PHILIPPINE REPORTS

VOL. 883

SEPTEMBER 4 - 9, 2020

VOLUME 883

REPORTS ON CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 4 - 9, 2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

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DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 10306. September 9, 2020]

FATIMA S. INGRAM, *Petitioner*, *v.* **ATTY. JOSE Q. LORICA IV,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CONFLICT OF INTEREST; THREE TESTS IN DETERMINING WHETHER A VIOLATION OF THE RULE AGAINST REPRESENTING CONFLICTING INTEREST IS PRESENT.— Jurisprudence has provided three tests in determining whether a violation of the above rule is present in a given case. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule. Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

2. ID.; ID.; ID.; THE RULE ON CONFLICT OF INTERESTS FINDS NO APPLICATION IN THE ABSENCE OF A LAWYER-CLIENT RELATIONSHIP.— [T]he rule on conflict of interests

presupposes a lawyer-client relationship. This is because the purpose of the rule is precisely to protect the fiduciary nature of the ties between an attorney and his client. The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests.

Conversely, a lawyer may not be precluded from accepting and representing other clients on the ground of conflict of interests, if the lawyer-client relationship does not exist in favor of a party in the first place. Suffice it to state, the proscription against representing conflicting interests finds no application, unless it serves the foregoing purpose.

3. ID.; ID.; ID.; THE MERE ACT OF NOTARIZING A PROMISSORY NOTE HARDLY GIVES RISE TO AN ATTORNEY-CLIENT RELATIONSHIP BETWEEN THE NOTARY PUBLIC AND THE PAYEES OF THE SAID NOTE; CASE AT BAR.— In this case, the record is devoid of any allegation, much less proof, that a lawyer-client relationship exists between respondent and the spouses Ingram. An attorney-client relationship is said to exist when a lawyer acquiesces or voluntarily permits the consultation of a person, who in respect to a business or trouble of any kind, consults a lawyer with a view of obtaining professional advice or assistance. Here, respondent's mere act of notarizing the subject promissory note and nothing more, hardly gave rise to an attorney-client relationship between the notary public and the payees of the said note, the spouses Ingram. There is, in fact, no showing that respondent and the spouses Ingram ever dealt with each other, as it was only the spouses Blanco, as the makers and signatories of the instrument, who appeared before him to acknowledge their execution thereof. For this reason, We hold that the respondent did not violate the rule on conflict of interests.

4. ID.; ID.; NOTARIES PUBLIC; NOTARIZATION, FUNCTION OF; AN ATTEMPT TO NULLIFY A PROMISSORY NOTE ON THE GROUND THAT IT WAS NOT DULY EXECUTED DEFEATED THE VERY PURPOSE OF THE NOTARIAL ACT AND CONSTITUTES A VIOLATION OF CANON 7 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY.— It must be underscored that notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity. Thus, respondent's attempt to nullify the promissory note on the ground that it was not duly executed, defeated the very purpose of his own notarial act. By his conduct, he made a clear mockery of the integrity of a notary public and degraded the function of notarization.

Time and again, We have held that notarization of a document is not an empty act or routine. It is invested with substantive public interest for its function is to convert a private document into a public document, thus rendering a notarial document entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Hence, a notary public cannot simply disavow the contents of his notarial acknowledgment, otherwise, the confidence of the public in the integrity of public instruments and the integrity of the notarial practice and the legal profession, in general, would be undermined.

In this light, respondent should be held liable for his indiscretion not only as a notary public but also as a lawyer. His disavowal of the contents of his notarial acknowledgment — which, in good taste, he is called upon to honor and uphold; and which the public should be able to rely upon — constitutes a violation of his obligation under Canon 7 of the CPR, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

. . .We deem the penalty of suspension for a period of six months from the practice of law to be commensurate with the extent of respondent's violation. Nonetheless, We sustain the IBP Board of Governor's imposition of the penalties of immediate revocation of his Notarial Commission and disqualification from being commissioned as a notary public for a period of two years.

APPEARANCES OF COUNSEL

Michael Henry C. Sevilleja for petitioner.

D E C I S I O N

GAERLAN, *J.*:

Before Us is an administrative complaint[1] for disbarment filed by Fatima S. Ingram (complainant) against Atty. Jose Q. Lorica IV (respondent).

Facts

The records show that on August 4, 2004, the spouses Victor Ferdinand B. Blanco and Rizza O. Blanco (spouses Blanco) executed a promissory note[2] in favor of the spouses John Ingram and complainant (collectively, spouses Ingram). The promissory note was notarized by respondent.[3]

When the spouses Blanco defaulted in payment, the spouses Ingram instituted the following actions:

a) Criminal Case No. 13757 for Estafa, which was dismissed for want of probable cause, the case being purely civil in nature and not criminal;

b) Criminal Case Nos. 21381 and 21382 for violation of *Batas Pambansa Bilang 22*; and

c) Civil Case No. U-8268 for collection of sum of money with damages.[4]

The spouses Blanco then engaged the legal services of respondent to represent them in the foregoing cases.[5]

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[1] *Rollo*, pp. 13-22.

[2] Id. at 28-29, 35-36.

[3] Id. at 36.

[4] Id. at 23-26.

[5] Id. at 10.

The instant controversy arose when respondent, as counsel of the spouses Blanco, filed an Answer[6] to the civil complaint, wherein the validity of the promissory note was raised as an issue. Paragraph 3 thereof alleged that the execution of the subject promissory note was attended with coercion, threats, intimidation and the like, *viz.*:

> 3. That paragraphs 3 and 4 are DENIED, the truth of the matter being that there should be an accounting to be made by both parties to arrive at an actual obligation of herein defendants. The rest of the allegations are likewise DENIED for lack of knowledge and information sufficient to form a belief thereon. **The execution of the alleged promissory note was without due regard to the defendants' pleas at the time as they were subjected to coercion, threats, intimidation and the like, thus defendant Victor Ferdinand Blanco was forced to sign the same**[.] x x x[7]

Along the same line, the pre-trial brief[8] filed by respondent in behalf of the spouses Blanco stated, among others:

> 5. Whether or not plaintiffs were made aware of the financial situation [of] herein defendants and requested the restructuring of their agreement so as for them to be able to settle their obligation unto the plaintiffs but the latter denied such request and instead, **sent coercive and threatening communications unto the defendants, who were forced to execute the subject promissory note**[.][9]

The spouses Ingram were thus prompted to move for the disqualification of the respondent to act as counsel for the spouses Blanco in Civil Case No. U-8268.[10]

Thereafter, complainant filed the instant complaint for disbarment,[11] docketed as CBD Case No. 06-1863. Complainant

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[6] Id. at 39-46.

[7] Id. at 39.

[8] Id. at 44-46.

[9] Id. at 44.

[10] Id. at 47-50.

[11] Id. at 9-12.

posits that respondent, as the person who notarized the promissory note, is estopped from assailing the validity thereof inasmuch as he certified that the maker thereof acknowledged before him that the instrument is the latter's own free will and voluntary act and deed. Complainant also filed an administrative case, docketed as Administrative Case No. U-22.1, for the revocation of respondent's notarial appointment before the office of the Executive Judge of the Regional Trial Court, Urdaneta City.[12]

Later, in her position paper[13] in this disbarment case, complainant likewise accused respondent of committing acts of dishonesty and deceit. According to the complainant, paragraph 2 (d) of the promissory note provides:

> d) Any and all payments should be made in Australian Currency as described in paragraphs 1 and 2 and as such, the exchange rate will not affect the aforecited payment. Should it become necessary to bank any of the cheques for collection, we shall be held liable for any difference between the current rate at the time of banking and the current rate of P38.00 per Australian Dollar as used in the drawing of cheques.[14]

To assail the above stipulation, respondent cited Article 1250 of the Civil Code in his clients' Answer in Civil Case No. U-8268 in the following manner:

> 14. That relative to the stipulation on the exchange rate on the subject promissory note, it is but imperative that the pertinent provisions of Article 1250 of the Civil Code of the Philippines be noted herein, to wit:
>
> In case of an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of [the] payment[.][15]

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[12] Id. at 75-76.

[13] Id. at 90-103.

[14] Id. at 28.

[15] Id. at 41.

Similarly, in the Pre-Trial Brief he prepared for the spouses Blanco, he stated:

II. STATEMENT OF ISSUES

x x x x x x x x x

6. Whether or not it is but imperative that the pertinent provisions of Article 1250 of the Civil Code of the Philippines be noted relative to the stipulation on the exchange rate on the subject promissory note, that is, "In case of an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of [the] payment[.]"[16]

Meanwhile, Article 1250 of the Civil Code in its entirety reads:

Article 1250. In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of the payment, unless there is an agreement to the contrary.

According to the complainant, respondent intentionally and deliberately omitted the phrase "*unless there is an agreement to the contrary*," in an attempt to put in issue the stipulated exchange rate in the promissory note and to mislead the complainant as to the complete thought provided in Article 1250 of the Civil Code.

On the other hand, in his Verified Answer[17] to the disbarment complaint, the respondent claims that it was only at the time when he prepared the Answer in Civil Case No. U-8268 that he learned that the spouses Ingram employed coercion, threats and intimidation upon his clients before, during and after the execution of the promissory note. He attached copies of: the Police Blotter[18] dated March 1, 2005, stating that the spouses Ingram "*allegedly threatened [Mr. Blanco] to be killed, putting*

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[16] Id. at 44.

[17] Id. at 73-78.

[18] Id. at 84.

him into great fear and mental anguish;" the document denominated as "*Chronological Events of Grave Threats issued by Sps. John and Fatima Ingram against Victor Blanco*,"[19] listing the alleged incidents from November 21, 2004 to February 28, 2005, when the spouses Ingram threatened the lives of the spouses Blanco; and, the Police Blotter[20] dated August 13, 2005, stating that the complainant allegedly threatened to drive his business bankrupt and remarked in an angry voice "*umalis kayudtan ta awan ti kuarta da ditan.*" According to respondent, he committed no dishonesty in the preparation of the answer in the civil case and simply relied in good faith on the narration of facts of his clients. As a lawyer, he deemed it imperative to raise the foregoing defenses in order to protect his clients' interest. He likewise asserts that, in any case, he had already withdrawn his appearance from the civil case with the conformity of the spouses Blanco.

Findings and Recommendation

In a Report and Recommendation[21] dated 3 August 2009, the Integrated Bar of the Philippines (IBP) Investigating Commissioner found that respondent did not commit a violation when he represented the spouses Blanco in Civil Case No. U-8268 and assailed the validity of the promissory note that he himself notarized. He opined that complainant cannot validly invoke the doctrine of estoppel against respondent, since the latter had no knowledge of the alleged threat, coercion and intimidation when he notarized the promissory note, and since complainant failed to show that she relied on the respondent's notarial acknowledgment before dealing with the spouses Blanco.[22]

Nonetheless, the Investigating Commissioner found that respondent violated Rule 10.02, Canon 10 of the Code of Professional Responsibility (CPR) when he omitted the phrase

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[19] Id. at 86.

[20] Id. at 85.

[21] Id. at 187-194.

[22] Id. at 90-91.

"*unless there is an agreement to the contrary*," in citing Article 1250 of the Civil Code because the phrase would weaken his clients' case.[23] Thus, Commissioner recommended as follows:

> PREMISES CONSIDERED, in view of the foregoing facts and circumstances, there being substantial evidence to show that respondent Jose Q. Lorica IV knowingly misrepresented Article 1250 of the Civil Code, it is recommended that he be warned that the commission of the same act in the future [will] be dealt with more severely.
>
> Respectfully submitted.[24]

In Resolution No. XX-2011-300[25] dated December 10, 2011, the IBP Board of Governors found respondent guilty of glaring conflict of interest and thus, resolved to reverse the Report and Recommendation of the Investigating Commissioner, *viz.*:

> RESOLVED to REVERSE as it is hereby unanimously REVERSED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding Respondent's [sic] guilty of glaring conflict of interest, Atty. Jose Q. Lorica IV is hereby SUSPENDED from the practice of law for a period of two (2) years and Revocation of his Notarial Commission if presently existing and SUSPENDED from being commissioned as a notary public for a period of five (5) years.[26]

Feeling aggrieved, respondent filed a motion for reconsideration.[27]

On June 21, 2013, the IBP Board of Governors issued Resolution No. XX-2013-736,[28] denying respondent's motion for reconsideration, but modifying the penalty imposed, *viz.*:

> RESOLVED to unanimously DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings

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[23] Id. at 192-193.

[24] Id. at 194.

[25] Id. at 186.

[26] Id.

[27] Id. at 195-202.

[28] Id. at 276-277.

of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2011-300 dated December 10, 2011 is hereby AFFIRMED, with modification, instead Atty. Jose Q. Lorica IV is hereby SUSPENDED from the practice of law for one (1) year, and his Notarial Commission REVOKED immediately. Further, he is DISQUALIFIED from re-appointment as Notary Public for two (2) years.

Ruling

The Court deviates with the finding of the IBP Board of Governors.

Rule 15.03 of the CPR reads:

Canon 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

Jurisprudence has provided three tests in determining whether a violation of the above rule is present in a given case. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule. Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[29]

At first glance, it would indeed appear that respondent is guilty of glaring conflict of interest under the first test. By

[29] *Aniñon v. Atty. Sabitsana, Jr.*, 685 Phil. 322, 327 (2012).

handling the defense of the spouses Blanco in Civil Case No. U-8268 and raising for them the defense that the execution of the promissory note that he himself notarized was attended by coercion, threats and intimidation, respondent clearly took up a position that was inconsistent with his own attestation in the notarial acknowledgment thereof that the instrument was Mr. Bianco's own free will and voluntary act and deed.

However, the rule on conflict of interests presupposes a lawyer-client relationship. This is because the purpose of the rule is precisely to protect the fiduciary nature of the ties between an attorney and his client.[30] The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests.[31]

Conversely, a lawyer may not be precluded from accepting and representing other clients on the ground of conflict of interests, if the lawyer-client relationship does not exist in favor of a party in the first place.[32] Suffice it to state, the proscription against representing conflicting interests finds no application, unless it serves the foregoing purpose.

In this case, the record is devoid of any allegation, much less proof, that a lawyer-client relationship exists between respondent and the spouses Ingram. An attorney-client

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[30] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 570 (2014).

[31] Id. at 572-573.

[32] Id. at 570.

relationship is said to exist when a lawyer acquiesces or voluntarily permits the consultation of a person, who in respect to a business or trouble of any kind, consults a lawyer with a view of obtaining professional advice or assistance.[33] Here, respondent's mere act of notarizing the subject promissory note and nothing more, hardly gave rise to an attorney-client relationship between the notary public and the payees of the said note, the spouses Ingram. There is, in fact, no showing that respondent and the spouses Ingram ever dealt with each other, as it was only the spouses Blanco, as the makers and signatories of the instrument, who appeared before him to acknowledge their execution thereof. For this reason, We hold that the respondent did not violate the rule on conflict of interests.

The foregoing notwithstanding, respondent is far from being scot-free. There is definitely something amiss with his actuation, such that while it may not come within the purview of "conflict of interest" as contemplated in this jurisdiction, a "conflict" in the general sense of the word, is extant. To reiterate, respondent clearly took up inconsistent positions when, on one hand, he attested in the notarial acknowledgment of the promissory note that the instrument was Mr. Blanco's own free will and voluntary act and deed, while on the other hand, he assailed the due execution thereof by putting up the defenses of coercion, threats and intimidation allegedly employed by the spouses Ingram that forced the spouses Blanco to execute the same.

It must be underscored that notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity.[34] Thus, respondent's attempt to nullify the promissory note on the ground that it was not duly executed, defeated the very purpose of his own notarial act. By his conduct, he made a clear mockery of the integrity of a notary public and degraded the function of notarization.

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[33] *Virgo v. Atty. Amorin*, 597 Phil. 182, 191 (2009).

[34] *Atty. Angeles, Jr. v. Atty. Bagay*, 749 Phil. 114, 123 (2014).

Time and again, We have held that notarization of a document is not an empty act or routine. It is invested with substantive public interest for its function is to convert a private document into a public document, thus rendering a notarial document entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[35] Hence, a notary public cannot simply disavow the contents of his notarial acknowledgment, otherwise, the confidence of the public in the integrity of public instruments and the integrity of the notarial practice and the legal profession, in general, would be undermined.

In this light, respondent should be held liable for his indiscretion not only as a notary public but also as a lawyer. His disavowal of the contents of his notarial acknowledgment—which, in good taste, he is called upon to honor and uphold; and which the public should be able to rely upon—constitutes a violation of his obligation under Canon 7 of the CPR, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

Considering, however, that respondent's infraction does not amount to representation of conflicting interests, which deserves a more severe penalty, and considering, furthermore, that respondent eventually withdrew as counsel of the spouses Blanco, We deem the penalty of suspension for a period of six months from the practice of law to be commensurate with the extent of respondent's violation. Nonetheless, We sustain the IBP Board of Governor's imposition of the penalties of immediate revocation of his Notarial Commission and disqualification from being commissioned as a notary public for a period of two years.

Finally, We adopt the finding of the Investigating Commissioner that respondent is guilty of misquoting Article 1250 of the Civil Code when he omitted the phrase "*unless there is an agreement to the contrary*," in citing the said provision. Indeed, while the

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[35] *Fabay v. Atty. Resuena*, 779 Phil. 151, 158 (2016).

evidence on record fell short in establishing that the omission was an "act of lying or cheating" that would constitute a "dishonest act," it clearly contravened Rule 10.02 of the CPR, which provides:

> Rule 10.02. A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

For this infraction, respondent deserves to be admonished.

WHEREFORE, premises considered, Atty. Jose Q. Lorica IV is hereby found **GUILTY** of violation of Canon 7 of the Code of Professional Responsibility for which he is hereby **SUSPENDED** from the practice of law for a period of six (6) months. He is likewise meted the penalties of immediate **REVOCATION** of his Notarial Commission if presently existing and **DISQUALIFICATION** from being commissioned as a Notary Public for a period of two (2) years. He is likewise hereby found **GUILTY** of violation of Rule 10.02 of the Code of Professional Responsibility for which he is hereby **ADMONISHED**. The penalties herein imposed come with a **STERN WARNING** that the repetition of similar violations will be dealt with even more severely.

Let copies of this Decision be attached to the personal records of respondent as attorney, and be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for proper dissemination to all courts throughout the country.

SO ORDERED.

Leonen (Chairperson), *Gesmundo, Carandang,* and *Zalameda, JJ.*, concur.

THIRD DIVISION

[G.R. No. 203346. September 9, 2020]

CARGILL PHILIPPINES, INC., *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; THE COURT OF TAX APPEALS HAS JURISDICTION TO REVIEW AND NULLIFY THE RULINGS OF THE COMMISSIONER OF INTERNAL REVENUE.— Under Republic Act No. 1125, or An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, the Commissioner of Internal Revenue's rulings on "other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue" are appealable to the Court of Tax Appeals. . . .

. . .

In *The City of Manila v. Hon. Grecia-Cuerdo*, this Court recognized that the Court of Tax Appeals possessed all inherent powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases. . . .

This Court underscored that the grant of appellate jurisdiction to the Court of Tax Appeals includes the power necessary to exercise it effectively. Deemed included in its jurisdiction is the authority to resolve petitions for certiorari against interlocutory orders of the Regional Trial Court in local tax cases. Furthermore, a split jurisdiction between the Court of Tax Appeals and the Court of Appeals is "anathema to the orderly administration of justice" and could not have been the legislative intent.

In *Banco De Oro v. Republic*, this Court abandoned *British American Tobacco* and declared that the Court of Tax Appeals has exclusive jurisdiction to determine the validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue. . . .

. . .

Thus, the Court of Tax Appeals has jurisdiction to pass upon the validity of BIR Ruling No. DA-ITAD-60-07, on which petitioner squarely relied to support its claim for refund. The Court of Tax Appeals is not bound by the Bureau of Internal Revenue's interpretation or application of treaty provisions when it is found to be clearly erroneous.

2. TAXATION; MOST FAVORED NATION CLAUSE; BILATERAL TAX TREATIES; THE SIMILARITY IN THE PAYMENT OF TAXES IS A CONDITION FOR THE ENJOYMENT OF THE MOST FAVORED NATION TREATMENT.— The most favored nation clause speaks of the "*lowest rate of Philippine tax that may be imposed on royalties of the same kind* ***paid under similar circumstances*** *to a resident of a third State*." Therefore, the tax treatment of royalties to a United States entity may be taken in relation to other tax treaties that provide a lower tax rate on the same type of income.

Here, the question is whether petitioner is entitled to the 10% preferential tax rate, as provided in Article 12(2)(a) of the RP-Czech Tax Treaty, on royalties paid to CAN Technologies, a resident corporation of the United States. . . .

In *Commissioner of Internal Revenue v. S.C. Johnson & Sons*, this Court construed the phrase "paid under similar circumstances" under the most favored nation clause as referring to *circumstances that are tax-related.* In other words, the *similarity in the circumstances of payment of taxes on the royalties derived from the Philippines is a condition for the enjoyment of the most favored nation treatment.*

3. ID.; ID.; ID.; DOUBLE TAXATION; METHODS AND LEGAL PRINCIPLES TO ELIMINATE DOUBLE TAXATION.— This Court explained in *S.C. Johnson* that bilateral tax treaties have been entered into by the Philippines with different countries to avoid double taxation. It held:

> . . . [T]he tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for

> doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. . . .
>
> This Court further explained that to eliminate double taxation, a tax treaty resorts to two methods: *first*, by allocating the right to tax between the contracting states; and *second*, where the state of source is assigned the right to tax, by requiring the state of residence to grant a tax relief either through exemption or tax credit. . . .
>
> The exemption and credit principles are the two leading principles in eliminating double taxation that are being followed in existing conventions between countries.

4. ID.; ID.; ID.; ID.; ID.; EXEMPTION PRINCIPLE; METHODS UNDER THE SAID PRINCIPLE.— Under the exemption principle, the income that may be taxed in the state of source is not taxed in the state of residence. This may be applied by two methods: *full exemption*, where the state of residence does not account for the income from the state of source for tax purposes; or *with progression*, where the income taxed in the state of source is not taxed by the state of residence, but the state of residence retains the right to consider that income when determining the tax to be imposed on the rest of the income.

5. ID.; ID.; ID.; ID.; ID.; CREDIT PRINCIPLE; METHODS UNDER THE SAID PRINCIPLE; TAX SPARING; MATCHING CREDIT.— Under the credit principle, the state of residence retains the right to tax the taxpayer's total income, but allows a deduction for the tax paid in the state of source. It may be applied by two methods: a *full credit*, where the total amount of tax paid in the state of source is allowed as deduction; or an *ordinary credit*, where the deduction allowed by the state of residence is restricted to that part of its own tax appropriate to the income from the state of source.

Some states have also adopted the so-called "*tax sparing*" provision, in relation to tax incentives granted under their respective domestic laws to attract foreign investments. With tax sparing, taxes exempted or reduce are considered fully paid. Consequently, a non-resident may obtain a tax credit for the taxes that have been *"spared"* under the incentive program of

the state of source, preserving the economic benefits granted by the state of source.

Another form of tax sparing is the so-called "matching credit," where the state of residence agrees, as a counterpart to the reduced tax, to allow a deduction against its own tax of an amount fixed at a higher rate.

6. ID.; ID.; ID.; CONDITIONS FOR THE MOST FAVORED NATION CLAUSE TO APPLY; PETITIONER CANNOT AVAIL OF THE LOWER 10% TAX RATE UNDER THE RP-CZECH TAX TREATY FOR ITS FAILURE TO PROVE THAT THE TAX ROYALTIES UNDER THE RP-US TAX TREATY WAS PAID UNDER THE CIRCUMSTANCES SIMILAR TO THE TAX ON ROYALTIES UNDER THE RP-CZECH TAX TREATY.— Per *S.C. Johnson*, two conditions must be met for the most favored nation clause to apply. *First*, royalties derived from the Philippines by a resident of the United States and of the third state must be of the same kind or class, in order to avail of the lower tax enjoyed by the third state. *Second*, the tax consequences of royalty payments under the two treaties must be under similar circumstances. This requires a showing that the method employed for eliminating or mitigating the effects of double taxation under the treaty with the United States and the third state are the same.

. . .

Here, there is no question as to compliance with the first condition. It is undisputed that payments to CAN Technologies for the use or entitlement to use its patent, technology, and copyrights on the manufacture and sale of animal feeds are within the definition of royalties under Article 13(3) of the RP-US Tax Treaty and Article 12(2) of the RP-Czech Tax Treaty.

On the second condition . . . .

. . .

[W]e find untenable petitioner's contention on the similarity of tax reliefs allowed by the United States and the Czech Republic. . . .

Indeed, both the United States and the Czech Republic adopt the credit principle, where the taxes paid in the Philippines on royalty income are allowed to be credited against the United

States tax or Czech tax, as the case may be. However, a closer look at the treaty provisions would show that while the RP-Czech Tax Treaty specifies how the tax credit is to be implemented and its limitations, the RP-US Tax Treaty does not.

. . .

. . . Under the RP-US Tax Treaty, the limitation on credit is not determinable unless we look into the internal tax law of the United States.

Therefore, the Court of Tax Appeals was correct in ruling that the relevant provisions of the United States law are necessary to determine for certain the similarity in circumstances in the payment of taxes on royalty in the United States and the Czech Republic.

. . .

All told, the most favored nation clause cannot apply. Petitioner cannot avail of the lower 10% tax rate under the RP-Czech Tax Treaty for its failure to prove that the tax on royalties under the RP-US Tax Treaty was paid under circumstances similar to the tax on royalties under the RP-Czech Tax Treaty.

7. ID.; ID.; ID.; INTERNATIONAL LAW; REMEDIAL LAW; EVIDENCE; PROOF OF FOREIGN LAWS; DOCTRINE OF PROCESSUAL PRESUMPTION, DEFINED; DOCTRINE, NOT APPLICABLE TO CASE AT BAR.— The International law doctrine of *processual presumption* or *presumed-identity approach* comes into play when a party invoking the application of a foreign law to a dispute fails to prove the foreign law. While the doctrine has been applied in cases involving common carriers, property relations of spouses, maritime and labor, it is not applicable in this case.

. . .

Petitioner misapplies the doctrine of *processual presumption* in a bid to escape the consequences of its failure to present the pertinent provisions of the United States law.

APPEARANCES OF COUNSEL

Du-Baladad & Associates for petitioner.
BIR Legal Division for respondent.

D E C I S I O N

LEONEN, *J.*:

Two conditions must be met for the most favored nation clause to apply: (1) similarity in subject matter, *i.e.* that royalties derived from the Philippines by a resident of the United States and of the third state are of the same kind;[1] and (2) similarity in circumstances in the payment of tax, *i.e.* the same mechanism must be employed by the United States and the third state in mitigating the effects of double taxation.[2] Failure to meet these conditions means the clause cannot apply.

This Court resolves a Petition for Review on Certiorari[3] assailing the Decision[4] and Resolution[5] of the Court of Tax Appeals *En Banc*,which denied Cargill Philippines, Inc.'s (Cargill) claim for refund or tax credit worth ₱8,771,270.71, supposedly representing the erroneously paid withholding taxes on royalties from June 1, 2005 to April 30, 2007. The Court of Tax Appeals *En Banc* upheld the First Division's Decision[6]

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[1] Id. at 23.

[2] Id. at 25.

[3] *Rollo*, pp. 10-69.

[4] Id. at 89-114. The May 24, 2012 Decision in CTA EB Case No. 734 was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas of En Banc, Court of Tax Appeals.

[5] Id. at 76-87. The August 30, 2012 Resolution in CTA EB No. 734 was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas of En Banc, Court of Tax Appeals, Quezon City.

[6] Id. at 116-132. The September 6, 2010 Decision in CTA Case No. 7656 was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino of the First Division, Court of Tax Appeals, Quezon City.

and Resolution,[7] holding that BIR Ruling No. DA-ITAD 60-07 is not binding because the RP-Czech and RP-US tax treaties do not grant similar tax reliefs on royalty payments in violation of the most favored nation clause.

Cargill is a domestic corporation primarily engaged in trading commodities such as copra products, soybeans, and wheat, and in the manufacturing of animal feeds and coconut oil.[8]

On June 1, 2002, Cargill entered into an Intellectual Property License Agreement with United States company CAN Technologies, Inc.[9] (CAN Technologies). The Agreement granted Cargill a "non-exclusive, royalty-bearing, and non-transferable license" to use CAN Technologies' patent, technology, and copyrights "to produce, market, distribute, sell, use and supply animal feeds in the Philippines."[10] In turn, Cargill would pay CAN Technologies a royalty fee equivalent to 1.25% of its net sales and 5.25% of its consulting revenues.[11]

From June 1, 2005 to April 2007, Cargill allegedly paid CAN Technologies ₱175,425,414.12 as royalties, less withholding final taxes at the rate of 15%, or ₱26,313,812.10.[12]

On December 21, 2005, Cargill wrote the Bureau of Internal Revenue, requesting confirmation that the royalties it had paid CAN Technologies were subject to the preferential tax rate of 10% in accordance with the "most favored nation" clause of the RP-US Tax Treaty, in relation to the RP-Bahrain Tax Treaty.[13]

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[7] Id. at 134-143. The February 15, 2011 Resolution in CTA Case No. 7656 was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta of the First Division, Court of Tax Appeals, Quezon City.

[8] Id. at 14.

[9] The company was formerly known as AGX Services, Inc.

[10] Id. at 15-16.

[11] Id. at 16.

[12] Id.

[13] Id. at 118. *See* Convention between the Government of the Republic of the Philippines and the State of Bahrain for the Avoidance of Double

In reply, the Bureau of Internal Revenue issued BIR Ruling No. DA-ITAD 60-07 on May 11, 2007, confirming that a 10% tax rate may be applied to the royalties Cargill had paid CAN Technologies since January 1, 2004. It did clarify that this was not due to the RP-Bahrain Tax Treaty, which was inapplicable, but Article 12[14] of the RP-Czech Tax Treaty, in relation to Article 13[15] of the RP-US Tax Treaty.[16]

Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (2001), available at <https://www.bir.gov.ph/images/bir_files/international_tax_affairs/Bahrain%20treaty.pdf> (last accessed on September 15, 2020).

[14] Convention Between the Czech Republic and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (2000), art. 12 provides:

Article 12
Royalties

1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2) However, the royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:
a. 10 per cent of the gross amount of the royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work, other than that mentioned in sub-paragraph (b),any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;

. . . . . .

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

[15] Convention between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income (1976), art. 13 provides:

Article 13
Royalties

1) Royalties derived by a resident of one of the Contracting State from sources within the other Contracting State may be taxed by both Contracting States.
2) However, the tax imposed by that Contracting State shall not exceed —
a. In the case of the United States, 15% of the gross amount of the royalties, and
b. In the case of the Philippines, the least of:

Thus, on July 10, 2007, Cargill filed on behalf of CAN Technologies a claim for refund of ₱8,771,270.71, which it alleged to be the overpaid withholding tax on royalty payments. On the same date, Cargill also filed a Petition before the Court of Tax Appeals, though later submitted an amended Petition.[17]

On September 6, 2010, the Court of Tax Appeals First Division dismissed[18] the Petition for insufficiency of evidence. It held that Cargill failed to show that the taxes imposed on royalties in the RP-US and RP-Czech tax treaties were "paid under similar circumstances" or that the tax reliefs granted to United States residents under the RP-US Tax Treaty, with respect to taxes imposable upon royalties earned from sources within the Philippines, were similar to those allowed to Czech residents under the RP-Czech Tax Treaty.[19]

The First Division noted that since Cargill failed to present the relevant provisions of the United States law, it cannot be determined for certain whether the limitation on tax credit under the United States Law was similar to that under the RP-Czech Tax Treaty.[20]

The First Division found BIR Ruling No. DA-ITAD 60-07 infirm in allowing Cargill to apply the 10% preferential tax rate on royalties. It held that the BIR Ruling merely cited the relevant provisions of the tax treaties without explaining how the mechanisms employed by the United States and Czech

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i. 25 per cent of the gross amount of the royalties;
ii. 15 per cent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and
iii. *The lowest rate of Philippine tax that may be imposed on royalties* ***of the same kind paid under similar circumstances*** *to a resident of a third State*. (Emphasis supplied)

[16] Id. at 118-119.

