. Hence, finding no cogen reason to the contrary, the formula set by these cases

is herein adopted. Applying the foregoing, the award of consequential damages should therefore yield an amount of **₱3,798,480.00**, taking into consideration the undisputed BIR zonal valuation of ₱17.00/sq. m. for the affected lots at the time the complaint was filed on September 7, 2001. In this regard, it bears pointing out that consequential damages, being a component of just compensation, should be determined based on the value of the properties "as of the date of the taking x x x or the filing of the complaint for expropriation, **whichever came first**." Here, the filing of the expropriation complaint evidently preceded the actual taking of the properties on December 19, 2003. Therefore, the BIR zonal valuation prevailing at such earlier point in time should be the proper basis in determining the amount of consequential damages.

4. ID.; ID.; JUDGMENTS; RULE ON IMMUTABILITY OF JUDGMENTS; THE RIGID APPLICATION THEREOF MAY BE RELAXED IN EXCEPTIONAL AND COMPELLING CASES TO SERVE SUBSTANTIAL JUSTICE. — [P]etitioners contend that the CA erred in failing to impose legal interest on the award of just compensation. To recount, the CA held that since petitioners failed to appeal the RTC Decision which was silent on legal interest, the same was already final as to them. While it is a basic rule that "a decision that has acquired finality becomes immutable and unalterable[,] and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law," the Court has, in exceptional and compelling cases, relaxed its rigid application to serve substantial justice. Among others, in the case of *Apo Fruits Corporation v. Land Bank of the Philippines*, **the Court relaxed the doctrine of immutability of judgment and ordered the imposition of legal interest on the just compensation award.** The Court reasoned that despite the immutability doctrine, the award of legal interest remains warranted **in deference to the constitutional right of owners to receive the fair and full amount of "just" compensation** for property taken by the State x x x. Thus, in light of the foregoing, legal interest at the rate of 12% per annum (p.a.) from the time of actual taking, *i.e.*, December 19, 2003, up to June 30, 2013, and thereafter, at 6% p.a. until full payment should be imposed on the unpaid balance of the just compensation damages in the amount of **₱13,473,408.53**, as well as on the consequential in the amount of **₱3,798,480.00.**

> To be sure, the delay in the payment of just compensation amounts to an effective forbearance of money on the part of the State that "accrues as a matter of law and follows as a matter of course from the landowner's right to be placed in as good a position as money can accomplish, **as of the date of taking**." Hence, the award of legal interest is but proper in this case.

APPEARANCES OF COUNSEL

Valencia Valencia Ciocon Pandan Rubica Rubica Garcia Peñalosa for petitioners.

April C. Pintor for respondent PNB.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 18, 2017 and the Resolution[3] dated February 26, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 03574, which affirmed with modification the Decision[4] dated January 18, 2010 of the Regional Trial Court of Bacolod City, Branch 49 (RTC) in Civil Case No. 01-11529, and (*a*) fixed the just compensation for the subject lots at ₱593.86/ square meter (sq. m.); (*b*) deleted the award of attorney's fees; (*c*) remanded the case to the RTC for the determination of any consequential damages for the remainder of the properties; and (*d*) ordered the segregation, transfer and registration of

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[1] *Rollo*, pp. 41-52.

[2] *Id.* at 57-73. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Edward B. Contreras, concurring.

[3] *Id.* at 76-77. Penned by Executive Justice Edgardo L. Delos Santos (now a member of this Court) with Associate Justices Edward B. Contreras and Louis P. Acosta, concurring.

[4] *Id.* at 143-160. Penned by Presiding Judge Manuel O. Cardinal, Jr.

the subject lots after payment of the just compensation and consequential damages, if any.

The Facts

On September 7, 2001, respondent National Power Corporation (NAPOCOR)[5] filed a complaint[6] for expropriation against petitioner Ricardo S. Schulze, Sr.,[7] in his capacity as then President of Elaris Investment Co., Inc. and Judicial Guardian of petitioner Jose Luis S. Valdes, petitioners Spouses Antonio and Maria Elena S. Valdes (collectively, petitioners), and respondent Philippine National Bank (PNB)[8] before the RTC, seeking the acquisition of an easement of right of way over certain portions of land located in Barangay Granada, Bacolod City, Negros Occidental (subject lots), with an aggregate area of 23,563 sq. m., for the construction and maintenance of its 138 KV Bacolod-Cadiz Transmission Line for the Negros IV-Panay Project.[9] The subject lots each formed part of five (5) large tracts of land,[10] with an

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[5] NAPOCOR is a government-owned and controlled corporation vested with authority under Republic Act No. 6395, entitled "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION" (approved on September 10, 2001), as amended, to undertake the development of hydroelectric power generation and the production of electricity from nuclear, geothermal, and other sources as well as the transmission of electric power nationwide. To such end, it is authorized to exercise the power of eminent domain; see *NAPOCOR v. Diato-Bernal*, 653 Phil. 345, 347 (2010).

[6] *Rollo*, pp. 86-90.

[7] Ricardo S. Schulze, Sr. was the former President and representative of petitioner Elaris Investment Co., Inc., but he passed away during the proceedings before the RTC; thus, the company is now represented by his widow, petitioner Ana Maria L. Schulze; see *id.* at 42 and 145.

[8] In view of its mortgage liens over the subject properties, PNB was named as a co-defendant of petitioners in the RTC, and was impleaded in the instant petition as respondent in such capacity; see *id.* at 42.

[9] See *id.* at 59.

[10] The lands are: (1) Lot 1360-B-1-A-4, Psd-06-017654 being a portion of Lot 1360-B-1-A (LRC) Psd-21530, covered by Transfer Certificate of Title (TCT) No. T-156795 registered in the name of Maria Elena S. Valdes, with an area of 88,048 sq. m.; (2) Lot 13-60-A-5, Psd-06-017654, being a

aggregate area of 470,443 sq. m.[11] NAPOCOR asked to pay a simple easement fee.[12]

In their Answer,[13] petitioners contended that: (*a*) the assessed and corresponding market values of their lands have already increased several folds; and (*b*) apart from the area sought to be expropriated, the remainder[14] of their lots (affected lots) will suffer a reduction in value due to the installation of NAPOCOR's posts, transmission lines, transformers, and other facilities, for which they are entitled to consequential damages.[15]

NAPOCOR was eventually granted a Writ of Possession,[16] after petitioners received the amount of ₱519,851.47,[17]

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portion of Lot 1360-A, Psd-21530, covered by TCT No. T-156789 registered in the name of Ana Maria L. Schulze, with an area of 126,876 sq. m.; (3) Lot 1360-A-6, Psd-06-017654 being a portion of Lot 1360-A, Psd-21530, covered by TCT No. T-156790 registered in the name of Antonio Valdes, with an area of 135,500 sq. m.; (4) Lot 1360-A-7, Psd-06-017654 being a portion of Lot 1360-A, Psd-21530, covered by TCT No. T-156791 registered in the name of Jose Luis S. Valdes, with an area of 119,009 sq. m.; and (5) Lot 1360-B-1-A-3, Psd-06-017654, being a portion of Lot 1360-B-1-A (LRC) Psd-295344, covered by TCT No. T- No. 156794 registered in the name of Jose Luis S. Valdes, with an area of 1,010 sq. m. (see records [Vol. I], pp. 7-29).

[11] See *rollo*, p. 60.

[12] See *id.* at 151.

[13] See Answer dated October 26, 2001 (*id.* at 129-131) filed by petitioners, with the exception of PNB, who instead filed a manifestation stating that its only interest over the subject properties was the mortgage liens over the same (*id.* at 60).

[14] Computed as follows:

470,443 sq. m.	Aggregate area of the 5 tracts of land
– 23,563	Subject lots
446,880 sq. m.	Affected lots

[15] See *rollo*, pp. 129-130.

[16] See Writ of Possession dated October 1, 2003 issued by Presiding Judge Ramon D. Delariarte; records (Vol. I), pp. 429-431.

[17] The total sum was deposited in Savings Account No. 0421-2012-85 under the names of petitioners in the Bacolod Branch of the Land Bank of the Philippines; see *id.* at 352-355.

representing 100% of the Bureau of Internal Revenue (BIR) zonal valuation of the subject lots, *i.e.*, ₱400,571.00[18] plus the value of the improvements built thereon valued in the amount of ₱119,280.47.[19] **NAPOCOR was able to obtain possession of the subject lots on December 19, 2003** (date of actual taking).[20]

The RTC appointed a Board of Commissioners to determine the just compensation for the properties[21] which, thereafter, submitted a Court Commission's Report[22] dated October 13, 2008, recommending that the subject lots be valued at ₱593.86/sq. m.,[23] based on the market value of similar properties in the

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[18] Computed as follows:

23,563 sq. m.	Portion expropriated
x ₱17.00	BIR zonal valuation/sq. m.
₱400,571.00	BIR zonal valuation for the subject lots

[19] See records (Vol. I), p. 354.

[20] See Sheriff's Return dated December 30, 2003 (*id.* at 427); and Delivery of Possession dated December 19, 2003 (*id.* at 428).

[21] See Order dated August 26, 2003; *id.* at 349. See also *rollo*, pp. 60 and 146.

[22] *Rollo*, pp. 132-142.

[23] See *id.* at 142. The recommended value was computed as follows:

Market Value of the Original Area 470,443 sq. m. @ ₱300 per square meter	₱141,132,900
Less: Market Value of the Area Occupied 23,563 sq. m. @ ₱300 per sq. m.	7,068,900
	134,064,000
Less: Severance Damage on the segregated area 189,918 sq. m. @ ₱30 per sq. m.	5,697,540
	128,366,460
Less: External Obsolescence due to the fear in the market place 40,894 sq. m. @ ₱30 per sq. m.	1,226,820
Market Value of the Subject Property after the taking	₱127,139,640

years 2002 and 2003, as well as other factors, such as: property location, desirability, neighborhood, utility, and size.[24] NAPOCOR objected to the findings of the commissioners, arguing that the commissioners erred in valuing the properties based on market data for the years 2002 and 2003, instead of the year 2001, when the complaint was filed.[25]

The RTC Ruling

In a Decision[26] dated January 18, 2010, the RTC adopted the findings of the commissioners and fixed the just compensation for the subject lots at ₱13,993,260.00.[27] It held that the recommended valuation rate of ₱593.86/sq. m. was their approximate market value since they are located in an area where land development is changing from general agricultural use to residential development. It also found it proper to award the amount of ₱26,538,415.68 as consequential damages,[28] representing 10% of the fair market value of the affected lots, considering that their values were impaired because of the presence of NAPOCOR's posts and high tension transmission lines on the subject lots. It likewise awarded ₱100,000.00

XI. CONCLUSION

Market Value before the taking	₱141,132,900
Less: Market Value before the taking	₱127,139,640
Just Compensation	₱ 13,993,260

[24] See *id.* at 154-155. See also *id.* at 133-137.

[25] See *id.* at 155-156.

[26] *Id.* at 143-160.

[27] See *id.* at 157-158.

[28] Computed as follows:

446,880 sq. m.	Affected lots
x ₱593.86/sq. m.	Recommended valuation rate
₱265,384,156.80	Fair market value
x 10%	Estimated percentage
₱26,538,415.68	Consequential damages

attorney's fees in favor of petitioners who were forced to hire the services of a lawyer in order to protect their rights.[29]

Dissatisfied, NAPOCOR appealed[30] to the CA. On the other hand, petitioners, in their appellee's brief,[31] claimed that the trial court erred in failing to impose legal interest on the monetary awards.[32]

The CA Ruling

In a Decision[33] dated September 18, 2017, the CA upheld the just compensation fixed for the subject lots for being duly supported by uncontroverted facts confirmed by ocular inspection, and found no cogent reason to disturb the same.[34] However, it found the award of consequential damages to be improper for being speculative, and remanded the case back to the trial court for further reception of evidence.[35] It likewise deleted the award of attorney's fees in the absence of showing of any irregularity in the expropriation proceedings.[36] On the other hand, it denied petitioners' claim of interest considering their failure to appeal the RTC Decision which was silent on any award of legal interest.[37]

Undaunted, petitioners moved for partial reconsideration[38] of the CA Decision, which was denied in a Resolution[39] dated February 26, 2019. Hence, the instant petition.

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[29] See *rollo*, pp. 158-159.

[30] See Brief for the Plaintiff-Appellant dated August 24, 2011; CA *rollo*, pp. 38-56.

[31] See Brief for the Defendant-Appellees dated May 4, 2012; *rollo*, pp. 201-220.

[32] See *id.* at 218-219.

[33] *Id.* at 57-73.

[34] See *id.* at 66-68.

[35] See *id.* at 69.

[36] See *id.* at 70.

[37] See *id.* at 72.

[38] See partial motion for reconsideration dated November 7, 2017; *id.* at 78-85.

[39] *Id.* at 76-77.

The Issue Before the Court

The issues raised in the present petition are: *(a)* whether the CA erred in remanding the case to determine the proper amount of consequential damages; and *(b)* whether the CA erred in failing to impose legal interest on the award of just compensation.[40]

The Court's Ruling

The petition is partly meritorious.