[17] Id. at 17-18.

[18] Id. at 116-132.

[19] Id. at 125.

[20] Id. at 130.

Republic to mitigate the effects of double taxation are the same.[21]

On September 23, 2010, Cargill filed an Omnibus Motion for Reconsideration and to Reopen the Case for Presentation of Additional Evidence.[22]

In its February 15, 2011 Resolution,[23] the Court of Tax Appeals First Division denied the Omnibus Motion. Citing *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*,[24] it explained that the most favored nation clause aims to grant "*equality of international treatment*," which entails that the tax burden laid on the investor's income be the "*same*" in the two countries. To determine whether there is equality of treatment, the limitations of credit on foreign taxes under the United States Law in relation to Article 23 (1) of the RP-US Tax Treaty must be compared with the limitation in Article 22 of the RP-Czech Tax Treaty.[25] As such, Cargill's failure to present the United States Law was deemed fatal to its refund claim. The First Division also reiterated that it was not bound by the BIR Ruling, it being "judicially found to be erroneous."[26]

On March 25, 2011, Cargill filed its Petition for Review before the Court of Tax Appeals *En Banc*.[27]

In a May 24, 2012 Decision,[28] the Court of Tax Appeals *En Banc* dismissed the Petition. It held that Cargill may not avail of the lower 10% tax rate for its failure to comply with the requirements of the most favored nation clause embodied in *S.C. Johnson*, particularly, its failure to show similarity in the

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[21] Id. at 131.

[22] Id. at 134.

[23] Id. at 134-143.

[24] 368 Phil. 388 (1999) [Per J. Gonzaga-Reyes, Third Division].

[25] *Rollo*, pp. 137-138.

[26] Id. at 138-141.

[27] Id. at 89 and 92.

[28] Id. at 89-114.

circumstances in the payment of taxes on royalties under the two treaties. It also sustained the First Division's holding that BIR Ruling No. DA-ITAD 60-07 cannot be given weight.[29]

Cargill's Motion for Reconsideration was likewise denied in an August 30, 2012 Resolution.[30] Rejecting the argument on its lack of jurisdiction to reverse BIR rulings, the Court of Tax Appeals *En Banc* reasoned that it may pass upon the issue of the validity of an administrative ruling or regulation if raised in refund or assessment cases or other cases where it has jurisdiction.[31]

Hence, Cargill filed this Petition. In turn, the Commissioner of Internal Revenue, through the Office of the Solicitor General, filed a Comment.[32] Cargill subsequently filed its Reply.[33]

Petitioner submits that BIR Ruling No. DA-ITAD 60-07 had confirmed the applicability of the 10% preferential tax rate on the royalties payable by petitioner to CAN Technologies, pursuant to the RP-Czech Tax Treaty in relation to the most favored nation clause of the RP-US Tax Treaty.[34] It adds that, contrary to the holding of the First Division, the BIR Ruling exhaustively explained why the most favored nation rate was applicable,[35] and the ruling was arrived at after the Commissioner had considered all the appropriate laws,[36] supporting documents, and information[37] submitted by petitioner.

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[29] Id. at 112.

[30] Id. at 76-87.

[31] Id. at 85.

[32] Id. at 510-538.

[33] Id. at 546-572. In compliance with this Court's June 23, 2014 Resolution in relation to the October 22, 2012 Resolution.

[34] Id. at 22.

[35] Id. at 27-28.

[36] Id. at 28.

[37] Id. at 31.

Petitioner contends that the BIR Ruling determined that the two conditions laid down in *S.C. Johnson* for the most favored nation clause to apply were met.[38] These conditions were: (1) that royalties derived by a resident of the United States and of Czech Republic are of the same kind;[39] and (2) that the same mechanism must be employed by the United States and Czech Republic in mitigating the effects of double taxation.[40] Petitioner further stresses that before and after BIR Ruling No. DA-ITAD 60-07, the Bureau of Internal Revenue had issued several rulings with the same conclusion.[41] These rulings were presumably supported by factual and legal bases, and petitioner argues that these must be respected.[42]

Moreover, petitioner submits that the Court of Tax Appeals had no jurisdiction to reverse BIR Ruling No. DA-ITAD 60-07.[43] It invokes *British American Tobacco v. Camacho*,[44] which had ruled that the Court of Tax Appeals' jurisdiction does not include cases where the constitutionality of a law or rule is challenged. It submits that the BIR Ruling remains valid until the Commissioner of Internal Revenue or the regular courts revoke it.[45] Neither can it be attacked collaterally in the present tax refund case.[46]

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[38] *Rollo*, p. 22.

[39] Id. at 23.

[40] Id. at 25.

[41] Id. at 29-31. DA-ITAD BIR Ruling No. 127-06 dated October 23, 2006; ITAD BIR Ruling No. 152-12 dated March 4, 2012; ITAD BIR Ruling No. 073-12 dated February 16, 2012; ITAD BIR Ruling No. 126-11 dated April 5, 2011; ITAD BIR Ruling No. 070-11 dated March 1, 2011; ITAD BIR Ruling No. 045-10 dated March 5, 2010; ITAD BIR Ruling No. 041-10 dated September 21, 2010; ITAD BIR Ruling No. 019-10 dated August 20, 2010.

[42] Id. at 31-32.

[43] Id. at 32.

[44] 584 Phil. 489 (2008) [Per J. Ynares-Santiago, En Banc].

[45] *Rollo*, p. 32.

[46] Id. at 33-34.

Even if BIR Ruling No. DA-ITAD 60-07 were invalid, petitioner contends that such invalidity cannot be applied retroactively to its prejudice.[47]

Petitioner then argues that the preferential 10% tax rate would still apply despite certain dissimilarities.[48] For one, even if the RP-Czech Tax Treaty allows tax credit to a *resident*, while the RP-US Tax Treaty allows tax credit to a *resident and citizen*, the most favored nation clause still applies. What is important is that residents of both states are entitled to the similar tax reliefs for taxes paid in the Philippines.[49] Similarly, even if the RP-Czech Tax Treaty allows tax credit on royalties *paid* in the Philippines, while the RP-US Tax Treaty allows tax credit on royalties *paid or accrued* in the Philippines, the clause would still apply.[50]

Petitioner also submits that a reference to United States laws is not necessary for the most favored nation clause to apply.[51] It adds that in *S.C. Johnson*, this Court did not consider the domestic laws of the United States and Germany in determining if the taxes are "paid under similar circumstances."[52] In that case, asserts petitioner, the tax credit allowed under the RP-US and RP-Germany tax treaties were considered, and not the tax credit ultimately granted under each country's domestic law.[53]

Petitioner adds that "since the . . . royalties involved refer to royalties in the Philippines, the taxes on royalties referred to . . . pertains to the taxes paid in the Philippines based on the treaties and not the taxes paid in the country where the recipient of the royalty income is a resident."[54] Petitioner submits that:

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[47] Id. at 35.

[48] Id. at 39.

[49] Id. at 40-41.

[50] Id. at 42-43.

[51] Id. at 44.

[52] Id. at 50.

[53] Id. at 49-50.

[54] Id. at 50-51.

. . . the taxes on royalties under both the RP-US Tax Treaty and the RP-Czech Tax Treaty are paid under similar circumstances, considering that the taxes paid on such royalties in the Philippines are allowed as tax credit from the tax due on such income imposed in the United States and on the taxes due on such income imposed in the Czech Republic.[55]

Finally, petitioner insists on being entitled to the refund of ₱8,771,270.71, the amount it claims to represent the erroneously paid final withholding taxes on royalties paid to CAN Technologies.[56]

In her Comment, respondent counters that the Court of Tax Appeals has jurisdiction to pass upon the validity of BIR Ruling No. DA-ITAD 60-07, as petitioner's claim for refund hinges on this issue.[57]

Respondent goes on to claim that the Court of Tax Appeals correctly ruled that BIR Ruling No. DA-ITAD 60-07 is not valid because the second requirement of the most favored nation clause, per *S.C. Johnson*,was not met.[58] Petitioner allegedly failed to show similarity in the circumstances in the payment of taxes on royalties under the two treaties.[59]

Respondent also asserts that petitioner failed to present evidence to establish the provisions of the United States law that determines the limitation of the amount that may be credited, as referred to in Article 23 (1) of the RP-US Tax Treaty.[60]

Finally, respondent claims that BIR Ruling No. DA-ITAD 60-07 must be struck down because it goes against the rule in *S.C. Johnson* for the most favored nation clause to apply.[61]

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[55] Id. at 54.

[56] Id.

[57] Id. at 517.

[58] Id. at 522.

[59] Id. at 525.

[60] Id. at 528.

[61] Id. at 531.

She maintains that "administrative regulations 'may not enlarge, alter, or restrict the provisions of the law it administers.'"[62]

In its Reply, petitioner reiterates the arguments it raised in its Petition. It maintains that even if BIR Ruling No. DA-ITAD 60-07 were invalid, the ruling should not be retroactively applied to its prejudice.[63]

Petitioner further avers that the differences on entities entitled to tax credit[64] and on the timing of tax credit recognition do not amount to dissimilarities in the circumstances of the payment of the tax, and thus, would not render the most favored nation clause inapplicable.[65] It also submits that limitations on tax credit are present in both the RP-US Tax Treaty and RP-Czech Tax Treaty. It disagrees with respondent's position that reference to domestic laws on the determination of the amount of foreign tax credit would result in a dissimilarity in the circumstances of the payment of the taxes.[66]

Petitioner asserts that limitations on tax credit are common features in tax treaties. Citing the OECD Model Tax Convention and its commentaries, petitioner avers that a number of treaties usually refer to the domestic laws of the contracting states for detailed rules on foreign tax credit. This is permissible, adds petitioner, as long as the general principle laid down in Article 23B of the OECD Model is not altered. The general principle is that the tax credit of foreign income taxes imposed on foreign source income is limited to the extent that such taxes do not exceed the income tax of the other country on that foreign source income.[67]

Petitioner submits that since both the RP-US and RP-Czech tax treaties provide the general principle on limitation on tax

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[62] Id.

[63] Id. at 547-548.

[64] Id. at 549.

[65] Id. at 551-552.

[66] Id. at 552.

[67] Id. at 552-554.

credit, there is similarity in the circumstances of payment of taxes.[68] There is no need to delve into the details of the United States law, which merely concerns the calculation of the limitation on tax credit. Petitioner adds that the Philippines had likewise placed similar conditions and references to domestic law in the tax treaties.[69]

Invoking the doctrine of *processual presumption*, petitioner further argues that the United States income tax law is presumed to be the same as Philippine tax law. It contends that Section 904 (a) of the United States Internal Revenue Code is similar to Section 34 (c) (4) of the National Internal Revenue Code of 1997, as amended.[70]

Finally, petitioner submits that tax treaties are governed by international law, and they should be interpreted in good faith in light of their object and purpose, pursuant to the general rules of interpretation set forth in the Vienna Convention on the Law of Treaties. It then asserts that the Court of Tax Appeals' ruling—that the second requisite of the most favored nation clause was not met—was not made in good faith and does not serve the object and purpose of the tax treaties. Petitioner argues that such strict construction negates the essence of the most favored nation clause, which is to ensure equality in international treatment, and the availment of the reliefs provided in the tax treaties.[71]

For this Court's resolution are the following issues:

First, whether or not the Court of Tax Appeals has jurisdiction to determine the validity of BIR Ruling No. DA-ITAD 60-07. Related to this is whether or not the validity of BIR Ruling No. DA-ITAD 60-07 can be assailed in the present tax refund case;

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[68] Id. at 556.

[69] Id. at 556-558.

[70] Id. at 561-563.

[71] Id. at 564-566.

Second, whether or not the Court of Tax Appeals erred in declaring BIR Ruling No. DA-ITAD 60-07 invalid and not binding;

Third, whether or not the Court of Tax Appeals' ruling declaring BIR Ruling No. DA-ITAD 60-07 to be invalid can be applied to petitioner; and

Finally, whether or not petitioner is entitled to a tax refund/credit certificate in the amount of ₱8,771,270.71, representing erroneously paid final withholding taxes on royalties paid to CAN Technologies from June 1, 2005 to April 30, 2007.

The Petition is denied.

I

The Court of Tax Appeals has jurisdiction to review and nullify the rulings of the Commissioner of Internal Revenue.

Under Republic Act No. 1125, or An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, the Commissioner of Internal Revenue's rulings on "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue" are appealable to the Court of Tax Appeals, thus:

> SECTION 7. *Jurisdiction*. — The CTA shall exercise:
>
> a. *Exclusive appellate jurisdiction to review by appeal*, as herein provided:
>
> 1. *Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue*[.]

Here, petitioner argues that the Court of Tax Appeals had no jurisdiction to reverse or nullify BIR Ruling No. DA-ITAD 60-07, citing *British American Tobacco v. Camacho*,[72] which held:

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[72] 584 Phil. 489 (2008) [Per J. Ynares-Santiago, En Banc].

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. *Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts.* This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[73] (Emphasis supplied)

We disagree.

In *The City of Manila v. Hon. Grecia-Cuerdo*,[74] this Court recognized that the Court of Tax Appeals possessed all inherent powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases:

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

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[73] Id. at 511.

[74] 726 Phil. 9 (2014) [Per J. Peralta, En Banc].

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.[75] (Emphasis supplied, citations omitted)

This Court underscored that the grant of appellate jurisdiction to the Court of Tax Appeals includes the power necessary to

[75] Id. at 26-28.

exercise it effectively. Deemed included in its jurisdiction is the authority to resolve petitions for certiorari against interlocutory orders of the Regional Trial Court in local tax cases.[76] Furthermore, a split jurisdiction between the Court of Tax Appeals and the Court of Appeals is "anathema to the orderly administration of justice" and could not have been the legislative intent.[77]

In *Banco De Oro v. Republic*,[78] this Court abandoned *British American Tobacco* and declared that the Court of Tax Appeals has exclusive jurisdiction to determine the validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue. Consistent with *Commissioner of Internal Revenue v. Leal*,[79] citing *Rodriguez v. Blaquera*[80] and *Asia International Auctioneers, Inc. v. Hon. Parayno, Jr.*,[81] we recognized the Court of Tax Appeals' broad authority over tax-related cases. Thus:

> *The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.*
>
> *This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).*

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of

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[76] Id. at 28.

[77] Id. at 25.

[78] 793 Phil. 97 (2016) [Per J. Leonen, En Banc].

[79] 440 Phil. 477 (2002) [Per J. Sandoval-Gutierrez, Third Division].

[80] 109 Phil. 598 (1960) [Per J. Concepcion, En Banc].

[81] 565 Phil. 255 (2007) [Per C.J. Puno, First Division].

Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.[82] (Emphasis supplied, citations omitted)

Banco de Oro stressed that such jurisdiction is exclusively vested in the Court of Tax Appeals, whether raised by the taxpayer directly or as a defense.

Thus, the Court of Tax Appeals has jurisdiction to pass upon the validity of BIR Ruling No. DA-ITAD 60-07, on which petitioner squarely relied to support its claim for refund. The Court of Tax Appeals is not bound by the Bureau of Internal

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[82] *Banco De Oro v. Republic*, 793 Phil. 97, 123-125 (2016) [Per J. Leonen, En Banc].

Revenue's interpretation or application of treaty provisions when it is found to be clearly erroneous. As this Court held:

> Even conceding that the construction of a statute by the CIR is to be given great weight, the courts, which include the CTA, are not bound thereby if such construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws. "It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government."[83] (Citation omitted)

II

The main substantive issue raised in this case involves the application of the most favored nation clause under Article 13 (2) (b) (iii) of the RP-US Tax Treaty,[84] a convention between the Philippines and the United States. The provision states:

> Article 13
> Royalties
>
> 1) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.
>
> 2) However, the tax imposed by that Contracting State shall not exceed —
>
> a. In the case of the United States, 15 percent of the gross amount of the royalties, and
> b. In the case of the Philippines, the least of:
> i. 25 percent of the gross amount of the royalties;
> ii. 15 percent of the gross amount of the royalties, where

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[83] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, 609 Phil. 695, 724 (2009) [Per J. Chico-Nazario, Third Division].

[84] The Convention between the Government of the Republic of the Philippines and the Government of the United States of America with respect to Taxes on Income was signed in Manila on October 1, 1976. It entered into force on October 16, 1982, the 30th day following the exchange of the relevant instruments of ratification in Washington, United States on September 16, 1982. Its provisions on taxes apply on income derived or which accrued beginning January 1, 1983.

the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

iii. *The lowest rate of Philippine tax that may be imposed on royalties of the same kind* ***paid under similar circumstances*** *to a resident of a third State.* (Emphasis supplied)

The most favored nation clause speaks of the "*lowest rate of Philippine tax that may be imposed on royalties of the same kind* ***paid under similar circumstances*** *to a resident of a third State*." Therefore, the tax treatment of royalties to a United States entity may be taken in relation to other tax treaties that provide a lower tax rate on the same type of income.

Here, the question is whether petitioner is entitled to the 10% preferential tax rate, as provided in Article 12 (2) (a) of the RP-Czech Tax Treaty,[85] on royalties paid to CAN Technologies, a resident corporation of the United States:

Article 12
Royalties

1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, *the tax so charged* ***shall not exceed*** —

   a. *10 per cent of the gross amount of the royalties* arising from the use of, or the right to use, any copyright of literary, artistic or scientific work, other than that mentioned in sub-paragraph (b), any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;

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[85] The Convention between the Czech Republic and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income was signed in Manila on November 13, 2000. It became effective on January 1, 2004.

. . . .

> The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. (Emphasis supplied)

In *Commissioner of Internal Revenue v. S.C. Johnson & Sons*,[86] this Court construed the phrase "paid under similar circumstances" under the most favored nation clause as referring to *circumstances that are tax-related*. In other words, the *similarity in the circumstances of payment of taxes on the royalties derived from the Philippines is a condition for the enjoyment of the most favored nation treatment.*

This Court explained in *S.C. Johnson* that bilateral tax treaties have been entered into by the Philippines with different countries to avoid double taxation. It held:

> The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation*, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.[87] (Emphasis in the original, citations omitted)

This Court further explained that to eliminate double taxation, a tax treaty resorts to two methods: *first*, by allocating the right to tax between the contracting states; and *second*, where the state of source is assigned the right to tax, by requiring the

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[86] 368 Phil. 388 (1999) [Per J. Gonzaga-Reyes, Third Division].

[87] Id. at 404-405.

state of residence to grant a tax relief either through exemption or tax credit. Thus:

> Double taxation usually takes place when a person is resident of a contracting state and derives income from, or owns capital in, the other contracting state and both states impose tax on that income or capital. In order to eliminate double taxation, a tax treaty resorts to several methods. First, it sets out the respective rights to tax of the state of source or situs and of the state of residence with regard to certain classes of income or capital. In some cases, an exclusive right to tax is conferred on one of the contracting states; however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited.
>
> The second method for the elimination of double taxation applies whenever the state of source is given a full or limited right to tax together with the state of residence. In this case, the treaties make it incumbent upon the state of residence to allow relief in order to avoid double taxation. *There are two methods of relief — the exemption method and the credit method. In the* ***exemption method, the income or capital which is taxable in the state of source or situs is exempted in the state of residence, although in some instances it may be taken into account in determining the rate of tax applicable to the taxpayer's remaining income or capital.*** *On the other hand, in the* ***credit method, although the income or capital which is taxed in the state of source is still taxable in the state of residence, the tax paid in the former is credited against the tax levied in the latter.*** *The basic difference between the two methods is that in the exemption method, the focus is on the income or capital itself, whereas the credit method focuses upon the tax.*[88] (Emphasis supplied, citations omitted)

The exemption and credit principles are the two leading principles in eliminating double taxation that are being followed in existing conventions between countries.[89]

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[88] Id. at 405-406.

[89] Commentary on Article 23A and 23B of the OECD Model: Concerning the Methods for Elimination of Double Taxation, 8, available at <https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_59d66429-en#page9> (last accessed on September 8, 2020).
The Organization for Economic Cooperation and Development (OECD) Model Double Taxation Conventions constituted as the principal bases for bilateral

Under the exemption principle, the income that may be taxed in the state of source is not taxed in the state of residence. This may be applied by two methods: *full exemption*,where the state of residence does not account for the income from the state of source for tax purposes; or *with progression*,where the income taxed in the state of source is not taxed by the state of residence, but the state of residence retains the right to consider that income when determining the tax to be imposed on the rest of the income.[90]

Under the credit principle, the state of residence retains the right to tax the taxpayer's total income, but allows a deduction for the tax paid in the state of source. It may be applied by two methods: a *full credit*, where the total amount of tax paid in the state of source is allowed as deduction; or an *ordinary credit*, where the deduction allowed by the state of residence is restricted to that part of its own tax appropriate to the income from the state of source.[91]

Some states have also adopted the so-called "*tax sparing*"[92] provision, in relation to tax incentives granted under their

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treaty negotiations among developed nations. The US model income tax convention was also based to a large degree on the OECD Model. *See* Robert Thornton Smith, *Tax Treaty Interpretation by the Judiciary*, 49 THE TAX LAWYER 845-891 (1996), available at <*https://www.jstor.org/stable/20771815?refreqid=excelsior%3Af1e1bc19b78581d03babe8c48d68a7eb&seq=1*> (last accessed on September 8, 2020).

[90] Commentary on Article 23A and 23B of the OECD Model: Concerning the Methods for Elimination of Double Taxation, 8, available at <https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_59d66429-en#page9> (last accessed on September 8, 2020).

[91] Id.

[92] *See for instance* Article 24 of RP-India Tax Treaty; Article 23 (3) of the RP-Vietnam Tax Treaty.
An example of tax sparing is found in the TAX CODE, Section 28 (B) (5) (b), in relation to dividend income earned by a foreign investor in the Philippines. The provision states:
SEC. 28. Rates of Income Tax on Foreign Corporations. –

. . . . . .

respective domestic laws to attract foreign investments.[93] With tax sparing, taxes exempted or reduced are considered fully paid.[94] Consequently, a non-resident may obtain a tax credit for the taxes that have been "*spared*" under the incentive program of the state of source,[95] preserving the economic benefits granted by the state of source.

(B) *Tax on Nonresident Foreign Corporation.* –

. . . . . .

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –

. . . . . .

(b) *Intercorporate Dividends.* – A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57 (A) of this Code, *subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%)*, which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided*, That effective January 1, 2009 the credit against the tax due shall be equivalent to fifteen percent (15%),which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends[.] *See Commissioner of Internal Revenue v. Procter & Gamble Phil. Manufacturing Corp.*, 243 Phil. 703 (1988) [Per J. Paras, Second Division].

[93] Commentary on Article 23A and 23B of the OECD Model: Concerning the Methods for Elimination of Double Taxation, p. 8, available at <https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_59d66429-en#page9> (last accessed on September 8, 2020).

[94] J. Paras, Dissenting Opinion in *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.*, 281 Phil. 425, 465-476 (1991) [Per J. Feliciano, En Banc].

[95] Commentary on Article 23A and 23B of the OECD Model: Concerning the Methods for Elimination of Double Taxation, p. 8, available at <https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_59d66429-en#page9> (last accessed on September 8, 2020).
An example of a tax sparing provision is found in Article 23 in relation to Article 12 of the RP-New Zealand Tax Treaty, which provides:

Another form of tax sparing is the so-called "matching credit,"[96] where the state of residence agrees, as a counterpart

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Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

a) in the case of New Zealand, 15 percent of the gross amount of the royalties; and

b) in the case of the Philippines,

(i) *15 percent of the gross amount of the royalties where the royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities*; and

(ii) in all other cases, 25 percent of the gross amount of the royalties.

Article 23
RELIEF FROM DOUBLE TAXATION

Double taxation shall be avoided in the following manner:

. . . . . .

2. In the case of New Zealand:

Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle hereof), Philippine tax paid under the law of the Philippines and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in the Philippines (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income. . . *Where, in terms of paragraph 2 (b) (i) of Article 12, a resident of New Zealand derives income from royalties which are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity he shall be deemed to have paid in addition to the Philippine tax actually paid, Philippine tax in an amount equal to 10 percent of the gross amount of the royalties.* (Emphasis supplied)

[96] For instance, Article 23 (2) of the RP-Brazil Tax Treaty provides:

Article 23
METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first Contracting State shall allow as a deduction from the tax on the income of that resident,

to the reduced tax, to allow a deduction against its own tax of an amount fixed at a higher rate.[97]

In *S.C. Johnson*, this Court stated that "[i]n negotiating tax treaties, the underlying rationale for reducing the tax rate is that the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country."[98] It expounded:

...the ultimate reason for avoiding double taxation is to encourage foreign investors to invest in the Philippines — a crucial economic goal for developing countries. The goal of double taxation conventions would be thwarted if such treaties did not provide for effective measures to minimize, if not completely eliminate, the tax burden laid upon the income or capital of the investor. Thus, if the rates of tax are lowered by the state of source, in this case, by the Philippines, there should be a concomitant commitment on the part of the state of residence to grant some form of tax relief, whether this be in the form of a tax credit or exemption. Otherwise, the tax which could have been collected by the Philippine government will simply be collected by another state, defeating the object of the tax treaty since the tax burden imposed upon the investor would remain unrelieved. If the state of residence does not grant some form of tax relief to the investor, no benefit would redound to the Philippines, *i.e.*, increased

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an amount equal to the income tax paid in the other Contracting State.

The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in the other Contracting State.

2. *For the deduction indicated in paragraph 1, the Brazilian tax and the Philippine tax shall always be deemed to have been paid at the rate of 25 per cent in the following cases:*

a) dividends referred to in paragraph 2 of Article 10;

b) interest referred to in paragraph 2 of Article 11; and

c) royalties referred to in paragraph 2 of Article 12.

[97] Commentary on Article 23A and 23B of the OECD Model: Concerning the Methods for Elimination of Double Taxation, p. 8, available at <https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_59d66429-en#page9> (last accessed on September 8, 2020).

[98] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, 368 Phil. 388, 406 (1999) [Per J. Gonzaga-Reyes, Third Division].

investment resulting from a favorable tax regime, should it impose a lower tax rate on the royalty earnings of the investor, and it would be better to impose the regular rate rather than lose much-needed revenues to another country.[99] (Citations omitted)

In light of the purpose of tax treaties, the relevant treaty provisions on the tax treatment of particular items of income, combined with the provision on the elimination or avoidance of double taxation, govern the allocation of the right to tax between the contracting states.

In some tax treaties or international agreements, a most favored nation clause is added to ensure the contracting states of the benefit of concessions previously or subsequently to be made by either contracting state. This provision guards against oversight during treaty negotiation, and obviates the need for subsequent negotiations.[100] The clause aims to prevent discriminations[101] and to give assurance of the opportunity to enjoy equality of treatment.[102] In *S.C. Johnson*:

The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries. The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation. The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided that the subject matter of taxation, in this case royalty income, is the same as that in the tax treaty under which the taxpayer is liable. Both Article 13 of

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[99] Id. at 409-410.

[100] *The Most Favoured Nation Clause*, 22 THE AMERICAN JOURNAL OF INTERNATIONAL LAW, 133-156 (1928). Available at <https://www.jstor.org/stable/2213313> (last accessed on September 8, 2020).

[101] *See Commissioner of Internal Revenue v. Philippine Ace Lines, Inc.*,134 Phil. 874 (1968) [Per J. Angeles, En Banc].

[102] *See Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, 368 Phil. 388 (1999) [Per J. Gonzaga-Reyes, Third Division].

the RP-US Tax Treaty and Article 12(2)(b) of the RP-West Germany Tax Treaty, above-quoted, speaks of tax on royalties for the use of trademark, patent, and technology. The entitlement of the 10% rate by U.S. firms despite the absence of a matching credit (20% for royalties) would derogate from the design behind the most favored nation clause to grant equality of international treatment since the tax burden laid upon the income of the investor is not the same in the two countries. The similarity in the circumstances of payment of taxes is a condition for the enjoyment of most favored nation treatment precisely to underscore the need for equality of treatment.[103] (Citations omitted)

Per *S.C. Johnson*, two conditions must be met for the most favored nation clause to apply. *First*,royalties derived from the Philippines by a resident of the United States and of the third state must be of the same kind or class, in order to avail of the lower tax enjoyed by the third state. *Second*,the tax consequences of royalty payments under the two treaties must be under similar circumstances. This requires a showing that the method employed for eliminating or mitigating the effects of double taxation under the treaty with the United States and the third state are the same.

In that case, this Court found that the United States resident was not entitled to the most favored nation tax rate of 10% on royalty income derived from the Philippines because the payment of such tax was not under similar circumstances. While Germany has a matching credit of 20% of the gross amount of royalties paid in the Philippines, there is no such similar credit granted by the United States.[104]

Here, there is no question as to compliance with the first condition. It is undisputed that payments to CAN Technologies for the use or entitlement to use its patent, technology, and copyrights on the manufacture and sale of animal feeds are within the definition of royalties under Article 13 (3)[105] of the

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[103] Id. at 410-411.

[104] Id. at 411.

[105] Convention between the Government of the Republic of the Philippines

RP-US Tax Treaty and Article 12 (2)[106] of the RP-Czech Tax Treaty.

On the second condition, this Court agrees with petitioner that differences pertaining to the taxpayers entitled to tax credit (*resident and citizen* under RP-US Tax Treaty vs. *resident* under RP-Czech Tax Treaty) and to the timing of the recognition of the tax credit (taxes *paid or accrued* under RP-US Tax Treaty vs. taxes *paid* under RP-Czech Tax Treaty) do not amount to dissimilarities in the circumstances of the payment

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and the Government of the United States of America with Respect to Taxes on Income (1976), art. 13 provides:

Article 13
Royalties

. . . . . .

(3) The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes used for radio or television broadcasting, *any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience.* The term "royalties" also includes gains derived from the sale, exchange or other disposition of any such right or property which are contingent on the productivity, use, or disposition thereof. (Emphasis supplied)

[106] Convention between the Czech Republic and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (2000), art. 12 provides:

Article 12
Royalties

1) ...

2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed —

a. 10% of the gross amount of the royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work, other than that mentioned in sub-paragraph (b), *any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience[.]* (Emphasis supplied)

of the tax, which would have rendered the most favored nation clause inapplicable.[107]

As petitioner argued, the inclusion of "citizens" under the RP-US Tax Treaty is not a material distinguishing feature. What is important is that residents of both the United States and the Czech Republic are entitled to similar tax reliefs for taxes paid in the Philippines. Similarly, that taxes "paid or accrued" are allowed as tax credit under the RP-US Tax Treaty pertains merely to the timing of recognition of the credit, which depends on when the tax was levied at the state of source. Regardless, under the tax treaties, relief is required to be granted by the state of residence where an item of income is taxed by the state of source.

However, we find untenable petitioner's contention on the similarity of tax reliefs allowed by the United States and the Czech Republic. Both the RP-US Tax Treaty and the RP-Czech Tax Treaty were entered into "for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income."[108] The articles for the elimination or avoidance of double taxation of both countries are found in the following provisions in the RP-US Tax Treaty and RP-Czech Tax Treaty:

RP-US Tax Treaty	**RP-Czech Tax Treaty**
Article 23 RELIEF FROM DOUBLE TAXATION	Article 22 ELIMINATION OF DOUBLE TAXATION
Double taxation of income shall be avoided in the following manner: 1. *In accordance with the provisions and subject to the limitations of the law of the United States* (as it may be amended from time to time	1. In the case of a resident of the Philippines, double taxation shall be eliminated as follows: Subject to the laws of the Philippines and the limitations thereof regarding the allowance of

[107] *Rollo*, pp. 40-43.

[108] The prefatory clauses of both treaties uniformly state this.

without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States as a *credit against the United States tax the appropriate amount of taxes paid or accrued to the Philippines* and, in the case of a United States corporation owning at least 10 percent of the voting stock of a Philippine corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid or accrued to the Philippines by the Philippine corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to the Philippines, *but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources within the Philippines or on income from sources outside the United States) provided by United States law for the taxable year*. For the purpose of applying the United States credit in relation to taxes paid or accrued to the Philippines,	a credit against the Philippine tax of tax paid in any country other than the Philippines, the Czech tax paid in respect of income derived from the Czech Republic shall be allowed as credit against the Philippine tax payable in respect of that income. 2. In the case of a resident of the Czech Republic, double taxation shall be eliminated as follows: a) The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of this Convention may also be taxed in the Philippines, but shall allow as a deduction from the amount of tax computed on such a base *an amount equal to the tax paid in the Philippines. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of this Convention, may be taxed in the Philippines*. b) Where in accordance with any provision of the

	the rules set forth in Article 4 (Source of Income) shall be applied to determine the source of income. For purposes of applying the United States credit in relation to taxes paid or accrued to the Philippines, the taxes referred to in paragraphs *1 (b) and 2 of Article 1* (Taxes Covered) shall be considered to be income taxes.		Convention income derived by a resident of the Czech Republic is exempt from tax in the Czech Republic, the Czech Republic may nevertheless, in calculating the amount of Czech tax on the remaining income of such resident, take into account the exempted income. (Emphasis supplied)
2.	In accordance with the provisions and subject to the limitations of the law of the Philippines (as it may be amended from time to time without changing the general principle hereof), the Philippines shall allow to a citizen or resident of the Philippines as a credit against the Philippine tax the appropriate amount of taxes paid or accrued to the United States . . . Such appropriate amount shall be based upon the amount of tax paid or accrued to the United States, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Philippine tax on income from sources within the United States, and on income from sources outside the Philippines) provided by Philippine law for the taxable year[.] (Emphasis supplied)		

Indeed, both the United States and the Czech Republic adopt the credit principle, where the taxes paid in the Philippines on royalty income are allowed to be credited against the United States tax or Czech tax, as the case may be. However, a closer look at the treaty provisions would show that while the RP-Czech Tax Treaty specifies how the tax credit is to be implemented and its limitations, the RP-US Tax Treaty does not.

By looking at the RP-Czech Tax Treaty, we would already know how the credit is applied and what the maximum deduction allowed is:

First, the Czech tax is calculated based on the taxpayer's total income, including the income from the Philippines, but the tax paid in the Philippines is allowed as deduction from the Czech tax; and

Second, the *tax paid in the Philippines should not exceed the Czech tax appropriate to the Philippine-sourced income*.

On the other hand, while the RP-US Tax Treaty does not provide details on how the credit is to be applied and its limitations, it expressly refers to the United States law in that the tax paid or accrued to the Philippines shall be allowed as a credit against United States tax *in accordance with, and subject to the limitations of United States law*. Furthermore, the *tax credit shall not exceed the limitations provided by the United States law for the taxable year*.

Moreover, under the RP-Czech Tax Treaty, the limitation on credit is already specified—that the Philippine tax should not exceed the Czech tax payable for the same income. Under the RP-US Tax Treaty, the limitation on credit is not determinable unless we look into the internal tax law of the United States.

Therefore, the Court of Tax Appeals was correct in ruling that the relevant provisions of the United States law are necessary to determine for certain the similarity in circumstances in the payment of taxes on royalty in the United States and the Czech Republic.

In this regard, the Court of Tax Appeals First Division, as reiterated by the *En Banc*, made the following findings:

Records show that petitioner failed to present evidence to prove or establish the provisions of the United States law which would determine the limitation being referred to in Article 23(1) of the RP-US Tax Treaty. Thus, We cannot say for certain that the RP-US Tax Treaty grants similar tax reliefs to residents of the United States with respect to taxes imposable upon royalties earned from sources within the Philippines as those allowed to Czech residents under the RP-Czech Tax Treaty.

The limitation of the amount that may be credited under the RP-US Tax Treaty must be clearly established. This must be so because the similarity in the circumstances of payment of taxes is a condition for the enjoyment of most favored nation treatment, precisely to underscore the need for equality of treatment.[109] (Citation omitted)

Petitioner, however, invokes the doctrine of *processual presumption*,which provides that "in the absence of pleading and proof, the laws of the foreign country or state will be presumed to be the same as our local or domestic law."[110] It argues that the limitation on credit may then be clearly established by referring to our domestic law, which is presumed to be the same as the United States law on the matter. It adds that Section 904 (a) of the United States Internal Revenue Code is similar to Section 34 (c) (4) of the National Internal Revenue Code of 1997, as amended.[111]

This Court is not convinced.

The International law doctrine of *processual presumption* or *presumed-identity approach* comes into play when a party invoking the application of a foreign law to a dispute fails to prove the foreign law.[112] While the doctrine has been applied in cases involving common carriers,[113] property relations of

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[109] *Rollo*, p. 130.

[110] Id. at 561.

[111] Id. at 561-562.

[112] *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, 563 Phil. 1, 22 (2007) [Per J. Velasco, Jr., Second Division].

[113] *See Nedlloyd Lijnen B.V. Rotterdam v. Glow Laks Enterprises, Ltd.*, 747 Phil. 170 (2014) [Per J. Perez, First Division] and *International*

spouses,[114] maritime[115] and labor,[116] it is not applicable in this case.

It is a fundamental taxation principle that a state may tax persons, property, *income*, or business within its territorial limits.[117] Royalty income derived by a non-resident foreign corporation in the Philippines are generally taxed at 35% (for payments before January 1, 2009) pursuant to Section 28 (B) (1)[118] of the National Internal Revenue Code of 1997. However, such royalties may be exempt or partially exempt (if subject to a reduced rate only) to the extent required by any treaty obligation binding on the Philippines. Section 32 (B) (5) of the National Internal Revenue Code of 1997, as amended, provides:

Harvester Co. in Russia v. Hamburg-American Line, 42 Phil. 845 (1918) [Per J. Street, Second Division].

[114] *See Collector of Internal Revenue v. Fisher*, 110 Phil. 686 (1961) [Per J. Barrera, En Banc] and *Beam v. Yatco*, 82 Phil. 30 (1948) [Per J. Perfecto, Second Division].

[115] *See Wildvalley Shipping Co., Ltd. v. Court of Appeals*, 396 Phil. 383 (2000) [Per J. Buena, Second Division].

[116] *See ATCI Overseas Corporation v. Echin*, 647 Phil. 43 (2010) [Per J. Carpio-Morales, Third Division] and *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, 563 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division].

[117] *Manila Gas Corp. v. Collector of Internal Revenue*, 62 Phil. 895, 900 (1936) [Per J. Malcolm, En Banc].

[118] TAX CODE, sec. 28 provides:
Section 28. *Rates of Income Tax on Foreign Corporations.* —

. . . . . .

(B) *Tax on Nonresident Foreign Corporation.* —
(1) *In General.* — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5 (c): Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).

. . . . . .

SECTION 32. *Gross Income*. —

. . . . . .

(B) Exclusions from Gross Income. — The following items shall not be included in gross income and shall be exempt from taxation under this Title:

. . . . . .

(5) Income Exempt under Treaty. — Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

Thus, a foreign corporation may avail of the benefits of a tax treaty concluded by the Philippines with its country of residence by invoking the treaty provisions and proving that they apply to it. In other words, unless clearly proven that the treaty provisions apply to it, a non-resident foreign corporation, like CAN Technologies, shall be taxed according to the National Internal Revenue Code of 1997, as amended.

Petitioner's claim on behalf of CAN Technologies for refund of "erroneously paid withholding tax on royalty income" is anchored on the 10% preferential tax rate under the RP-Czech Tax Treaty, in relation to the most favored nation clause of the RP-US Tax Treaty. Consequently, compliance with the conditions for the applicability of the most favored nation clause must be proven as a fact. It is necessary to show the similarity in tax reliefs accorded by the United States and the Czech Republic under their respective treaties with the Philippines.

With regard to the RP-US Tax Treaty, a specific reference was made to the United States law for the limitation on allowable tax credit. This requires that the pertinent provisions of the United States law be presented in evidence. Whether the United States law imposes the same restrictions on tax credit as those imposed in the RP-Czech Tax Treaty is a question of fact that petitioner must prove.

Petitioner misapplies the doctrine of *processual presumption* in a bid to escape the consequences of its failure to present the pertinent provisions of the United States law.

A tax refund hinged on a lower tax rate under the RP-Czech Tax Treaty, in relation to the RP-US Tax Treaty, is akin to a tax exemption, and is strictly construed against the taxpayer.[119] Petitioner bears the burden of proving its claim indubitably. It cannot be permitted to rest on vague implications.[120] As this Court held:

> This Court has laid down the rule that "as the power of taxation is a high prerogative of sovereignty, the relinquishment is never presumed and any reduction or diminution thereof with respect to its mode or its rate, must be strictly construed, and the same must be coached in clear and unmistakable terms in order that it may be applied." More specifically stated, the general rule is that any claim for exemption from the tax statute should be strictly construed against the taxpayer.[121]

All told, the most favored nation clause cannot apply. Petitioner cannot avail of the lower 10% tax rate under the RP-Czech Tax Treaty for its failure to prove that the tax on royalties under the RP-US Tax Treaty was paid under circumstances similar to the tax on royalties under the RP-Czech Tax Treaty. Accordingly, there is no overpayment of tax on royalties from June 1, 2005 to April 30, 2007. The Court of Tax Appeals correctly denied petitioner's claim for refund of ₱8,771,270.71.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed May 24, 2012 Decision and August 30, 2012 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 734 are **AFFIRMED**.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[119] *See Commissioner of Internal Revenue v. Mitsubishi Metal Corp.*, 260 Phil. 224 (1990) [Per J. Regalado, Second Division] and *PLDT v. City of Davao*, 415 Phil. 764 (2001) [Per J. Mendoza, Second Division].

[120] *See Davao Light & Power Co., Inc. v. Commissioner of Customs*, 150 Phil. 940 (1972) [Per J. J.B.L. Reyes, First Division]; *Asiatic Petroleum Co., Ltd. v. Llanes*, 49 Phil. 466 (1926) [Per J. Street, En Banc].

[121] *Luzon Stevedoring Corp. v. Court of Tax Appeals*, 246 Phil. 666, 671 (1988) [Per J. Paras, Second Division].

THIRD DIVISION

[G.R. No. 205810. September 9, 2020]

ESTATE OF VALERIANO C. BUENO and GENOVEVA I. BUENO, represented by VALERIANO I. BUENO, JR. and SUSAN I. BUENO, *Petitioners*, *v.* **ESTATE OF ATTY. EDUARDO M. PERALTA, SR. and LUZ B. PERALTA, represented by DR. EDGARDO B. PERALTA,** *Respondents*.

SYLLABUS

1. CIVIL LAW; CONTRACTS; DEFECTIVE CONTRACTS; UNENFORCEABLE CONTRACTS; LACK OF WRITING CAN BE CURED BY RATIFICATION OR ACKNOWLEDGMENT.— Our laws recognize four kinds of defective contracts. Among these is the unenforceable contract, or one that, for lack of authority, or of writing, or for incompetence of both parties, cannot be given effect unless properly ratified. But note that the lack of writing does not make the agreement void or inexistent. It merely bars suit for performance or breach. Such a defect can be cured by acknowledgment or ratification.

2. ID.; ID.; ID.; ID.; STATUTE OF FRAUDS; COVERED TRANSACTIONS MUST BE REDUCED IN WRITING SO AS TO BE ENFORCEABLE; EXCEPTIONS.— Quite recently, We had the opportunity to discuss the parameters of the Statute of Frauds in *Heirs of Alido v. Campano*, which reiterated that an unenforceable contract under Article 1403 (2) is not necessarily void since it can be ratified by failure to object to the presentation of oral evidence to prove the contract itself, or by the acceptance of benefits. The contract can be established by the express or implied conduct of the parties. The Court explained, thus:

> Article 1403 (2) of the Civil Code, or otherwise known as the Statute of Frauds, requires that covered transactions must be reduced in writing, otherwise the same would be unenforceable by action. In other words, sale of real property must be evidenced by a written document as an oral sale of immovable property is unenforceable.

3. ID.; ID.; ID.; ID.; RATIFICATION OF ORAL CONTRACTS; CASE AT BAR.— With what transpired between the parties, the oral contract between Bueno and Atty. Peralta should be excluded from the application of the Statute of Frauds. The application of the exception in the first sentence of Article 1403, in relation to Article 1405 of the Civil Code should apply instead. Ratification as an exception to unenforceable contracts is addressed in the first sentence of Article 1403, while the modes of ratification are described in Article 1405.

. . .

Ratification is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation of the agreement or a waiver of the right to impugn the unauthorized act.

4. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; BY ADOPTIVE ADMISSION, REPEATED AND CONSISTENT REPRESENTATIONS FROM A PARTY ARE CONSIDERED JUDICIAL ADMISSIONS.— The Estate of Bueno argues against the existence of the condition for the transfer of the subject property to Atty. Peralta because it was never raised as an issue in the Answer. However, it is plain to Us, based on the allegations in the petition and the Reply, that the Estate of Bueno **reiterated** a **confirmation** of Bueno's **commitment** to transfer the property to Atty. Peralta. Such repeated and consistent representation from the Estate of Bueno and their counsel demonstrate the *existence* of the contract between Bueno and Atty. Peralta, which the Court considers as **judicial admissions**.

On the aspect of reiteration of a factual statement, there is the acknowledged postulate on **adoptive admission** as a component of the concept on judicial admissions under Section 4, Rule 129 of the Revised Rules on Evidence. This concession of a disputed fact by the adverse party was also applied by this Court in *Republic v. Kenrick Development Corporation*:

> A party may, by his words or conduct, voluntarily adopt or ratify another's statement. Where it appears that a party clearly and unambiguously assented to or adopted the statements of another, evidence of those statements is admissible against him. This is the essence of the principle of adoptive admission.

> An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person. By adoptive admission, a third person's statement becomes the admission of the party embracing or espousing it.

5. ID.; ID.; ID.; NEGATIVE PREGNANT STATEMENTS; CIVIL LAW; ESTOPPEL; A DENIAL PREGNANT WITH AN ADMISSION IS IN EFFECT AN ADMISSION OF THE AVERMENT TO WHICH IT IS DIRECTED AND CALLS INTO EFFECT THE PRINCIPLE OF ESTOPPEL.— We note explicit remarks from the Estate of Bueno during the various stages of the suit that can be deemed as **negative pregnant** statements, or that form of denial which is at the same time an affirmative assertion favorable to the opposing party. It is said to be a denial pregnant with an admission of the substantial facts in the pleading responded to. It is in effect an admission of the averment to which it is directed.

These statements call into effect the principle of estoppel under Article 1431 of the New Civil Code. Any other evidence to prove the agreement is unnecessary in light of the Estate of Bueno's conduct over the years, from the time the agreement was made, to the moment Atty. Peralta and his family took possession of the subject property in 1962, and through the years that they occupied the same.

Consequently, the Court may disregard all evidence submitted by the Estate of Bueno contrary to, or inconsistent with, their judicial admissions.

6. ID.; ID.; ID.; ORAL ADMISSIONS; HEARSAY EVIDENCE; COMPETENT WITNESSES MAY TESTIFY TO WHAT THEY HEARD; CASE AT BAR.— An examination of the transcript reveals that the sole objection to Edmundo's testimony was that it was hearsay. But since the statement of Bueno was uttered in the presence of Atty. Nicdao, the latter had personal knowledge of such admission. There is no prohibition against a witness testifying to what he heard. . . .

Accordingly, the oral contract between Bueno and Atty. Peralta is removed from the application of the Statute of Frauds with failure of the Estate of Bueno's counsel to object to parol evidence of the contract, and Valeriano Jr.'s testimony confirming its existence, . . .

To be sure, the counsel for the Estate of Bueno did object during the testimony of Dr. Peralta, arguing against the introduction of parol evidence of the contract between Bueno and Atty. Peralta . . .

However, such objection was effectively waived by the Estate of Bueno, when it introduced the testimony of Valeriano Bueno, Jr. (Valeriano Jr.), which tended to prove the oral contract between his father and Atty. Peralta . . .

7. ID.; ID.; ID.; IN EXAMINING THE STATEMENTS OF A WITNESS, VERBAL PRECISION IS NOT REQUIRED, AS LONG AS THE SUBSTANCE OF THE CONVERSATION OR DECLARATION IS STATED.— The importance of single words in oral discourse is comparatively much less than in writings, and memory does not retain precise words, except of simple utterances and for a short time. If the witness states the substance of the conversation or declaration, it is not error for the court to admit his testimony. Thus, in examining the statements of the witnesses, the Court is not looking for verbal precision, only that said utterances amount to an unequivocal admission of the contract.

8. ID.; ID.; OBJECTION TO THE ADMISSIBILITY OF ORAL EVIDENCE; WAIVER OF THE BENEFIT OF PAROL EVIDENCE RULE.— As early as 1910, in *Conlu v. Araneta* (*Conlu*), this Court had ruled that a contract of sale of real property that does not comply with the form required for its execution is not automatically invalidated by such defect. If the parties to the action fail to object to the admissibility of oral evidence to the contract of sale of real property during trial, then the contract will be just as binding upon the parties as if it had been reduced to writing.

In *Abrenica v. Gonda* (*Abrenica*), the Court explained the rule on the waiver of the benefit of the parol evidence rule, or the ratification by failure to object:

> Now then, it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the

presentation of the proof, the inadmissibility of the evidence is, or may be, inferred.

9. CIVIL LAW; CONTRACTS; SALES; THE EXISTENCE OF A PERFECTED CONTRACT CAN BE BASED ON THE CONDUCT OF THE PARTIES; CASE AT BAR.— Based on the admissions on record, it is readily apparent that, even way back in 1962, Bueno and Atty. Peralta have been mutually benefiting from the oral contract: in exchange for his legal services, Atty. Peralta received from Bueno the house and lot at 3450 Magistrado Villamor in Sta. Mesa.

The existence of a perfected contract of sale can be based on the conduct of the parties. . . .

. . .

Previous, simultaneous, and subsequent acts of the parties are properly cognizable indicia of their true intention. The courts may consider the relations existing between the parties and the purpose of the contract, particularly when it was made in good faith between mutual friends, as acknowledged in the petition itself.

Bueno's acts allowing Atty. Peralta and his family to stay on the property, introduce substantial improvements, and pay the real property tax thereon, coupled with the absence of any action to recover the subject property show the intention of Bueno to cede ownership over the same in favor of Atty. Peralta.

LEONEN, *J.*, *dissenting opinion*:

1. CIVIL LAW; CONTRACTS; STATUTE OF FRAUDS; ITS PURPOSE IS TO PREVENT FRAUD IN THE ENFORCEMENT OF OBLIGATIONS.— The Statute of Frauds was written into Article 1403 (2) of the Civil Code so that courts would not rely on the unassisted memories of witnesses in proving the terms of a contract, to prevent fraud in the enforcement of obligations. However, as correctly pointed out by my colleagues, the Statute of Frauds is not applicable to partially performed contracts.

In *Asia Production Company, Inc. v. Paño*, this Court explained that both the Statute of Frauds and the exceptions to its application are intended to prevent the perpetration of fraud.

2. ID.; ID.; ID.; ORAL CONTRACTS; BEFORE PARTIAL PERFORMANCE MAY REMOVE THE CONTRACT FROM THE STATUTE OF FRAUDS, THE TERMS OF THE AGREEMENT MUST BE CLEAR AND THE ACTION MUST BE SHOWN TO HAVE BEEN PERFORMED BASED ON THE ALLEGED ORAL CONTRACT; CASE AT BAR.— Considering that there was an allegation of performance of an oral contract, I agree that it was proper to consider the possibility that the Statute of Frauds may not cover the agreement between Peralta and the Bueno Spouses. However, when there is no clear evidence from the contracting parties themselves that would signify their specific intentions when entering into the verbal agreement, courts must be careful in determining that a contract has been partially performed.

Before partial performance may remove an agreement for the sale of real property from the Statute of Frauds, the terms of the agreement must first be clear. . . .

The terms of an oral contract must have the degree of certainty required of a written contract before the courts may order its enforcement. This is a sound policy. Before the action may be deemed as performance of an obligation under an oral contract, its terms must be clear, because it must first be evident that the action was performed *pursuant solely to the alleged oral contract*, and nothing else. In other words, before an act may be considered partial performance, the evidence must convincingly show that the action was performed because of the alleged oral contract, to the exclusion of any other agreement.

3. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE; TO PROVE THE EXISTENCE OF AN ORAL CONTRACT, THE PAROLE EVIDENCE MUST BE CERTAIN, DEFINITE, CLEAR, UNAMBIGUOUS, AND UNEQUIVOCAL IN ITS TERMS AND BE CLEARLY ESTABLISHED BY EVIDENCE; CASE AT BAR.— The better rule is the one stated in *Babao*, where this Court said that the parol evidence relied on must be "certain, definite, clear, unambiguous, and unequivocal in its terms . . . and be clearly established by the evidence."

The majority correctly observes that specific words may not be necessary in all cases to establish the existence of an oral contract. Nonetheless, in cases such as this, where there is a

clear statutory protection, courts must exercise greater caution and methodically consider the evidence presented and what it *actually proves*, step by step. The testimony of Bueno's son, Valeriano, Jr., on being aware of his father's willingness to transfer ownership over the property at a future date *if* Peralta "would render his services to [his] father until his retirement" is, for purposes of determining that an oral contract exists, and that the obligations of the parties had been fully fulfilled, too vague.

APPEARANCES OF COUNSEL

Jaso Dorillo & Associates for petitioners.
Allene M. Anigan for respondents.

D E C I S I O N

ZALAMEDA, *J.*:

This is a petition for review on *certiorari*[1] assailing the 31 August 2012 Decision[2] and 08 February 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 86410. The Court of Appeals set aside the 11 October 2005 Decision[4] of Branch 37 of the Regional Trial Court (RTC) Manila in Civil Case No. 96-76696. The CA ordered Valeriano Bueno, Sr. and the Heirs of Genoveva Bueno (collectively, Estate of Bueno) to execute a Deed of Conveyance over the Transfer Certificate of Title (TCT) No. 47603, which is located at No. 3450 Magistrado Villamor Street, Lourdes Subdivision, Sta. Mesa, Manila (subject property), in favor of the Estate of Atty. Eduardo

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 75-116; penned by Associate Justice Rosmari D. Carandang (now a Member of this Court), and concurred in by Associate Justices Ricardo R. Rosario (now a member of this Court) and Leoncia R. Dimagiba of the Court of Appeals, Manila.

[3] Id. at 118-119.

[4] Id. at 646-658; penned by Judge Vicente A. Hidalgo.

M. Peralta, Sr. and Luz B. Peralta (Estate of Peralta), represented by one (1) of their children, Dr. Edgardo B. Peralta (Dr. Peralta).

Antecedents

A lawyer and a businessman entered into a supposed mutually beneficial arrangement. The businessman gave the lawyer real estate in exchange for the rendition of valuable legal services. With the knowledge and acquiescence of the businessman and his family, the lawyer established his family home, introduced several substantial improvements on the property, and paid its real property taxes. This arrangement went on for several decades and survived the lawyer's death. The heirs of the lawyer now ask for the execution of the proper deed of conveyance from the heirs of the businessman.

In 1957, Valeriano Bueno, Sr. (Bueno) and his wife Genoveva (collectively, Spouses Bueno) engaged Atty. Eduardo M. Peralta, Sr. (Atty. Peralta) to take care of their personal and business[5] legal matters. Atty. Peralta was legal counsel of and held several executive positions (President, Executive Vice-President, Secretary, Treasurer, or Director) in the Spouses Bueno's various companies for almost 26 years.

In 1960, the Spouses Bueno gave Atty. Peralta the subject property as partial consideration for professional services rendered. Atty. Peralta, together with his wife and children, occupied the property beginning in January 1962. Atty. Peralta requested for execution of a deed of conveyance, but because the subject property was encumbered, Bueno merely provided him a photostatic copy of the title for his reference and Bueno prevailed upon him to pay the real property taxes. Relying on Bueno's express and implied representations, Atty. Peralta and

[5] The amended complaint enumerated these companies: Bueno Industrial and Development Corp., Butuan Lumber and Manufacturing Co., Inc., Pampanga Sugar Mills, Inc., Mahogany Products, Inc., Big Country Ranch, Inc., Pantaron Range Development Co., Palanan Logging Enterprises, Inc., Mindanao Livestock Corp., Ilocos Mining and Smelting Corp., Puncan Plantation Co., Bulawan Plantation Co., Looc Bay Lumber Co., Sierra Madre Projects, Inc., and Continental Bank.

his family introduced several substantial improvements to the subject property over the years.

Atty. Peralta passed away on 27 December 1983. In 1990, Dr. Peralta wrote Spouses Bueno to ask for the proper deed of conveyance of the subject property. Instead of granting the request, Spouses Bueno demanded the surrender of the physical possession of the subject property. Subsequent demands were made on Spouses Bueno to execute the proper deed of conveyance, but they were repeatedly refused. Later, Bueno and his daughter-in-law intruded into the property. Bueno himself attacked Edmundo Peralta (Edmundo), one of Atty. Peralta's children. This led to the filing of a criminal complaint against Bueno.[6]

Dr. Peralta, representing the Estate of Peralta, filed a complaint[7] for specific performance and prayed for execution of the appropriate deed of conveyance of the subject property.

In their Answer, Spouses Bueno maintained that the Estate of Peralta's claim was unenforceable under the Statute of Frauds. They alleged that Atty. Peralta never demanded that Spouses Bueno sell the subject property to him after he and his family were allowed to make use of the same. Moreover, specific performance is impossible as the subject property is encumbered with financial institutions. Thus, Bueno cannot do what the Estate of Peralta asks for unless the property is redeemed or the obligations were paid.

The complaint was later amended to implead the heirs of Genoveva Bueno, who passed away before trial began. Bueno himself passed away on 18 October 2000. Trial proceeded with the two (2) estates as contending parties.

After the Estate of Peralta filed its formal offer of evidence, the Estate of Bueno filed a Demurrer to Evidence and claimed that the former failed to prove that Bueno Spouses conveyed the property to Atty. Peralta back in 1960. The RTC denied

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[6] *Rollo*, pp. 467-468.

[7] Id. at 165-179.

the demurrer in its 31 May 2002 Order.[8] The RTC rejected the Estate of Bueno's argument that the agreement between Bueno and Atty. Peralta was covered by the Statute of Frauds because the agreement was not an executory contract. The RTC also ruled that the Estate of Peralta's claim was not barred by prescription, since the action is essentially an action to quiet title. Such action is imprescriptible, especially since delivery of possession of the property is already consummated.

Ruling of the RTC

In its 11 October 2005 Decision,[9] the RTC dismissed the Estate of Peralta's complaint for lack of merit. The RTC declared Spouses Bueno and their heirs as rightful owners of the subject property.

The RTC found that Bueno sufficiently established that there was no perfected contract between Atty. Peralta and Spouses Bueno with respect to the transfer of the subject property. But, according to the RTC, it was undisputed that Spouses Bueno committed to award the subject property to Atty. Peralta if he serves them until retirement. Atty. Peralta, however, failed to fulfill the condition, as evidenced by his hand-written resignation letter dated 15 March 1975. This, the RTC said, gave Spouses Bueno the right to rescind the contract.

On the other hand, the RTC changed its view about the nature of the case. While it earlier construed the case as one for quieting of title, it now held that it was an action for the enforcement of an oral contract. Under Article 1145 of the Civil Code, such an action prescribed in six (6) years. Since the right to commence action was acquired in 1960, the same had already prescribed when the Estate of Peralta filed its complaint in 1996.

The Estate of Peralta filed a motion for reconsideration, which the RTC denied in its 19 December 2005 Order.[10]

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[8] Id. at 245-248.

[9] Id. at 645-658.

[10] Id. at 679-680.

Ruling of the CA

In its 31 August 2012 Decision, the CA granted the Estate of Peralta's appeal and set aside the RTC's decision.

According to the CA, the contract between Bueno and Atty. Peralta is an innominate contract in the nature of a *facio ut des* (I do and you give) agreement. The parties agreed for Atty. Peralta to render legal services to Bueno and his companies (the *facio* or the "I do"). Then, upon his retirement, for Atty. Peralta to receive the property from Bueno (the *des* or "you give"). The CA cited the 1903 case of *Perez v. Pomar*[11] where the Supreme Court upheld the verbal *facio ut des* contract because one party had already rendered the service.

The CA also invoked the unjust enrichment rule in Article 22[12] of the Civil Code and decreed that Atty. Peralta's services were not gratuitously rendered and should be properly remunerated. The CA noted that the Estate of Bueno did not present evidence on Atty. Peralta's salaries or other forms of compensation from Bueno and his companies. According to Atty. Moises Nicdao (Atty. Nicdao), Atty. Peralta's law partner, the latter did not have a definite salary from Bueno.[13] Thus, the CA ruled that Atty. Peralta's occupation of the property was in the concept of an owner, as the property was given by Bueno with Atty. Peralta's services as a valuable consideration.

Moreover, the CA also observed that Bueno's relinquishment of possession of the subject property and Atty. Peralta's continued rendition of services to Bueno were vital pieces of evidence of the agreement and perfection of the *facio ut des* contract. The partial performance by both parties removed the *facio ut des* contract from the ambit of the Statute of Frauds under Article

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[11] G.R. No. L-1299, 16 November 1903, 2 Phil. 682-689 (1903).

[12] Article 22 provides: "Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[13] Deposition taking of Atty. Nicdao, 12 December 1997, p. 11.

1403 of the Civil Code because that provision applies only to executory, and not to executed, contracts.

The CA also gave credence to the Estate of Peralta's evidence that, despite submitting his resignation, Atty. Peralta continued to render his services as Bueno's counsel by filing pleadings and replying to queries. To the appellate court, apart from bare denials, the Estate of Bueno did not present any other evidence to prove that Atty. Peralta had stopped rendering his legal services by 1975. The Estate of Bueno even admitted that Atty. Peralta still represented them in cases as late as 1981, or just two years prior to Atty. Peralta's death. The CA declared:

> We therefore arrive at the conclusion that at the retirable age of 60 in August 1980, [Atty. Peralta] was still working as a lawyer for [Bueno] and his companies. Relating this to the controversy at hand, We find [Atty. Peralta] to have fulfilled the condition for him to work with [Bueno] and his companies, We find [Atty. Peralta] to have fulfilled the condition for him to work for [Bueno] and his companies until his retirement. From the moment he was entitled to his retirement on his birthday on 19 May 1980, he had also fulfilled the *facio* — his obligation to render service and became entitled to the [subject] property.
>
> Thus, [Bueno] became obligated to perform his *des* — his obligation to give the [subject] property to [Atty. Peralta] as this had become demandable. [Bueno], however, had already partially performed this obligation when he delivered the [subject] property to [Atty. Peralta] when the latter first took possession of the [subject] property with him and his family's continued occupation of the same up to his 60th birth anniversary.[14]

The CA further ruled that the action had not prescribed. The six (6)-year period did not commence in 1960 because Atty. Peralta had not wholly perfected his right to demand the execution of the documents to transfer the title to the subject property to him as he still had to serve Bueno until his retirement. It was only upon Atty. Peralta's retirement that the ownership automatically vested upon him. The CA subscribed to the Estate

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[14] *Rollo*, pp. 109-110.

of Peralta's view that the case is imprescriptible as it is an action for quieting of title. Similarly, the CA did not find the Estate of Peralta guilty of laches.

The CA concluded, thus:

> In arriving at Our decision, We have tried not to lose sight of the gist of this dispute. It is essentially about the agreement of two men who agreed that one should work for or the other until his retirement in return for which a house and land of the other would be given to the him [sic]. This much has been admitted by appellees and found by the trial court. The evidence has also shown that [Atty. Peralta] practically worked his whole professional life at the service of [Bueno] and his companies. In adjudging the property to the heirs of [Atty. Peralta], this Court is merely respecting a fundamental rule of fairness: no man must unjustly benefit and enrich himself at the expense of another.
>
> WHEREFORE, the instant Appeal is GRANTED and the Decision of the Regional Trial Court is SET ASIDE. [The Estate of Bueno is] ordered to EXECUTE a Deed of Conveyance over the Transfer Certificate of Title of Lot No. 3450 Magistrado Villamor St., Lourdes Subdivision, Sta. Mesa, Manila in favor of the estates of Eduardo M. Peralta, Sr. and Luz B. Peralta.
>
> Should [the Estate of Bueno] fail or refuse to do execute [sic] the aforementioned Deed of Conveyance within thirty (30) days from finality of this Decision, Brach 37 of the [RTC] of Manila shall ISSUE and Order divesting [the Estate of Bueno's] title to the property and vest it in favor of the [estates of Eduardo M. Peralta, Sr. and Luz B. Peralta] which shall have the force and effect of a conveyance executed in due form of law.
>
> SO ORDERED.[15]

The Estate of Bueno's motion for reconsideration for lack of merit was denied by the CA in its 08 February 2013 Resolution.[16] Consequently, the Estate of Bueno filed the present petition for review.