At the outset, it bears stressing that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, and that, as a rule, factual findings of the lower courts are generally considered final and binding on this Court.[41] As an exception, however, when there is a misapprehension of facts or when inferences drawn from the facts are manifestly mistaken, the Court is empowered to pass upon factual issues,[42] as in this case.

Guided by the foregoing considerations, the Court finds that the CA erred in ruling that the award of consequential damages was not supported by evidence.[43] Case law provides that the amount of just compensation an owner is entitled to receive is equivalent to the fair market value of the property to be expropriated. Nevertheless, where only a portion of a certain property is to be acquired, the owner is not restricted only to compensation for the part actually taken, but is **likewise entitled to recover consequential damages for the remainder of the property, which may suffer an impairment or decrease in value as an incidental result of the expropriation,**

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[40] See *id.* at 46.

[41] See *Borja v. Miñoza*, 812 Phil. 133, 144 (2017).

[42] See *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 212-213 (2005).

[43] See *rollo*, p. 69.

provided such fact is proven by sufficient evidence.[44] The award of consequential damages is recognized under Section 6, Rule 67 of the Rules of Court, which reads:

> Section 6. *Proceedings by Commissioners*. — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.** (Emphasis supplied)

In this case, records[45] show that the value of the affected lots was impaired on account of their close proximity to the power posts, transmission lines, and other facilities installed on the subject lots, which constrained the use of the properties, and created a perceived fear of radiation, electrocution, and other health risks in the minds of prospective buyers.[46] Notably, the RTC observed that "given their nature, high powered transmission lines would necessarily diminish — if not entirely

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[44] See *Republic v. Spouses Salvador*, 810 Phil. 742, 747 (2017); *Republic v. Cebuan*, 810 Phil. 767, 782 (2017); and *Republic v. C.C. Unson Company, Inc.*, 781 Phil. 770, 786 (2016).

[45] See Just Compensation Appraisal of Property dated June 21, 2006; records (Vol. I), pp. 687-699.

[46] See *id.* at 697.

damage — the value and use of the property as well as endanger lives and limbs[,]"[47] and "the existence of [NAPOCOR'S] posts and high tension transmission lines which traversed [petitioners'] properties would impair their prices or value to some extent."[48] This finds support in the Court Commission's Report[49] dated October 13, 2008, which was quoted and adopted by the RTC, *viz.*:

Based upon an analysis of the prevailing land usage in the neighborhood and the property itself, we are of the opinion that the following land use would represent the highest and best use of the property:

> **Before the taking** — the whole property could be developed to a pleasant residential subdivision with a view of the adjoining properties.
>
> **After the taking** — portions of the property have been occupied, segregated and affected by power transmission lines that **deprived the property owners from developing the whole property to a pleasant residential subdivision without any eye sore or danger of being affected by the radiation emitted by the power lines**. The damage caused to the adjoining area affected by the power lines is due to **the fear in the marketplace or the external obsolescence caused by the proximity to the power lines** and not due to corona ions that can risk causing childhood leukemia and other illnesses like cancer to both children and adults.[50]

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x x x [S]everance damage is the decrease in market value of the remaining property of an owner caused by the taking of the part of his property. In this exercise, severance damage is noted on the remaining land area.

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[47] See *rollo*, p. 157.

[48] See *id.* at 158.

[49] *Id.* at 132-142.

[50] See *id.* at 139-140; emphases supplied.

The severance damage on the remaining land area is based on the reduction of value in the highest and best use of that portion of the property that has been segregated from the main parcel of land thus making it less desirable to develop to a residential subdivision.

The external obsolescence on the adjoining property is based on the fear in the market place due to the proximity of the power transmission lines. This is depreciation on property values similar to the effect of the presence of a squatter colony, sidewalk vendors, railroad tracks, airport runway, noise or polluting factory or heavy traffic.[51]

In previous cases, the Court has recognized the payment of consequential damages to compensate property owners — as petitioners in this case — for **the adverse effect caused by power transmission lines to "the market value of the land x x x [considering that] potential buyers x x x would shy away from building their houses in the proximity of such high voltage transmission lines."**[52] Accordingly, the payment of consequential damages in favor of petitioners is in order.

This notwithstanding, the Court agrees with the CA in holding that the consequential damages in an amount equivalent to 10% of the fair market value of the affected lots are speculative and without basis. As the CA correctly held, there appears to be no reliable and actual data supporting the estimated valuation fixed by the RTC. Thus, the award of consequential damages in the amount of ₱26,538,415.68 must be set aside.

However, the Court finds it unnecessary to order the remand of the case to determine the proper amount of consequential damages since jurisprudence has already provided for a reasonable basis to compute the same in similar cases. In *NAPOCOR v. Marasigan*[53] *(Marasigan)*, the Court had fixed the amount of

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[51] See *id.* at 141; emphasis supplied.

[52] *National Transmission Corporation v. Lacson-De Leon*, G.R. No. 221624, July 4, 2018, 870 SCRA 617, 633.

[53] *NAPOCOR v. Marasigan*, G.R. No. 220367, November 20, 2017, 845 SCRA 248.

consequential damages at the rate of 50% of the BIR zonal valuation of the affected property. Notably, *Marasigan* similarly involved the expropriation of an easement of right of way brought about by the installation of transmission lines, as in this case. As observed by the Court, the said amount was derived from the recommendation of the appraisal committee which, after ocular inspection, had evaluated the effects of installing transmission lines to the value of the properties, *i.e.*, that they may no longer be used either for commercial or residential purposes, *viz.*:

> Respondents in this case claim consequential damages for the areas in between the transmission lines which were rendered unfit for use. "Dangling" areas, as defined under National Power Board Resolution No. 94-313, refer to those remaining small portions of the land not traversed by the transmission line project but which are nevertheless rendered useless in view of the presence of the transmission lines. The appraisal committee determined the total dangling area to be 41,867 square meters and consequently recommended the payment of consequential damages equivalent to 50% of the BIR zonal value per square meter or for a total amount of ₱22,227,800.
>
> In arriving at its recommendation to pay consequential damages, the appraisal committee conducted an ocular inspection of the properties and observed that the areas before and behind the transmission lines could no longer be used either for commercial or residential purposes. Despite this determination, NPC insists that the affected areas cannot be considered as "dangling" as these may still be used for agricultural purposes. In so arguing, NPC loses sight of the undisputed fact that the transmission lines conveying high-tension current posed danger to the lives and limbs of respondents and to potential farm workers, making the affected areas no longer suitable even for agricultural production. Thus, the Court finds no reason to depart from the assessment of the appraisal committee, as affirmed and adopted by the RTC.[54]

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[54] *Id.* at 269-270.

The foregoing formula was then adopted in the fairly recent case of *National Transmission Corporation v. Lacson-De Leon*[55] *(Lacson-De Leon)*, wherein it was held that "the more reasonable computation is the one laid down in *NAPOCOR v. Marasigan*, which is 50% of the BIR zonal valuation of the affected property,"[56] *viz.*:

The award of consequential damages is limited to 50% of the BIR zonal valuation of the property segregated by the electric transmission lines

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x x x In *NAPOCOR v. Marasigan*, the Court awarded consequential damages equivalent to 50% of the BIR zonal valuation of the property segregated by the electric transmission lines, thus:

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> Respondents in this case claim consequential damages for the areas in between the transmission lines which were rendered unfit for use. "Dangling" areas, as defined under National Power Board Resolution No. 94-313, refer to those remaining small portions of the land not traversed by the transmission line project but which are nevertheless rendered useless in view of the presence of the transmission lines. The appraisal committee determined the total dangling area to be 41,867 square meters and consequently recommended the payment of consequential damages equivalent to **50% of the BIR zonal value per square meter** or for a total amount of ₱22,227,800. (Emphasis in the original)
>
> In arriving at its recommendation to pay consequential damages, the appraisal committee conducted an ocular inspection of the properties and observed that the areas before and behind the transmission lines could no longer be used either for commercial or residential purposes. Despite this determination, NPC insists that the affected areas cannot be considered as "dangling" as these may still be used for agricultural purposes.

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[55] *Supra* note 52.

[56] *Id.* at 654.

> In so arguing, NPC loses sight of the undisputed fact that the transmission lines conveying high-tension current posed danger to the lives and limbs of respondents and to potential farm workers, making the affected areas no longer suitable even for agricultural production. Thus, the Court finds no reason to depart from the assessment of the appraisal committee, as affirmed and adopted by the RTC.
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> **While the award of consequential damages is proper, the Court finds the amount of 10% of the fair market value of the segregated property without basis. Rather, the more reasonable computation is the one laid down in *NAPOCOR v. Marasigan*, which is 50% of the BIR zonal valuation of the affected property.** [57]

To note, *Lacson-De Leon* involved the same 138 KV Bacolod-Cadiz Transmission Line for the Negros IV-Panay Project, as in this case. Also, similar to this case, the Court had set aside exactly the same valuation of 10% of the properties' fair market value for being without basis. Hence, finding no cogent reason to the contrary, the formula set by these cases is herein adopted.

Applying the foregoing, the award of consequential damages should therefore yield an amount of **₱3,798,480.00**,[58] taking into consideration the undisputed BIR zonal valuation of ₱17.00/sq. m.[59]

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[57] *Id.* at 631-634; emphasis and underscoring supplied.

[58] Computed as follows:

446,880 sq. m.	Affected lots
x ₱17.00/sq. m.	BIR zonal valuation at the time of the filing of the complaint
x 50%	Correct percentage
₱3,798,480.00	Consequential damages

[59] See BIR Certification dated May 2, 2002; records (Vol. I), p. 368-A. Under Department of Finance (DOF) Department Order (DO) No. 46-97 which was effective from *November 24, 1997 to December 27, 2002*, the BIR zonal value of sugar lands (Classification A17) in Barangay Granada, Bacolod City, Negros Occidental at the time of the filing of the complaint was **₱17.00/sq. m.** When the BIR zonal value of lands in the area were

for the affected lots[60] at the time the complaint was filed on September 7, 2001. In this regard, it bears pointing out that consequential damages, being a component of just compensation,[61] should be determined based on the value of the properties "as of the date of the taking x x x or the filing of the complaint for expropriation, **whichever came first**."[62] Here, the filing of the expropriation complaint evidently preceded the actual taking of the properties on December 19, 2003. Therefore, the BIR zonal valuation prevailing at such earlier point in time should be the proper basis in determining the amount of consequential damages.

For another, petitioners contend that the CA erred in failing to impose legal interest on the award of just compensation. To recount, the CA held that since petitioners failed to appeal the RTC Decision which was silent on legal interest, the same was already final as to them. While it is a basic rule that "a

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subsequently updated (through DOF DO No. 65-02, which became effective on *December 28, 2002 until July 7, 2017*), the value of sugar lands (A17) in the area remained unchanged at **₱17.00/sq. m.** See https://www.bir.gov.ph/index.php/zonal-values.html (last accessed June 1, 2020).

[60] To reiterate, the affected lots have an area of 446,880 sq. m.:

470,443 sq. m.	Aggregate area of the 5 tracts of land
– 23,563	Subject lots
446,880 sq. m.	Affected lots

[61] See *National Transmission Corporation v. Lacson-De Leon*, *supra* note 52, at 637; and *NAPOCOR v. Marasigan*, *supra* note 53, at 271-272.

[62] Section 4, Rule 67 of the Rules of Court reckons the determination of just compensation on either the date of the taking or the filing of the complaint, whichever is earlier, thus:

Section 4. *Order of Expropriation.* — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of **just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first**.

decision that has acquired finality becomes immutable and unalterable[,] and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law,"[63] the Court has, in exceptional and compelling cases,[64] relaxed its rigid application to serve substantial justice.[65] Among others, in the case of *Apo Fruits Corporation v. Land Bank of the Philippines*,[66] **the Court relaxed the doctrine of immutability of judgment and ordered the imposition of legal interest on the just compensation award**. The Court reasoned that despite the immutability doctrine, the award of legal interest remains warranted **in deference to the constitutional right of owners to receive the fair and full amount of "just" compensation** for property taken by the State, *viz.*:

> Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just," **must also be made without delay. Without prompt payment, compensation**

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However, in *Lacson-De Leon* (*supra* note 52, at 628), the Court ruled that even if the valuation of the property was not made on the date of filing of the complaint, "to the mind of the Court, no significant change in the fair market value could have happened" within the three (3)-year period between the date of the filing of the complaint and the date the commissioners filed their report containing their recommendation, factual findings, observations and conclusions, and as such, saw no reason to deviate therefrom.

[63] *Spouses Genato v. Viola*, 625 Phil. 514, 528-529 (2010).

[64] "The Court has further allowed the relaxation of the rigid rule on the immutability of a final judgment in order to serve substantial justice in considering: (1) matters of life, liberty, honor or property; or (2) the existence of special or compelling circumstances; or (3) the merits of the case; or (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; or (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby." See *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019.

[65] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, 659 Phil. 117, 123 (2011).

[66] 647 Phil. 251 (2010).

cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income.