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[15] Id. at 115-116.

[16] Id. at 118-120.

Issues

The Estate of Bueno raises a lone assignment of error in this Petition: The Court of Appeals committed a reversible error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the decision of the trial court dismissing the complaint for specific performance filed by the Estate of Peralta against the Estate of Bueno, and ordering the Estate of Bueno to execute a deed of conveyance over the transfer certificate of title of lot number 3450 Magistrado Villamor Street, Lourdes Subdivision, Sta. Mesa, Manila in favor of the Estate of Eduardo Peralta, Sr. and Luz B. Peralta.[17]

During the course of deliberations in this case, the discussions focused on the applicability of the Statute of Frauds on the agreement between Bueno and Atty. Peralta. The majority maintains that there was ratification of the agreement despite the applicability of the Statute of Frauds. The dissent, on the other hand, argues that the terms and conditions of the oral contract were not sufficiently proved so the agreement is covered by the Statute of Frauds.

Ruling of the Court

The Statute of Frauds

The Statute of Frauds, as found in Article 1403 (2) of the Civil Code, reads:

> Article 1403. The following contracts are unenforceable, unless they are ratified:
>
> x x x x x x x x x
>
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

[17] Id. at 23.

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation to the credit of a third person.

x x x x x x x x x.

Note that Art. 1403 (2) speaks of a general rule, but recognizes ratification as an exception.

Our laws recognize four kinds of defective contracts.[18] Among these is the unenforceable contract, or one that, for lack of authority, or of writing, or for incompetence of both parties, cannot be given effect unless properly ratified. But note that the lack of writing does not make the agreement void or inexistent. It merely bars suit for performance or breach. Such a defect can be cured by acknowledgment or ratification.[19]

Quite recently, We had the opportunity to discuss the parameters of the Statute of Frauds in *Heirs of Alido v. Campano*,[20] which reiterated that an unenforceable contract

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[18] Balane (2018), *Jottings and Jurisprudence in Civil Law (Obligations and Contracts)*, p. 695.

[19] Id., p. 752.

[20] G.R. No. 226065, 29 July 2019. (Emphases and citations omitted).

under Article 1403 (2) is not necessarily void since it can be ratified by failure to object to the presentation of oral evidence to prove the contract itself, or by the acceptance of benefits. The contract can be established by the express or implied conduct of the parties. The Court explained, thus:

> Article 1403 (2) of the Civil Code, or otherwise known as the Statute of Frauds, requires that covered transactions must be reduced in writing, otherwise the same would be unenforceable by action. In other words, sale of real property must be evidenced by a written document as an oral sale of immovable property is unenforceable.
>
> Nevertheless, it is erroneous to conclude that contracts of sale of real property without its term being reduced in writing are void or invalid. In *The Estate of Pedro C. Gonzales v. The Heirs of Marcos Perez*, the Court explained that failure to observe the prescribed form of contracts do not invalidate the transaction, to wit:
>
> > Nonetheless, it is a settled rule that the failure to observe the proper form prescribed by Article 1358 does not render the acts or contracts enumerated therein invalid. It has been uniformly held that the form required under the said Article is not essential to the validity or enforceability of the transaction, but merely for convenience. The Court agrees with the CA in holding that a sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties. Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. Article 1358 does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.
>
> Further, the Statute of Frauds applies only to executory contracts and not to those which have been executed either fully or partially. In *Swedish Match, AB v. Court of Appeals*, the Court expounded on the purpose behind the requirement that certain contracts be reduced in writing, *viz.*:
>
> > The Statute of Frauds embodied in Article 1403, paragraph (2), of the Civil Code requires certain contracts enumerated therein to be evidenced by some note or memorandum in order

> to be enforceable. The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable. Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents.
>
> The Statute, however, simply provides the method by which the contracts enumerated therein may be proved but does not declare them invalid because they are not reduced to writing. By law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. Consequently, the effect of non-compliance with the requirement of the Statute is simply that no action can be enforced unless the requirement is complied with. Clearly, the form required is for evidentiary purposes only. Hence, if the parties permit a contract to be proved, without any objection, it is then just as binding as if the Statute has been complied with.
>
> The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.

While the Statute of Frauds aim [sic] to safeguard the parties to a contract from fraud or perjury, its non-observance does not adversely affect the intrinsic validity of their agreement. The form prescribed by law is for evidentiary purposes, non-compliance of which does not make the contract void or voidable, but only renders the contract unenforceable by any action. In fact, contracts which do not comply with the Statute of Frauds are ratified by the failure of the parties to object to the presentation of oral evidence to prove the same, or by an acceptance of benefits under them.

Further, the Statute of Frauds is limited to executory contracts where there is a wide field for fraud as there is no palpable evidence of the intention of the contracting parties. It has no application to executed contracts because the exclusion of parol evidence would

promote fraud or bad faith as it would allow parties to keep the benefits derived from the transaction and at the same time evade the obligations imposed therefrom.

The RTC errs in summarily dismissing respondent's claim of ownership simply because the sale between her and Alido was not supported by a written deed. As above-mentioned, an oral sale of real properly is not void and even enforceable and binding between the parties if it had been totally or partially executed.

The Court agrees with the observations of the CA that the Statute of Frauds is inapplicable in the present case as the verbal sale between respondent and Alido had been executed. From the time of the purported sale in 1978, respondent peacefully possessed the property and had in her custody OCT No. F-16558. Further, she had been the one paying the real property taxes and not Alido. Possession of the property, making improvements therein and paying its real property taxes may serve as indicators that an oral sale of a piece of land had been performed or executed.

In addition, while tax declarations are not conclusive proof of ownership, they may serve as *indicia* that the person paying the realty taxes possesses the property in concept of an owner. In *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago* the Court, thus, explained:

> In the instant case, it was established that Lot 2344 is a private property of the Santiago clan since time immemorial, and that they have declared the same for taxation. Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.

From 1978 until her death, Alido never questioned respondent's continued possession of the property, as well as of OCT No. F-16558. Neither did she stop respondent from paying realty taxes under the

latter's name. Alido allowed respondent to exercise all the rights and responsibilities of an owner over the subject parcel of land. Even after her death, neither her heirs disturbed respondent's possession of the property nor started paying for the real property taxes on the said lot. Further, it is noteworthy that petitioners do not assail that respondent had acquired the property fraudulently or illegally as they merely rely on the fact that there was no deed of sale to support the said transaction. However, as manifested by the actions or inactions of Alido and respondent, it can be reasonably concluded that Alido had sold the property to respondent and that the said transaction had been consummated.

With what transpired between the parties, the oral contract between Bueno and Atty. Peralta should be excluded from the application of the Statute of Frauds. The application of the exception in the first sentence of Article 1403, in relation to Article 1405 of the Civil Code should apply instead. Ratification as an exception to unenforceable contracts is addressed in the first sentence of Article 1403, while the modes of ratification are described in Article 1405.

Art. 1403. The following contracts are unenforceable, **unless they are ratified** x x x.

Art. 1405. **Contracts infringing on the Statute of Frauds**, referred to in No. 2 of Article 1403, **are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them**. (Emphasis supplied)

Article 1405 is further bolstered by Articles 1392 and 1393 of the Civil Code:

Art. 1392. Ratification extinguishes the action to annul a voidable contract.

Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Ratification is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation of the

agreement or a waiver of the right to impugn the unauthorized act.[21]

Both the trial court and the CA found that there was a contract to transfer the property from Bueno to Atty. Peralta. The trial court held:

> The undisputed fact is that the subject property was a subject of the commitment between [the] Buenos and Atty. Peralta whereby the latter shall be awarded of the same property if he could serve as counsel for the Buenos and the group of companies they owned until the time of his retirement.[22]

The trial court glaringly omitted Bueno's acts of ratification of the oral contract from 1960, or how the Estate of Bueno ratified the contract during trial. It limited its discussion to the "lack of personal knowledge of the alleged verbal transaction."

The CA, on the other hand, viewed Bueno's acts of ratification through the lens of partial performance of the contract and placed significant value on Atty. Peralta's legal services. In awarding the property to the Estate of Peralta, the CA recognized that "[Atty. Peralta] practically worked his whole professional life at the service of [Bueno] and his companies."[23] The CA stated:

> The agreement and perfection of this contract by [Bueno] and [Atty. Peralta] are evident by the subsequent acts of the both parties: [Bueno's] relinquishing possession of the property to [Atty. Peralta] and [Atty. Peralta's] continued rendition of services to [Bueno] and his companies.[24]

Effects of judicial admissions

It is a matter of record, too, borne by the Estate of Bueno's own recital of facts in the present petition, that Atty. Peralta,

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[21] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, G.R. Nos. 194964-65, 11 January 2016, 776 Phil. 401-455 (2016); 778 SCRA 458, 505.

[22] *Rollo*, p. 654.

[23] Id. at 115.

[24] Id. at 100.

having been friends with Bueno since their younger years, was engaged to render legal services for the Bueno family's corporations beginning in 1960.[25]

This matter was further clarified during pre-trial when the Estate of Bueno admitted Atty. Peralta's physical possession of the subject property from January, 1962 up to the present. Likewise admitted was Atty. Peralta's rendition of legal services to the Spouses Bueno and their companies from 1957 to 1975.[26]

The Estate of Bueno argues against the existence of the condition for the transfer of the subject property to Atty. Peralta because it was never raised as an issue in the Answer.[27] However, it is plain to Us, based on the allegations in the petition[28] and the Reply,[29] that the Estate of Bueno **reiterated** a **confirmation** of Bueno's **commitment** to transfer the property to Atty. Peralta. Such repeated and consistent representation from the Estate of Bueno and their counsel demonstrate the *existence* of the contract between Bueno and the Atty. Peralta, which the Court considers as **judicial admissions**.

On the aspect of reiteration of a factual statement, there is the acknowledged postulate on **adoptive admission** as a component of the concept on judicial admissions under Section 4, Rule 129 of the Revised Rules on Evidence. This concession of a disputed fact by the adverse party was also applied by this Court in *Republic v. Kenrick Development Corporation*:[30]

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[25] Id. at 76-78; *See* 1989 REVISED RULES ON EVIDENCE, Rule 129, Sec. 4; Rule 131, Sec. 2 (a); CIVIL CODE, Article 1431.

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

[27] Id. at 78-79.

[28] Id. at 84. ". . . In addition, the late Valeriano Bueno, Sr. verbally expressed that the property would be given to Atty. Peralta, Sr. on condition that he would serve as legal counsel up to his retirement. . .";

[29] Id. ". . . the fact is that the subject property was a subject of the verbal commitment to Atty. Peralta, Sr. whereby the property of late Valeriano Bueno, Sr. shall be given to the latter if could serve as counsel for him and his company until the time of his retirement."

[30] G.R. No. 149576, 08 August 2006, 529 Phil. 876-886 (2006); 498 SCRA 220, 227-229. Citations omitted. Emphasis added.

A party may, by his words or conduct, voluntarily adopt or ratify another's statement. Where it appears that a party clearly and unambiguously assented to or adopted the statements of another, evidence of those statements is admissible against him. This is the essence of the principle of adoptive admission.

An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person. By adoptive admission, a third person's statement becomes the admission of the party embracing or espousing it. Adoptive admission may occur when a party:

(a) expressly agrees to or concurs in an oral statement made by another;

(b) hears a statement and later on essentially repeats it;

(c) utters an acceptance or builds upon the assertion of another;

(d) replies by way of rebuttal to some specific points raised by another but ignores further points which he or she has heard the other make; or

(e) reads and signs a written statement made by another.

Here, respondent accepted the pronouncements of Atty. Garlitos and built its case on them. At no instance did it ever deny or contradict its former counsel's statements. It went to great lengths to explain Atty. Garlitos' testimony as well as its implications, as follows:

1. While Atty. Garlitos denied signing the answer, the fact was that the answer was signed. Hence, the pleading could not be considered invalid for being an unsigned pleading. The fact that the person who signed it was neither known to Atty. Garlitos nor specifically authorized by him was immaterial. The important thing was that the answer bore a signature.

2. While the Rules of Court requires that a pleading must be signed by the party or his counsel, it does not prohibit a counsel from giving a general authority for any person to sign the answer for him which was what Atty. Garlitos did. The person who actually signed the pleading was of no moment as long as counsel knew that it would be signed by another. This was similar to addressing an authorization letter "to whom it may concern" such that any person could act on it even if he or she was not known beforehand.

3. Atty. Garlitos testified that he prepared the answer; he never disowned its contents and he resumed acting as counsel for respondent subsequent to its filing. These circumstances show that Atty. Garlitos conformed to or ratified the signing of the answer by another.

Respondent repeated these statements of Atty. Garlitos in its motion for reconsideration of the trial court's February 19, 1999 resolution. And again in the petition it filed in the Court of Appeals as well as in the comment 15 and memorandum it submitted to this Court.

Evidently, respondent completely adopted Atty. Garlitos' statements as its own. Respondent's adoptive admission constituted a judicial admission which was conclusive on it.

In addition, We note explicit remarks from the Estate of Bueno during the various stages of the suit that can be deemed as **negative pregnant** statements, or that form of denial which is at the same time an affirmative assertion favorable to the opposing party. It is said to be a denial pregnant with an admission of the substantial facts in the pleading responded to.[31] It is in effect an admission of the averment to which it is directed.

These statements call into effect the principle of estoppel under Article 1431[32] of the New Civil Code. Any other evidence to prove the agreement is unnecessary in light of the Estate of Bueno's conduct over the years, from the time the agreement was made, to the moment Atty. Peralta and his family took possession

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[31] Regalado (2010), *Remedial Law Compendium*, 10th ed., Vol. I, p. 181, citing 1 Martin 306, *Guevarra v. Eala*, A.C. No. 7136, 01 August 2007, 555 Phil. 713-732 (2007); 529 SCRA 1; *Republic v. Sandiganbayan*, G.R. No. 189590, 23 April 2018, 862 SCRA 163 — "Moreover, the denial by private respondent Romeo of his ownership of the subject property is pregnant with an admission, i.e., that he has an interest in his wife's share in the property by virtue of their marital union. This is a negative pregnant, which is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party."

[32] Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. *See* 4 Wigmore on Evidence (1905), pp. 3619-3621.

of the subject property in 1962, and through the years that they occupied the same.[33]

Consequently, the Court may disregard all evidence submitted by the Estate of Bueno contrary to, or inconsistent with, their judicial admissions.[34]

Ratification by failure to object to the presentation of oral evidence

To reiterate, the first mode of ratification under Article 1405 is failure to object to the presentation of oral evidence. The record is replete with such oral evidence that the Estate of Bueno failed to refute.

Noteworthy is the deposition[35] of Atty. Nicdao, taken in the presence of both parties' counsels. His testimony was offered by the Estate of Peralta for the following purposes:

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[33] Herrera (1999), *Remedial Law*, Vol. 5, p. 107, citing *Solivio v. Court of Appeals*, G.R. No. 83484, 12 February 1990, 261 Phil. 231-250 (1990); 182 SCRA 119.

[34] *Republic v. Menzi*, G.R. No. 183446, 13 November 2012, 698 Phil. 495-525 (2012); 685 SCRA 291, 312-313 — "Having been made by their executor during the trial of the case on the merits, these declarations are binding, at least insofar as the Estate is concerned. Pursuant to Section 4, Rule 129 of the Revised Rules on Evidence, an admission, verbal or written, made by a party in the course of the proceedings in the same case does not require proof. It may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case. When made in the same case in which it is offered, "no evidence is needed to prove the same and it cannot be contradicted unless it is shown to have been made through palpable mistake or when no such admission was made." The admission becomes conclusive on him, and all proofs submitted contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. Absent any showing in the record that the above-quoted declarations were made by Montecillo through palpable mistake, the Republic correctly argues that they are binding upon the Estate which, for said reason, is precluded from claiming that the funds deposited under TDC Nos. 162828 and 162829 came from the 1984 sale of Bulletin shares to US Automotive."

[35] The deposition was taken before Judge Tiburcio V. Empaynado, Jr. of the Municipal Trial Court of San Antonio, Nueva Ecija on 12 December

1. To prove that the witness knew personally Atty. Eduardo Peralta, Sr., and Mrs. Luz Peralta, both are now deceased and he likewise knew the defendant spouses Valeriano C. Bueno and the late Genoveva Bueno.

x x x x x x x x x

3. That sometime in 1966 at the house and lot subject of this case, defendants unconditionally transferred and conveyed full ownership of the subject property in favor of the plaintiffs and that he was present during such incident.

x x x x x x x x x

5. That the property subject of this case was given to the plaintiff as partial consideration for the legal services rendered by the late Atty. Eduardo Peralta, Sr.

x x x x x x x x x.[36]

Atty. Nicdao likewise testified in open court and made the following statements under direct examination, without any objection from the counsel of the Estate of Bueno, to wit:

Q Pañero, let me call your attention to paragraph 4 of this affidavit which state and I quote:

"In fact I remember one incident sometime in 1966 at the residence of Atty. Peralta during which occasion, Mr. Valeriano Bueno reiterated his generosity to Atty. Peralta for the legal services rendered thus far in my presence and in the presence of other persons who were similarly invited for the occasion such as Mr. Jose Padilla to who I was also introduced by the late Atty. Peralta."

When you speak of the residence of Atty. Peralta, are you referring to the property subject of this case which is located at 3450 Majistrada [sic] Villamor St., Lourdes Subdivision, Sta. Mesa, Manila which is the property subject of this case?

A Yes Sir.

1997 and on 02 February 1998. Atty. Acerey Pacheco appeared for the Estate of Peralta, while Atty. Domingo Lalaquit appeared for Valeriano Bueno and the Heirs of Genoveva Bueno.

[36] *Rollo*, p. 419.

Q Could you tell us now what do you remember of that incident sometime in 1966?

A I remember that was in the house of Atty. Eduardo Peralta, Sr. when there was an occasion, I think that was a birthday party. I am [sic] invited, Mr. Bueno, his wife, attorney-to-be Padilla, myself. That is in the evening, May 19 I think.

Q What transpired there, Mr. Witness?

A We took food and drink there, that is what transpired there. Mr. Bueno, if he followed only all the promises of Mr. Bueno, all the employees should have one lot each especially those lots acquired at Antipolo, Rizal. In this particular case, Atty. Peralta do [sic] not have any definite amount of salary. He only promised to give that house and lot to him and this Mr. Peralta told me about that and when there was a birthday we talked with each other that I witnessed personally that Mr. Bueno was really in his kindness, gave the house and lot to Mr. Peralta. It cannot be transferred yet because it is still indebted to Mitsubishi with the promise that when the obligation will be paid, he will legally transfer the property but the truth is verbally, the property was already given to Mr. Peralta on that date. What did Atty. Peralta do afterwards, he made renovations of the property. I think he spent more than P200,000.00 on the renovation.

Q And at that time he made that declaration or pronouncement, could you tell us if Mrs. Genoveva Bueno was present on that occasion?

A Yes sir. Mrs. Bueno is in conformity with the giving of that property because whether she like [sic] or not, if Mr. Peralta would be paid, even three times the value of the property should be paid.

Q Would you affirm before this Honorable Court that from the time Defendant Sps. Bueno gave that property as partial consideration for his legal services, the plaintiff more particularly Atty. Peralta had occupied that property continuously, uninterruptedly and in the concept of an owner?

A Atty. Peralta occupied the building and lot continuously up to his death. After his death, his heirs were the ones who lived there, sir.[37]

On cross examination, Atty. Nicdao further testified on Bueno's conveyance of the property:

Q And that Valeriano Bueno was already represented by another lawyer other than Atty. Peralta during that time, you don't know?

A You know Pañero, the issue here is whether or not Mr. Bueno had given the house and lot to Atty. Peralta and Mrs. Peralta. At the time when he gave that, Mrs. Bueno is also present and at the same in one occasion in 1966, Mr. Bueno with his wife there on the occasion reiterated that he had already given that house and lot and that is the reason why Atty. Peralta and Mrs. Peralta have made renovations of the building which I think he had even spent more than P300,000.00 for the renovation. That is only the issue that I know but with respect to other issues, I do not know. Suppose we deal on that issue here.

Q So, you do not know that Mr. Bueno imposed certain conditions to Atty. Peralta to own that house and lot already?

A What the condition was, any moment that he will be able to pay the obligation being answer [sic] to the house and lot, he will immediately issue, he will immediately execute a deed of sale sir.

Q And you do not know that Mr. Bueno imposed upon Atty. Peralta that he has to be his lawyer up to the time of his retirement from the practice of law, you don't know?

Atty. Pacheco It was already answered. In fact, the witness stated that there is only one condition set by Mr. Bueno. That the moment the loan had been paid then the deed of sale will be executed.

Court Already answered.

x x x x x x x x x

[37] Id. at 427-429.

Q In Exh. "C", you said Mr. Valeriano Bueno reiterated that he is going to give Atty. Peralta the house and lot. Was it reduced into writing?

A Personally, we have to believe Bueno. In the first place, he is a millionaire at that time he is [sic] a billionaire. In the second place, I did not know yet that he is lying but I know that he is sincere in giving that. He gave that because of the services of Peralta. That is what I know sir.

Q So, it is now clear that there was no written document on that what you said that Mr. Bueno gave the house and lot to Atty. Peralta, there was no document?

A As far as I'm concerned, I don't know if after that occasion, he gave a document or not but what I know, he really gave that personally sir.[38]

On re-direct, Atty. Nicdao expounded on the circumstances surrounding conveyance of the property from Bueno to Atty. Peralta. Again, there was no objection from the counsel of the Estate of Bueno, thus:

Q Mr. Witness, Atty. Nicdao, you were stating a while ago that sometime in 1966 in one of the occasions held at the residence of Atty. Peralta, Mr. Bueno reiterated that he already gave that property to Atty. Peralta, is that correct?

A Yes sir.

Q So, you mean to tell us that it was as early as 1960 that Mr. Bueno gave that property to Atty. Peralta who physically took possession of that property in the concept of an owner?

A Because he was advised by Mr. Bueno and Mrs. Bueno to transfer to that house at [sic] Villamor St. and that will be their property sir.

Q And after that, after 1960, when Atty. Peralta and his family took physical possession of that property, he introduced improvements in the concept of an owner again?

A Yes sir.

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[38] Id. at 409-413.

Q During the lifetime of Atty. Peralta, you are not aware of any acts committed or made by Mr. Bueno inconsistent with that agreement he had with Atty. Peralta regarding the giving or transfer of ownership over that property in favor of Atty. Peralta?

A I am not aware, sir. What I know is continuously, until now, he still in the house from 1960.[39]

On the other hand, Edmundo also testified on the agreement between his father and Bueno. The RTC described his testimony in the following manner:

Next witness for the plaintiff is Edmundo Peralta who testified to the fact that there was no condition imposed by Valeriano Bueno to his father, Eduardo Peralta, Sr., regarding the grant of the subject property to the latter. According to him, there was no negotiation whatsoever between Mr. Bueno, his son Jun Bueno and himself regarding the return of the property by way of three (3) million pesos although there was [a] previous proposal to sell the property to Mr. Bueno for that amount. He testified that **Mr. Bueno admitted that the property is really owned by the Peralta's for which reason he is willing to buy the property for three (3) million**. His father has been in continuous legal service for the Buenos up to the time of his death in December of 1983. He knows the fact because of some documents that he has and also the calendar of cases shows that he has been exclusively working on cases shows that he has been exclusively working on cases of Buenos [sic] up to the time of his death.[40]

An examination of the transcript reveals that the sole objection to Edmundo's testimony was that it was hearsay. But since the statement of Bueno was uttered in the presence of Atty. Nicdao, the latter had personal knowledge of such admission. There is no prohibition against a witness testifying

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[39] Id. at 413-414; deposition taking of Atty. Nicdao, 06 February 1998; Atty. Acerey Pacheco appeared for the Estate of Peralta, while Atty. Domingo Lalaquit appeared for Valeriano Bueno and the Heirs of Genoveva Bueno.

[40] Id. at 649.

to what he heard.[41] The following explanation by a respected Justice is enlightening:[42]

> Admissions are original evidence and no foundation is necessary for their introduction in evidence.
>
> *Oral admissions*. – If the admission was made orally, it may be proved by any competent witness who heard them or by the declarant himself. [citing 31 C.J.S. 1153] **It is not necessary that the witness should be able to fix accurately the date of the conversation in which the admission was made. [citing 31 C.J.S. 1154]. It is not a condition that the exact words of the statement be repeated; the law does not require impossibilities. If the witness states the substance of the conversation or declaration, the admission of his testimony is not erroneous.**"

To be sure, the counsel for the Estate of Bueno did object during the testimony of Dr. Peralta, arguing against the introduction of parol evidence of the contract between Bueno and Atty. Peralta:

> As its last witness, plaintiff presented Dr. Edgardo Peralta who testified [that] he is residing in [sic] 3451 M. Villamor Street, Sta. Mesa, Manila since the year of 1962. He knows that the [sic] Mr. Bueno is the previous owner of the address 3450 M. Villamor Street[,] Sta. Mesa[,] Manila which [is] just across his present address. He said that at present they are the owner of the property because the same has been verbally given to his parents by Mr. Bueno. (In this regard, the defense entered its continuing objection to the question profounded [sic] citing Articles 1403 and 1358 of the Civil Code). He said that the title of the property was not given to his father because this was made a part of the collateral to a mortgage by Mr. Bueno. Thus, they made representation to the bank through a letter dated January 1, 1996 (Exhibit "G") sent by registered mail for the bank to honor the verbal agreement made by and between Mr. Bueno and his late father to which they received no reply.[43]

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[41] *People v. Valdez*, G.R. No. 127753, 11 December 2000, 401 Phil. 19-37 (2000); 347 SCRA 594.

[42] Francisco (1997), *The Revised Rules of Court in the Philippines*, Vol. 7, Part I, pp. 306-307, which is the same as Francisco (2017). *Basic Evidence* (3rd ed.), p. 148, Rule 130, Sec. 26.

[43] *Rollo*, p. 650.

However, such objection was effectively waived by the Estate of Bueno, when it introduced the testimony of Valeriano Bueno, Jr. (Valeriano Jr.), which tended to prove the oral contract between his father and Atty. Peralta:

> As the last witness for the defendants, VALERIANO BUENO, JR., [who] was presented to the Court on September 29, 2003 who [sic] is the legitimate son of Spouses [Bueno]. He testified that he knew both the plaintiff Spouse Bueno and that Atty. Peralta worked for several years as legal counsel of his father and for the company of his father. Relative to paragraph six (6) of the Amended Complaint, he testified that he has no knowledge of the fact of that but from what he recalled, his father was willing to give Atty. Peralta the ownership of the subject property still in the name of his father if Atty. Peralta can render legal services to the witness' father until Atty. Peralta's retirement but Atty. Peralta resigned in 1974. He also recognized the document presented by the plaintiff concerning the financial arrangement with Edmundo B. Peralta, but nothing happened to it. After the witness confirmed the unfriendly encounters between his father and Edmundo Peralta, he also identified the reconstituted title and the suit he caused to be filed against Edgardo Peralta and Edmundo Peralta.
>
> On cross-examination he testified that he was only aware of the fact that his father was willing to give the property to Atty. Peralta on the condition that Atty. Peralta will serve his father until his retirement, and that during the lifetime of his father, his father did not file any ejectment case nor an action to recover possession against Atty. Peralta and Luz B. Peralta even after the two passed away. He also acknowledged that arrangement between him and Edmundo Peralta on the financial assistance, the improvements introduced by and at the expense of the plaintiff and their children like additional buildings on the subject property for which his father did not interpose any objection.[44]

Accordingly, the oral contract between Bueno and Atty. Peralta is removed from the application of the Statute of Frauds with failure of the Estate of Bueno's counsel to object to parol evidence of the contract, and Valeriano Jr.'s testimony confirming its existence, thus:

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[44] Id. at 651-652.

On Direct Examination

Q: Now, in paragraph 6 of the amended complaint, the estate of Atty. Eduardo M. Peralta, Sr. and Luz B. Peralta claims that the property, including the improvements located at 3450 Magistrado Villamor Street, Lourdes Subdivision had been given to the former as partial consideration of the services rendered by Atty. Eduardo M. Peralta, Sr.

Now, my question is, what can you say about this allegation in paragraph 6 of the amended complaint?

A: I have no knowledge to that effect, Your Honor. From what I can recall, my father was willing to give him the ownership to the property they are [occupying] if [Atty. Peralta] would render his services to my father until his retirement.[45]

On Cross Examination

Q: And now, you said that you learned that your father was willing to give the property as long as Atty. Peralta will serve until his retirement, is that correct?

A: Yes, sir.

Q: So, there is in fact an agreement that this property will be transferred to Atty. Peralta, subject to that condition?

Court: Subject to that condition.

Q: When he was alive, your father, he did not file any ejectment case against Atty. Peralta?

A: No, sir.

Q: Your father did not even file any case for recovery of possession in the Regional Trial Court, is it not correct?

A: Yes, sir.[46]

Personal knowledge of a judicial admission is not required and competence of a witness to testify is determined at the time of testimony

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[45] TSN, 29 September 2003, p. 9.

[46] Id. at 33-35.

The importance of single words in oral discourse is comparatively much less than in writings, and memory does not retain precise words, except of simple utterances and for a short time.[47] If the witness states the substance of the conversation or declaration, it is not error for the court to admit his testimony.[48] Thus, in examining the statements of the witnesses, the Court is not looking for verbal precision, only that said utterances amount to an unequivocal admission of the contract.

It is clear from Valeriano Jr.'s testimony that he was, in fact, aware of the transaction over the subject realty and he acknowledged that his father was willing to part ownership over the property in favor of Atty. Peralta. To repeat, such statement is in the nature of an "adoptive admission"[49] and, therefore, does not require that he has first-hand knowledge of the contract from its inception in 1960.[50]

In addition to ratification by failure to object during the hearing, the Estate of Bueno's Answer amounted to a ratification of the oral contract when it stated that the only reason for Bueno's failure to convey the property to Atty. Peralta was the encumbrance on the property: "Specific performance as

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[47] 29A Am. Jur., *Id.*, p. 122, citing *Edwards v. State*, 198 Md 132, 81 A2d 631, 26 ALR2d 874.

[48] Francisco (2017), *Basic Evidence* (3rd ed.), p. 148 citing 31 C.J.S. 1153-1154.

[49] Agpalo (2003), *Handbook on Evidence* (First ed.), p. 157 — "An admission may not necessarily be one made by the party himself. It may be an adoptive admission. An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as admission of something stated or implied by the other person. The basis for admissibility of admissions made vicariously is that arising from the ratification or adoption by the party of the statements which the other person had made." (citing *Estrada v. Desierto*, 356 SCRA 108).

[50] Wigmore on Evidence, Vol. 2, p. 1222; 29A Am. Jur., 2nd ed. (1994), pp. 120-121, citing FRE Rule 602, *United States v. Ammar* (CA3 Pa) 714 F2d 238, 13 Fed Rules Evi Serv 849 and other cases; Jones on Evidence, Vol. 2, 5th ed. (1958), pp. 634-635; *Estrada v. Desierto, et al.*, G.R. Nos. 146710-15, 02 March 2001, 03 April 2001.

prayed for by the plaintiff is very improbable if not impossible as the subject property of this case is encumbered with financial institutions that unless redeemed or obligations paid defendants spouses cannot act as prayed for."[51] The Estate of Bueno, likewise, failed to allege that Atty. Peralta's service until retirement was a condition of the contract.

As early as 1910, in *Conlu v. Araneta*[52] (*Conlu*), this Court had ruled that a contract of sale of real property that does not comply with the form required for its execution is not automatically invalidated by such defect. If the parties to the action fail to object to the admissibility of oral evidence to the contract of sale of real property during trial, then the contract will be just as binding upon the parties as if it had been reduced to writing.

In *Abrenica v. Gonda*[53] (*Abrenica*), the Court explained the rule on the waiver of the benefit of the parol evidence rule, or the ratification by failure to object:

> Now then, it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of the evidence is, or may be, inferred.
>
> A motion to strike out parol or documentary evidence from the record is useless and ineffective if made without timely protest, objection, or opposition on the part of the party against whom it was presented.
>
> > Objection to the introduction of evidence should be made before the question is answered. When no such objection is made, a motion to strike out the answer ordinarily comes too late. (De Dios Chua Soco vs. Veloso, 2 Phil. Rep., 658).

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[51] *Rollo*, p. 912.

[52] G.R. No. L-4508, 04 March 1910, 15 Phil. 387-391 (1910).

[53] G.R. No. L-10100, 15 August 1916, 34 Phil. 739-750 (1916).

In the case of Conlu *vs.* Araneta and [Guanko] (15 Phil. Rep., 387) in which one of the points discussed was the inadmissibility of parol evidence to prove contracts involving real property, in accordance with the provisions of section 335 of the Code of Civil Procedure, no objection having been made to such evidence, this court said:

> A failure to except to the evidence because it does not conform with the statute, is a waiver of the provisions of the law.
>
> An objection to a question put to a witness must be made at the time question is asked. (Kreigh *vs.* Sherman, 105 III., 49; 46 Am. Dig., Century Ed., 932.)
>
> Objections to evidence and the reason therefor must be stated in apt time. (Kidder *vs.* Macllhenny, 81 N.C., 123; 46 Am. Dig., Century Ed., 933.)
>
> It is held in general that by failing to object to the proof of an oral contract a party waives the benefit of the statute and cannot afterward claim it. (20 Cycl., 320, where several decisions on the subject are cited.)

Many rulings have been made in regard to this matter by the courts of the United States, and among them we cite a few found in volume 46 of the American Digest, page 933:

> Where plaintiff without objection proved by parol evidence that certain land belonged to him, defendant cannot afterwards object that the deed should have been produced. (Clay *vs.* Boyer, 10 Ill. [5 Gilman], 506.)
>
> After a question has been repeatedly asked and answered without objection, it is too late to object to its repetition on the ground that the answer is in itself inadmissible. (Mckee *vs.* Nelson, 4 Cow., 355; 15 Am. Dec., 384.)
>
> An objection to the admission of evidence on the ground of incompetency, taken after the testimony has been given, is too late. (In re Morgan, 104 N.Y., 74; 9 N.E., 861.)
>
> Plaintiff having testified to conversation between defendant's son and himself until the direct examination extended through about 12 folios, defendant could not sit by and then object to the foregoing testimony. (Goehme *vs.* Michael, 5 N.Y. St. Rep., 492.)

The first witness to testify at the trial was the plaintiff himself. From the first question put to him, it clearly appeared, as may be seen in folios 5, 6, and 7 of the stenographic notes, that the contract of pledge or mortgage of the lands, as the plaintiff himself improperly calls it, or the sale of said lands with right of repurchase, between him and the defendant Gonda, was verbal one and for the period of seven years, made in the course of a conversation between the plaintiff and said defendant in the house of Domingo Tamayo. The defendants' counsel, however, did not endeavor immediately to obtain from the witness a statement as to whether that contract was set forth in any instrument; he did not object to the witness continuing to testify in regard to the contract, nor did he in any way object to the questions they continued to ask the witness concerning the matter, though he did object to one question as leading and to another one as irrelevant, thus indicating that he had no other objection to make to those questions. Only after witness, the plaintiff, had finished answering all the questions put to him on the subject of the contract, did counsel for the defendants move that all of his testimony and statements be stricken out. It is obvious that the court should not have granted that motion; but we must also bear in mind that the court did not grant other similar and subsequent motions made during the examination of the other witnesses; he merely said that he would take them under advisement. The fact that the defendants' counsel asked various cross-questions, both of the plaintiff and of the other witnesses, in connection with the answers given by them in their direct examination, with respect to particulars concerning the contract, implies a waiver on his part to have the evidence stricken out.

It is true that, before cross-examining the plaintiff and one of the witnesses, this same counsel requested the permission of the court, and stipulated that his clients' rights should not be prejudiced by the answers of those witnesses in view of the motion presented to strike out their testimony; but this stipulation of the defendants' counsel has no value or importance whatever, because, if the answers of those witnesses were stricken out, the cross-examination could have no object whatsoever, and if the questions were put to the witnesses and answered by them, they could only be taken into account by connecting them with the answers given by those witnesses on direct examination.

As no timely objection or protest was made to the admission of the testimony of the plaintiff with respect to the contract; and as the motion to strike out said evidence came [too] late; and, furthermore,

as the defendants themselves, by the cross-questions put by their counsel to the witnesses in respect to said contract, tacitly waived their right to have it stricken out, that evidence, therefore, cannot be considered either inadmissible or illegal, and [the] court, far from having erred in taking it into consideration and basing his judgment thereon, notwithstanding the fact that it was ordered to be stricken out during the trial, merely corrected the error he committed in ordering it to be so stricken out and complied with the rules of procedures hereinbefore cited.

The *Abrenica* rule has been consistently applied by the Court through the years.[54] One case that has been frequently cited in recent years is that of *Limketkai Sons Milling, Inc. v. Court of Appeals*,[55] (*Limketkai*) where we reiterated that cross-examination is a waiver of the defense of the Statute of Frauds, to wit:

In the instant case, counsel for respondents cross-examined petitioner's witnesses at length on the contract itself, the purchase price, the tender of cash payment, the authority of Aromin and Revilla, and other details of the litigated contract. Under the *Abrenica* rule (reiterated in a number of cases, among them *Talosig vs. Vda. de Nieba*, 43 SCRA 472 [1972]), even assuming that parol evidence was initially inadmissible, the same became competent and admissible because of the cross-examination, which elicited evidence proving the evidence of a perfected contract. The cross-examination on the contract is deemed a waiver of the defense of the Statute of Frauds (*Vitug*, Compendium of Civil Law and Jurisprudence, 1993 Revised Edition, *supra*, p. 563).

The reason for the rule is that as pointed out in *Abrenica* "if the answers of those witnesses were stricken out, *the cross-examination*

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[54] Among these cases are: *Sps. Reyes v. Court of Appeals*, G.R. No. 147758, 26 June 2002, 432 Phil. 1052-1072 (2002); 383 SCRA 471; *Maunlad Savings and Loan Association v. Court of Appeals*, G.R. No. 114942, 27 November 2000, 399 Phil. 590-603 (2000); 346 SCRA 35; *Cruz v. Court of Appeals*, G.R. No. 79962, 10 December 1990, 270 Phil. 299-314 (1990); 192 SCRA 209; *Barretto v. Manila Railroad Co.*, G.R. No. L-21313, 29 March 1924, 46 Phil. 964-967 (1924).

[55] G.R. No. 118509, 01 December 1995, 321 Phil. 105-129 (1995); 250 SCRA 523, 538.

could have no object whatsoever and if the questions were put to the witnesses and answered by them, they could only be taken into account by connecting them with the answers given by those witnesses on direct examination" (pp. 747-748).

We see no reason to abandon the *Abrenica* rule now, especially as the rule is, like the Statute of Frauds, still found in our substantive law.

Ratification by acceptance of benefits

Based on the admissions on record, it is readily apparent that, even way back in 1962, Bueno and Atty. Peralta have been mutually benefiting from the oral contract: in exchange for his legal services, Atty. Peralta received from Bueno the house and lot at 3450 Magistrado Villamor in Sta. Mesa.

The existence of a perfected contract of sale can be based on the conduct of the parties.[56] In *Maharlika Publishing Corporation vs. Tagle*,[57] the Court held:

> x x x In other words, appropriate conduct by the parties may be sufficient to establish are agreement, and there may be instances where interchanged correspondence does not disclose the exact point at which the deal was closed, but the actions of the parties may indicate that a binding obligation has been undertaken.

As to the alleged resignation of Atty. Peralta, the records bear out that the same was ineffectual, or can be deemed as not a true resignation because he continued to render legal services to Bueno and his companies despite said resignation. Even assuming that Atty. Peralta did resign, he can be considered to have resumed his position and engaged as counsel until he reached the mandatory retirement age and even beyond. Thus, he can be considered to have complied with the condition.

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[56] *See MCC Industrial Sales Corporation v. Ssangyong Corporation*, G.R. No. 170633, 17 October 2007, 562 Phil. 390-441 (2007); 536 SCRA 408.

[57] G.R. No. 65594, 09 July 1986, 226 Phil. 456-470 (1986); 142 SCRA 553.

Bueno should not be allowed to repudiate his own acts and representations to the prejudice of Atty. Peralta and his family who relied upon them. It does not matter that neither the receipt for the consideration nor the sale itself was in writing. In any event, by invoking the unenforceability of the arrangement under the Statute of Frauds, Bueno and subsequently, his heirs, acknowledged the existence of a contract between him and Atty. Peralta.[58]

Previous, simultaneous, and subsequent acts of the parties are properly cognizable indicia of their true intention.[59] The courts may consider the relations existing between the parties and the purpose of the contract, particularly when it was made in good faith between mutual friends,[60] as acknowledged in the petition itself.[61]

Bueno's acts allowing Atty. Peralta and his family to stay on the property, introduce substantial improvements, and pay the real property tax thereon, coupled with the absence of any action to recover the subject property show the intention of Bueno to cede ownership over the same in favor of Atty. Peralta. The Court likewise notes the testimony of Gaudencio Juan, initially a company forester and personnel manager but retired as Special Assistant to the President, that Bueno had the propensity to promise real property to his employees.[62]

The agreement between Bueno and Atty. Peralta arose not only to mutually benefit each other – legal services in exchange of real property – but was likewise borne out of kindness and

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[58] *See Municipality of Hagonoy v. Hon. Dumdum, Jr.*, G.R. No. 168289, 22 March 2010; 630 Phil. 305-323 (2010); 616 SCRA 315.

[59] *Vitalista v. Bantigue Perez*, G.R. No. 164147, 524 Phil. 440-461; *Velazquez v. Justo Teodoro*, G.R. No. L-18666, 17 February 1923, 46 Phil. 757 (1923); *Borromeo v. Court of Appeals*, G.R. No. L-22962, 28 September 1972, 150-B Phil. 770, 777 (1972); 47 SCRA 65, 73.

[60] Paras (2012), *Civil Code of the Philippines Annotated* (17th ed.), Vol. 4, p. 714, citing *Kidwell v. Cartes*, 43 Phil. 953 (1922).

[61] Petition, paragraph 4.5, p. 8.

[62] *Rollo*, p. 651.

generosity. This was made public by Bueno himself as testified to by witness Atty. Nicdao.[63] This Court must not countenance the acts of Bueno and those of his heirs as they, by their silence, delay, and inaction, knowingly induced Atty. Peralta and his family to spend time, effort, and expense in paying real property tax and making improvements since 1962 only to spring an ambush and deny the claim of title when the relationship between the parties has turned sour.

Conclusion

It is human nature on the part of Atty. Peralta's family to assert their right before a court of justice when such is threatened. It is also human nature on the part of Bueno and his family to delay the filing of any claim of possession because of the clear absence of merit in their own claim.[64] However, the oral contract between Bueno and Atty. Peralta is ratified by both parties and thus must be enforced and upheld. This is in harmony with the principle that courts of equity will not allow the Statute of Frauds to be used as an instrument of fraud.[65] This is also in recognition of the valuable legal services already rendered by Atty. Peralta and from which Bueno and his family benefited.

WHEREFORE, the Petition is hereby **DENIED**. The 31 August 2012 Decision and the 08 February 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 86410 are **AFFIRMED**.

SO ORDERED.

Gesmundo, Inting,[*] and *Gaerlan, JJ.*, concur.

Leonen, J. (Chairperson), see separate dissenting opinion.

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[63] Id. at 703, *see* Brief for the Appellants, citing Annex A of the 17 January 1996 Complaint; *see* also p. 225, Comment/Opposition citing the TSN dated 12 December 1997.

[64] *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, 14 November 1996; 332 Phil. 206-226 (1996); 264 SCRA 181.

[65] *Carbonnel v. Poncio*, G.R. No. L-11231, 12 May 1958; 103 Phil. 655-661 (1958); 103 SCRA 655, 660.

[*] Designed additional member per raffle dated 22 January 2020.

DISSENTING OPINION

LEONEN, *J.*:

The majority finds that an alleged oral contract to transfer interest in a real property was ratified through the failure to object to oral evidence, thus removing it from the ambit of the Statute of Frauds.

I disagree.

Before the partial execution of a contract of sale may remove an oral contract from coverage of the Statute of Frauds, the terms of the contract must be clearly established[1] to sufficiently deem the action alleged as partial performance as having been done solely pursuant to the alleged oral contract.

This case arose from a Complaint[2] for specific performance filed by the Estate of Atty. Eduardo M. Peralta, Sr. (Peralta) and Luz B. Peralta, represented by Dr. Edgardo B. Peralta, against Spouses Valeriano (Bueno) and Genoveva Bueno (Genoveva).

The Peralta Estate alleged that Peralta handled numerous legal cases for the Bueno Spouses,[3] and that as partial payment for his services, the Bueno Spouses gave him their real property at No. 3450 Magistrado Villamor St., Lourdes Subdivision, Sta. Mesa, Manila.[4]

In 1962, Peralta, his wife, and their legitimate heirs, except for Eduardo, Jr., moved to the property and introduced numerous improvements on it.[5] The Bueno Spouses gave Peralta a photocopy of the title over the property for reference, and had

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[1] *Dao Heng Bank, Inc. v. Spouses Laigo*, 592 Phil. 172-182 (2008) [Per J. Carpio Morales, Second Division].

[2] *Rollo*, pp. 165-179.

[3] Id. at 168.

[4] Id. at 172.

[5] Id. at 173-174.

him pay the realty taxes for the property, which his heirs continued to pay after Peralta's death in 1983.[6]

After Peralta died, one of his sons, upon Bueno's request, turned over the records of the cases handled by Peralta.[7]

In a letter dated September 15, 1990, Dr. Edgardo B. Peralta, replying to a letter from Bueno's other lawyer, asserted Peralta's full ownership over the property and demanded that the Bueno Spouses execute documents conveying the real property to the Peralta's.[8] In response, the Bueno Spouses demanded that the Peraltas surrender possession of the property.[9]

Several demands were made to execute the conveyance documents over the property, which the Bueno Spouses refused to do.[10] Instead, they and their daughter-in-law intruded on the property and, one time, Bueno even went to the property and physically attacked Edmundo B. Peralta, one of Peralta's successors-in-interest.[11]

Thus, Peralta's heirs were constrained to file the Complaint, praying that the Bueno Spouses be ordered to execute a deed of conveyance over the property.[12]

In their Answer with Affirmative Defenses and Counterclaim,[13] the Bueno Spouses denied the allegations in the Complaint for being hearsay, baseless, and products of imagination. They argued, among others, that the Peralta Estate's claim was unenforceable under the Statute of Frauds. They maintained that Peralta and his family were merely allowed by the Bueno

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[6] Id. at 176-177.

[7] Id.

[8] Id. at 177.

[9] Id.

[10] Id. at 177-178.

[11] Id. at 178.

[12] Id. at 179.

[13] Id. at 911.

Spouses to reside on the property, and Peralta himself never demanded that Bueno give or sell the property to him.[14] Moreover, they asserted that it would be impossible to convey the property to the Estate as it was encumbered with financial institutions, which had not yet been paid.[15]

The Peralta Estate later filed an amended Complaint, impleading the heirs of Genoveva, who had died before the trial started. The heirs moved to dismiss the Complaint, insisting among others that the action was barred by the Statute of Limitations.[16]

In a July 29, 1998 Order, the Regional Trial Court denied the Motion to Dismiss. It noted that the grounds alleged were not included in the Answer, which had not been amended after the Complaint had been amended.[17] This Order was assailed through a petition for certiorari before the Court of Appeals, which dismissed it for being prematurely filed, and for failure to move for reconsideration before filing the petition.[18]

On October 18, 2000, Bueno died.[19]

Meanwhile, trial on the merits ensued. After the Peralta Estate had formally offered its evidence, the defendants sought leave to file a demurrer to evidence. In their Demurrer to Evidence, they claimed that the Peralta Estate failed to prove that the Bueno Spouses gave the property to Peralta in 1960.[20]

The Regional Trial Court denied the Demurrer to Evidence.[21] Hypothetically admitting the allegations in the Complaint, it

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[14] Id. at 911-912.

[15] Id. at 912-913.

[16] Id. at 80.

[17] Id. at 81.

[18] Id. at 82.

[19] Id. at 452.

[20] Id. at 82.

[21] Id. at 245.

rejected the argument that the verbal contract was covered by the Statute of Frauds, which it said applied only to executory contracts, not the verbal contract between Peralta and Bueno.[22] It also noted that the case was not barred by prescription, as it was essentially an action to quiet title, which is imprescriptible when delivery of possession of the property has been made.[23]

After trial, the Regional Trial Court dismissed the Peralta Estate's Complaint in an October 11, 2005 Decision.[24] It summarized the evidence presented as follows:

Evidence for the Plaintiff

The plaintiffs presented three witnesses namely: Atty. Moises Nicdao, Edmund[o] B. Peralta, and Dr. Edgardo D. Peralta.

During the deposition taking of witness for the plaintiff, Atty. Moises Nicdao, which was conducted in the Municipal Trial Court of San Antonio, Nueva Ecija, he testified, *inter alia*, to the following facts:

In the early days of his legal profession he established his own law office at Escolat, Marisol Building until he joined Atty. Eduardo Peralta, Sr. who was having an office at the Mercedes Building in Quiapo sometime between the year 1958 to 1959. He was prodded by the late Atty. Peralta to associate with the law firm headed by Atty. Peralta as Vice-President and Chief Legal Counsel to assist in the handling of cases of Valeriano Bueno and his several companies. He identified his sworn statement to the effect that he recalled an incident in 1966 at the residence of Atty. Peralta wherein he publicly reiterated his generosity to Atty. Peralta for the services the latter has rendered. During the said occasion Atty. Peralta told him that he was not receiving any definite salary from Mr. Valeriano Bueno but the latter made a promise to give him the subject property. The subject property could not be transferred immediately because of [sic] the same is encumbered. Valerian[o] Bueno verbally promised that upon

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[22] Id. at 247-247-A.

[23] Id. at 248.

[24] Id. at 646. The October 11, 2005 Decision in Civil Case No. 96-76696 was penned by Judge Vicente A. Hidalgo of the National Capital Judicial Region, Branch 37, Manila.

the payment of the obligation, the said property shall be transferred to Atty. Peralta.

Next witness for the plaintiff is Edmundo Peralta who testified to the fact that there was no condition imposed by Valeriano Bueno to his father, Eduardo Per[al]ta Sr., regarding the grant of the subject property to the latter. According to him, there was no negotiation whatsoever between Mr. Bueno, his son Jun Bueno and himself regarding the return of the property by way of payment of three (3) million pesos although there was previous proposal to sell the property to Mr. Bueno for that amount. He testified that Mr. Bueno admitted that the property is really owned by the Peralta's for which reason he is willing to buy the property for three (3) million. His father has been in continuous legal service for the Buenos up to the time of his death in December of 1983. He knows the fact because of some documents that he has and also the calendar of cases shows that he has been exclusively working on cases of Buenos up to the time of his death. (TSN February 2, 2004, pp. 4-16)

On Cross-Examination, the witness was asked if he has any documents which would show that his father has served as counsel for Buenos on 1983 and he was able to present only documents of earlier dates of 1979 and 1976. His father never filed any case for the transfer of the property in his favor. Likewise, he has no knowledge of [the] existence of any documents executed in favor of Peralta's to show ownership of the property. Neither did her mother ever send any demand letter for the transfer of the property in Peraltas' favor even up to the time of his death in 1990. He confirmed that there is no document to show that they are the owner[s] of the property. After the death of his father they never execute[d] any deed of partition as the same has been privately arranged among them as heirs and they agreed to adjudicate the same to their youngest brother Eduardo Peralta, Jr. Further, he testified that they filed several criminal charges against Buenos for harassing and scandalous acts they have committed in trying to evict them from the premises. (TSN, July 12, 2004, pp. 10-24)

As its last witness, plaintiff presented Dr. Edgardo Peralta who testified he is residing in 3451 M. Villamor Street, Sta. Mesa[,] Manila since the year of 1962. He knows that the Mr. Bueno is the previous owner of the address 3450 M. Villamor Street[,] Sta. Mesa[,] Manila which [is] just across his present address. He said that at present they are the owner[s] of the property because the same has been

verbally given to his parents by Mr. Bueno. (In this regard, the defense entered its continuing objection to the question pro[p]ounded citing Articles 1403 and 1358 of the Civil Code). He said that the title of the property was not given to his father because this was made a part of the collateral to a mortgage by Mr. Bueno. Thus, they made representations to the bank through a letter dated January 1, 1996 (Exhibit "G") sent by registered mail for the bank to honor the verbal agreement made by and between Mr. Bueno and his late father to which they received no reply.

Evidence for the Defense

The defense presented **GAUDENCIO JUAN Y PAGADOR**, 82 years old and residing at 8-A St. (sic) Mary St., Proj. 8, Quezon City who testified, among others, that he knows Spouses Valeriano Bueno and Genoveva Ignacio because he worked with their company for 38 years. He likewise knows Atty. Eduard Peralta, Sr. because he was working with the company of Spouses-defendants where he was working. Atty. Peralta started working in the company in the year 1957, as a retained counsel of Bueno group of companies, mostly of six (6) logging companies — Bueno Industrial & Development Corp., Butuan Lumber and Manufacturing Co., Inc., Mahogany Products, Inc., Palanan Logging Enterprise, Looc Bay Lumber Co., on a case to case basis. He recalled that initially he worked in the company as company forester and personnel manager at the same time and after he retired in 1985 he was still retained by the company as Special Assistant to the President. He testified that he knows that Spouses-Defendants Bueno are the owners of the subject property covered by Transfer Certificate Title No. 47603 (RT-192) the same property actually occupied by the Peraltas, more particularly the children of late Peralta Sr., namely: Edmundo, Edgardo and Eduardo all surnamed Peralta. Before the Peraltas occupied the property, the same was occupied by Juanti Merin, the Forester of Bueno Realty and group of companies. After Merin's resignation, the property was assigned to the Peraltas sometime in 1960 as additional benefits being granted to a lawyer of the company. He testified that Atty. Eduardo Peralta, Sr. resigned or severed his employment with the company of Bueno sometime in 1975 as evidenced by his letter-resignation dated May 19, 1975 (Exhibit "1").

On Cross-examination he testified that Atty. Peralta was retained as counsel by the Bueno group of companies in 1957 and the witness was hired as a company forester of the Bueno group of companies

in 1964 up to the time he retired in 1985. Thereafter, and even after Valeriano Bueno Sr. died, he continued to act as consultant of Valeriano Bueno, Sr.'s son and the group of companies of the Buenos. During his cross-examination, he acknowledged that Mr. Bueno, Sr. also promised him that he will own a lot in one of the pieces of property of the Buenos at Antipolo, Rizal but it did not materialize. He said that he could not remember if Atty. Eduardo Peralta has rendered legal services in favor of Buenos after his resignation.

For his part, **DOMINGO LALAQUIT y GONZALES**, testified as the second witness for the defendants as follows:

He was hired by the company lawyer of Bueno sometime in 1973 and is presently connected with the same company as lawyer and stockholder of United Realty and Development Corp., Rich Golden School in Antipolo Rizal. He confirmed what had transpired during the pre-trial conference. The plaintiff's possession of the subject property and his lack of knowledge regarding the transfer of the subject property, his employment as counsel for the defendants in 1973 and his role in the cases referred to him by Bueno thereafter.

As the last witness for the defendants, **VALERIANO BUENO, JR.**, was presented to the Court on September 29, 2003 who is the legitimate son of Spouses. He testified that he knew both the plaintiff Spouse Bueno and that Atty. Peralta worked for several years as legal counsel of his father and for the company of his father. Relative to paragraph six (6) of the Amended Complaint, he testified that he has no knowledge of that but from what he recalled, his father was willing to give Atty. Peralta the ownership of the subject property still in the name of his father if Atty. Peralta can render legal services to the witness' father until Atty. Peralta's retirement but Atty. Peralta resigned in 1974. He also recognized the document presented by the plaintiff concerning the financial arrangement with Edmundo B. Peralta, but nothing happened to it. After the witness confirmed the unfriendly encounters between his father and Edmundo Peralta, he also identified the reconstituted title and the suit he caused to be filed against Edgardo Peralta and Edmundo Peralta.

On cross-examination he testified that he was only ware of the fact that his father was willing to give the property to Atty. Peralta on the condition that Atty. Peralta will serve his father until his retirement, and that during the lifetime of his father, his father did not file any ejectment case nor an action to recover possession against Atty. Peralta and Luz B. Peralta even after the two passed away. He

also acknowledged the arrangement between him and Edmundo Peralta on the financial assistance, the improvements introduced by and at the expense of the plaintiff and their children like additional buildings on the subject property for which his father did not interpose any objection.[25] (Emphasis in the original)

Based on the evidence, the Regional Trial Court found that the Bueno Spouses and Peralta reached an agreement where Peralta would be awarded the property in exchange for his services as counsel for the Buenos and their companies until his retirement.[26] However, Peralta failed to fulfill this condition because he resigned in 1975, as shown in his handwritten resignation letter.[27] Together with the other pieces of evidence, this letter established that Peralta resigned eight years before his death in 1983,[28] and thus, did not render services until his retirement. Consequently, the Bueno Spouses had the right to rescind the contract.[29]

The Regional Trial Court also observed that Peralta never attempted to assert any rights or ownership over the property after it had allegedly been given to him. The trial court took this to mean that the Bueno Spouses had never unconditionally promised to convey the property, and Peralta was aware that he had not acquired any right of ownership over it. The trial court reasoned that Peralta must have realized that after his resignation, he and his family were being allowed to occupy the property out of the Bueno Spouses' goodwill and generosity.[30]

The Regional Trial Court further ruled that the cause of action had already prescribed. Although it had previously rejected the argument of prescription when it denied the Demurrer to Evidence, this rejection was based on the assumption that the

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[25] Id. at 648-652.

[26] Id. at 654.

[27] Id. at 655.

[28] Id.

[29] Id. at 656.

[30] Id.

Complaint was an action to quiet title, which is imprescriptible. After evidence had been presented, however, it found that the Complaint was not an action to quiet title, but one anchored on a right to enforce an oral contract, which prescribes in six years.[31] The right of action was allegedly acquired in 1960, and thus, had already prescribed when the Peralta Estate filed the Complaint in 1996.[32]

The dispositive portion of the Regional Trial Court Decision reads:

> WHEREFORE, premises considered, the complaint is hereby ordered DISMISSED for lack of merit. The defendants SPOUSES VALERIANO and GENOVEVA BUENO and their heirs are declared as rightful owner of the subject property.
>
> SO ORDERED.[33]

The Peralta Estate moved for reconsideration,[34] but the Motion was denied in the Regional Trial Court's December 19, 2005 Order. Thus, the Peralta Estate appealed before the Court of Appeals.[35]

The Court of Appeals granted the Peralta Estate's appeal in an August 31, 2012 Decision.[36] It found that Peralta and the Bueno Spouses entered into an oral conditional contract with a suspensive condition of Peralta's retirement. Thus, the Bueno Spouses were obligated to convey the property to Peralta upon his retirement.[37]

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[31] Id. at 657 citing CIVIL CODE, Art. 1145.

[32] Id. at 657-658.

[33] Id. at 658.

[34] Id. at 659-675.

[35] Id. at 679.

[36] Id. at 75-116. The August 31, 2012 Decision in CA-G.R. CV No. 86410 was penned by Associate Justice Rosmari D. Carandang (now a member of this Court) and concurred in by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba of the Court of Appeals Fifth Division, Manila.

[37] Id. at 96-97.

The Court of Appeals reasoned that the oral agreement was enforceable as a verbal *facio ut des* contract. It cited *Perez v. Pomar*,[38] where this Court invoked the unjust enrichment rule and enforced an oral *facio ut des* contract because it was established that a party had already rendered services pursuant to the agreement.[39]

The Court of Appeals further appreciated that the Peralta Estate's witness, Atty. Moises Nicdao (Atty. Nicdao), said that Peralta did not have a definite salary. It noted that the Bueno Estate did not present any evidence on Peralta's salary or any compensation, and that Peralta's possession of the property was the result of Bueno's generosity. Thus, the Court of Appeals concluded that the property formed the compensation for Peralta's services, and that his possession of the property was for a valuable consideration. It found it unlikely that Peralta would have accepted free rent of the property as part of his compensation.[40]

The Court of Appeals further held that this oral agreement was not covered by the Statute of Frauds. It reasoned that the contract must have been perfected, because Bueno relinquished possession of the property while Peralta rendered his legal services.[41]

Further, the Court of Appeals found that Peralta served Bueno until retirement. It pegged Peralta's retirement to be when he reached the age of 60, reasoning that the Ministry of Labor and Employment prescribed 60 years as the age of retirement.[42] It reversed the Regional Trial Court's finding that Peralta had completely resigned in 1975,[43] as the evidence preponderantly showed that he continued to work for the Buenos even after the supposed resignation.[44]

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[38] 2 Phil. 682 (1903) [Per J. Torres, En Banc].

[39] *Rollo*, pp. 97-98.

[40] Id. at 99-100.

[41] Id. at 100.

[42] Id. at 109.

[43] Id. at 107.

[44] Id. at 103.

To support this finding, the Court of Appeals noted how after 1975, Peralta continued to work on various engagements for the Buenos.[45] Among others, it noted that in 1980, when Peralta was at the retirement age of 60, he was still the counsel on record for the Buenos in the Supreme Court case, *Bueno Industrial v. R.C. Aquino Timber*.[46]

The Court of Appeals also found that the action had not prescribed. It reasoned that, contrary to the Regional Trial Court's finding, the Complaint was not an action to enforce an oral contract, because both parties had already performed their obligations under the contract. It deemed the contract as an action to quiet title, and was therefore imprescriptible since the Peralta Estate was in possession of the property.[47] It also rejected the argument of laches, being "merely a form of equitable relief[.]"[48]

This led to the Petition before this Court.

I maintain that the Petition is meritorious.

The Statute of Frauds was written into Article 1403 (2) of the Civil Code so that courts would not rely on the unassisted memories of witnesses in proving the terms of a contract, to prevent fraud in the enforcement of obligations.[49] However, as correctly pointed out by my colleagues, the Statute of Frauds is not applicable to partially performed contracts.

In *Asia Production Company, Inc. v. Paño*,[50] this Court explained that both the Statute of Frauds and the exceptions to its application are intended to prevent the perpetration of fraud:

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[45] Id. at 103-107.

[46] Id. at 109 citing 148 Phil. 579 (1971) [Per J. Castro, En Banc].

[47] Id. at 111.

[48] Id. at 114.

[49] *Heirs of Claudel v. Court of Appeals*, 276 Phil. 114 (1991) [Per J. Sarmiento, Second Division].

[50] 282 Phil. 469 (1992) [Per J. Davide, Jr., Third Division].