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We recognized in *Republic v. Court of Appeals* [433 Phil. 106 (2002)] the **need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken**. We ruled in this case that:

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government. Thus, **if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court.** In fine, between the taking of the property and the actual payment, **legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred**. [67]

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As a rule, **a final judgment may no longer be altered, amended or modified**, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. In the past, however, we have **recognized exceptions to this rule by reversing judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons called for such actions**.[68]

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[67] *Id.* at 273-274; emphases supplied.

[68] *Id.* at 288; emphases and underscoring supplied.

That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain be "just" when the payment for the compensation for property already taken has been unreasonably delayed? [69]

Further, in the same case, the Court discussed that a contrary ruling denying interest in the just compensation award would not only be an aberration of our settled jurisprudence on the matter but also run counter to the societal objective of agrarian reform:

As duly noted in the above discussions, this issue is not one of first impression in our jurisdiction; the consequences of delay in the payment of just compensation have been settled by this Court in past rulings. Our settled jurisprudence on the issue alone accords this case primary importance as a contrary ruling would unsettle, on the flimsiest of grounds, all the rulings we have established in the past.

More than the stability of our jurisprudence, the matter before us is of transcendental importance to the nation because of the subject matter involved — agrarian reform, a societal objective that the government has unceasingly sought to achieve in the past half century. This reform program and its objectives would suffer a major setback if the government falters or is seen to be faltering, wittingly or unwittingly, through lack of good faith in implementing the needed reforms. Truly, agrarian reform is so important to the national agenda that the Solicitor General, no less, pointedly linked agricultural lands, its ownership and abuse, to the idea of revolution. This linkage, to our mind, remains valid even if the landowner, not the landless farmer, is at the receiving end of the distortion of the agrarian reform program.

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x x x [R]ules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules

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[69] *Id.* at 289-290; emphasis and underscoring supplied.

of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.[70]

Thus, in light of the foregoing, legal interest at the rate of 12% per annum (p.a.) from the time of actual taking, *i.e.*, December 19, 2003, up to June 30, 2013, and thereafter, at 6% p.a. until full payment[71] should be imposed on the unpaid balance of the just compensation in the amount of **₱13,473,408.53**,[72] as well as on the consequential damages in the amount of **₱3,798,480.00**. To be sure, the delay in the payment of just compensation amounts to an effective forbearance of money on the part of the State[73] that "accrues as a matter of law and follows as a matter of course from the landowner's right to be placed in as good a position as money can accomplish, **as of the date of taking**."[74] Hence, the award of legal interest is but proper in this case.

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[70] *Id.* at 290-291.

[71] See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

[72] Representing the difference between the amount of just compensation fixed for the subject lots, *i.e.*, ₱13,993,260.00, and the initial deposit in the amount of ₱519,851.47. See Resolution dated September 20, 2003; records (Vol. I), pp. 352-355. See also *Evergreen Manufacturing Corporation v. Republic* (817 Phil. 1048, 1069 [2017]), where the Court declared that: "[t]he difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money."

[73] See Court's Resolution in *Land Bank of the Philippines v. Barrido*, G.R. No. 198478, March 6, 2019. See also *Evergreen Manufacturing Corporation v. Republic, id*.

[74] *Rebadulla v. Republic*, G.R. Nos. 222159 and 222171, January 31, 2018, 853 SCRA 602, 623. See also Court's Resolution in *Land Bank of the Philippines v. Barrido, id.*, where the Court noted that: "[j]ust compensation does not only refer to the full and fair equivalent of the property taken. It also means payment in full without delay. It is presumed that there is delay if the government failed to pay the property owner the full amount of just compensation on the date of taking."

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 18, 2017 and the Resolution dated February 26, 2019 of the Court of Appeals in CA-G.R. CV No. 03574 are hereby **AFFIRMED** with **MODIFICATION**. Accordingly, respondent National Power Corporation is hereby **ORDERED** to pay petitioners Ricardo S. Schulze, Sr., substituted by his wife, Ana Maria L. Schulze as President of Elaris Investment Co., Inc., Jose Luis S. Valdes, Spouses Antonio and Maria Elena S. Valdes, and Elaris Investment Co., Inc., and respondent Philippine National Bank, according to their respective interests, the following amounts:

(1) The unpaid balance of the just compensation in the amount of ₱13,473,408.53 for the taking of the subject lots with an aggregate area of 23,563 square meters (sq. m.);

(2) The amount of ₱3,798,480.00 representing the consequential damages equivalent to 50% of the Bureau of Internal Revenue zonal valuation of the affected lots, with a net area of 446,880 sq. m., as of the date of the filing of the complaint; and

(3) Legal Interest on the total amount of just compensation, *i.e.*, the unpaid balance plus consequential damages, at the rate of 12% per annum (p.a.) from the time of actual taking on December 19, 2003, up to June 30, 2013, and thereafter, at 6% p.a. until full payment.

SO ORDERED.

Hernando, Inting, Lopez[*], and *Gaerlan*[**]*, JJ.*, concur.

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[*] Designated additional member per Raffle dated February 24, 2020.

[**] Designated additional member per Special Order No. 2780 dated May 11, 2020.

FIRST DIVISION

[G.R. No. 247712. June 10, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **CRISTINA MENDOZA *y* DAVID, RAMMIL CALMA *y* REYES, NESTOR JULIANO *y* SARMIENTO, GALLARDO MARTIN *y* LLEMOS, SESENANDO MARTIN *y* AGUSTIN, LEONARDO ALINCASTRE *y* ISIDRO and RENATO OBEDOZA *y* QUINTO, *accused*, CRISTINA MENDOZA *y* DAVID, NESTOR JULIANO *y* SARMIENTO, GALLARDO MARTIN *y* LLEMOS and SESENANDO MARTIN *y* AGUSTIN,** *accused-appellants*.

SYLLABUS

1. **CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS. —** Accused-appellants were charged and convicted under Article 267 of the RPC, as amended by R.A. No. 7659 x x x. [T]he following elements x x x [must be proved]: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: *i*) the kidnapping or detention lasts for more than three days; *ii*) it is committed by simulating public authority; *iii*) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or *iv*) the person kidnapped or detained is a minor, female, or a public officer. Significantly, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT OF THE CREDIBILITY OF WITNESSES BY THE LOWER COURTS DESERVES HIGH RESPECT ON APPEAL, ABSENT ANY SHOWING THAT THE LOWER COURTS OVERLOOKED, MISUNDERSTOOD, OR**

MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT WHICH WOULD AFFECT THE RESULT OF THE CASE. — [T]he Court finds no cogent reason to deviate from the common findings of the RTC and the CA, and their respective calibration of the credibility of the witnesses presented especially since both were in the best position to assess them. The Court is most certainly convinced that the prosecution has proven with moral certainty that it was accused-appellants who conspired to kidnap the victims Yasar and Reymond, and they did so for the purpose of extorting money from Yasar's father. x x x Absent any showing that the RTC or the CA overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, their assessment of the credibility of witnesses deserves high respect by the Court.

3. ID.; ID.; DENIAL AND ALIBI; CONSIDERED AS INHERENTLY WEAK DEFENSES, AND CANNOT BE GIVEN GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION BY CREDIBLE WITNESSES. — [T]he collective testimonies of the prosecution witnesses — mainly that of the victims — unmistakably and positively identified the assailants and narrated in detail the events that transpired from the moment they were abducted in the morning of January 9, 2009, up to their release on January 11, 2009. x x x [A]s correctly ruled by the CA, accused-appellants' denials and alibis are inherently weak defenses and thus, cannot be given greater evidentiary weight than the positive declaration by credible witnesses.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

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

Before this Court is the appeal of the Decision[1] dated July 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08257 affirming the Decision[2] dated March 29, 2016 of the Regional Trial Court (RTC) of Balanga City, Bataan, Branch 2 in Criminal Case No. 11684, convicting herein accused-appellants Sesenando Martin *y* Agustin (Sesenando), Gallardo Martin *y* Llemos (Gallardo), Nestor Juliano *y* Sarmiento (Nestor), and Cristina Mendoza *y* David (Cristina; collectively, accused-appellants), for the crime of Kidnapping for Ransom.

On January 30, 2009, the Department of Justice filed an Information against Sesenando, Gallardo, Nestor, Cristina, and three other individuals namely: Leonardo Alincastre *y* Isidro (Leonardo), Rammil Calma *y* Reyes (Rammil), Renato Obedoza *y* Quinto (Renato), and two other unidentified individuals: John Doe and Peter Doe, for the crime of Kidnapping for Ransom penalized under Article 267 of the Revised Penal Code (RPC). The said Information reads:

> That on or about the 9th day of January 2009, in Pilar, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with John Doe and Peter Doe, whose true names and identities and whereabouts are still unknown, an [*sic*] all of them mutually helping and abetting one another, did then and there, by force and intimidation, willfully, unlawfully and feloniously, take, carry away, kidnap, and deprive YASAR IRFAN and REYMOND BARICAS *y* PADAYAW of their liberty against their will, by blocking the path of the said victims while on board a blue Kawasaki Bajaj-wind 125 motorcycle, forcibly dragging them inside a red Mitsubishi Adventure vehicle, divesting them of their personal belongings including a Nokia 5310 Express Music mobile phone, V8 China mobile phone, silver necklace

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[1] Penned by Associate Justice Pablito A. Perez, with Associate Justices Ramon M. Bato, Jr. and Pedro B. Corales, concurring; CA *Rollo*, pp. 143-167.

[2] Penned by Presiding Judge Antonio Ray A. Ortiguera; *id.* at 60-91.

worth Php2,000.00, silver bracelet valued at Php1,000.00, four (4) silver rings all worth ₱1,500.00 and ₱11,250.00 in cash, and by bringing them to a safe house in Hermosa, Bataan, until they were released on January 11, 2009. That the abduction of YASAR IRFAN and REYMOND BARICAS *y* PADAYAW was for the purpose of extorting ransom from the family of the victims as in fact a demand for ransom was made as a condition [for] their release amounting to fifty (50) million (Php50,000,000.00) pesos, which was later reduced to four hundred thousand (Php400,000.00) pesos, which was paid and delivered on January 11, 2009 at Dinalupihan, Bataan, and which facilitated the release of the victims, to the damage and prejudice of said victims Yasa[r] Irfan and Reymond Baricas *y* Padayaw.

CONTRARY TO LAW.[3]

When arraigned on May 18, 2009, Sesenando, Gallardo, Nestor, Leonardo, Rammil, and Cristina entered a "not guilty" plea, while Renato also pleaded "not guilty" upon arraignment on November 9, 2009. Thus, trial on the merits ensued.

Based on the collective testimonies of its witnesses, the prosecution alleged that in the morning of January 9, 2009, Yasar Irfan (Yasar) and his driver Reymond Baricas *y* Padayaw (Reymond) were riding a Kawasaki motorcycle along Barangay (Brgy.) Pantingan, Pilar, Bataan coming from Bagac, Bataan when they were suddenly flagged down by six men.[4] An armed man, later identified as Renato, signaled for them to stop.[5] Thereafter, Yasar and Reymond were made to board a red Mitsubishi Adventure by five men later identified as Sesenando, Gallardo, Leonardo, Renato, and Rammil.[6] Inside the car, Yasar and Reymond were blindfolded and robbed of their personal belongings.[7] They travelled for about 30 minutes, with Rammil, who rode the motorcycle, trailing behind.[8] Yasar and Reymond

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[3] *Id.* at 60-61.

[4] *Id.* at 62.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

were brought to a nipa hut where they remained blindfolded and their feet chained.[9] Reymond then heard a male voice speak to a female voice over the loudspeaker of a phone.[10] *"Andito na po sa amin yung dalawang tao na pinakuha nyo sa amin"*, said the male voice.[11] "Good work," replied the female voice.[12] At the time, Yasar was just behind Reymond.[13] Yasar was then asked for the contact number of his father Mohammed Munir Tahir (Mohammed).[14] Using the loudspeaker of a phone, Reymond heard one of the kidnappers say *"Hawak naming ang anak mo at isang tauhan mo"* and demanded ₱5 Million[15] in exchange for the release of the captives with a threat to deliver Yasar's head should the ransom be not paid.[16] Yasar was hit several times and both victims were held hostage in the *nipa* hut and was only allowed to remove their blindfolds when eating.[17] In the afternoon of January 10, 2009, Yasar heard someone say "*Nandyan na si Kicker Singh*"; he peeped through his blindfold and saw an Indian National accompanied by a woman later identified as Cristina.[18] Cristina then said that if the ransom money will not be given, the two "pigs" should be disposed of.[19] In the evening of that same day, Yasar and Reymond were given their dinner. After eating, they were not blindfolded again and were brought out of the *nipa* hut to a mango tree.[20] Later, Yasar and Reymond heard that the ransom

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[9] *Id.* at 64.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 65.

[15] Also referred to as ₱50 Million in the Information, *supra* note 3.

[16] *Id.* at 65.

[17] *Id.*

[18] *Id.* at 63.

[19] *Id.*

[20] *Id.*

money was given and everyone laughed in merriment.[21] On January 11, 2009, at around 1:00 a.m., Yasar and Reymond were brought to Brgy. Cataning in Hermosa, Bataan in a tricycle driven by Gallardo.[22] There, Yasar and Reymond were told to wait for Mohammed[23] who arrived about an hour later and brought them home.

Just hours later, that same day, the police asked Yasar and Reymond to accompany them to the place where they came from and there, they found the blindfold that was used.[24] Yasar and Reymond also showed the police the *nipa* hut where they were detained from January 9 to 11, 2009.[25] The police proceeded inside the *nipa* hut, found Sesenando, Gallardo, and Nestor, and immediately arrested them.[26] Therein, the police recovered, among others: the motorcycle helmet Yasar wore at the time of the abduction; cloth used as blindfold; metal chain with padlocks used to tie the victims' legs; 10 pieces of ₱500 bills; 50 pieces of ₱100 bills; a butterfly knife; and the brown envelope wherein the ransom money was placed.[27] Subsequently, Sesenando, Gallardo, and Nestor were brought to the Police Anti-Crime and Emergency Response (PACER) in Camp Crime.[28] There, an inventory revealed that the serial numbers of the bills seized from Sesenando and Nestor matched those of the ransom money.[29] At around 11:00 a.m., Leonardo surrendered himself to the authorities and upon search of his house, a multifold of bills in different denominations were retrieved.[30] Thereafter,

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 151.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 152.

[30] *Id.*

at about 12:30 p.m., the PACER team was able to locate Cristina's residence where they found Rammil and several bills in his possession — the serial numbers of which also matched those of the ransom money.[31] Cristina insisted on accompanying Rammil to the police station. The police asked for identification and when Cristina opened her bag, the law enforcers saw quite a number of ₱500 bills which, upon close inspection, matched the serial numbers of the ransom money.[32]

The evidence for the defense, succinctly synthesized by the CA, are as follows:

[Sesenando]'s defense.

From January 2, 2009, Sesenando was [in] Brgy. San Pedro, Hermosa, Bataan attending the wake of his uncle, Fidel Batulayan. It was only on January 10, 2009 at 6:00 p.m. that he went back to Sitio Palma, Brgy. Cataning, Hermosa, Bataan to tend to his plants and animals.

As Sesenando was nearing his hut, he saw Leonardo carrying a helmet, some chains, and rags. With Leonardo [was] a masked man accosting two (2) men who [were] blindfolded. The other man (who he later learned as accused Renato) pointed a gun at his head and said, *"Gagamitin ko itong ulo mo sa ayaw at sa gusto mo."* The men then took his cellular phone, watch, and machete *(itak)*. He went in his hut where he was guarded by the masked man until he fell asleep. Sesenando was woken up by noises from outside. He took a peek and saw his son, accused Gallardo, walking towards his house with one of the men pointing a gun at his back.

At 6:00 a.m. of January 11, 2009, Sesenando woke up to find that the men had left. When he went to the other hut, he saw the ten (10) pieces of 500[-]peso bills taken by the men from him. Sesenando was looking for his belongings when he was suddenly kicked on the back by a policeman. He was arrested and his huts were ransacked. He was held with the other accused at Camp Crame where accused Leonardo threatened him and his family not to say anything.

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[31] *Id.*

[32] *Id.* at 153.

[Gallardo]'s defense.

From 4:00 a.m. to 10:00 p.m. on January 9, 2009, Gallardo was plying his jeepney route from Orani to Dinalupihan, Bataan. He then attended a wake at Brgy. San Pedro, Hermosa, Bataan. On January 10, 2009, still from 4:00 a.m. to 10:00 p.m., Gallardo plied the same route. As evidence, Gallardo submitted a Certification by the president of HODJODA[33] attesting that he was working his usual route on both dates. When he went home on January 10, 2009, his mother asked him to go to Sitio Palma to bring a blanket and some medicine to his father, Sesenando, who was not feeling well. Gallardo travelled using his bicycle. Upon arriving at the area of his father's hut, Gallardo saw several men with their faces covered. One man (who he learned as accused Rammil) was calling someone through a cellular phone, while another pointed a gun at him asking his purpose in coming there. Gallardo was then escorted inside his father's hut where he saw Leonardo standing outside. Gallardo went inside, gave the medicine and blanket to his father, and fell asleep.

Around 6:15 a.m. of January 11, 2009, Gallardo was awakened by a police officer poking an M16 rifle on his head. Gallardo was punched and hit by a metal pipe by the police officers. He was also asked of the whereabouts of the other kidnappers. Gallardo answered that he did not know anything.

Gallardo was brought to Camp Crame where he was tortured for three (3) days. There, Leonardo confided to him that kidnapping [was] his job and cautioned him not to say anything to the authorities.

[Nestor]'s defense

On January 9, 2009, Nestor was in his house in Olongapo. At 5:30 p.m. on January 10, 2009, Nestor received a text message from her daughter, Flordeliza Martin (wife of Wilfredo Martin and daughter-in-law of [Sesenando]), asking his assistance in taking care of Flordeliza's sick daughter.

At 7:00 p.m. of the same date, Nestor arrived at Wilfredo's hut which is adjacent to Sesenando's two (2) huts at Sitio Palma, Brgy. Cataning, Hermosa, Bataan. After looking after his grandchild, Nestor ate supper and went to sleep.

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[33] Hermosa, Orani, Dinalupihan Jeepney Operators Drivers Association.

In the morning of January 11, 2009, Nestor was awakened by several men pointing their M16 rifles at him. Nestor was tied up, frisked, and the hut where he slept was searched. After a while, one of the men showed Nestor several bills claiming that they were found in his hut. Nestor denied involvement in the crime. Prior to the incident, Nestor said he did not know accused Leonardo, Rammil, Cristina and Renato.

[Cristina]'s defense.

On January 9, 2009 at 12:00 p.m., Cristina was in an LBC branch [in] Dinalupihan, Bataan to get a money remittance. She received PhP6,000.00 in 500[-]peso bills.

From 9:00 a.m. of January 10, 2009 until 5:00 a.m. of January 11, 2009, Cristina was at the Bataan Provincial Jail for a conjugal visit with a certain Jun Singh. Fernando Isidro and Noli Padilla, both inmates of Bataan Provincial Jail testified that they were assigned to list the jail visitors and they confirm[ed] that Cristina entered the jail on January 10, 2009 between 8:00-9:00 a.m. and left the following day. Reynaldo Pineda, Jail Officer of Bataan Provincial Jail also attested that Cristina was a frequent visitor of Jun Singh and although he did not personally witness Cristina signing her name on the visitor's log book, he remembered her arriving at the jail on January 10, 2009 and leaving only the next day between 5:00-5:45 a.m. Riza Fuentez, Senior Jail Officer of Bataan District Jail, however testified that there [was] no certification for the release of the logbook for Cristina or to her counsel.

After leaving the jail, she went to the market before going home at around 8:00 a.m. While at her house, she heard a commotion outside. She investigated and saw Rammil kneeling in her garage. A police officer was pointing a gun at him. The police officers then asked Cristina if they could search her house. She consented but the officers did not find anything. Rammil was taken away but Cristina insisted that she accompany him. At the Hermosa precinct, Rammil was beaten up by the police officers. A certain police officer named Marcelino then ordered Cristina to give him her bag. She yielded and Marcelino took the money she withdrew from LBC.

[Leonardo]'s defense

On January 11, 2009, from 11:00 a.m. to 12:00 noon, Leonardo was in his house at Brgy. Balsik, Hermosa, Bataan. A police officer entered his house and pointed a gun at his children and wife. The police

officers were accompanied by someone who pointed to him as one of the kidnappers. Leonardo was invited to the police station and the officers ordered him to surrender his belongings. The officers searched his house, but they did not find anything. He demanded from them a search warrant but they just dismissed him. [Leonardo] was taken to the police station in Bataan and then to the PACER office in Camp Crame.

[Rammil]'s defense.

Rammil got acquainted with Cristina because her son, Richie Mendoza, is his friend. He helps Cristina collect loan payments. Rammil denied ownership of the recovered money.[34] x x x

The RTC Ruling

In convicting the accused-appellants, the RTC held that the prosecution was able to satisfactorily establish, by testimonial and documentary evidence, all the elements of Kidnapping for Ransom under Article 267 of the RPC, as amended by Republic Act (R.A.) No. 7659.[35] Moreover, the RTC found that 1) the identities of accused-appellants; 2) their respective participation; and 3) the fact that demands were made for the delivery of ransoms money for the release of the victims were all adequately proven.[36] Further, the RTC gave credence to the positive identification and detailed narrations of Yasar and Reymond over the bare denials and weak alibis of the accused-appellants.

Thus, on March 29, 2016, the RTC rendered its Decision finding Sesenando, Gallardo, Leonardo, Nestor, Rammil and Cristina guilty as charged, the *fallo* of which read:

WHEREFORE, the Court renders judgment finding the accused [Sesenando], [Gallardo], [Leonardo], [Nestor], [Rammil], and [Cristina] GUILTY beyond reasonable doubt of the crime of kidnapping for ransom defined and penalized under Republic Act No. 7659. Pursuant to Republic Act No. 9346, they are hereby sentenced to suffer the

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[34] CA *Rollo*, pp. 153-156.

[35] *Id.* at 84.

[36] *Id.* at 85.

prison term of *RECLUSION PERPETUA* without eligibility for parole. All the accused are credited in full of the preventive imprisonment they have already served in confinement.

Further, the above-named accused are sentenced to pay, jointly and severally, [Yasar] the amount of [PhP]11,000.00 and [Reymond] the amount of [PhP]7,250.00 as actual damages, and to each of the victims [Yasar] and [Reymond] civil indemnity of [PhP]100,000.00, moral damages of [PhP]100,000.00, and exemplary damages of [Php]100.000.00. The foregoing amounts shall earn interest at the rate of six percent (6%) per annum from the date of finality of judgment until fully paid.

The case against [Renato] is DISMISSED by reason of his death.

SO ORDERED.[37]

Aggrieved, Sesenando, Gallardo, Nestor, and Cristina filed their Notice of Appeal on April 7, 2016;[38] whilst Rammil appealed[39] through counsel on April 11, 2016.

The CA Ruling

At the outset, the CA noted that counsel for Rammil failed to file an Appellant's Brief within the period provided in the Notice to File Brief.[40] Hence, Rammil's appeal was *motu proprio* dismissed by the CA thereby rendering his conviction final.[41] The CA clarified that Rammil's appeal, even if granted, would fail just the same.[42]

The CA then went on to affirm the conviction meted by the RTC upon accused-appellants. In upholding the conviction of the accused-appellants, it agreed with the RTC that all the elements of the crime charged were duly proven. It found that

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[37] *Id.* at 91.

[38] *Id.* at 21.

[39] *Id.* at 22.

[40] *Id.* at 33.

[41] *Id.* at 158.

[42] *Id.*

the totality of the evidence presented clearly showed that Yasar and Reymond "were deprived of their liberty when they were forcibly dragged towards a red Mitsubishi Adventure car where they were blindfolded, brought to a safe house, their feet chained and were not allowed to leave the hut."[43] Moreover, according to the CA, it was undisputed that Yasar and Reymond were abducted in Pilar, Bataan and such fact was even stipulated during the pre-trial.[44] It pointed out that the defense's own witness testified that he (Sesenando) saw two men who were blindfolded being accosted by Leonardo, Renato, and several masked men towards a hut.[45] Verily, for the CA, the victims' account of their abduction was corroborated on material points by no less than the testimonies of both the prosecution and one of the defense's witnesses.[46] Finally, the CA held that the defense's denials and respective alibis were debunked by the positive identification made by the victims and other prosecution witnesses.[47]

And so, in the dispositive portion of the herein assailed Decision dated July 27, 2018, the CA wrote:

> **WHEREFORE**, the instant appeal is **[DISMISSED]**. The assailed Decision dated March 29, 2016 of Branch 2, [RTC] of Balanga City, Bataan in Criminal Case No. 11684 is hereby **AFFIRMED**.
>
> **SO ORDERED**.[48]

Consequently, the accused-appellants filed their Notice of Appeal[49] on September 5, 2018. Thereafter, in a Resolution[50]

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[43] *Id.* at 159.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 164.

[48] *Id.* at 166.

[49] *Id.* at 171.

[50] *Rollo*, pp. 35-36.

dated August 14, 2019, the Court required the parties to file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested[51] that they are adopting their respective briefs filed before the CA.

In their Brief, accused-appellants assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT SUFFICIENT EVIDENCE EXIST TO ESTABLISH BEYOND REASONABLE DOUBT THE IDENTITIES OF THE ACCUSED-APPELLANTS AS PERPETRATORS OF THE CRIME.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS X X X WHEN THEIR GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[52]

The Court's Ruling

The Court finds no merit in the present appeal.

Accused-appellants were charged and convicted under Article 267 of the RPC, as amended by R.A. No. 7659,[53] which states:

ART. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

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[51] *Id.* at 50-58.