The purpose of the statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged. It was not designed to further or perpetuate fraud. Accordingly, its application is limited. It makes only ineffective actions for specific performance of the contracts covered by it; it does not declare them absolutely void and of no effect. As explicitly provided for in the above-quoted paragraph (2), Article 1403 of the Civil Code, the contracts concerned are simply "unenforceable" and the requirement that they — or some note or memorandum thereof — be in writing refers only to the manner they are to be proved. It goes without saying then, as held in the early case of *Almirol, et al. vs. Monserrat*, that the statute will apply only to executory rather than executed contracts. Partial execution is even enough to bar the application of the statute. In *Carbonnel vs. Poncio, et al.*, this Court held:

> ". . . It is well-settled in this jurisdiction that the Statute of Frauds is applicable only to executory contracts, not to contracts that are totally or partially performed.
>
> 'Subject to a rule to the contrary followed in a few jurisdictions, it is the accepted view that part performance of a parol contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the acts constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that chancery may decree its specific performance or grant other equitable relief. It is well settled in Great Britain and in this country, with the exception of a few states, that a sufficient part performance by the purchaser under a parol contract for the sale of real estate removes the contract from the operation of the statute of frauds.'
>
> In the words of former Chief Justice Moran: 'The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud.' However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable

> the defendant to keep the benefits already derived by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby."[51] (Citations omitted)

Considering that there was an allegation of performance of an oral contract, I agree that it was proper to consider the possibility that the Statute of Frauds may not cover the agreement between Peralta and the Bueno Spouses. However, when there is no clear evidence from the contracting parties themselves that would signify their specific intentions when entering into the verbal agreement, courts must be careful in determining that a contract has been partially performed.

Before partial performance may remove an agreement for the sale of real property from the Statute of Frauds, the terms of the agreement must first be clear. In *Babao v. Perez*,[52] this Court emphasized:

> Assuming *arguendo* that the agreement in question falls also under paragraph (a) of Article 1403 of the new Civil Code, *i.e.*, it is a contract or agreement for the sale of real property or of an interest therein, it cannot also be contended that that provision does not apply to the present case for the reason that there was part performance on the part of one of the parties. In this connection, it must be noted that this statute is one based on equity. It is based on equitable estoppel or estoppel by conduct. It operates only under certain specified conditions and when adequate relief at law is unavailable. And one of the requisites that need be present is that the agreement relied on must be certain, definite, clear, unambiguous and unequivocal in its terms before the statute may operate. Thus, the rule on this matter is as follows:
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> "The contract must be fully made and completed in every respect except for the writing required by the statute, in order to be enforceable on the ground of part performance. The parol agreement relied on must be certain, definite, clear, unambiguous, and unequivocal in its terms, particularly where the agreement is between parent and child, and be clearly established by the

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[51] Id. at 477-479.

[52] 102 Phil. 756-769 (1957) [Per J. Bautista Angelo, First Division].

evidence. The requisite of clearness and definiteness extends to both the terms and the subject matter of the contract. Also, the oral contract must be fair, reasonable, and just in its provisions for equity to enforce it on the ground of part performance. If it would be inequitable to enforce the oral agreement, or if its specific enforcement would be harsh or oppressive upon the defendant, equity will withhold its aid. Clearly, the doctrine of part performance taking an oral contract out of the statute of frauds does not apply so as to support a suit for specific performance where both the equities and the statute support the defendant's case."

. . . . . .

"Obviously, there can be no part performance until there is a definite and complete agreement between the parties. In order to warrant the specific enforcement of a parol contract for the sale of land, on the ground of part performance, all the essential terms of the contract must be established by competent proof, and shown to be definite, certain, clear, and unambiguous.

"And this clearness and definiteness must extend to both the terms and the subject-matter of the contract.

"The rule that a court will not specifically enforce a contract for the sale of land unless its terms have been definitely understood and agreed upon by the parties, and established by the evidence, is especially applicable to oral contracts sought to be enforce on the ground of part performance. An oral contract, to be enforced on this ground, must at least have that degree of certainty which is required of written contracts sought to be specifically enforced.

"The parol contract must be sufficiently clear and definite to render the precise acts which are to be performed thereunder clearly ascertainable. Its terms must be so clear and complete as to allow no reasonable doubt respecting its enforcement according to the understanding of the parties."

"In this jurisdiction, as in the United States, the existence of an oral agreement or understanding such as that alleged in the complaint in the case at bar cannot be maintained on vague, uncertain, and indefinite testimony, against the reasonable presumption that prudent men who enter into such contracts

> will execute them in writing, and comply with the formalities prescribed by law for the creation of a valid mortgage. But where the evidence as to the existence of such an understanding or agreement is clear, convincing, and satisfactory, the same broad principles of equity operate in this jurisdiction as in the United States to compel the parties to live up to the terms of their contract."[53] (Citations omitted)

The terms of an oral contract must have the degree of certainty required of a written contract before the courts may order its enforcement. This is a sound policy. Before the action may be deemed as performance of an obligation under an oral contract, its terms must be clear, because it must first be evident that the action was performed *pursuant solely to the alleged oral contract*, and nothing else. In other words, before an act may be considered partial performance, the evidence must convincingly show that the action was performed because of the alleged oral contract, to the exclusion of any other agreement.

Courts should be particularly cautious in cases such as this, where the person whose actions were deemed as partial performance pursuant to an oral contract had never once in his lifetime palpably asserted any rights pursuant to the contract. Closer scrutiny is appropriate, since partial performance is an exception to a statutory safeguard to prevent fraud in evidence.

Here, the records do not show any evidence that convincingly attribute Peralta's legal services to Bueno as done pursuant to an agreement that he would serve until his retirement in exchange for the property.

The majority also held that the alleged contract was removed from the ambit of the Statute of Frauds because it was ratified under Article 1403, in relation to Article 1405, of the Civil Code. To the majority, petitioners' failure to object to the presentation of oral evidence to prove the oral contract, and the acceptance of Peralta's legal services under the oral contract, ratified the contract.[54]

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[53] Id. at 765-767.

[54] Ponencia, pp. 12-13.

The majority maintains that the record is replete with oral evidence that the Bueno Estate did not refute.[55] It points out that Atty. Nicdao's testimony was offered to prove, among others, that the Bueno Spouses gave the real property to Peralta as partial consideration for his legal services; that they "unconditionally transferred and conveyed full ownership" over the real property to Peralta; and that Atty. Nicdao was present at that incident.[56] It cites the following excerpts from Atty. Nicdao's testimony as oral evidence presented to prove the oral contract:

> A We took food and drink there, that is what transpired there. Mr. Bueno, if he followed only all the promises of Mr. Bueno, all the employees should have one lot each especially those lots acquired at Antipolo, Rizal. In this particular case, Atty. Peralta do [sic] not have any definite amount of salary. He only promised to give that house and lot to him and this Mr. Peralta told me about that and when there was a birthday we talked with each other that I witnessed personally that Mr. Bueno was really in his kindness, gave the house and lot to Mr. Peralta. It cannot be transferred yet because it is still indebted to Mitsubishi with the promise that when the obligation will be paid, he will legally transfer the property but the truth is verbally, the property was already given to Mr. Peralta on that date. What did Atty. Peralta do afterwards, he made renovations of the property. I think he spent more than P200,000.00 on the renovation.
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> Q And at that time he made that declaration or pronouncement, could you tell us if Mrs. Genoveva Bueno was present on that occasion?
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> A Yes sir. Mrs. Bueno is in conformity with the giving of that property because whether she like[d] it or not, if Mr. Peralta would be paid, even three times the value of the property should be paid.
>
> Q Would you affirm before this Honorable Court that from the time Defendant Sps. Bueno gave that property as partial

[55] Id. at 16-20.

[56] Id. at 16-17.

consideration for his legal services, the plaintiff more particularly Atty. Peralta had occupied that property continuously, uninterruptedly and in the concept of an owner?

A Atty. Peralta occupied the building and lot continuously up to his death. After his death, his heirs were the ones who lived there sir.

. . . . . .

Q And that Valeriano Bueno was already represented by another lawyer other than Atty. Peralta during that time, you don't know?

A You know Pañero, the issue here is whether or not Mr. Bueno had given the house and lot to Atty. Peralta and Mrs. Peralta. At the time when he gave that, Mrs. Bueno is also present and at the same in one occasion in 1966, Mr. Bueno with his wife there on the occasion ***reiterated that he had already given that house and lot*** and that is the reason why Atty. Peralta and Mrs. Peralta have made renovations of the building which I think he had even spent more than P300,000.00 for the renovation. That is the only issue that I know but with respect to other issues, I do not know. Supposed we deal on that issue here.

Q So, you do not know that Mr. Bueno imposed certain conditions to Atty. Peralta to own that house and lot already?

A What the condition was, ***any moment that he will be able to pay the obligation being answer*** [sic] to the house and lot, he will immediately issue, ***he will immediately execute a deed of sale sir***.

Q And you do not know that Mr. Bueno imposed upon Atty. Peralta that he has to be his lawyer up to the time of his retirement from the practice of law, you don't know?

Atty. Pacheco It was already answered. In fact, the witness stated that there is only one condition set by Mr. Bueno. That the moment the loan had been paid then the deed of sale will be executed.

Court Already answered.

. . . . . .

Q In Exh. "C", you said Mr. Valeriano Bueno reiterated that he is going to give Atty. Peralta the house and lot. Was it reduced into writing?

A Personally, we have to believe Bueno. In the first place, he is a millionaire at that time he is [sic] a billionaire. In the second place, I did not know yet that he is lying but I know that he is sincere in giving that. He gave that because of the services of Peralta. That is what I know sir.

Q So, it is now clear that there was no written document on that what you said that Mr. Bueno gave the house and lot to Atty. Peralta, there was no document?

A As far as I'm concerned, I don't know if after that occasion, he gave a document or not but what I know, he really gave that personally sir.

. . . . . .

Q Mr. Witness, Atty. Nicdao, you were stating a while ago that sometime in 1966 in one of the occasions held at the residence of Atty. Peralta, Mr. Bueno reiterated that he already gave that property to Atty. Peralta, is that correct?

A Yes Sir.

Q So, you mean to tell us that it was as early as 1960 that Mr. Bueno gave that property to Atty. Peralta who physically took possession of that property in the concept of an owner?

A Because he was advised by Mr. Bueno and Mrs. Bueno to transfer to that house at [sic] Villamor St. and that will be their property sir.

Q And after that, after 1960, when Atty. Peralta and his family took physical possession of that property, he introduced improvements in the concept of an owner again?

A Yes Sir.

Q During the lifetime of Atty. Peralta, you are not aware of any acts committed or made by Mr. Bueno inconsistent with that agreement he had with Atty. Peralta regarding the giving or transfer of ownership over that property in favor of Atty. Peralta?

A I am not aware, sir. What I know is continuously, until now, he still in (sic) the house from 1960.[57] (Emphasis supplied)

From this, the majority concludes that the oral contract was ratified due to petitioner's failure to object to the presentation of Atty. Nicdao's testimony.

One must take a closer look at what Atty. Nicdao testified to, and what contract he claimed to have personally witnessed, if any. He testified that in 1966, he personally witnessed that Bueno, "in his kindness, gave the house and lot to Mr. Peralta"; that "verbally, the property was already given to Mr. Peralta"; and that there was only ***one condition***, that Bueno would execute a deed of sale once the loan on the property had been paid.[58] As to Genoveva's supposed consent, Atty. Nicdao did not testify that he heard her consent, but only that she was "in conformity with the giving of that property because whether she like[d] it or not, if Mr. Peralta would be paid, even three times the value of the property should be paid."[59]

Thus, as Atty. Nicdao testified, Bueno had given Peralta the property in 1960, and reiterated in 1966 that it had already been completely given, without condition for Peralta to perform any additional obligation in return. Atty. Nicdao even specified that Bueno gave the house "in his kindness[.]"[60]

Although the contract was deemed analogous to a contract of sale, where the purchase price had been completely paid, the majority itself concludes that the oral contract was "borne out of kindness and generosity[,]" pointing out that Bueno "had the propensity to promise real property to his employees."[61] Atty. Nicdao also testified that Peralta had *no reciprocal obligation* to transfer the real property. Thus, the contract

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[57] Id. at 17-20.

[58] Id. at 18.

[59] Id.

[60] Id. at 17.

[61] Id. at 28-29.

testified to by Atty. Nicdao and accepted as proved was a donation.[62]

Donations of real property, however, must comply with other requirements for validity, which should be addressed if the contract testified to by Atty. Nicdao was the one that was deemed ratified.

True, under Article 1405 of the Civil Code, the failure to object to the presentation of oral evidence to prove contracts infringing on the Statute of Frauds ratifies those contracts. However, neither the Court of Appeals nor this Court's majority accepted that Atty. Nicdao's testimony described the contract accurately or completely, as neither concluded that Bueno had given the property entirely out of kindness. Yet, to the majority, the terms of the oral contract allegedly witnessed by Atty. Nicdao were the ones purportedly ratified through the counsel's failure to object.

The majority also maintained that the conduct of the parties established the existence of the contract. It cites *Heirs of Alido v. Campano*,[63] where this Court concluded that the actions and inactions of the parties established that a sale of real property had been consummated because, among others, the buyer's possession had not been questioned during the seller's lifetime, and the seller had allowed the buyer to exercise all the owner's rights and responsibilities over the real property.[64]

Heirs of Alido, in turn, cited *Ortega v. Leonardo*[65] to assert that possession of a property and making improvements on it may serve as indicators that the real property has been sold. *Ortega*, however, did not conclusively determine that an oral contract had been entered into and partially performed. Rather, it observed that certain acts, under proper circumstances, could potentially constitute partial performance, and decided only

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[62] *Republic v. Silim*, 408 Phil. 69 (2001) [Per J. Kapunan, First Division].

[63] G.R. No. 226065, July 29, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65542> [Per J. Reyes, Jr., Second Division].

[64] Id.

[65] 103 Phil. 870 (1958) [Per J. Bengzon, En Banc].

that trial should proceed to determine whether the contract existed and had been partially performed:

> Thus, it is stated that "The continuance in possession by a purchaser who is already in possession may, in a proper case, be sufficiently referable to the parol contract of sale to constitute a part performance thereof. There may be additional acts or peculiar circumstances which sufficiently refer the possession to the contract. . . . Continued possession under an oral contract of sale, by one already in possession as a tenant, has been held a sufficient part performance, where, accompanied by other acts which characterize the continued possession and refer it to the contract of purchase. Especially is this true where the circumstances of the case include the making of substantial, permanent, and valuable improvements."
>
> It is also stated that "The making of valuable permanent improvements on the land by the purchaser, in pursuance of the agreement and with the knowledge of the vendor, has been said to be the strongest and most unequivocal act of part performance by which a verbal contract to sell land is taken out of the statute of frauds, and is ordinarily an important element in such part performance. . . . Possession by the purchaser under a parol contract for the purchase of real property, together with his making valuable and permanent improvements on the property which are referable exclusively to the contract, in reliance on the contract, in the honest belief that he has a right to make them, and with the knowledge and consent or acquiescence of the vendor, is deemed a part performance of the contract. The entry into possession and the making of the improvements are held on amount to such an alteration in the purchaser's position as will warrant the court's entering a degree of specific performance."
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> Again, it is stated that "A tender or offer of payment, declined by the vendor, has been said to be equivalent to actual payment, for the purposes of determining whether or not there has been a part performance of the contract. This is apparently true where the tender is by a purchaser who has made improvements. But the doctrine now generally accepted, that not even the payment of the purchase price, without something more, . . . is a sufficient part performance.
>
> And the relinquishment of rights or the compromise thereof has likewise been held to constitute part performance.
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> In the light of the above four paragraphs, it would appear that the complaint in this case described several circumstance[s] indicating partial performance: relinquishment of rights continued possession,

building of improvements, tender of payment plus the surveying of the lot at plaintiff's expense and the payment of rentals.[66] (Citations omitted)

Thus, *Ortega* stated that when partial performance has been *alleged*, the party so alleging must have the opportunity during trial to establish the partial performance, and in so doing, the terms of the contract.

Moreover, unlike this case, the terms of the oral contract in *Ortega* were alleged by an actual party to the contract, and were also clear:

> Stripped of non-essentials, the complaint averred that long before and until her house had been completely destroyed during the liberation of the City of Manila, plaintiff occupied a parcel of land, designated as Lot I, Block 3, etc. (hereinafter called Lot I) located at San Andres Street, Malate, Manila; that after liberation she reoccupied it; that when the administration and disposition of the said Lot I (together with other lots in the Ana Sarmiento Estate) were assigned by the Government to the Rural Progress Administration plaintiff asserted her right thereto (as occupant) for purposes of purchase; that defendant also asserted a similar right, alleging occupancy of a portion of the land subsequent to plaintiff's; that during the investigation of such conflicting interests, defendant asked plaintiff to desist from pressing her claim and definitely promised that if and when he succeeded in getting title to Lot I, he would sell to her a portion thereof with an area of 55.60 square meters (particularly described) at the rate of P25.00 per square meter, provided she paid for the surveying and subdivision of the Lot, and provided further that after he acquired title, she could continue holding the lot as tenant by paying a monthly rental of P10.00 until said portion shall have been segregated and the purchase price fully paid; that plaintiff accepted defendant's offer, and desisted from further claiming Lot I; that defendant finally acquired title thereto; that relying upon their agreement, plaintiff caused the survey and segregation of the portion which defendant had promised to sell, incurring expenses therefor, said portion being now designated as Lot I-B in a duly prepared and approved subdivision plan; that in remodelling her son's house constructed on a lot adjoining Lot I she extended it over said Lot I-B; that after defendant had acquired Lot I plaintiff regularly paid him the monthly rental of P10.00; that in July 1954, after the plans of subdivision and segregation of the lot

[66] Id. at 872-874.

had been approved by the Bureau of Lands, plaintiff tendered to defendant the purchase price which the latter refused to accept, without cause or reason.[67] (Citations omitted)

Since those terms were alleged by an actual party to the alleged contract, a discernible and clear link could be drawn between the actions alleged as partial performance and the alleged oral contract. Thus, it was possible to determine that the acts done as partial performance were "referable exclusively to the contract, in reliance on the contract[.]"[68]

Furthermore, *Ortega* was careful to point out that it was the *confluence of each of the enumerated bases* that could establish partial performance for purposes of removing the contract from the coverage of the Statute of Frauds:

> We shall not take time to discuss whether one or the other or any two or three of them constituted sufficient performance to take the matter away from the operation of the Statute of Frauds. Enough to hold *that the combination of all of them* amounted to partial performance, and we do so line with the accepted basis of the doctrine, that it would be a fraud upon the plaintiff if the defendant were permitted to oppose performance of his part after he has allowed or induced the former to perform in reliance upon the agreement.
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> The paragraph immediately preceding will serve as our comment on the appellee's quotations from American Jurisprudence itself to the effect that "relinquishment" is not part performance, and that neither "surveying the land'' nor tender of payment is sufficient. The precedents hereinabove transcribed oppose or explain away or qualify the appellee's citations. And at the risk of being repetitious we say: granting that *none* of the three circumstances indicated by him, (relinquishment, survey, tender) would *separately* suffice, still the *combination* of the three with the others already mentioned, amounts to more than enough.[69]

This Court in *Ortega* did not rule on whether an oral contract had been partially performed, and it was also careful to enumerate

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[67] Id. at 871-872.

[68] Id. at 873.

[69] Id. at 874.

a number of actions that must be present to constitute partial performance. It is thus improper in this case to rely on *Heirs of Alido*, which in turn relied on *Ortega*. To do so would be to disregard the purpose of the general rule that sales of real property must be in writing to be enforceable.

The better rule is the one stated in *Babao*, where this Court said that the parol evidence relied on must be "certain, definite, clear, unambiguous, and unequivocal in its terms . . . and be clearly established by the evidence."[70]

The majority correctly observes that specific words may not be necessary in all cases to establish the existence of an oral contract. Nonetheless, in cases such as this, where there is a clear statutory protection, courts must exercise greater caution and methodically consider the evidence presented and what it *actually proves*, step by step. The testimony of Bueno's son, Valeriano, Jr., on being aware of his father's willingness to transfer ownership over the property at a future date *if* Peralta "would render his services to [his] father until his retirement"[71] is, for purposes of determining that an oral contract exists, and that the obligations of the parties had been fully fulfilled, too vague.

Yet, the majority cites Valeriano, Jr.'s testimony, where he expressly said that he had "no knowledge" that the property had been given to Peralta as partial consideration for legal services rendered. He only said that he learned that his father was willing to give Peralta the property.[72]

The majority also maintains that petitioners judicially admitted that Bueno committed to transfer the property:

> [I]t is plain to Us, based on the allegations in the petition and the Reply, that the Estate of Bueno reiterated a confirmation of Bueno's commitment to transfer the property to Atty. Peralta. Such repeated and consistent representation from the Estate of Bueno and their counsel

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[70] *Babao v. Perez*, 102 Phil. 756, 765 (1957) [Per J. Bautista Angelo, First Division].

[71] Ponencia, p. 22.

[72] Id. at 22-23.

demonstrate the existence of the contract between Bueno and the Atty. Peralta, which the Court considers as judicial admissions.

. . . . . .

In addition, We note explicit remarks from the Estate of Bueno during the various stages of the suit that can be deemed as negative pregnant statements, or that form of denial which is at the same time an affirmative assertion favorable to the opposing party. It is said to be a denial pregnant with an admission of the substantial facts in the pleading responded to. It is in effect an admission of the averment to which it is directed.

These statements call into effect the principle of estoppel under Article 1431 of the New Civil Code. Any other evidence to prove the agreement is unnecessary in light of the Estate of Bueno's conduct over the years, from the time the agreement was made, to the moment Atty. Peralta and his family took possession of the subject property in 1962, and through the years that they occupied the same.

Consequently, the Court may disregard all evidence submitted by the Estate of Bueno contrary to, or inconsistent with, their judicial admissions.[73] (Citations omitted)

Since the very reason for the Statute of Frauds is to prevent fraud, the evidence relied on to evade coverage of the Statute of Frauds must be clear.

Whatever agreement there may have been on the transfer of interest in the real property, it remains unclear what the obligations of this agreement were; and whatever these obligations were, it is likewise unclear if they had not already been fulfilled. If it is true that Bueno committed to transfer ownership of the property to Peralta, this had not been reduced to writing. Under the Statute of Frauds, this Court cannot enforce such agreement.

ACCORDINGLY, I vote that the Court of Appeals' August 31, 2012 Decision and February 18, 2013 Resolution in CA-G.R. CV No. 86410 be **REVERSED and SET ASIDE**, and the Regional Trial Court's October 11, 2005 Decision in Civil Case No. 96-76696 be **REINSTATED**.

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[73] Id. at 13-16.

THIRD DIVISION

[G.R. No. 211893. September 9, 2020]

ROZEL "ALEX" F. MAR SANTOS, DOING BUSINESS UNDER THE NAME AND STYLE TOTAL LAND MANAGEMENT, INC., *Petitioner*, *v.* **V.C. DEVELOPMENT CORPORATION, ET AL.,** *Respondents*.

SYLLABUS

1. CIVIL LAW; COMPROMISE, DEFINED; REQUISITES FOR VALIDITY, ENUMERATED; SETTLEMENT OF DISPUTES IS ALWAYS ENCOURAGED TO ACHIEVE SPEEDY AND IMPARTIAL JUSTICE.— The settlement of disputes before the courts is always encouraged to achieve speedy and impartial justice, and declog the court's dockets. Remarkably, Article 2029 of the Civil Code impresses upon the courts to "endeavor to persuade the litigants in a civil case to agree upon some fair compromise." On this score, parties are given autonomy and freedom to make arrangements to resolve their dispute. Notably, a compromise is defined as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." As with all other contracts, it must bear the essential requisites enumerated under Article 1318 of the Civil Code, namely, "(i) consent of the contracting parties; (ii) object certain which is the subject matter of the contract; and (iii) cause of the obligation which is established." In addition, its "terms and conditions must not be contrary to law, morals, good customs, public policy and public order."

2. ID.; ID.; THE COURT OF APPEALS ERRED IN DISREGARDING THE COMPROMISE AGREEMENT OF THE PARTIES.— For all intents and purposes, the issues raised in the complaint for specific performance have been resolved through the execution of the Compromise Agreement and the performance of the parties' respective undertakings. It bears stressing that compliance with the terms of the Compromise Agreement occurred in as early as July 9, 2010 and August 2, 2010, more than one and a half years prior to the promulgation of the assailed CA Decision and Resolution. All throughout, not one of the parties questioned the due execution of said Compromise. It is

thus regrettable that despite the parties' mutual efforts to settle their dispute, the CA prolonged the litigation and rendered a decision which was unfortunately contrary to the parties' concessions. Furthermore, the CA erred in disregarding the Compromise Agreement on account of V.C. Development's failure to file a Comment or Manifestation affirming AVP Sayson's authority. It is clear from its September 3, 2010 Resolution that the failure to file a Comment shall be deemed as an assent to the terms of the Compromise Agreement. This in itself warranted an approval of said Compromise. Added thereto, V.C. Development's compliance with the terms of the Compromise Agreement undoubtedly prove its ratification of AVP Sayson's authority. Suffice to say, in *Paraiso Int'l. Properties, Inc. v. Court of Appeals, et al.,* the Court held that the CA committed grave abuse of discretion in disapproving the parties' Compromise Agreement on account of perceived formal defects. Similar to the instant case, therein respondent likewise failed to explain the discrepancies for two years.

3. ID.; ID.; THE COURT UPHELD THE VALIDITY OF THE SUBJECT COMPROMISE AGREEMENT AND ENJOINED THE PARTIES TO FAITHFULLY COMPLY WITH THE TERMS AND CONDITIONS THEREOF.— [T]he Court finds that the July 9, 2010 Compromise Agreement was validly executed. x x x [T]he Court deems it wise to write *finis* to the instant case. A remand is no longer necessary considering that the Court is in a position to resolve the dispute and a remand will only prolong the case and thereby thwart justice. x x x The Court reminds the parties that they are enjoined to faithfully comply with the terms and conditions of their Compromise Agreement. Santos alleged that despite the execution of the Deed of Absolute Sale, V.C. Development failed to effect a full transfer of ownership over the property. Notably, if one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise by a writ of execution, or regard it as rescinded and insist upon his original demand. Non-fulfillment of the terms of the compromise justifies execution. The prerogative of which course to pursue rests on Santos.

APPEARANCES OF COUNSEL

Abad Abad and Associates for petitioner.
Librojo and Associates Law Offices for respondents.

D E C I S I O N

GAERLAN, *J.*:

Courts shall encourage parties in a civil case to settle their dispute amicably by agreeing on a fair and just compromise.[1]

This resolves the Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court filed by petitioner Rozel "Alex" F. Mar Santos (Santos), praying for the reversal of the January 4, 2012 Decision[3] and the February 11, 2014 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 90266. The CA disregarded the Compromise Agreement[5] dated July 9, 2010 executed between Santos and respondent V.C. Development Corporation (V.C. Development), and affirmed the October 4, 2007 Decision[6] of the Regional Trial Court (RTC) of Quezon City, Branch 80.

The Antecedents

Sometime in 1990, Santos and V.C. Development entered into an agreement for the sale of the latter's lots in Violago Homes Batasan, Quezon City. They agreed that Santos will sell the lots under various housing packages, build homes, and aid the buyers in securing a mortgage with the United Savings Bank (United Savings).[7]

Santos solicited prospective buyers Anacleto Quibuyen (Quibuyen) and Ana Maria Male (Male), among others. He likewise assisted them in obtaining housing loans from United

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[1] CIVIL CODE, Article 2029.

[2] *Rollo*, pp. 27-45.

[3] Id. at 50-55; penned by Associate Justice Manuel M. Barrios, with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr., concurring.

[4] Id. at 57-59.

[5] Id. at 14-15.

[6] Id. at 61-68; signed by Judge Ma. Theresa Dela Torre-Yadao.

[7] Id. at 51.

Savings. As a condition for releasing the loan proceeds, United Savings required the submission of the owner's duplicate copy of the titles and the construction of houses over the lots.[8]

Believing that the transactions will proceed smoothly, Santos began the construction of 10 houses in Violago Homes.[9]

Unfortunately, V.C. Development failed to promptly submit the titles to United Savings, in view of its previous mortgage with the Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS). It was only on January 15, 1991 that it finally released TCT No. 309980 and TCT No. 309985, which were the titles for the properties purchased by Quibuyen and Male, respectively. Said titles were delivered to Santos who, in turn, was tasked to deliver them to United Savings.[10] Moreover, V.C. Development failed to complete the construction of the subdivision amenities. Due to the delay, United Savings refused to release the loan proceeds.[11]

In view of the ensuing chaos, the buyers withdrew their reservation fees and down payments, and filed various complaints against V.C. Development before the HLURB.[12]

In turn, V.C. Development demanded the return of the owner's duplicate copies of TCT No. 309980 and TCT No. 309985.[13] However, Santos refused to return them and held them as a security for the repayment of the construction expenses he advanced.[14]

This prompted V.C. Development to file a complaint for specific performance with damages against Santos.[15]

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[8] Id.

[9] Id. at 31.

[10] Id. at 100.

[11] Id. at 101.

[12] Id. at 32.

[13] Id. at 51.

[14] Id. at 32.

[15] Id. at 52.

Ruling of the RTC

On October 4, 2007, the RTC rendered a Decision[16] in favor of V.C. Development and ordered Santos to return TCT No. 309980 and TCT No. 309985. The RTC opined that an implied trust was created between Santos and V.C. Development. The latter gave the titles to the former for the sole purpose of assisting the buyers in obtaining loans from United Savings. Considering that the transaction did not push through, Santos must return the titles to V.C. Development.

The RTC further articulated that Santos may not hold on to the titles as a security for the payment of his construction expenses. The construction agreement was forged between him and the purchasers. V.C. Development was not a party thereto.

The dispositive portion of the RTC ruling reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering [Santos] to return or give back to [V.C. Development] the owner's duplicates of TCT Nos. 309980 and 309985.
>
> With costs against the defendants.
>
> SO ORDERED.[17]

Dissatisfied with the ruling, Santos filed a Notice of Appeal.[18]

After the parties submitted their respective pleadings[19] before the CA, the case was referred to the Philippine Mediation Center (PMC).

On July 9, 2010, a mediation conference was held between Santos and V.C. Development, as represented by its Assistant Vice President Beatriz Q. Sayson (AVP Sayson). During the meeting, the parties agreed to settle the case amicably and thus, executed the following Compromise Agreement:[20]

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[16] Id. at 61-68.

[17] Id. at 68.

[18] Id. at 69-70.

[19] Id. at 71-108.

[20] Id. at 112-113.

1) That [V.C. Development] is refunding the amount of P11,000.00 to lot buyer Ana Maria R. Male and P7,000.00 to lot buyer Anacleto Quibuyen, through Mr. Rozel "Alex" F. Mar Santos, receipt of which is acknowledged by the latter;

2) That within a period of thirty (30) days from today, [V.C. Development] will execute an instrument assigning all its rights and interests in the property covered by TCT No. 309985 of the land records of Quezon City in the name of [V.C. Development] to [Santos];

3) That [Santos] is returning to [V.C. Development] the owner's duplicate of TCT No. 309980 of the land records of Quezon City in the name of [V.C. Development], receipt of which is acknowledged by the latter.[21]

In compliance with the terms of the Compromise Agreement, V.C. Development handed two checks to Santos, amounting to ₱11,000.00 and ₱7,000.00, representing the reimbursement of the payments made by Male and Quibuyen, respectively.[22] For his part, Santos returned the owner's duplicate copy of TCT No. 309980.[23]

In view of the settlement of the case, the PMC, through assigned Appellate Court Mediator Retired Justice Oswaldo D. Agcaoli submitted the Compromise Agreement for the final approval of the CA's Second Division.[24]

Meanwhile, on August 2, 2010, V.C. Development's President Oscar I. Violago (Violago) and Santos executed a Deed of Absolute Sale[25] whereby the former transferred to the latter the property covered by TCT No. 309985, as payment for the construction expenses.

However, on September 3, 2010, the CA issued a Resolution[26] noting that AVP Sayson was not the named authorized

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[21] Id. at 112.

[22] Id. at 114.

[23] Id. at 115.

[24] Id. at 34.

[25] Id. at 18-19.

[26] Id. at 118.

representative in the Secretary's Certificate. Accordingly, the CA required V.C. Development to manifest within 10 days from notice its conformity to the said Compromise Agreement. The CA warned that failure to comply with its directive shall be deemed an assent to AVP Sayson's authority.[27]

V.C. Development failed to file a Manifestation.[28] In view thereof, the CA proceeded to rule on the merits of the case.

Ruling of the CA

On January 4, 2012, the CA rendered the assailed Decision[29] ordering Santos to return the owner's duplicate copies of TCT No. 309980 and TCT No. 309985.