[52] CA *rollo*, p. 42.

[53] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES. Approved December 13, 1993.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

From the foregoing, the following elements can be deduced: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: *i*) the kidnapping or detention lasts for more than three days; *ii*) it is committed by simulating public authority; *iii*) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or *iv*) the person kidnapped or detained is a minor, female, or a public officer.[54] Significantly, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.[55]

After a painstaking review of the case, the Court finds no cogent reason to deviate from the common findings of the RTC and the CA, and their respective calibration of the credibility of the witnesses presented especially since both were in the best position to assess them. The Court is most certainly convinced that the prosecution has proven with moral certainty that it

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[54] *People v. Kamir*, 817 Phil. 698, 708 (2017).

[55] *People v. Pagalasan*, 452 Phil. 341, 362 (2003).

was accused-appellants who conspired to kidnap the victims Yasar and Reymond, and they did so for the purpose of extorting money from Yasar's father. Moreover, the collective testimonies of the prosecution witnesses — mainly that of the victims — unmistakably and positively identified the assailants and narrated in detail the events that transpired from the moment they were abducted in the morning of January 9, 2009, up to their release on January 11, 2009.

Further, as correctly ruled by the CA, accused-appellants' denials and alibis are inherently weak defenses and thus, cannot be given greater evidentiary weight than the positive declaration by credible witnesses. The Court defers to the conclusion of the CA in this regard:

> Sesenando maintains that he was [in] San Pedro, Hermosa, Bataan from January 2-10, 2009 attending the wake of a relative, Fidel Batulayan [Batulayan]. Gallardo also testified that he attended said wake on the evening of January 9, 2009. The prosecution however pointed out that Batulayan was buried on January 6, 2009 per [his] Death Certificate x x x. This belies Sesenando and Gallardo's defense that they were at a wake in San Pedro when the kidnapping occurred.
>
> x x x x x x x x x
>
> Nestor's alibi that he was [in] Olongapo on January 9, 2009 and that he was summoned by his daughter, Flordeliza, on January 10, 2009 to attend to a sick grandchild is also specious. x x x
>
> More telling is Flordeliza's *Sinumpaang Salaysay* dated January 23, 2009 which contradicts Sesenando, Gallardo and Nestor's alibis. Flordeliza narrated that: Nestor arrived at their hut [in] Sitio Palma, Hermosa, Bataan on January 8, 2009; on the same date Nestor, together with Flordeliza, Violeta, Sesenando and Gallardo went to the wake of [Batulayan] x x x; on January 9, 2009 at 11:00 a.m., Flordeliza, together with her children, Sesenando, Violeta, and Nestor went home to Sitio Palma; upon arriving at their hut they saw armed men who detained them[.] x x x
>
> To add more confusion, Violeta x x x narrated that: on January 9, 2009, she and Sesenando were at Batulayan's wake x x x; that in the afternoon of the same date, Sesenando received a text message from Flordeliza asking Sesenando to return to Sitio Palma, Hermosa Bataan

because some unknown men were at their hut; Sesenando immediately returned to Sitio Palma[.] x x x

These material inconsistencies x x x dilute the probative weight of Sesenando, Gallardo, and Nestor's denials and alibis and engenders serious doubts as to their reliability and veracity.

As to Cristina's alibi, the defense was unable to show that it was physically impossible for Cristina to be at the safe house [in] Sitio Palma [in] the afternoon of January 10, 2009. x x x Cristina insists that she was at the Bataan Provincial Jail for a conjugal visit from 9:00 a.m. on January 9, 2009 until the following day at 5:00 a.m. x x x However, as observed by the RTC, the exact whereabouts of Cristina between the hours of 9:00 a.m. of January 10, 2009 to 5:00 a.m. of January 11, 2009 [was] unaccounted for. [The] Bataan Provincial Jail is about 20 to 25 kilometers away from [Bgry.] Cataning, Hermosa, Bataan. Such distance can be traversed in less than 30 minutes by a motorized vehicle. Thus, it was not physically impossible for Cristina to be at the *locus criminis* at the time of the incident. In addition, positive identification by [Yasar] and [Reymond] that she was at the safe house on x x x January 10, 2009 destroys her defense of alibi x x x.

Accused [Leonardo] and accused-appellant Rammil offered nothing but their bare denial x x x[56]

Absent any showing that the RTC or the CA overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, their assessment of the credibility of witnesses deserves high respect by the Court.

All told, the elements of kidnapping, as embodied in Article 267 of the RPC, as amended, and the existence of conspiracy having been sufficiently proven in the case at bench, the Court sustains the decision of the CA.

Anent the penalty, the RTC and the CA correctly imposed upon accused-appellants the penalty of *reclusion perpetua* in view of R.A. No. 9346.[57]

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[56] CA *Rollo*, pp. 162-164.

[57] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved on June 24, 2006.

WHEREFORE, premises considered, the present appeal is **DISMISSED**. The Decision dated July 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08257 which upheld the Decision dated March 29, 2016 of the Regional Trial Court of Balanga City, Bataan, Branch 2 in Criminal Case No. 11684, is hereby **AFFIRMED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 251954. June 10, 2020]

IN RE: IN THE MATTER OF THE ISSUANCE OF A WRIT OF HABEAS CORPUS OF INMATES RAYMUNDO REYES AND VINCENT B. EVANGELISTA, duly represented by Atty. Rubee Ruth C. Cagasca-Evangelista, in her capacity as wife of Vincent B. Evangelista and counsel of both inmates, *Petitioners, vs.* **BUCOR CHIEF GERALD BANTAG, in his capacity as Director General of Bureau of Corrections of New Bilibid Prison, Bureau of Corrections and all those persons in custody of the inmates Raymundo Reyes and Vincent B. Evangelista,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; MERE CONCURRENCY OF JURISDICTION IN THE ISSUANCE OF A WRIT OF *HABEAS CORPUS* DOES NOT AFFORD PARTIES ABSOLUTE FREEDOM TO CHOOSE THE COURT WITH WHICH THE PETITION SHALL BE FILED. — The Rules

of Court provide that "[e]xcept as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." An application for a writ of *habeas corpus* may be made through a petition filed before this Court or any of its members, the Court of Appeals (CA) or any of its members in instances authorized by law, or the RTC or any of its presiding judges. In the absence of all the RTC judges in a province or city, any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge may hear and decide petitions for a writ of *habeas corpus* in the province or city where the absent RTC judges sit. Hence, this Court has concurrent jurisdiction, along with the CA and the trial courts, to issue a writ of *habeas corpus*. However, mere concurrency of jurisdiction does not afford parties absolute freedom to choose the court with which the petition shall be filed. Petitioners should be directed by the hierarchy of courts. After all, the hierarchy of courts "serves as a general determinant of the appropriate forum for petitions for the extraordinary writs."

2. ID.; ID.; ID.; DIRECT RESORT TO THE SUPREME COURT WILL NOT BE ENTERTAINED UNLESS THE REDRESS DESIRED CANNOT BE OBTAINED IN THE APPROPRIATE LOWER COURTS, AND EXCEPTIONAL AND COMPELLING CIRCUMSTANCES JUSTIFY THE AVAILMENT OF THE EXTRAORDINARY REMEDY OF THE WRIT OF *CERTIORARI*, CALLING FOR THE EXERCISE OF ITS PRIMARY JURISDICTION. — [I]t must be stressed that as a matter of policy, direct resort to this Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances, such as in cases involving national interest and those of serious implications, justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction. Not one of these exceptional and compelling circumstances, however, were even alleged or shown in order for the Court to disregard the sanctity of the hierarchy of courts.

3. ID.; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; THE WRIT OF *HABEAS CORPUS* WILL NOT BE ALLOWED IF A PERSON ALLEGED TO BE RESTRAINED IN HIS LIBERTY

IS IN THE CUSTODY OF AN OFFICER UNDER PROCESS ISSUED BY A COURT OR JUDGE, OR BY VIRTUE OF A JUDGMENT OR ORDER OF A COURT OF RECORD. — A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint that will preclude freedom of action is sufficient. The rule is that if a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, the writ of *habeas corpus* will not be allowed x x x [, pursuant to] Section 4, Rule 102 of the Revised Rules of Court x x x. In this case, the confinement of Reyes and Evangelista at the New Bilibid Prison in Muntinlupa City is valid pursuant to a lawful judgment. They were convicted for violation of Section 15, RA 6425, as amended by RA 7659, and the affirmation of their conviction was decreed by no less than this very Court.

4. ID.; ID.; ID.; THE WRIT OF *HABEAS CORPUS* MAY ALSO BE AVAILED OF AS A POST-CONVICTION REMEDY UNDER EXTRAORDINARY CIRCUMSTANCES, BUT MERE INVOCATION THAT AN EXTRAORDINARY CIRCUMSTANCE EXISTS IS NOT ENOUGH. — We are aware that the writ of *habeas corpus* may also be availed of as a post-conviction remedy when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: 1) there has been a deprivation of a constitutional right resulting in the restraint of a person; 2) the court had no jurisdiction to impose the sentence; or 3) **the imposed penalty has been excessive, thus voiding the sentence as to such excess**. Here, petitioner invokes the third circumstance. When the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a *habeas corpus* proceeding is considerably narrowed. As a high prerogative writ which furnishes an extraordinary remedy, the writ of *habeas corpus* may be invoked only under extraordinary circumstances. Mere invocation that an extraordinary circumstance exists is not enough, as in this case. x x x [T]here is no dispute that death penalty has been abolished. This does not mean, however, that the penalties imposed under RA 7956, apart from death, have

likewise been repealed. Upon a reading of the law, only the imposition of the death penalty has been removed, and RA 7659, as well as other laws, are repealed or amended insofar as they impose the death penalty. Section 2 of RA 9346 provides the appropriate penalty in lieu of death: *reclusion perpetua*, when the law violated makes use of the nomenclature of the Revised Penal Code; or life imprisonment, when the law violated does not make use of the said nomenclature. Evidently, RA 9346 did not repeal the amendment introduced in RA 7659 imposing the penalty of *reclusion perpetua* in cases of illegal sale of dangerous drugs. As such, the imposition of the penalty of imprisonment of *reclusion perpetua* against Reyes and Evangelista is valid.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; RULES AND REGULATIONS ISSUED BY ADMINISTRATIVE BODIES TO INTERPRET THE LAW WHICH THEY ARE ENTRUSTED TO ENFORCE ARE ENTITLED TO GREAT RESPECT, FOR THEY PARTAKE OF THE NATURE OF A STATUTE AND HAVE IN THEIR FAVOR A PRESUMPTION OF LEGALITY. — On the issue of the applicability of RA 10592, Section 2, Rule IV of the 2019 Revised Implementing Rules and Regulations of Republic Act No. 10592, "An Act Amending Articles 29, 94, 97, 98, and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code," (2019 IRR), issued by the Department of Justice (DOJ) and the Department of the Interior and Local Government (DILG), provides x x x that PDLs convicted of heinous crimes shall not be entitled to GCTA. Section 1 of RA 10592, amending Article 29 of the RPC, supports this x x x. Reyes and Evangelista, who were found guilty of illegal sale of dangerous drugs exceeding 200 grams, have committed a heinous crime. This is in consonance with RA 7659, which includes the distribution or sale of dangerous drugs as heinous for being a grievous, odious and hateful offense and which, by reason of its inherent or manifest wickedness, viciousness, atrocity and perversity is repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society. Rules and regulations issued by administrative bodies to i nterpret the law which they are entrusted to enforce, such as the 2019 IRR issued by the DOJ and the DILG, have the

> force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.

APPEARANCES OF COUNSEL

Rubee Ruth Cagasca-Evangelista for Vincent B. Evangelista and Raymundo Reyes.

Office of the Solicitor General for respondents.

R E S O L U T I O N

ZALAMEDA, *J.*:

Before the Court is a Petition for the Issuance of Writ of *Habeas Corpus* praying for: 1) the issuance of a writ of *habeas corpus* directing respondent Gerald Bantag, as Director General of the Bureau of Corrections, to make a return thereon, showing legal authority to detain Raymundo Reyes (Reyes) and Vincent B. Evangelista (Evangelista), persons deprived of liberty (PDLs), and to present them personally before the Court; and 2) for the release of Reyes and Evangelista from incarceration at the New Bilibid Prison in Muntinlupa City.

Petitioner, Atty. Rubee Ruth C. Cagasca-Evangelista (petitioner), the wife of Evangelista, filed the instant petition as counsel for her husband and Reyes. She alleges that Reyes and Evangelista were convicted[1] by Branch 103, Regional Trial Court (RTC) of Quezon City on 14 December 2001 for violation of Section 15, Article III, Republic Act No. (RA) 6425,[2] as amended, for the illegal sale of 974.12 grams of

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[1] *Rollo*, pp. 13-16.

[2] The Dangerous Drugs Act of 1972.

methylamphetamine hydrochloride, or *shabu*, acting in conspiracy with one another, and were sentenced to suffer the penalty of *reclusion perpetua* and to pay the amount of Php 500,000.00 each. The penalty was made in accordance with the amendment introduced by RA 7659,[3] which increased the penalty of imprisonment for illegal sale of drugs from six (6) years and one (1) day to twelve (12) years, to *reclusion perpetua* to death for 200 grams or more of *shabu*. The said conviction was affirmed by the Supreme Court in a Decision[4] dated 27 September 2007.

More than a decade after the affirmation of Reyes and Evangelista's conviction by the Supreme Court, petitioner now claims that with the abolition of the death penalty,[5] and the repeal of the death penalty in RA 7659 as a consequence, the penalty for illegal sale of drugs should be reverted to that originally imposed in RA 6425, or from *reclusion perpetua* in RA 7659 to six (6) years and one (1) day to twelve (12) years in RA 6425. According to her, "if the convicts will serve the penalty of *RECLUSION PERPETUA*[,] it is as (*sic*) the same as punishing them to (*sic*) a crime that is not existing anymore. And said [penalty] will [be] tantamount to deprivation of their life and liberty and will not be fair and just in the eyes of man and law."[6]

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[3] Pursuant to Section 14, RA 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, other Special Penal Laws and for other Purposes) amended Section 15, Article II of RA 6425 to read as follows:

"Sec. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. xxx."

[4] *Rollo*, pp. 18-34; *People v. Evangelista*, 560 Phil. 510-522 (2007); G.R. No. 175281, 27 September 2007.

[5] RA 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[6] *Rollo*, p. 6.

Further, petitioner insists that both Reyes and Evangelista have already served 19 years and 2 months, or more than 18 years if the benefit of Good Conduct Time Allowance (GCTA) under RA 10592[7] was to be considered. And, with the benefit of the GCTA, which may be applied retroactively,[8] both Reyes and Evangelista have already served more than the required sentence imposed by law.

The primary consideration is the propriety of the petition for the issuance of the writ of *habeas corpus*.

We answer in the negative.

As a preliminary matter, we point out that petitioner disregarded the basic rules of procedure. There is no verified declaration of electronic submission of the soft copy of the petition. The required written explanation of service or filing under Section 11, Rule 13 of the Rules of Court is also patently lacking.

Second, petitioner disregarded the hierarchy of courts.

The Rules of Court provide that "[e]xcept as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."[9]

An application for a writ of *habeas corpus* may be made through a petition filed before this Court or any of its members, the Court of Appeals (CA) or any of its members in instances authorized by law, or the RTC or any of its presiding judges.[10]

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[7] An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code.

[8] *Rollo*, p. 6; *Inmates of the New Bilibid Prison, Muntinlupa City v. Secretary Leila N. De Lima*, G.R. Nos. 212719 and 214637, 25 June 2019.

[9] Rule 102, Section 1.

[10] *In re: Salibo v. Warden*, G.R. No. 197597, 08 April 2015, 755 SCRA 296, 308.

In the absence of all the RTC judges in a province or city, any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge may hear and decide petitions for a writ of *habeas corpus* in the province or city where the absent RTC judges sit.[11]

Hence, this Court has concurrent jurisdiction, along with the CA and the trial courts, to issue a writ of *habeas corpus*. However, mere concurrency of jurisdiction does not afford parties absolute freedom to choose the court with which the petition shall be filed.[12] Petitioners should be directed by the hierarchy of courts. After all, the hierarchy of courts "serves as a general determinant of the appropriate forum for petitions for the extraordinary writs."[13]

In the landmark case of *Gios-Samar, Inc., v. DOTC*,[14] the Supreme Court ruled that direct recourse to this Court is proper only to seek resolution of questions of law, and not issues that depend on the determination of questions of facts:

> In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus* (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. **Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies.**

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[11] See Batas Pambansa Blg.(BP) 129, The Judiciary Reorganization Act of 1980, Section 35.

[12] *Agcaoili, Jr. v. Fariñas*, G.R. No. 232395, 03 July 2018.

[13] *Id.* Citing *Chamber of Real Estate and Builders Assn. (CREBA) v. Sec. of Agrarian Reform*, 635 Phil. 283, 300 (2010) citing *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 432 (2005), unless you write citations omitted.

[14] G.R. No. 217158, 12 March 2019.

This is the *raison d'etre* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised. (Emphasis supplied)

At first blush, petitioner seeks to raise a question of law — whether or not the abolition of the death penalty in RA 9346 reverted the penalty for illegal sale of *shabu* from RA 7659 to RA 6425 prior to its amendment, thus placing the question within the jurisdiction of this Court. The real question, however, is the release of Reyes and Evangelista from detention based on the alleged service of their sentences pursuant to RA 10592, which requires a determination of facts, *i.e.*, if said PDLs are entitled to the benefit of GCTA. On this ground alone, the petition must be dismissed.

At any rate, it must be stressed that as a matter of policy, direct resort to this Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances, such as in cases involving national interest and those of serious implications, justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction.[15] Not one of these exceptional and compelling circumstances, however, were even alleged or shown in order for the Court to disregard the sanctity of the hierarchy of courts.

Procedural considerations aside, the Court still finds the petition wanting in merit.

A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint

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[15] *Yee v. Bernabe*, G.R. No. 141393, 19 April 2006, 487 SCRA 385, 394.

that will preclude freedom of action is sufficient.[16] The rule is that if a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, the writ of *habeas corpus* will not be allowed.[17] Section 4, Rule 102 of the Revised Rules of Court provides:

> Section 4. *When writ not allowed or discharge authorized*. — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In this case, the confinement of Reyes and Evangelista at the New Bilibid Prison in Muntinlupa City is valid pursuant to a lawful judgment. They were convicted for violation of Section 15, RA 6425, as amended by RA 7659, and the affirmation of their conviction was decreed by no less than this very Court.

We are aware that the writ of *habeas corpus* may also be availed of as a post-conviction remedy when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: 1) there has been a deprivation of a constitutional right resulting in the restraint of a person; 2) the court had no jurisdiction to impose the sentence; or 3) **the imposed penalty has been excessive, thus voiding the sentence as to such excess**.[18] Here, petitioner invokes the third circumstance.

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[16] *Garcia v. De Lima*, G.R. No. 207034 (Notice), 09 November 2015.

[17] *Barredo v. Vinarao*, 555 Phil. 823-831(2007); G.R. No. 168728, 02 August 2007, 529 SCRA 120, 124-125.

[18] *In re: Abellana v. Paredes*, G.R. No. 232006, 10 July 2019.

When the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a *habeas corpus* proceeding is considerably narrowed.[19] As a high prerogative writ which furnishes an extraordinary remedy, the writ of *habeas corpus* may be invoked only under extraordinary circumstances.[20] Mere invocation that an extraordinary circumstance exists is not enough, as in this case.

As claimed by petitioner, there is no dispute that death penalty has been abolished. This does not mean, however, that the penalties imposed under RA 7956, apart from death, have likewise been repealed. Section 1 of RA 9346, An Act Prohibiting the Death Penalty in the Philippines, provides:

> SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed, **Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.**

Upon a reading of the law, only the imposition of the death penalty has been removed, and RA 7659, as well as other laws, are repealed or amended insofar as they impose the death penalty. Section 2 of RA 9346 provides the appropriate penalty in lieu of death: *reclusion perpetua*, when the law violated makes use of the nomenclature of the Revised Penal Code; or life imprisonment, when the law violated does not make use of the said nomenclature. Evidently, RA 9346 did not repeal the amendment introduced in RA 7659 imposing the penalty of *reclusion perpetua* in cases of illegal sale of dangerous drugs. As such, the imposition of the penalty of imprisonment of *reclusion perpetua* against Reyes and Evangelista is valid.

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[19] *Id.*

[20] *De Villa v. The Director, New Bilibid Prison*, 485 Phil. 368-395 (2004); G.R. No. 158802, 17 November 2004, 442 SCRA 706, 721.

On the issue of the applicability of RA 10592, Section 2, Rule IV of the 2019 Revised Implementing Rules and Regulations of Republic Act No. 10592, "An Act Amending Articles 29, 94, 97, 98, and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code," (2019 IRR), issued by the Department of Justice (DOJ) and the Department of the Interior and Local Government (DILG), provides:

> Section 2. *GCTA During Service of Sentence*. — The good conduct of a PDL convicted by final judgment in any penal institution, rehabilitation or detention center or any other local jail shall entitle him to the deductions described in Section 3 hereunder, as GCTA, from the period of his sentence, pursuant to Section 3 of RA No. 10592.
>
> **The following shall not be entitled to any GCTA during service of sentence:**
>
> a. Recidivists;
>
> b. Habitual Delinquents;
>
> c. Escapees; and
>
> d. **PDL convicted of Heinous Crimes.**

It is clear from the aforequoted provision that PDLs convicted of heinous crimes shall not be entitled to GCTA. Section 1 of RA 10592, amending Article 29 of the RPC, supports this:

> x x x *Provided, finally,* that **recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act**. (Emphasis supplied)

Reyes and Evangelista, who were found guilty of illegal sale of dangerous drugs exceeding 200 grams, have committed a heinous crime. This is in consonance with RA 7659, which includes the distribution or sale of dangerous drugs as heinous for being a grievous, odious and hateful offense and which, by reason of its inherent or manifest wickedness, viciousness, atrocity and perversity is repugnant and outrageous to the common

standards and norms of decency and morality in a just, civilized and ordered society.[21]

Rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, such as the 2019 IRR issued by the DOJ and the DILG, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.[22]

Accordingly, the writ cannot be issued and the discharge of Reyes and Evangelista from imprisonment should not be authorized.

WHEREFORE, the petition is hereby **DISMISSED**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Carandang*, and *Gaerlan, JJ.*,[*] concur.

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[21] Second Whereas Clause of RA 7659.

[22] *Landbank of the Philippines v. Heirs of Tañada*, 803 Phil. 103-115 (2017); G.R. No. 170506, 11 January 2017, 814 SCRA 117, 127.

[*] Reorganization of the Three Divisions of the Court and Designation of the Chairpersons and Members thereof per Special Order No. 2762 dated 10 January 2020.

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registered in another person's name, to its rightful and legal owner, or to one with a better right. (*Id.*)

Moot and academic cases — A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. (The Department of Trade and Industry, represented by its Secretary, *et al. vs.* Enriquez, G.R. No. 225301, June 2, 2020) p. 208

ADMINISTRATIVE LAW

Administrative Code of 1987 — Provisions of the Administrative Code unambiguously provide for the Department Secretary's disciplinary jurisdiction over officers and employees under him in accordance with law; a bureau director, which heads a mere subdivision of a department, is under the Department Secretary's disciplinary supervision; it is important to emphasize that the aforequoted provisions made no distinction between presidential and non-presidential appointees with regard to the Secretary's disciplinary jurisdiction. (The Department of Trade and Industry, represented by its Secretary, *et al. vs.* Enriquez, G.R. No. 225301, June 2, 2020) p. 208

— The Administrative Code provides for the organization and maintenance of several departments as are necessary for the functional distribution of the work of the President; each department shall have jurisdiction over bureaus, offices, regulatory agencies, and government-owned or -controlled corporations assigned to it by law; the authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department. (*Id.*)

— The administrative structure of our government is laid down in the Administrative Code of 1987; pursuant to Section 1, Article VII of the 1987 Constitution, Section 11, Chapter 3, Book II of the Administrative Code provides that the executive power shall be vested in the President of the Philippines; needless to say, not every task in the

of the same for correction; Sections 3 and 4, Rule V of the same law mandates the Bureau of Corrections to assess and compute the time allowance due to the prisoners; Section 5, Rule V of said law requires the use of computer-generated template, capable of incorporating time allowances that may be granted to detainees and prisoners alike, to monitor their progress. (*Id.*)

— The indispensability of an executive approval is further highlighted by the 1987 Constitution, expressly vesting upon the President the exclusive prerogative to grant acts of clemency; in *Tiu*, the Court elucidated that the reduction of a prisoner's sentence is a form of partial pardon, which entails the exercise of the President's constitutionally-vested authority. (*Id.*)

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Distinguished from the Law on Government Procurement (R.A. No. 9184) — Section 10, Article IV, in relation to paragraphs (n) and (o), Section 5, Article I, of RA 9184, mandates that "all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or-controlled corporations, government financial institutions, and local government units shall be done through competitive bidding"; "this is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding"; as a procurement of consulting services made for the benefit of the Pasig City Government as a procuring entity, the transaction in question fell within the scope of RA 9184, and absent the applicability of any of the recognized exceptions to such rule, as in this case, the same should have been the subject of a competitive bidding. (People *vs.* Naciongayo, G.R. No. 243897, June 8, 2020) p. 664

disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored; absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. (Prieto, *et al. vs.* Cajimat, G.R. No. 214898, June 8, 2020) p. 409

Petition for review on certiorari to the Supreme Court under Rule 45 — A petition for review on *certiorari* under Rule 45 is limited only to questions of law; as a rule, We do not review factual questions raised under Rule 45 as it is not Our function to analyze or weigh evidence already considered in the proceedings below. (2100 Customs Brokers, Inc. *vs.* Philam Insurance Company [now AIG Philippines Insurance Inc.], G.R. No. 223377, June 10, 2020) p. 844