The CA agreed with the RTC that an implied trust was created between the parties. Santos held the titles in trust for V.C. Development, and solely for the purpose of delivering them to United Savings to facilitate the release of the loan proceeds. Since the loan did not materialize, Santos must return the titles. He cannot withhold them as leverage for the recovery of the construction expenses he incurred.[30]

The decretal portion of the CA ruling states:

WHEREFORE, the appeal is DENIED, and the Decision dated 04 October 2007 of the Regional Trial Court of Quezon City, Branch 80 is AFFIRMED.

SO ORDERED.[31]

Santos filed a Manifestation and Motion[32] dated January 20, 2012 stating that the parties have substantially complied with the terms of the Compromise Agreement dated July 9, 2010.

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[27] Id.

[28] Id. at 36.

[29] Id. at 50-55.

[30] Id. at 54-55.

[31] Id. at 55.

[32] Id. at 119-121.

Consequently, he prayed that a judgment be rendered based on said Compromise Agreement.

On February 29, 2012, the CA issued a Resolution[33] requiring V.C. Development to file a Comment on Santos' Motion and Manifestation. However, the Resolution was unserved with a postal notation *RTS-Moved Out*.[34]

Thereafter, the CA issued another Resolution[35] dated August 23, 2013 reiterating its earlier order for V.C. Development to comment on Santos' Manifestation and Motion.[36]

V.C. Development failed to file a Comment or Opposition.[37]

On February 11, 2014, the CA issued the assailed Resolution[38] denying Santos' Motion and Manifestation. The CA noted that V.C. Development failed to validate the Compromise Agreement despite the various notices sent to it. Absent clear proof that V.C. Development indeed authorized AVP Sayson to sign on its behalf, the Compromise Agreement may not be approved.[39]

Aggrieved, Santos filed the instant Petition for Review on *Certiorari*[40] under Rule 45.

Issue

The pivotal issue raised in the instant case is whether or not the CA erred in failing to render a judgment according to the Compromise Agreement.

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[33] Id. at 126.

[34] Id. at 127.

[35] Id.

[36] Id. at 119-121.

[37] Id. at 37.

[38] Id. at 57-59.

[39] Id. at 37.

[40] Id. at 27-45.

In his petition, Santos maintains that the Compromise Agreement was validly executed.[41] V.C. Development never contested the authority of AVP Sayson to sign on its behalf.[42] Moreover, the acts of V.C. Development following the signing of said Compromise indicate its acquiescence thereto. V.C. Development issued checks in favor of buyers Male and Quibuyen.[43] Furthermore, V.C. Development's President Violago executed a Deed of Absolute Sale dated August 2, 2010 over the property covered by TCT No. 309985.[44] However, Santos alleges that V.C. Development failed to fully transfer title over the property in his name.[45]

Moreover, Santos points out that pursuant to the CA Resolution dated September 3, 2010, V.C. Development's failure to submit a Comment should have been regarded as its conformity to the Compromise Agreement.[46]

Finally, Santos posits that the issuance of the assailed Decision and Resolution may impede compliance with the terms of the Compromise Agreement, and disturb the vested rights acquired therefrom.[47]

In its Comment,[48] V.C. Development admits the validity of the Compromise Agreement and states that its officers have fully and faithfully complied with the undertakings therein.[49] Likewise, it agrees that said Compromise Agreement has created obligations and vested rights. Thus, a decision on the merits may threaten to disturb the peace between the parties.[50]

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[41] Id. at 40.

[42] Id.

[43] Id.

[44] Id.

[45] Id. at 35.

[46] Id. at 42.

[47] Id.

[48] Id. at 150-152.

[49] Id. at 151-152.

[50] Id. at 152.

Furthermore, V.C. Development's counsel manifests that his firm did not receive copies of the CA Resolutions.[51] At the time they were sent, the firm was undergoing "structural changes" in its name, composition and address. Moreover, the records were already archived as it was believed that the dispute had been resolved and terminated in view of the Compromise Agreement.[52]

Ruling of the Court

The petition is impressed with merit.

The settlement of disputes before the courts is always encouraged[53] to achieve speedy and impartial justice, and declog the court's dockets. Remarkably, Article 2029 of the Civil Code impresses upon the courts to "endeavor to persuade the litigants in a civil case to agree upon some fair compromise."[54] On this score, parties are given autonomy and freedom to make arrangements to resolve their dispute.

Notably, a compromise is defined as "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[55] As with all other contracts, it must bear the essential requisites enumerated under Article 1318 of the Civil Code, namely, "(i) consent of the contracting parties; (ii) object certain which is the subject matter of the contract; and (iii) cause of the obligation which is established."[56] In addition, its "terms and conditions must not be contrary to law, morals, good customs, public policy and public order."[57]

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[51] Id. at 151.

[52] Id.

[53] *Viesca v. Gilinsky*, 553 Phil. 498, 523-524 (2007).

[54] CIVIL CODE, Article 2029.

[55] Id., Article 2028.

[56] *Anacleto v. Van Twest*, 393 Phil. 616, 624 (2000).

[57] *Uy v. Chua*, 616 Phil. 768, 779-780 (2009).

In the case at bar, Santos and V.C. Development endeavored to amicably settle their case for specific performance by entering into a Compromise Agreement. However, the case was not terminated in view of a "discrepancy" noticed by the CA.[58] Specifically, the CA noted that AVP Sayson was not listed as an authorized person in V.C. Development's Secretary's Certificate. Because of this perceived flaw, the CA disregarded the Compromise Agreement and proceeded to render a judgment on the merits.

The CA erred in disregarding the Compromise Agreement.

It cannot be gainsaid that both parties acknowledged the existence and validity of the Compromise Agreement. Their acts following its execution clearly manifest their assent. At the risk of being repetitive, the Court stresses that V.C. Development complied with its commitment to refund the payments made by Male and Quibuyen, and transferred the rights and interests over TCT No. 309985 to Santos by executing a Deed of Absolute Sale dated August 2, 2010. It bears noting that no less than President Violago executed and signed said Deed. In exchange, Santos adhered to his undertaking by returning the owner's duplicate of TCT No. 309980 to V.C. Development.[59]

For all intents and purposes, the issues raised in the complaint for specific performance have been resolved through the execution of the Compromise Agreement and the performance of the parties' respective undertakings. It bears stressing that compliance with the terms of the Compromise Agreement occurred in as early as July 9, 2010 and August 2, 2010, more than one and a half years prior to the promulgation of the assailed CA Decision and Resolution. All throughout, not one of the parties questioned the due execution of said Compromise. It is thus regrettable that despite the parties' mutual efforts to settle their dispute, the CA prolonged the litigation and rendered a decision which was unfortunately contrary to the parties' concessions.

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[58] *Rollo*, p. 118.

[59] Id. at 112.

Furthermore, the CA erred in disregarding the Compromise Agreement on account of V.C. Development's failure to file a Comment or Manifestation affirming AVP Sayson's authority. It is clear from its September 3, 2010 Resolution that the failure to file a Comment shall be deemed as an assent to the terms of the Compromise Agreement. This in itself warranted an approval of said Compromise. Added thereto, V.C. Development's compliance with the terms of the Compromise Agreement undoubtedly prove its ratification of AVP Sayson's authority.

Suffice to say, in *Paraiso Int'l. Properties, Inc. v. Court of Appeals, et al.*,[60] the Court held that the CA committed grave abuse of discretion in disapproving the parties' Compromise Agreement on account of perceived formal defects. Similar to the instant case, therein respondent likewise failed to explain the discrepancies for two years.[61] The Court annulled and set aside the CA's resolution, explaining that:

> In the instant case, **the appellate court gravely abused its discretion in disapproving the compromise agreement for the simple reason that respondent did not comply with the CA's resolutions requiring it to explain the apparent formal defects in the agreement. The Court notes that the appellate court unnecessarily focused its attention on the defects in the form of the compromise agreement when these flaws in formality do not go into the validity of the parties' contract, and, more importantly, when none of the parties assails its due execution**.
>
> To elucidate, the absence of a specific date does not adversely affect the agreement considering that the date of execution is not an essential element of a contract. A compromise agreement is essentially a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. x x x[62] (Emphasis supplied)

In view of all the foregoing, the Court finds that the July 9, 2010 Compromise Agreement was validly executed. As held

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[60] 574 Phil. 597 (2008).

[61] Id. at 605.

[62] Id. at 606-607.

in *Malvar v. Kraft Foods Phils., Inc., et al.*,[63] if the Compromise Agreement is valid, it shall be subject to judicial approval:

> If the compromise agreement is found to be in order and not contrary to law, morals, good customs and public policy, its judicial approval is in order. A compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and will not be disturbed except for vices of consent or forgery.[64]

Moreover, the Court deems it wise to write *finis* to the instant case. A remand is no longer necessary considering that the Court is in a position to resolve the dispute and a remand will only prolong the case and thereby thwart justice.[65] As elucidated in *Paraiso Int'l. Properties*:[66]

> x x x rather than remand the case to the appellate court which will only further delay the lengthy litigation that the parties wish to end, we choose to act directly on the matter. Thus, on the basis of our finding that the compromise agreement is not contrary to law, public order, public policy, morals or good customs, the Court hereby approves the same.[67]

The Court reminds the parties that they are enjoined to faithfully comply with the terms and conditions of their Compromise Agreement.[68] Santos alleged that despite the execution of the Deed of Absolute Sale, V.C. Development failed to effect a full transfer of ownership over the property. Notably, if one of the parties fails or refuses to abide by the

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[63] 717 Phil. 427 (2013), citing *Republic v. Court of Appeals*, 418 Phil. 341 (2001), and Article 2037, and Article 2038, Civil Code; see *Sps. San Antonio v. Court of Appeals*, 423 Phil. 8 (2001).

[64] Id. at 449, citing *Republic v. Court of Appeals*, id., and Article 2037 and Article 2038, Civil Code; see *Sps. San Antonio v. Court of Appeals*, id. at 16-17.

[65] *Santos v. Santos*, G.R. No. 214593, July 17, 2019, citing *Canlas v. Republic*, 746 Phil. 358, 381 (2014).

[66] Supra note 60.

[67] Id. at 608.

[68] *Barreras and Judge Garcia*, 251 Phil. 383, 387 (1989).

compromise, the other party may either enforce the compromise by a writ of execution, or regard it as rescinded and insist upon his original demand. Non-fulfillment of the terms of the compromise justifies execution.[69] The prerogative of which course to pursue rests on Santos.

In fine, courts shall not thwart the parties' efforts at reaching a compromise. It is certainly not the office of the court to meddle with concessions that parties have freely agreed to, absent any showing that they are contrary to law, morals, good customs, public order or public policy.

WHEREFORE, the petition is **GRANTED**. The January 4, 2012 Decision and the February 11, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 90266 are **REVERSED** and **SET ASIDE**. The Compromise Agreement dated July 9, 2010 is hereby **APPROVED** and judgment is rendered in conformity with and embodying the terms and conditions mentioned in said Compromise Agreement.

SO ORDERED.

Leonen (Chairperson), *Gesmundo, Carandang,* and *Zalameda, JJ.*, concur.

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[69] Id.

THIRD DIVISION

[G.R. No. 213130. September 9, 2020]

SECURITIES AND EXCHANGE COMMISSION & INSURANCE COMMISSION, *Petitioners*, *v.* **COLLEGE ASSURANCE PLAN PHILIPPINES, INC.,** *Respondent*.

[G.R. No. 218193. September 9, 2020]

INSURANCE COMMISSION, *Petitioner*, *v.* **COLLEGE ASSURANCE PLAN PHILIPPINES, INC.,** *Respondent*.

SYLLABUS

1. MERCANTILE LAW; CORPORATIONS; SUBSIDIARY; A SUBSIDIARY IS NOT A MERE ASSET OF THE PARENT CORPORATION, BUT HAS A SEPARATE AND DISTINCT PERSONALITY; CASE AT BAR.— Well-settled is the rule that "a corporation has a personality separate and distinct from that of its individual stockholders." This separate personality allows the corporation to acquire properties in its own name and incur obligations. A stockholder owning all or nearly all the capital stock of a corporation is not a ground to disregard a corporation's personality.

. . .

The subsidiary is not a mere asset of the parent corporation. "If used to perform legitimate functions, a subsidiary's separate existence may be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business."

Respondent does not dispute that CAP Pension is its subsidiary that has a separate and distinct personality. Likewise, undisputed is CAP Pension's performance of a legitimate function. Thus, CAP Pension may own properties and incur liabilities independently of its parent corporation.

2. ID.; ID.; ID.; A SUBSIDIARY IS NOT LIABLE FOR THE OBLIGATIONS OF THE PARENT CORPORATION.— As

a subsidiary, it is not liable for the obligations of respondent parent corporation.

Thus, it was incorrect for respondent to claim and the courts below to rule that "CAP Pension's assets were deemed under *custodia legis*. . . because it was directed in the November 8, 2006 Resolution for *CAP Pension and its assets* to be deemed as such." The 2006 Resolution cannot operate to place CAP Pension under the rehabilitation court's *custodia legis*, having full rein over its assets. This treated respondent and CAP Pension as one, rendering nugatory the separate and distinct personality of each corporation.

3. ID.; ID.; EQUITY; EFFECT OF SALE THEREOF; CASE AT BAR.— Equity represents ownership interest in a business. The sale of equity will neither significantly alter the corporation nor meddle in its affairs, but will involve a change in its ownership. As it was respondent CAPPI that was under rehabilitation and not CAP Pension, the rehabilitation court could not have validly ordered the CAP Pension's sale as if it was one of respondent's assets to be disposed. On the other hand, respondent's sale of its equities in CAP Pension shall generate needed funds for its rehabilitation. This reading of the 2006 Resolution is more in accord with law and respects the separate personalities of each corporation.

4. ID.; ID.; REHABILITATION; CONSERVATORSHIP; DISTINCTION BETWEEN THE TWO REMEDIES; CASE AT BAR.— Separating CAP Pension's conservatorship from respondent's rehabilitation is vital. Apart from their separate and distinct personalities, with each having its own assets and liabilities, the corporations' remedies of conservatorship and rehabilitation are under two separate jurisdictions.

Rehabilitation is a remedy availed by financially distressed corporations "to gain a new lease on life[.]" . . .

At the time respondent's petition for corporate rehabilitation was filed before the trial court, Presidential Decree No. 902-A and the Interim Rules of Procedure on Corporate Rehabilitation were in effect. Under these laws, rehabilitation was a court-supervised proceeding. . . .

On the other hand, CAP Pension's conservatorship is in the exercise of the Insurance Commission's authority under Republic Act No. 9829. Under this law, the Insurance Commission has the authority to place a pre-need corporation under conservatorship should circumstances warrant it.

. . .

Although of a similar nature, rehabilitation and conservatorship fall under different jurisdictions and are governed by different laws. While rehabilitation in this case was supervised by a trial court sitting as a commercial court, conservatorship was to be under the Insurance Commission's jurisdiction.

Respondent's rehabilitation is diametrically inconsistent with CAP Pension's conservatorship as it treats the latter as a mere asset to be disposed in furtherance of its rehabilitation. It has no regard to CAP Pension's financial infirmities and the protection of its planholders, which the conservatorship proceedings shall undertake. The conservator's mandate shall be impossible to fulfill if this Court affirms the rehabilitation court's ruling that CAP Pension and its assets were deemed under *custodia legis*. As CAP Pension's assets have been corralled solely to rehabilitate respondent corporation, its planholders were left with no recourse as respondent was given full rein over the corporation's assets. This Court cannot condone this.

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; EXCEPTIONS.— "[J]udgment that lapses into finality becomes immutable and unalterable." Consequently, it may no longer be amended. . . .

However, the doctrine of immutability of judgment admits of exceptions:

> (1) The correction of clerical errors; (2) The so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) Void judgments; and (4) Whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

6. ID.; ID.; JURISDICTION; ONCE ATTACHED, JURISDICTION IS NOT DIVESTED BY A SUBSEQUENT STATUTE TRANSFERRING JURISDICTION OVER SUCH PROCEEDINGS IN ANOTHER TRIBUNAL; EXCEPTION.— Jurisdiction is conferred by law. Well-settled is the principle that once

jurisdiction is acquired, that jurisdiction is retained until the case is terminated. . . .

Once attached, jurisdiction is not divested even by a subsequent statute transferring jurisdiction over such proceedings in another tribunal. "The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment." Thus, a statute which has no retroactive effect as to jurisdiction may not be applied to a pending case upon its enactment.

7. MERCANTILE LAW; REPUBLIC ACT NO. 9829 (PRE-NEED CODE OF THE PHILIPPINES); INSURANCE COMMISSION; PRE-NEED COMPANIES; JURISDICTION OVER PENDING PROCEEDINGS; THE INSURANCE COMMISSION IS VESTED WITH THE PRIMARY AND EXCLUSIVE SUPERVISION AND REGULATION OVER ALL PRE-NEED COMPANIES; THE REMEDIAL AND CURATIVE CHARACTER OF R.A. NO. 9829 DOES NOT EXTEND TO THE ISSUE OF JURISDICTION; CASE AT BAR.— Republic Act No. 9829 granted the Insurance Commission the primary and exclusive supervision and regulation over all pre-need companies. . . .

However, this Court cannot subscribe to the position that jurisdiction as provided in Republic Act No. 9829 should be applied retroactively. The remedial and curative character of Republic Act No. 9829 recognized in *Laigo* does not extend to the issue of jurisdiction.

8. ID.; ID.; PRE-NEED COMPANIES; SECURITIES AND EXCHANGE COMMISSION (SEC); JURISDICTION OVER PENDING PROCEEDINGS; THE SEC HAS JURISDICTION OVER ALL PENDING PROCEEDINGS BEFORE IT UNTIL THE FINAL DISPOSITION OF CASES.— Prior to the enactment of Republic Act No. 9829, Republic Act No. 8799 or the Securities Regulation Code governed pre-need plans. The Securities and Exchange Commission was then the agency mandated to prescribe rules and regulations governing the pre-need industry.

On December 4, 2009, Republic Act No. 9829 took effect, granting the Insurance Commission the primary and exclusive supervision and regulation over all pre-need companies. However, [S]ection 57 of Republic Act No. 9829 reads:

. . .

Notwithstanding any provision to the contrary, all pending claims, complaints and cases filed with the SEC shall be continued in its full and final conclusion. It shall also assist the Department of Justice in criminal cases involving matters related to the pre-need industry.

Section 57 of Republic Act No. 9829 recognizes the Commission's jurisdiction over all pending proceedings before it and decrees the retention of jurisdiction until final disposition of the cases. Manifest is the adherence to the previously acquired jurisdiction of the Commission over pending claims. Thus, there is no basis for petitioner to claim that jurisdiction under Republic Act No. 9829 may be applied retroactively.

9. ID.; ID.; ID.; TRUST FUND; THE REMEDIAL AND CURATIVE CHARACTER OF R.A. NO. 9829 PERTAIN TO THE ESTABLISHMENT OF A TRUST FUND.— The remedial and curative character of Republic Act No. 9829 pertains to the right of the planholders to claim against the trust fund. This Court in *Laigo* determined that the paramount consideration in requiring the establishment of a trust fund is the protection of the interests of the planholders in investment plans. What is remedial and curative is this *protection* to the planholders accorded by Republic Act No. 9829, and not jurisdiction. Thus, the remedial and curative character of Republic Act No. 9829 does not extend to the issue of jurisdiction.

10. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; QUESTIONS OF FACT; A PETITION THAT RAISES ISSUES THAT ENTAIL AN EXAMINATION OF THE EVIDENCE ON RECORD MUST BE DENIED OUTRIGHT; CASE AT BAR.— In petitions for review under Rule 45 of the Rules of Court, only questions of law may be raised. . . .

A question of fact is involved when "doubt arises as to the truth or falsity of the alleged facts." It entails an examination of the evidence on record, which the petitioner is asking this Court to do. The determination whether the rehabilitation plan is speculative and incomplete is a question of fact, involving a reassessment of the rehabilitation court's appreciation of evidence.

. . .

Thus, the petition in G.R. No. 213130 must be denied outright for raising issues that require a review of the evidence.

11. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT, AS AFFIRMED BY THE COURT OF APPEALS, ARE BINDING ON THE SUPREME COURT.— The factual findings of the trial court, as affirmed by the Court of Appeals, are binding on this Court and will not be disturbed on appeal. More so if the findings are that of a special commercial court which "has the expertise and knowledge over matters under its jurisdiction and is in a better position to pass judgment thereon." Unless there is abuse in the exercise of its authority, the rehabilitation court's findings of fact should be accorded finality.

APPEARANCES OF COUNSEL

Office of the Solicitor General for Securities and Exchange Commission.

Poblador Bautista & Reyes for College Assurance Plan Philippines, Inc.

D E C I S I O N

LEONEN, *J.*:

The doctrine of immutability of judgment does not apply whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

These are consolidated[1] cases involving jurisdiction over pre-need companies and subsidiary companies (G.R. No. 218193), and the propriety of extending the period of corporate rehabilitation (G.R. No. 213130). They originate from the Petition for Corporate Rehabilitation[2] filed by respondent College Assurance Plan Philippines, Inc., before the Regional Trial Court of Makati City.

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[1] *Rollo* (G.R. No. 218193), p. 488. July 13, 2015 First Division Resolution.

[2] Id. at 15.

G.R. No. 218193 resolves a Petition for Review on Certiorari[3] under Rule 45 of the 1997 Rules of Civil Procedure, praying for the issuance of a temporary restraining order and/or writ of preliminary injunction and the reversal of the Court of Appeals Decision[4] in CA-G.R. SP No. 124031.

Meanwhile, G.R. No. 213130 is a Petition for Review on Certiorari[5] praying for the issuance of a temporary restraining order and/or writ of preliminary injunction and the reversal of the Court of Appeals Decision[6] in CA-G.R. SP No. 131991.

The antecedents of G.R. No. 218193 are as follows:

College Assurance Plan Philippines, Inc. (CAPPI) is a domestic corporation engaged in the sale of "pre-need educational plans[.]"[7] CAPPI owns 86% of the outstanding capital stock of its subsidiary, the Comprehensive Annuity Plans and Pension (CAP Pension).[8]

On August 26, 2005, CAPPI filed a Petition for Rehabilitation before the Makati Regional Trial Court.[9] Finding the petition sufficient in form and substance, the Regional Trial Court, in its capacity as a rehabilitation court,[10] issued a Stay Order on September 13, 2005.[11]

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[3] Id. at 10-49.

[4] Id. at 51-65. The Decision dated April 28, 2015 was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Remedios A. Salazar-Fernando (Chairperson) and Marlene Gonzales-Sison of the Second Division of the Court of Appeals, Manila.

[5] *Rollo* (G.R. No. 213130), pp. 12-52.

[6] Id. at 54-59. The June 18, 2014 Decision was penned by Associate Justice Amelita G. Tolentino and concurred into by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba of the Fourth Division of the Court of Appeals, Manila.

[7] *Rollo* (G.R. No. 218193), p. 52.

[8] Id.

[9] Id.

[10] Branch 149, Makati City was designated as a Special Commercial Court pursuant to this Court's A.M. No. 00-11-03-SC (November 21, 2000) and A.M. No. 03-03-03-SC (June 27, 2003), as amended.

[11] *Rollo* (G.R. No. 218193), p. 52.

On October 17, 2005, the Securities and Exchange Commission filed its Comment opposing CAPPI's rehabilitation.[12]

The rehabilitation court gave due course to CAPPI's Petition for Rehabilitation on December 16, 2005 and referred the case to a receiver.[13]

On May 8, 2006, Interim Rehabilitation Receiver Mamerto A. Marcelo (Rehabilitation Receiver Marcelo) submitted an Evaluation Report stating that CAPPI's 2006 Revised Rehabilitation Plan was a "more conservative and realistic approach to rehabilitation."[14]

On November 8, 2006, the rehabilitation court approved CAPPI's revised Rehabilitation Plan through a Resolution.[15] Its dispositive portion partly provides:

> WHEREFORE, premises considered, this court hereby APPROVES the revised Rehabilitation Plan of petitioner subject to the following terms and conditions:
>
> 1. For the Board of Directors, Stockholders and Officers of petitioner:
>
> . . . . . .
>
> b. They are hereby ordered to dispose and sell all these subsidiaries and affiliates not later than December 31, 2008, listed in page 7 of the audited financial statements issued by San Buenaventura & Co., CPAs for year ending December 31, 2004.
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> . . . . . .
>
> SO ORDERED.[16]

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[12] Id. at 53.

[13] Id.

[14] Id.

[15] Id. at 253-268. The Resolution dated November 8, 2006 was penned by Presiding Judge Cesar O. Untalan of Branch 149, Regional Trial Court, Makati City.

[16] Id. at 264-268.

The Securities and Exchange Commission did not move for reconsideration of the rehabilitation court's Resolution.[17]

Meanwhile, Republic Act No. 9829 or the Pre-Need Code of the Philippines took effect on December 4, 2009.[18] Pursuant to Section 5[19] and Section 49[20] of the law, the Insurance

[17] Id. at 53-54.

[18] Id. at 54.

[19] Republic Act No. 9829 (2009), Sec. 5 provides:

SECTION 5. *Supervision*. — All pre-need companies, as defined under this Act, shall be under the primary and exclusive supervision and regulation of the Insurance Commission. The Commission is hereby authorized to provide for its reorganization, to streamline its structure and operations, upgrade its human resource component to enable it to effectively and efficiently perform its functions and exercise its powers under this Code.

[20] Republic Act No. 9829 (2009), Sec. 49 provides:

SECTION 49. *Appointment of Conservator*. — If at any time before or after the suspension or revocation of the license of a pre-need company as provided in Section 27 hereof, the Commission finds that such company is in a state of continuing inability or unwillingness to comply with the requirements of the Code and/or orders of the Commission, a conservator may be appointed to take charge of the assets, liabilities, and the management of such company, collect all moneys and debts due the company and exercise all powers necessary to preserve the assets of the company, reorganize its management, and restore its viability. The conservator shall have the power to overrule or revoke the actions of the previous management and board of directors of the said company, any provision of law, or of the articles of incorporation or bylaws of the company, to the contrary notwithstanding, and such other powers as the Commission shall deem necessary. The conservator may be another pre-need company, by officer or officers of such company, or any other competent and qualified person, firm or corporation. The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the pre-need company. The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

The conservator appointed shall report and be responsible to the Commission until such time as the Commission is satisfied that the pre-need company can continue to operate on its own and the conservatorship shall likewise be terminated should the Commission, on the basis of the report of the conservator or of his own findings, determine that the continuance in business of the pre-need company would be hazardous to planholders and creditors, in which case the provisions of Chapter XVI shall apply.

Commission sent a letter to CAP Pension on June 28, 2010, directing its President to "show cause why the company should not be put under conservatorship."[21]

Receiving no response, the Insurance Commission informed the Board of Directors of CAP Pension that the corporation was placed under conservatorship and that a conservator had been designated on September 13, 2010.[22]

CAPPI filed an Urgent Motion to Enforce Stay Order dated April 12, 2011 before the rehabilitation court.[23]

The rehabilitation court issued an April 15, 2011 Order,[24] reiterating its jurisdiction over CAPPI and all its assets, including CAP Pension, through the approved rehabilitation plan. In the same Order, the Court directed CAPPI to inform the court "on how to handle the issue of the management and/or sale of [CAP Pension]."[25]

Thereafter, the Rehabilitation Receiver and the Philippine Veterans Bank (PVB), as trustee of CAPPI, filed a Manifestation and Motion on May 3, 2011 praying for the "payment of the expenses and fees [to the planholders] . . . from the proceeds of the sale of the properties of the companies controlled by CAP Pension."[26]

On May 23, 2011, the Insurance Commission filed a Motion for Reconsideration with Comment/Opposition assailing the April 15, 2011 Order and praying for the denial of the Receiver and PVB's Manifestation and Motion.[27]

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[21] *Rollo* (G.R. No. 218193), p. 54.

[22] Id.

[23] *Rollo* (G.R. No. 213130), pp. 100-104.

[24] Id. at 25.

[25] Id.

[26] *Rollo* (G.R. No. 218193), p. 279.

[27] Id. at 54. William Russel L. Sobrepeña filed an Entry of Appearance with Comment and Omnibus Motion "asserting his claim over the assets of CAP Pension."

The rehabilitation court granted the Rehabilitation Receiver and PVB's Manifestation and Motion on June 17, 2011.[28]

In a December 12, 2011 Order,[29] the rehabilitation court denied the Insurance Commission's Motion for Reconsideration with Comment/Opposition.[30]

Aggrieved, the Insurance Commission and the Securities and Exchange Commission filed a Petition for Certiorari before the Court of Appeals assailing the rehabilitation court's orders.[31] The Petition was docketed as CA-G.R. SP No. 124031.

In its April 28, 2015 Decision,[32] the Court of Appeals dismissed the Insurance Commission's petition. The Court of Appeals found that the rehabilitation court did not gravely abuse its discretion,[33] as it "validly acquired jurisdiction over CAP Pension ahead of the Insurance Commission when it granted CAP's Petition for Rehabilitation[.]"[34] The dispositive portion of the Court of Appeals Decision reads:

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[28] Id. at 55. The Insurance Commission, together with the SEC, and Sobrepeña filed separate Motions for Reconsideration, which were denied by the trial court in a Joint Resolution dated November 3, 2011. The Insurance Commission and the SEC filed a Petition for Certiorari and Prohibition dated January 13, 2012 before the Court of Appeals. The Petition assailed the trial court's June 17, 2011 Order and Joint Resolution dated November 3, 2011. The Petition was docketed as CA-G.R. SP No. 122979. "The main issue in CA-G.R. SP No. 122979 is the propriety of the Makati RTC's Order allowing the disbursement of funds and the payment of CAP's beneficiaries using funds taken from CAP Pension's Trust Fund."

[29] Id. at 352-354.

[30] Id. at 55.

[31] Id.

[32] Id. at 51-65. The Decision was penned by Associate Justice Ramon A. Cruz and concurred into by Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison of the Second Division of the Court of Appeals Manila.

[33] Id. at 60.

[34] Id. at 56-57.

WHEREFORE, in view of the foregoing, this Petition for Certiorari is hereby **DISMISSED**.

SO ORDERED.[35] (Emphasis in the original)

Hence, this Petition (With Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)[36] was filed on July 3, 2015.

G.R. No. 213130 involves the rehabilitation court's extension of CAPPI's rehabilitation period and the modification of the revised rehabilitation plan.

Based on the same facts, CAPPI filed a Motion for Extension and Modification of the Rehabilitation Plan on September 21, 2012 before the rehabilitation court. It prays for an extension of the rehabilitation until 2021.[37]

Conferences were held to discuss the viability of the extension. In CAPPI's proposed 2012 Revised Rehabilitation Plan, it was stated that a developer is interested in CAPPI's idle real properties.[38]

The Insurance Commission and Securities and Exchange Commission opposed CAPPI's motion, arguing that the 2012 Revised Rehabilitation Plan is speculative, erroneously involves CAP Pension's properties, and may be prejudicial to the interest of CAP Pension's planholders.[39]

In a September 5, 2013 Order, the rehabilitation court granted CAPPI's motion and approved the 2012 Revised Rehabilitation Plan.

WHEREFORE, premises considered, the Motion for the Extension and Modification of the Rehabilitation Plan filed by petitioner is hereby GRANTED.

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[35] Id. at 61.

[36] Id. at 10-49.

[37] *Rollo* (G.R. No. 213130), p. 56.

[38] Id.

[39] Id.

The 2012 Revised Rehabilitation Plan as embodied in the Compliance dated December 5, 2012 is hereby APPROVED, which is good for a period of three (3) years, unless sooner terminated by this court for good reason. The same is likewise subject to yearly review to ensure compliance with all the terms and conditions of the plan. Accordingly, the rehabilitation of petitioner College Assurance Plan Philippines, Inc. is hereby extended for a period of three (3) years from date hereof.

SO ORDERED.[40]

Assailing the order of the rehabilitation court, the Insurance Commission and the Securities and Exchange Commission filed a Petition for Certiorari[41] with the Court of Appeals docketed as CA-G.R. SP. No. 131991.