— A petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law; for a question to be one of law, it must not involve an examination of the probative value of the evidence presented by any of the litigants. (Prieto, *et al. vs.* Cajimat, G.R. No. 214898, June 8, 2020) p. 409

— It is settled that a petition for review on *certiorari* under Rule 45 is a mode of appeal where the issue is limited to questions of law; as such, the Court will not review the factual findings of the lower tribunals, or re-examine the evidence already passed upon in the proceedings below; this is especially true when the findings of facts of the labor tribunals were affirmed by the CA. (Pastrana *vs.* Bahia Shipping Services, G.R. No. 227419, June 10, 2020) p. 892

— Only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, and that, as a rule, factual findings of the lower courts are generally considered final and binding on this Court; as an exception, however, when there is a misapprehension of facts or when inferences drawn from the facts are manifestly mistaken, the Court is empowered to pass upon factual issues, as in this case.

most especially when the CA, NLRC and Labor Arbiter speak as one in their findings and conclusions. (Tuppil, Jr., *et al. vs.* LBP Service Corporation, G.R. No. 228407, June 10, 2020) p. 910

— Under Section 1, Rule 45, petitions of this kind shall raise only questions of law; the factual findings are binding upon us and only questions of law, and only from the Court of Appeals' disposition, may be litigated once again; the Court is not obliged to weigh the evidence once again; while jurisprudence has laid down exceptions to this rule, any of these exceptions must be alleged, substantiated, and proved by the parties so the Court may in its discretion evaluate and review the facts of the case. (Sosmeña *vs.* Bonafe, *et al.*, G.R. No. 232677, June 8, 2020) p. 500

— Viewed as a petition for review for *certiorari*, it is clear that the issues raised are factual in nature and is beyond the ambit of this mode of appeal; as well, the errors assigned herein pertain to uniform factual findings of the RTC and the CA; these, as a rule, are "accorded the highest respect and are generally not disturbed by the appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted." (Nacario *vs.* People, G.R. No. 222387, June 8, 2020) p. 450

— Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 of the Rules of Court is limited to reviewing errors of law allegedly committed by the CA; factual findings of the trial courts, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect, if not conclusive effect, especially if such findings are affirmed by the CA. (Saulo *vs.* People, *et al.*, G.R. No. 242900, June 8, 2020) p. 630

Record on appeal — Under Section 2(a), Rule 41 of the Rules of Court, "no record on appeal shall be required except

— When the motion for reconsideration was denied he, likewise, failed to file a notice of appeal; because of this, the judgment has attained finality and judgment was executed against complainant; without a doubt, this exhibits his inexcusable lack of care and diligence in managing his client's cause in violation of Canon 18, and Rule 18.03 of the CPR; as such, he neglected the legal matters entrusted to him for which he must be clearly held administratively liable. (*Id.*)

BILL OF RIGHTS

***Right to speedy disposition of cases* —** In *Cagang*, the Court held that in cases where the burden of proof has shifted to the prosecution, the prosecution must be able to prove the following: *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay. (Javier, *et al*. *vs.* Sandiganbayan, *et al.*, G.R. No. 237997, June 10, 2020) p. 951

— Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides that the investigating prosecutor has 10 days "after the investigation to determine whether or not there is sufficient ground to hold the respondent for trial"; this 10-day period may seem short or unreasonable from an administrative standpoint; however, given the Court's duty to balance the right of the State, to prosecute violations of its laws, *vis-à-vis* the rights of citizens to speedy disposition of cases, the Court rules that citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure; as the preliminary investigation was terminated beyond the 10-day period provided in the Revised Rules of Criminal Procedure, the burden of proof thus shifted towards the prosecution to prove that the delay was not unreasonable. (*Id.*)

under the expanded jurisdiction were exhaustively discussed by the Court *En Banc* in the case of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. Department of Health;* one of the material distinctions is the cited ground; a *certiorari* petition under Rule 65 of the Rules of Court speaks of lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, while the remedy under the court's expanded jurisdiction expressly mentions only grave abuse of discretion amounting to lack or excess of jurisdiction*;* the distinction is apparently not legally significant as to what remedy should be resorted to, traditional or expanded, when the case involves an action with grave abuse of discretion; when, however, lack of jurisdiction is involved, no consideration is made as to how the government entity exercised its function. (The Department of Trade and Industry, represented by its Secretary, *et al. vs.* Enriquez, G.R. No. 225301, June 2, 2020) p. 208

— Petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court have long been used as remedies to keep lower courts within the confines of their granted jurisdictions; the 1987 Constitution, however, introduced the "expanded" scope of judicial power. (*Id.*)

— *Quasi*-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it; it involves the power to hear and determine questions of fact and, after such determination, to decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof; in the performance of *quasi*-judicial, and of course judicial, acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties. (*Id.*)

— The COA's jurisdiction over final money judgments rendered by the courts pertains only to the execution stage; the COA's authority lies in ensuring that public funds are not diverted from their legally appropriated purpose to answer for such money judgments; and rightly so since the COA is tasked to guarantee that the enforcement of these final money judgments be in accord with auditing laws which it ought to implement. (*Id.*)

— There is nothing in the Constitution, laws, or even the COA rules expressly granting the COA original *and exclusive* jurisdiction over money claims due from or owing to the government; for one, Batas Pambansa Blg. 129 as amended by RA 7691 vests jurisdiction over money claims in the first and second level courts; actions against the State are not excluded from the jurisdiction of the courts. (*Id.*)

— Two types of money claims which may be brought to the COA, distinguished: the first type covers money claims originally filed with the COA; jurisprudence specifies the nature of the money claims which may be brought to the COA at first instance; the second type of money claims refers to those which arise from a final and executory judgment of a court or arbitral body; he also correctly cited *Uy*, reiterating our undeviating jurisprudence that final judgments may no longer be reviewed or, in any way be modified directly or indirectly by a higher court, not even by the Supreme Court, much less, by any other official, branch or department of government. (*Id.*)

— What the COA did was reweigh the evidence on record and point out purported errors of fact and law in the arbitral award; this is certainly beyond the COA's constitutional mandate to audit and review the enforcement of money claims against the government; it is also contrary to jurisprudentially defined limitations to its audit powers; to accept the COA's theory that it has absolute discretion to disregard final and executory judgments rendered by courts and other adjudicative bodies in valid exercise of

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Illegal sale of dangerous drugs — In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction; it is essential to ensure that the substance recovered from the accused is the same substance offered in court. (People *vs.* Gandawali, *et al*., G.R. No. 242516, June 8, 2020)

CONSPIRACY

***Existence of* —** In a conspiracy, a person is guilty as co-principal when he or she performs an overt act, that is, either "by actively participating in the actual commission of the crime, by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy." (People *vs.* Manzanilla, G.R. No. 235787, June 8, 2020)

— When conspiracy is established, the responsibility of the conspirators is collective, not individual, rendering all of them equally liable regardless of the extent of their respective participations. (Mangulabnan *vs.* People, G.R. No. 236848, June 8, 2020)

CONTEMPT

Contempt proceedings — Contempt proceedings may be criminal or civil in nature; if the purpose is to vindicate and protect the dignity of this Court's authority, the contempt is criminal; but if the purpose is to punish one party for failing to comply with a court's order benefiting the other party, the contempt is civil; however, regardless of the nature of the proceedings, it is always treated separately even when the allegedly contumacious act is incidental to another action. (Bank of Commerce *vs.* Borromeo, G.R. No. 205632, June 2, 2020) p. 61

Power of courts — Courts have the power to punish for contempt in order to preserve order in judicial proceedings, enforce

furtherance of justice, the conduct of ministerial officers acting in connection with this judgment." (Bangko Sentral ng Pilipinas and its Monetary Board *vs.* Banco Filipino Savings and Mortgage Bank, G.R. No. 196580, June 10, 2020) p. 740

— The doctrine of non-interference or judicial stability is a time-honored policy that mandates that "no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction." (*Id.*)

Hierarchy of — Direct resort to the Supreme Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction. (In Re: In the Matter of the Issuance of A *Writ of Habeas Corpus* of inmates Raymundo Reyes and Vincent B. Evangelista, duly represented by Atty. Rubee Ruth C. Cagasca-Evangelista, in her capacity as wife of Vincent B. Evangelista and counsel of both inmates *vs.* BuCor Chief Gerald Bantag, in his capacity as Director General of Bureau of Corrections of New Bilibid Prison, *et al.*, G.R. No. 251954, June 10, 2020) p. 1067

— This Court has concurrent jurisdiction, along with the CA and the trial courts, to issue a writ of *habeas corpus*; however, mere concurrency of jurisdiction does not afford parties absolute freedom to choose the court with which the petition shall be filed; petitioners should be directed by the hierarchy of courts; after all, the hierarchy of courts "serves as a general determinant of the appropriate forum for petitions for the extraordinary writs." (*Id.*)

CRIMINAL PROCEDURE

Entrapment — A buy-bust operation is generally considered a valid means of entrapment; law enforcers often use this method in order to catch offenders in the act of committing drugs offenses; to be considered valid, the

payment of the deficiency of Petitioners' docket fees may still be allowed, the prescriptive periods applicable to Petitioners' alternative causes of action, should be considered. (*Id.*)

EMINENT DOMAIN OR EXPROPRIATION

***Just compensation* —** Case law provides that the amount of just compensation an owner is entitled to receive is equivalent to the fair market value of the property to be expropriated; where only a portion of a certain property is to be acquired, the owner is not restricted only to compensation for the part actually taken, but is likewise entitled to recover consequential damages for the remainder of the property, which may suffer an impairment or decrease in value as an incidental result of the expropriation, provided such fact is proven by sufficient evidence. (Schulze, Sr., substituted by his wife, Ana Maria L. Schulze as President of Elaris Investment Co., Inc., *et al vs.* National Power Corporation, *et al.*, G.R. No. 246565, June 10, 2020) p. 1029

— The proper amount of consequential damages is fixed at the rate of fifty percent of the Bureau of Internal Revenue zonal valuation of the affected property, and being a component of just compensation, it should be determined based on the value of the property as of the date of the taking or the filing of the complaint for expropriation, whichever comes first. (*Id.*)

EMPLOYMENT, TERMINATION OF

Gross and habitual neglect of duty — Employees' failure to meet the production quota, which is analogous to gross and habitual neglect of duty, not proven in case at bar; respondents failed to meet their quotas not because they are negligent but simply because the quotas are not attainable. (East Cam Tech Corporation *vs.* Fernandez, *et al.*, G.R. No. 222289, June 8, 2020) p. 437

***Management prerogative* —** The Court recognized management prerogative to fix a quota for its employees, and failure to meet the quota constitutes gross negligence, provided

postulates that the heads of the various executive departments are the alter egos of the President and, as such, the actions taken by them in the performance of their official duties are deemed the acts of the President unless the latter disapproves such acts. (The Department of Trade and Industry, represented by its Secretary, *et al. vs.* Enriquez, G.R. No. 225301, June 2, 2020) p. 208

Department Secretary's power — In the exercise of the Department Secretary's power to investigate presidential appointees, no element of finality characterizes his findings and report considering that from the nature of such power delegated to him, his findings and report are merely recommendatory for the President's consideration; an appeal is naturally not an available remedy from the Department Secretary's findings and recommendation; nevertheless, there is no logical, much less legal and jurisprudential basis, to conclude that such unavailability of appeal from the findings and recommendations of the Department Secretary is a ground to divest the latter of the investigative and recommendatory authority granted to him by law over presidential appointees. (The Department of Trade and Industry, represented by its Secretary, *et al. vs.* Enriquez, G.R. No. 225301, June 2, 2020) p. 208

— Inasmuch as the Department Secretary was given the power to investigate his subordinates by authority of the President, his power to impose preventive suspension also by authority of the President, cannot likewise be denied; it is well to point out that preventive suspension pending investigation is not punitive in nature. (*Id.*)

— Since the Department Secretary's exercise of disciplinary power is merely investigative and recommendatory, the President retains the power to alter or modify, or even nullify or set aside the former's findings and recommendation, and to substitute his judgment to that of the former; this is precisely the concept of the power of control in administrative law; this is likewise in consonance with the doctrine of qualified political agency. (*Id.*)

Purpose — The rule against forum shopping seeks to prevent diverging interpretation on fundamentally the same incidents, and unnecessary conflict, duplication, and expending of judicial resources. (Philippine College of Criminology, Inc., *et al*. *vs.* Bautista, G.R. No. 242486, June 10, 2020) p. 1014

Test of — In ascertaining whether multiple suits relate to a single cause of action, the test is whether there is the possibility that courts will, in different proceedings, consider substantially the same evidence such that there is the possibility of diverging interpretations; this engenders needless conflict, confusion, and duplication of judicial resources. (*Id.*)

— To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. (*Id.*)

— While it is true that the parties to the first and second complaints are not absolutely identical, this court has clarified that, for purposes of forum shopping, absolute identity of parties is not required and that it is enough that there is substantial identity of parties. (*Id.*)

HABEAS CORPUS

Writ of — A prime specification of an application for a writ of *habeas corpus* is restraint of liberty; the essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal; any restraint that will preclude freedom of action is sufficient. (In Re: In the Matter of the Issuance of A Writ of *Habeas Corpus* of inmates Raymundo Reyes and Vincent B. Evangelista, duly represented by Atty. Rubee Ruth C. Cagasca-

— While it is a basic rule that "a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law," the Court has, in exceptional and compelling cases, relaxed its rigid application to serve substantial justice. (*Id.*)

JUDICIAL DEPARTMENT

Judicial power — Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which 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. (The Department of Trade and Industry, represented by its Secretary, *et al. vs.* Enriquez, G.R. No. 225301, June 2, 2020) p. 208

Philippine Judicial Academy — Created under Republic Act No. 8557, PHILJA is "a separate component unit of the Supreme Court" that provides "continuing good education and training" to members of the Judiciary and its prospective applicants; it is tasked to "serve as a training school for justices, judges, court personnel, lawyers and aspirants to judicial posts"; it is mandated to "provide and implement a curriculum for judicial education and conduct seminars, workshops and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability." (Re: [BOT Resolution No. 14-1] Approval of the Membership of the PHILJA Corps of Professors for a Term of Two (2) Years Beginning April 12, 2014, Without Prejudice to Subsequent Reappointment, A.M. No. 14-02-01-SC-PHILJA, June 2, 2020) p. 1

— Except for the Executive Committee composed of the Chancellor, Vice-Chancellor, and Executive Secretary, no retired justice or judge above 75 years old shall be appointed in managerial or supervisory positions; no term of a retired judge may be renewed more than once;

a 'private individual."' (Duropan, *et al. vs.* People, G.R. No. 230825, June 10, 2020) p. 919

— A public officer whose official duty does not involve the authority to arrest may be liable for illegal detention; illegal detention, defined under Articles 267 and 268 of the Revised Penal Code, penalizes "*any private individual* who shall kidnap or detain another, or in any other manner deprive him or her of his or her liberty." (*Id.*)

LABOR RELATIONS

Employment contract — Article 1700 of the Civil Code provides that "the relations between capital and labor are not merely contractual" such that labor contracts are subject to the special laws governing working conditions and other similar subjects; this does not authorize the Court to provide missing details in the contract under the guise of interpreting the same nor compel the parties to negotiate such terms and conditions. (Heirs of the Late Marcelino O. Nepomuceno, represented by his wife, Ma. Fe L. Nepomuceno *vs.* Naess Shipping Phils., Inc./Royal Dragon Ocean Transport, Inc., G.R. No. 243459, June 8, 2020) p. 650

Fixed-term employment — As elucidated in *St. Theresa's School of Novaliches Foundation v. NLRC*: Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period provided the same is entered into by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstance vitiating consent; it does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. (Tuppil, Jr., *et al. vs.* LBP Service Corporation, G.R. No. 228407, June 10, 2020) p. 910

— Contracts of employment for a fixed term are not unlawful unless it is apparent from the circumstances that the periods

probationary employment are not relevant; however, if the fixed term is intended to run simultaneously with the probationary period of employment, then the fixed term is not to be considered the probationary period, unless a shorter probationary period is expressly adopted by the institution. (*Id.*)

LAND REGISTRATION

Torrens System — It has been held that "every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property"; the rule applies to both buyers and mortgagees of real property. (BPI Family Savings Bank *vs.* Spouses Soriano, G.R. No. 214939, June 8, 2020) p. 419

— The primary function of the *Torrens* system of land registration is essentially the establishment of a means by which land ownership may be incontrovertibly proven, with the anticipated effect of facilitating the ease, reliability, and enforceability of real estate transactions. (*Id.*)

MALICIOUS PROSECUTION

Commission of — *Magbanua v. Junsay* explains the cause of action of malicious prosecution: in this jurisdiction, the term "malicious prosecution" has been defined as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein." (Sosmeña *vs.* Bonafe, *et al.*, G.R. No. 232677, June 8, 2020) p. 500

— The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the knowledge that the charges were false and groundless; malicious prosecution does not only pertain to criminal prosecutions

put to her personal use, which petitioner failed to rebut and overturn. (*Id.*)

— In the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that such officer failed to account for the said funds upon demand without offering a justifiable explanation for the shortage. (*Id.*)

Elements — The elements of malversation under said provision of law are: 1) that the offender is a public officer; 2) that he or she had custody or control of funds or property by reason of the duties of his or her office; 3) that those funds or property were funds or property for which he or she was accountable; and 4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. (*Id.*)

MARRIAGE

Declaration of presumptive death of an absent spouse — A petition for declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage under Article 41 of the Family Code involves a proceeding that is summary in nature, the judgment of the court therein shall be immediately final and executory. (Republic *vs.* Fenol, G.R. No. 212726, June 10, 2020) p. 767

— It is not enough that the present spouse holds a firm conviction that his/her spouse is already dead and alleges the same in his/her petition; belief is a state of the mind which may only be established by direct evidence or circumstantial evidence that tends, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth. (*Id.*)

— The present spouse's bare assertion that he inquired from his friends or from the relatives of his absent spouse about the latter's whereabouts is insufficient especially when the names of the persons from whom he made inquiries were not identified in the testimony nor presented as witnesses. (*Id.*)

the same; the burden to adduce evidence that the accused is exempt from the COMELEC Gun Ban lies with the accused. (*Id.*)

— Under Section 261 (q) of B.P. Blg. 881, any person, even if holding a permit to carry firearms, is prohibited to carry firearms or other deadly weapons outside his residence or place of business during an election period, unless authorized in writing by the COMELEC; Sections 32 and 33 of Republic Act No. 7166, which amended B.P. Blg. 881, clarified who may bear firearms and who may avail of or engage the services of security personnel and bodyguards. (*Id.*)

PARRICIDE

Commission of — Article 246 of the RPC provides that the crime of parricide shall be punished by the penalty of *reclusion perpetua* to death; pursuant to Article 63(2) when the law prescribed a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances, as in the case at bar, the lesser penalty shall be applied. (People *vs.* Manzanilla, G.R. No. 235787, June 8, 2020) p. 529

PERJURY

Elements — The elements of perjury under Article 183 of the Revised Penal Code (RPC) are (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose. (Saulo *vs.* People, *et al.*, G.R. No. 242900, June 8, 2020) p. 630

performance of their official duties. (Civil Service Commission *vs.* Dampilag, G.R. No. 238774, June 10, 2020) p. 968

— The presumption of regularity is disputable and cannot be regarded as binding truth; when the performance of duty is tainted with irregularities, such presumption is effectively destroyed. (People *vs.* Gandawali, *et al.*, G.R. No. 242516, June 8, 2020) p. 621

— While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. (*Id.*)

PRINCIPAL BY INDUCEMENT

Two ways of commission — Under Article 17 of the RPC, a principal by inducement either: a) directly forces or b) directly induces another to commit the crime; there are equally two ways of committing each mode; directly forcing another to commit a crime may be accomplished by: (i) using irresistible force, or (ii) causing uncontrollable fear; whereas, directly inducing the commission of a crime may be: (i) by giving a price, reward, or promise, or (ii) by using words of command. (People *vs.* Manzanilla, G.R. No. 235787, June 8, 2020) p. 529

PROBATE PROCEEDINGS

Wills — Due execution is "whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law" as mandated by Articles 805 and 806 of the Civil Code, as follows: Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another; the testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign,

PROPERTY

Right of accession — Article 451 of the Civil Code grants the landowner the right to recover damages from a builder in bad faith; while Article 451 does not provide the basis for damages, the amount thereof should reasonably correspond with the value of the properties lost or destroyed as a result of the occupation in bad faith, as well as the fruits from those properties that the landowner reasonably expected to obtain. (Princess Rachel Development Corporation, *et al*. *vs*. Hillview Marketing Corporation, G.R. No. 222482, June 2, 2020) p. 105

— Bad faith contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes; to be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it. (*Id*.)

— In relation to possession, a landowner may be in good faith or may be deemed in bad faith depending on the landowner's knowledge of the fact of encroachment; a landowner is deemed in bad faith when there are circumstances indicating that he had become aware of the encroachment and had chosen not to act on it; in such cases, the owner's failure to act gives rise to laches or estoppel, and bars the registered owner from asserting good faith. (*Id*.)

— Should petitioners choose not to exercise its right to appropriate the improvements as granted to it under Article 449 of the Civil Code, it may exercise either of its alternative rights under Articles 450 and 451, *i.e*., (a) to demand the removal or demolition of what has been built at Hillview's expense; or (b) to compel Hillview to pay the price or value of the portions it had encroached upon, whether or not the value of the land is considerably more than the value of the improvements. (*Id*.)

Testamentary succession — It is settled that "the law favors testacy over intestacy" and hence, "the probate of the will cannot be dispensed with; Article 838 of the Civil Code provides that no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. (In the Matter of the Petition for the Probate of the Will of Consuelo Santiago Garcia, *et al*. *vs.* Santos, G.R. No. 204793, June 8, 2020) p. 371

— Unless the will is probated, the right of a person to dispose of his property may be rendered nugatory"; in a similar way, "testate proceedings for the settlement of the estate of the decedent take precedence over intestate proceedings for the same purpose." (In the Matter of the Petition for the Probate of the Will of Consuelo Santiago Garcia, *et al. vs.* Santos, G.R. No. 204793, June 8, 2020) p. 371

SUCCESSION

Testamentary succession — Article 820 of the Civil Code provides that, "any person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code"; here, the attesting witnesses to the will in question are all lawyers equipped with the aforementioned qualifications; in addition, they are not disqualified from being witnesses under Article 821 of the Civil Code, even if they all worked at the same law firm at the time. (In the Matter of the Petition for the Probate of the Will of Consuelo Santiago Garcia, *et al*. *vs.* Santos, G.R. No. 204793, June 8, 2020) p. 371

— Since the will in this case is contested, Section 11, Rule 76 of the Rules of Court applies, to wit: SEC. 11. *Subscribing witnesses produced or accounted for where will contested*. - If the will is contested, all the subscribing witnesses, and the notary in the case of wills executed under the Civil Code of the Philippines, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of

enacts laws of local application; he or she is a person in authority, per Section 388 of the Local Government Code; a *barangay tanod* is deemed as an agent of persons in authority whose duties are described in Section 388 of the Local Government Code; while deemed as persons in authority and agents of persons in authority, respectively, the *barangay kagawad* and *barangay tanod* are not the public officers whose official duty is to arrest or detain persons contemplated within the purview of Article 269 of the Revised Penal Code. (Duropan, *et al. vs.* People, G.R. No. 230825, June 10, 2020) p. 919

***Elements* —** In the crime of unlawful arrest, the offender who arrested or detained another intended to deliver the apprehended person to the proper authorities, considering he or she does not have the authority; this act of conducting the apprehended persons to the proper authorities takes the offense out of the crime of illegal detention. (Duropan, *et al. vs.* People, G.R. No. 230825, June 10, 2020) p. 919

— The crime of unlawful arrest punishes an offender's act of *arresting or detaining another to deliver him or her to the proper authorities*, when the arrest or detention is not authorized, or that there is no reasonable ground to arrest or detain the other. (*Id.*)

— To prosecute accused of the crime of unlawful arrest successfully, the following elements must be proved: (1) that the offender arrests or detains another person; (2) that the arrest or detention is to deliver the person to the proper authorities; and (3) that the arrest or detention is not authorized by law or that there is no reasonable ground to. (*Id.*)

VERIFICATION

Requirement of — A verification signed *sans* authority from the board of directors is defective; but where it is shown that strict compliance with the rules would not fully serve the ends of justice, the court may allow correction of the pleading if verification is lacking or even admit an unverified pleading; after all, verification of pleading

— The testimony of a minor who is a victim of rape is given full weight and credit, particularly in the absence of evidence showing that in making such statement, such minor is actuated by ill motive to falsely testify against the accused; it is an oft-repeated doctrine that when a female minor alleges rape, she says in effect all that is necessary to mean that she has been raped. (Nacario *vs.* People, G.R. No. 222387, June 8, 2020) p. 450

— The testimony of a single eyewitness, when credible, convincing, and consistent with human nature and the normal course of things, is sufficient to support a conviction, as rape is essentially an offense of secrecy; nonetheless, the Court must still scrutinize with great caution the testimony of the complainant, in line with the principle that the evidence for the prosecution must rise or fall on its own merits without regard to the weakness of the defense. (*Id.*)

— When it comes to the credibility of witnesses, the trial court's assessment deserves great weight, and is even conclusive and binding provided that it is not tainted with arbitrariness or oversight of some fact or circumstance, weight and influence; the trial court, having the full opportunity to observe directly the witnesses' deportment and manner of testifying, is in a better position than the appellate court to properly evaluate testimonial evidence and in assessing who among the witnesses holds the truth. (People *vs.* Quinto, G.R. No. 246460, June 8, 2020) p. 679

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