In its June 18, 2014 Decision,[42] the Court of Appeals dismissed the Petition and ruled that under Rule 3, Section 12 of the 2008 Rules of Procedure on Corporate Rehabilitation, the Rehabilitation Receiver has the power to recommend amendments or modifications to the approved rehabilitation plan.[43] The approval of these recommendations is left to the discretion of the rehabilitation court, pursuant to Section 22 of the same Rule.[44]

According to the Court of Appeals, the designated Rehabilitation Receiver, after having evaluated the proposed Redevelopment Project, financial projections, draft Memorandum of Agreement, Lease Agreement, and Joint Development Agreement, recommended the extension of the rehabilitation plan to three years only, subject to an annual review. The Receiver

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[40] Id.

[41] Id. at 12-52.

[42] Id. at 54-59. The Decision was penned by Associate Justice Amelita G. Tolentino and concurred into by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba of the Fourth Division of the Court of Appeals Manila.

[43] Id. at 58.

[44] Id.

rejected the proposal to extend it until 2021. Thus, the rehabilitation court made its own assessment and found no sufficient ground for the disapproval of the request for extension of the rehabilitation plan.[45]

The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, premises considered, the instant petition is **DISMISSED** for lack of merit. Accordingly, the assailed order dated September 5, 2013 of the court a quo is **AFFIRMED**.

SO ORDERED.[46] (Emphasis in the original)

Hence, petitioners Insurance Commission and Securities and Exchange Commission filed this Petition for Review[47] on August 14, 2014.[48]

In an August 18, 2014 Resolution,[49] this Court, through the Second Division, issued a temporary restraining order enjoining the Court of Appeals, CAPPI, its agents, representatives or other persons acting on its behalf, from implementing the Court of Appeals' June 18, 2014 Decision in CA-G.R. SP No. 131991.[50] In the same Resolution, CAPPI was required to file its Comment on the Petition within 10 days from notice thereof.[51]

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[45] Id. at 58-58-A.

[46] Id. at 59.

[47] Id. at 12-52.

[48] This Court, in a July 28, 2014 Resolution, granted the Securities and Exchange Commission and Insurance Commission's Motion for Extension of 30 days from the expiration of the reglementary period within which to file this Petition for Review on Certiorari.

[49] Id. at 275-276.

[50] Id. at 277-278.

[51] Requesting for an additional 15 days to file its Comment, CAP filed a Motion for Extension on September 5, 2014. Another Motion for Extension was filed by CAP on September 19, 2014, requesting for an additional period of ten days. These motions were granted by this Court in a December 3, 2014 Resolution.

The Second Division issued a September 8, 2014 Resolution[52] transferring this case to the First Division.

On September 11, 2014, CAPPI filed a Motion for Reconsideration[53] (with Urgent Motion to Lift Temporary Restraining Order) of the August 18, 2014 Resolution.[54]

Requesting for an additional period of 10 days, CAPPI filed a Motion for Extension[55] to file its comment on the Petition for Review on September 19, 2014. CAPPI eventually filed its Comment[56] on October 1, 2014.[57]

The Securities and Exchange Commission and the Insurance Commission filed their Reply[58] on April 6, 2015.[59]

In a July 29, 2015 Resolution,[60] this Court transferred this case to the Third Division.

On August 13, 2015, Rehabilitation Receiver Marcelo filed a July 29, 2015 Urgent Motion for Approval to Sell Property.[61]

On October 13, 2015, CAPPI filed a Manifestation with Urgent Motion to Resolve,[62] manifesting that the 2012 Rehabilitation

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[52] *Rollo* (G.R. No. 213130), p. 290-A.

[53] Id. at 532-543.

[54] This Court resolved to deny this reconsideration with finality in a December 3, 2014 Resolution.

[55] *Rollo* (G.R. No. 213130), pp. 760-763.

[56] Id. at 799-828.

[57] The Court granted CAP's first and second motions for extension to file a comment on the petition for review on certiorari in a December 3, 2014 Resolution. The Securities and Exchange Commission and the Insurance Commission were required to file a Reply thereto.

[58] *Rollo* (G.R. No. 213130), pp. 1057-1073.

[59] The Court granted the Office of the Solicitor General's motion for an extension to file a reply to the comment on the petition for review on certiorari in an April 20, 2015 Resolution.

[60] *Rollo* (G.R. No. 213130), p. 1083. First Division Resolution.

[61] Id. at 1088-1098.

[62] Id. at 1208-1213.

Plan "provides for the growth of CAP's existing ₱3.9 billion Trust Fund to ₱11.737 billion over a period of [25] years[,]"[63] and praying for the lifting of the restraining order as well as the resolution of the Petition.

In an October 21, 2015 Resolution,[64] the Third Division of this Court referred these cases to the Raffle Committee in view of Justice Francis H. Jardeleza's inhibition due to his prior participation in the case as Solicitor General.

On November 9, 2015, CAPPI filed an Urgent Motion to Resolve (Re: Rehabilitation Receiver's Urgent Motion to Sell Property dated 29 July 2015).[65]

In a November 25, 2015 Resolution,[66] this Court, through the Second Division, required the parties to file their Comment on the Urgent Motion to Sell Property filed by the counsel for Rehabilitation Receiver Marcelo within 10 days from notice thereof.

On February 1, 2016, CAPPI filed its Comment (Re: Rehabilitation Receiver's July 29, 2015 Urgent Motion for Approval to Sell Property),[67] arguing that the sale of the property is not in pursuit of the 2012 Revised Rehabilitation Plan. Allegedly, the restraining order enjoins the implementation of the 2012 Revised Rehabilitation Plan.[68]

On February 3, 2016, the Office of the Solicitor General, counsel for Securities and Exchange Commission and Insurance Commission, filed a Motion for Extension of Time to File Comment[69] on the Urgent Motion for Approval to Sell Property

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[63] Id. at 1209.

[64] Id. at 1286.

[65] Id. at 1280-1285.

[66] Id. at 1287-1289. Second Division Resolution.

[67] Id. at 1290-1295.

[68] Id. at 1291.

[69] Id. at 501-506; also in *Rollo* (G.R. No. 213130), pp. 1299-1304.

filed by the Rehabilitation Receiver, requesting for an additional period of 15 days.

The Securities and Exchange Commission and Insurance Commission filed their Comment[70] on the Rehabilitation Receiver's Urgent Motion for Approval to Sell Property on February 17, 2016.[71]

The First Division of this Court, in a July 13, 2015 Resolution,[72] resolved to consolidate G.R. No. 218193, *Insurance Commission v. College Assurance Plan Philippines, Inc.*, with G.R. No. 213130, *Securities and Exchange Commission and Insurance Commission v. College Assurance Plan Philippines, Inc.* of the Third Division and referred the consolidated case to the Member-in-Charge of the lower-numbered case, G.R. No. 213130.

This Court then required CAPPI to file its Comment within 10 days from notice thereof in a November 25, 2015 Resolution.[73]

CAPPI filed several motions for extension,[74] which was granted by this Court's Second Division in a June 1, 2016 Resolution.[75] CAPPI was granted a total of 55 days or until February 21, 2016 within which to file its comment. CAPPI filed its Comment[76] on March 28, 2016.

On August 14, 2017, the Court issued a Resolution[77] transferring G.R. No. 213130 and 218193 to the Third Division.

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[70] Id. at 507-524; also in *Rollo* (G.R. No. 213130), pp. 1305-1322.

[71] The June 1, 2016 Resolution likewise granted the Office of the Solicitor General's Motion for Extension of 15 days to file its comment on the Urgent Motion to Sell Property.

[72] *Rollo* (G.R. No. 218193), p. 488.

[73] Id. at 489-491.

[74] *Rollo* (G.R. No. 213130), pp. 1295-1298; pp. 1323-1327; and pp. 1323-1327.

[75] *Rollo* (G.R. No. 218193), pp. 531-533.

[76] *Rollo* (G.R. No. 213130), pp. 1346-1374.

[77] Id. at 549; also in *Rollo* (G.R. No. 213130), p. 1608.

On April 17, 2018, the Insurance Commission and Securities and Exchange Commission filed a Motion for Extension of Time to File Reply,[78] requesting for an extension of 30 days within which to file their reply.

The Insurance Commission filed its Reply[79] on May 21, 2018.

Petitioner Insurance Commission in its Petition for Review[80] in G.R. No. 218193, argues that the Court of Appeals erred in ruling that the rehabilitation court did not commit grave abuse of discretion when "it assumed that the assets of CAP Pension are under *custodia legis*, thereby disregarding the distinct and separate personality of [CAP Pension] apart from respondent [CAPPI]."[81] It adds that the Court of Appeals disregarded petitioner's authority as regulator of pre-need companies;[82] and "restrained petitioner's actions over CAP Pension despite their co-equal status."[83]

Petitioner prays for the issuance of a temporary restraining order and/or writ of preliminary injunction to prevent the depletion of assets of CAP Pension during the pendency of the petition.[84]

In its Comment,[85] respondent CAPPI counters that the petition is a "mere rehash" of the arguments previously passed upon by the Court of Appeals.[86] It contends that the distinct and separate personality of CAP Pension from CAPPI was not disregarded, but was expressly recognized by the Court of Appeals. The Court of Appeals ruled that the rehabilitation court

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[78] Id. at 571-576.

[79] Id. at 588-603.

[80] Id. at 10-49.

[81] Id. at 28-32.

[82] Id. at 32-35.

[83] Id. at 36.

[84] Id. at 39.

[85] *Rollo* (G.R. No. 213130), pp. 1346-1374.

[86] Id. at 1355.

acquired jurisdiction over CAP Pension through its order to sell CAP Pension, and not because it is a subsidiary of the corporation under rehabilitation.[87] Respondent asserts that the resolution of the court approving the Rehabilitation Plan containing such directive had long become final and executory.[88]

Respondent conceded that the petitioner has exclusive supervision and regulation of pre-need companies. However, according to the respondent, it can no longer place CAP Pension under conservatorship because the rehabilitation court had acquired prior jurisdiction over the corporation.[89]

Moreover, respondent asserts that even if the rehabilitation court and the petitioner are of co-equal status, "where two or more courts have concurrent jurisdiction, the first to validly acquire it takes it to the exclusion of the other or the rest."[90] Thus, the rehabilitation court has validly acquired jurisdiction over CAP Pension, to the exclusion of the petitioner.[91]

Finally, it claims none of the requisites for the issuance of a temporary restraining order or writ of preliminary injunction is allegedly present.

In its Reply,[92] petitioner contends that an exception to the general rule of immutability of judgment is present. Petitioner avers that the circumstances of this case render the execution of the assailed orders "unjust and inequitable."[93] Congress enacted Republic Act No. 9829 which is curative and remedial in nature, effectively "remov[ing] CAP Pension from the supposed *custodia legis* of the rehabilitation court[;]"[94] and

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[87] Id. at 1356-1358.

[88] Id. at 1358.

[89] Id. at 1363-1364.

[90] Id. at 1365.

[91] Id. at 1366.

[92] *Rollo* (G.R. No. 218193), 604-619.

[93] Id. at 609-610.

[94] Id. at 610.

CAP Pension suffered impairments in its capital, trust fund reserve, and insurance premium fund which necessitated the conservatorship proceeding.[95]

In G.R. No. 213130, petitioners Securities and Exchange Commission and Insurance Commission in their Petition for Review[96] contend that the rehabilitation plan must be "logical, feasible, and founded on legitimate projections."[97] They claim that the Court of Appeals seriously erred when it affirmed the order of the rehabilitation court granting the extension of the rehabilitation period and modifying the rehabilitation plan.

Petitioners allege that the 2012 Revised Rehabilitation Plan is "incomplete and speculative"[98] as respondent CAPPI did not provide details showing that the planned ventures shall be profitable.[99] They aver that the rehabilitation plan included properties of CAP Pension,[100] which has a separate and distinct personality from its stockholders and other corporations to which it may be connected.[101]

Moreover, they claim the approval of the 2012 Revised Rehabilitation Plan, which involves the properties of CAP Pension, preempts the resolution in CA-G.R. SP No. 122979 which involves the determination of the rehabilitation court's jurisdiction over CAP Pension.[102]

Petitioners aver that the Court of Appeals erred in ruling that they failed to show how the properties of CAP Pension are substantial enough to affect the projections in the rehabilitation plan. Further, they claim it was respondent who

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[95] Id. at 613.

[96] *Rollo* (G.R. No. 213130), pp. 10-49.

[97] Id. at 30.

[98] Id. at 32.

[99] Id. at 33.

[100] Id. at 34.

[101] Id. at 35.

[102] Id.

failed to specify the properties of CAP Pension which shall be part of the redevelopment project.[103]

Petitioners pray for the issuance of a temporary restraining order and/or writ of preliminary injunction enjoining the enforcement of the assailed Decision of the Court of Appeals, alleging that the implementation of the 2012 Revised Rehabilitation Plan will cause irreparable and serious damage to the planholders and undermine the authority of the Insurance Commission over CAP Pension.[104]

In its Comment,[105] respondent CAPPI counters that it has complied with the requirements of the law and the orders of the rehabilitation court in order to protect the interests of its planholders.[106]

According to respondent, the factual findings of the rehabilitation court, which was designated by this Court as a special commercial court, are entitled to great weight and respect.[107] They claim none of the exceptions to the rule that only questions of law are reviewable by this Court was alleged by petitioners.[108]

Respondent notes that when it moved for the extension of the approved rehabilitation plan before the rehabilitation court, it attached projections demonstrating the feasibility of the Revised Rehabilitation Plan. Curiously, these were withheld by the petitioners in their present petition. Moreover, conferences were conducted where representatives of petitioners were present.[109] Over the opposition of the petitioners, respondents claim that

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[103] Id. at 41.

[104] Id. at 42.

[105] Id. at 799-828.

[106] Id. at 799.

[107] Id. at 803-805.

[108] Id. at 801-803.

[109] Id. at 800.

the Rehabilitation Receiver found the Revised Rehabilitation Plan as most beneficial to the planholders.[110]

Further, respondent asserts that all of the properties in the Revised Rehabilitation Plan belong to them, and none belongs to CAP Pension.[111]

Thus, respondent claims the Revised Rehabilitation Plan is the most beneficial option for the planholders.[112]

In their Reply,[113] petitioners argue that as an exception, this Court can entertain questions of fact in a Rule 45 petition when the findings are grounded entirely on speculation, surmises, or conjectures. In this case, they claim that the Revised Rehabilitation Plan is incomplete and speculative.[114]

Further, petitioners argue that this case calls for a relaxation of the Rules as they are government agencies mandated to regulate pre-need corporations.[115]

Petitioners highlight how respondent admitted that it intends to include the properties of CAP Pension in future ventures. They claim this proposal is premature as it preempts the ruling of the Court of Appeals in CA-G.R. SP No. 122979.[116]

Petitioners maintain that the identity of the "developer" was not divulged and no evidence was submitted showing the profitability of the planned ventures.[117]

Moreover, they assert that projections in the Revised Rehabilitation Plan were premised on an extension of the plan

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[110] Id. at 800.

[111] Id. at 805-808.

[112] Id. at 810.

[113] Id. at 1057-1073.

[114] Id. at 1059.

[115] Id. at 1060.

[116] Id. at 1060-1063.

[117] Id. at 1063-1064.

for 10 years.[118] However, the rehabilitation court approved an extension of only three (3) years which obviously would not bring about the projections originally foreseen in the Revised Rehabilitation Plan.[119]

For this Court's resolution are the issues of (1) whether or not the rehabilitation court acquired jurisdiction over CAP Pension and its assets (in G.R. No. 218193); and (2) whether or not the rehabilitation court erred in granting the extension of CAPPI's rehabilitation period (in G.R. No. 213130).

Assailed in the Petition in G.R. No. 218193 is the Court of Appeals' April 28, 2015 Decision in CA-G.R. SP No. 124031, affirming the April 15, 2011 and December 12, 2011 Orders of the Regional Trial Court of Makati City, Branch 149 in the rehabilitation proceedings[120] of respondent.

The April 15, 2011 and December 12, 2011 Orders of the rehabilitation court affirmed its jurisdiction over CAP Pension and its assets acquired through the November 8, 2006 Resolution (2006 Resolution).[121]

We grant the petition. The reliance of the courts below in the 2006 Resolution is misplaced.

I

The 2006 Resolution did not place CAP Pension and its assets under *custodia legis*.

The rehabilitation court, as affirmed by the Court of Appeals, found that the order to sell and dispose of CAP Pension, "stemmed from the fact that it is one of the indicated sources of funds of [respondent] for its rehabilitation and that 86% of CAP Pension's

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[118] Id. at 1067.

[119] Id. at 1068.

[120] Docketed as Sp. Proc. No. M-6144.

[121] *Rollo* (G.R. No. 218193), pp. 253-268. The Resolution was penned by Presiding Judge Cesar O. Untalan of the Regional Trial Court of Makati City, Branch 149.

outstanding stock is owned by [respondent]."[122] The Court of Appeals in its assailed decision held that "CAP Pension is covered by the Makati RTC's directive and was effectively placed under *custodia legis* upon the issuance of the November 8, 2006 Resolution."[123]

To recall, in its 2006 Resolution, the rehabilitation court ordered the Board of Directors, stockholders, and officers of respondent "to dispose and sell all these subsidiaries and affiliates not later than December 31, 2008," among which is CAP Pension, as part of respondent's revised Rehabilitation Plan.[124]

Petitioners contend that the directive should be interpreted as an order for respondent to sell its *equities* in CAP Pension, as stated in the proposed Rehabilitation Plan.[125] It insists that the separate and distinct personality of CAP Pension precludes the sale of the whole company.[126] Respondent counters that the dispositive portion controls and CAP Pension along with its assets had long been under the rehabilitation court's jurisdiction.[127]

Petitioners' contention is meritorious.

Well-settled is the rule that "a corporation has a personality separate and distinct from that of its individual stockholders."[128] This separate personality allows the corporation to acquire properties in its own name and incur obligations. A stockholder owning all or nearly all the capital stock of a corporation is not a ground to disregard a corporation's personality.[129]

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[122] Id. at 57.

[123] Id.

[124] Id. at 264.

[125] Id. at 31.

[126] Id.

[127] *Rollo* (G.R. No. 213130), p. 1362.

[128] *Aboitiz Equity Ventures, Inc. v. Chiongbian*, 738 Phil. 773, 807 (2014) [Per J. Leonen, Third Division].

[129] Id.

There are stark differences between the businesses of respondent and CAP Pension. Respondent corporation was a pioneer in the pre-need industry in selling educational plans which guaranteed the planholders' payment for tuition and other school fees.[130] On the other hand, CAP Pension, respondent's subsidiary, sold pre-need plans for other purposes: "(1) [p]ost-graduate funds; (2) [starting] a business; (3) [a]dditional income during the children's growing-up years; (4) [b]uilding up one's estate; (5) [f]unds for eventual retirement; (6) [a]ugment other pension/retirement benefits; and (7) [f]unds for final expenses."[131] Needless to state, each corporation has a distinct personality, does business separately, and has its own clientele of planholders.

The subsidiary is not a mere asset of the parent corporation. "If used to perform legitimate functions, a subsidiary's separate existence may be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business."[132]

Respondent does not dispute that CAP Pension is its subsidiary[133] that has a separate and distinct personality.[134] Likewise, undisputed is CAP Pension's performance of a legitimate function. Thus, CAP Pension may own properties and incur liabilities independently of its parent corporation. As a subsidiary, it is not liable for the obligations of respondent parent corporation.

Thus, it was incorrect for respondent to claim and the courts below to rule that "CAP Pension's assets were deemed under *custodia legis*. . . because it was directed in the November 8, 2006 Resolution for *CAP Pension and its assets* to be deemed as such."[135] The 2006 Resolution cannot operate to place CAP

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[130] *Rollo* (G.R. No. 213130), p. 70.

[131] Id. at 29.

[132] *Philippine National Bank v. Ritratto Group, Inc.*, 414 Phil. 494, 503 (2001) [Per J. Kapunan, First Division].

[133] *Rollo* (G.R. No. 218193), p. 52.

[134] *Rollo* (G.R. No. 213130), p. 1356.

[135] Id. at 1357.

Pension under the rehabilitation court's *custodia legis*, having full rein over its assets. This treated respondent and CAP Pension as one, rendering nugatory the separate and distinct personality of each corporation. It was likewise erroneous to consider the assets of CAP Pension as commingled with respondent's.

The order in the 2006 Resolution can only mean that the Board of Directors, stockholders, and officers of respondent corporation were directed to sell its *equities* in CAP Pension.

Equity represents ownership interest in a business.[136] The sale of equity will neither significantly alter the corporation nor meddle in its affairs, but will involve a change in its ownership. As it was respondent CAPPI that was under rehabilitation and not CAP Pension, the rehabilitation court could not have validly ordered the CAP Pension's sale as if it was one of respondent's assets to be disposed. On the other hand, respondent's sale of its equities in CAP Pension shall generate needed funds for its rehabilitation. This reading of the 2006 Resolution is more in accord with law and respects the separate personalities of each corporation.

Moreover, the evidence on record supports this claim. Respondent, in its Petition for Rehabilitation,[137] filed before the Regional Trial Court[138] the proposed Rehabilitation Plan[139] and Consolidated Response to the comments of stakeholders,[140] and the Rehabilitation Receiver's Evaluation,[141] all intended the sale of respondent's *equity* in its subsidiaries and affiliate.

Thus, CAP Pension retained a personality separate and distinct from respondent throughout its rehabilitation proceedings. The 2006 Resolution placed neither CAP Pension nor its assets

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[136] Black Law's Dictionary.

[137] *Rollo* (G.R. No. 218193), pp. 67-100, Petition for Rehabilitation.

[138] Id. at 87.

[139] Id. at 67-100.

[140] Id. at 164.

[141] Id. at 232-252, Evaluation Report: Revised Rehabilitation Plan.

under *custodia legis*. Neither could the rehabilitation court hold CAP Pension personally liable for the obligations of its parent corporation.

I (A)

Separating CAP Pension's conservatorship from respondent's rehabilitation is vital. Apart from their separate and distinct personalities, with each having its own assets and liabilities, the corporations' remedies of conservatorship and rehabilitation are under two separate jurisdictions.

Rehabilitation is a remedy availed by financially distressed corporations "to gain a new lease on life[.]"[142] This was thoroughly discussed in *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*:[143]

> Corporate rehabilitation is a remedy for corporations, partnerships, and associations "who foresee the impossibility of meeting their debts when they respectively fall due." A corporation under rehabilitation continues with its corporate life and activities to achieve solvency, or a position where the corporation is able to pay its obligations as they fall due in the ordinary course of business. Solvency is a state where the businesses' liabilities are less than its assets.
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> The rationale in corporate rehabilitation is to resuscitate businesses in financial distress because "assets are often more valuable when so maintained than they would be when liquidated." Rehabilitation assumes that assets are still serviceable to meet the purposes of the business. The corporation receives assistance from the court and a disinterested rehabilitation receiver to balance the interest to recover and continue ordinary business, all the while attending to the interest of its creditors to be paid equitably. These interests are also referred to as the *rehabilitative* and the *equitable* purposes of corporate rehabilitation.

The nature of corporate rehabilitation was thoroughly discussed in *Pryce Corporation v. China Banking Corporation*:

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[142] *Metropolitan Bank & Trust Co. v. G & P Builders, Inc.*, 773 Phil. 289 (2015) [Per J. Leonen, Second Division].

[143] 781 Phil. 95 (2016) [Per J. Leonen, Second Division].

> Corporate rehabilitation is one of many statutorily provided remedies for businesses that experience a downturn. Rather than leave the various creditors unprotected, legislation now provides for an orderly procedure of equitably and fairly addressing their concerns. Corporate rehabilitation allows a court-supervised process to rejuvenate a corporation. It provides a corporation's owners a sound chance to reengage the market, hopefully with more vigor and enlightened services, having learned from a painful experience.
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> Necessarily, a business in the red and about to incur tremendous losses may not be able to pay all its creditors. Rather than leave it to the strongest or most resourceful amongst all of them, the state steps in to equitably distribute the corporation's limited resources.
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> . . . . . .
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> Rather than let struggling corporations slip and vanish, the better option is to allow commercial courts to come in and apply the process for corporate rehabilitation.

Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation reiterates that courts "must endeavor to balance the interests of all the parties that had a stake in the success of rehabilitating the debtors." These parties include the corporation seeking rehabilitation, its creditors, and the public in general.

> The public's interest lies in the court's ability to effectively ensure that the obligations of the debtor, who has experienced severe economic difficulties, are fairly and equitably served. The alternative might be a chaotic rush by all creditors to file separate cases with the possibility of different trial courts issuing various writs competing for the same assets. Rehabilitation is a means to temper the effect of a business downturn experienced for whatever reason. In the process, it gives entrepreneurs a second chance. Not only is it a humane and equitable relief, it encourages efficiency and maximizes welfare in the economy.[144] (Emphasis in the original, citations omitted)

At the time respondent's petition for corporate rehabilitation was filed before the trial court, Presidential Decree No. 902-A and the Interim Rules of Procedure on Corporate Rehabilitation

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[144] Id. at 112-115.

were in effect. Under these laws, rehabilitation was a court-supervised proceeding. This Court has previously taken cognizance of respondent's rehabilitation in *Abrera v. Barza*[145] where we held that the judge in Sp. Proc. No. M-6144, respondent's rehabilitation proceedings, did not gravely abuse his discretion in issuing the Order giving due course to respondent's petition for rehabilitation. In fact, respondent's rehabilitation has been ongoing, under the jurisdiction of the Regional Trial Court of Makati City, Branch 149, prior to this Court's issuance of a temporary restraining order on August 18, 2014.[146]

On the other hand, CAP Pension's conservatorship is in the exercise of the Insurance Commission's authority under Republic Act No. 9829. Under this law, the Insurance Commission has the authority to place a pre-need corporation under conservatorship should circumstances warrant it.[147]

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[145] 615 Phil. 595 (2009) [Per J. Peralta, Third Division].

[146] *Rollo* (G.R. No. 213130), pp. 275-278.

[147] Republic Act No. 9829 (2009), Sec. 49 provides:

SECTION 49. *Appointment of Conservator*. — If at any time before or after the suspension or revocation of the license of a pre-need company as provided in Section 27 hereof, the Commission finds that such company is in a state of continuing inability or unwillingness to comply with the requirements of the Code and/or orders of the Commission, a conservator may be appointed to take charge of the assets, liabilities, and the management of such company, collect all moneys and debts due the company and exercise all powers necessary to preserve the assets of the company, reorganize its management, and restore its viability. The conservator shall have the power to overrule or revoke the actions of the previous management and board of directors of the said company, any provision of law, or of the articles of incorporation or bylaws of the company, to the contrary notwithstanding, and such other powers as the Commission shall deem necessary. The conservator may be another pre-need company, by officer or officers of such company, or any other competent and qualified person, firm or corporation. The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the pre-need company. The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

In *Garcia v. NLRC*:[148]

> Conservatorship proceedings against a financially distressed insurance company are statutory in nature and are resorted to only if and *when the Insurance Commissioner finds that such company is in a state of continuing inability or unwillingness to maintain a condition of solvency or liquidity deemed adequate to protect the interest of policyholders and creditors*. In other words, the insurance company placed under conservatorship is facing financial difficulties which require the appointment of a conservator to take charge of its assets, liabilities, and management aimed at preserving its assets and restoring its viability as a going business enterprise.
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> . . . . . .
>
> The power of the Insurance Commissioner with respect to the statutory proceedings against insolvent or delinquent insurer is of general public concern, to which contract and property rights must yield.
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> Essentially, conservatorship under Section 248 of the Insurance Code is in the nature of rehabilitation proceedings. As such, the conservator may only act with the approval of the Insurance Commissioner with respect to the major aspects of rehabilitation. . . .[149]

(Emphasis supplied, citations omitted)

Although of a similar nature, rehabilitation and conservatorship fall under different jurisdictions and are governed by different laws. While rehabilitation in this case was supervised by a trial court sitting as a commercial court, conservatorship was to be under the Insurance Commission's jurisdiction.

Respondent's rehabilitation is diametrically inconsistent with CAP Pension's conservatorship as it treats the latter as a mere

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The conservator appointed shall report and be responsible to the Commission until such time as the Commission is satisfied that the pre-need company can continue to operate on its own and the conservatorship shall likewise be terminated should the Commission, on the basis of the report of the conservator or of his own findings, determine that the continuance in business of the pre-need company would be hazardous to planholders and creditors, in which case the provisions of Chapter XVI shall apply.

[148] 237 Phil. 623 (1987) [Per J. Fernan, Third Division].

[149] Id. at 635-636.

asset to be disposed in furtherance of its rehabilitation. It has no regard to CAP Pension's financial infirmities and the protection of its planholders, which the conservatorship proceedings shall undertake. The conservator's mandate shall be impossible to fulfill if this Court affirms the rehabilitation court's ruling that CAP Pension and its assets were deemed under *custodia legis*. As CAP Pension's assets have been corralled solely to rehabilitate respondent corporation, its planholders were left with no recourse as respondent was given full rein over the corporation's assets. This Court cannot condone this.

II

The doctrine of immutability of judgment does not apply whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[150]

Respondent harps on the finality of the 2006 Resolution, averring that the placing of CAP Pension and its assets in *custodia legis* cannot be reviewed or modified under the doctrine of immutability of judgment.[151]

"[J]udgment that lapses into finality becomes immutable and unalterable."[152] Consequently, it may no longer be amended. In *Mercury Drug Corp. v. Spouses Huang*:[153]

> It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable. The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even if the purpose of the modification or amendment is to correct perceived errors of law or fact. This principle known as the doctrine of immutability of judgment is a matter of sound public policy, which rests upon the practical consideration that every litigation must come to an end.

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[150] *Mercury Drug Corp. v. Spouses Huang*, 817 Phil. 434 (2017) [Per J. Leonen, Third Division].

[151] *Rollo* (G.R. No. 213130), pp. 1358-1359.

[152] *Mercury Drug Corp. v. Spouses Huang*, 817 Phil. 434, 437 (2017) [Per J. Leonen, Third Division].

[153] 817 Phil. 434 (2017) [Per J. Leonen, Third Division].

The rationale behind the rule was further explained in *Social Security System v. Isip*, thus:

> The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[154] (Citations omitted)

However, the doctrine of immutability of judgment admits of exceptions:

(1) The correction of clerical errors;
(2) The so-called *nunc pro tunc* entries which cause no prejudice to any party;
(3) Void judgments; and
(4) Whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[155] (Citation omitted)

Petitioner claims the last exception applies here. It cited two events which allegedly rendered the execution of the 2006 Resolution unjust and inequitable: (1) Congress enacted Republic Act No. 9829 or the *Pre-Need Code of the Philippines*; and (2) CAP Pension suffered impairments in its capital, Trust Fund reserve liability, and Insurance Premium Fund.[156]

II (A)

The remedial and curative character of Republic Act No. 9829 does not extend to the issue of jurisdiction.

Petitioner posits that the enactment of the Republic Act No. 9829 divested the rehabilitation court of its *supposed* jurisdiction over CAP Pension,[157] as the curative and remedial character of

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[154] Id. at 445-446.

[155] Id. at 446.

[156] *Rollo* (G.R. No. 218193), p. 7, Reply.

[157] Id.

the law has been recognized in *Securities and Exchange Commission v. Laigo*.[158]

Jurisdiction is conferred by law.[159] Well-settled is the principle that once jurisdiction is acquired, that jurisdiction is retained until the case is terminated. This was first enunciated in *People v. Pegarum*:[160]

> [J]urisdiction of a court depends upon the state of the facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached.[161]

Once attached, jurisdiction is not divested even by a subsequent statute transferring jurisdiction over such proceedings in another tribunal.[162] "The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment."[163] Thus, a statute which has no retroactive effect as to jurisdiction may not be applied to a pending case upon its enactment.[164]

Republic Act No. 9829 granted the Insurance Commission the primary and exclusive supervision and regulation over all pre-need companies. Section 5 of the law is explicit:

> SECTION 5. *Supervision*. — All pre-need companies, as defined under this Act, shall be under the primary and exclusive supervision and regulation of the Insurance Commission. The Commission is hereby authorized to provide for its reorganization, to streamline its

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[158] 768 Phil. 239 (2015) [Per J. Mendoza, Second Division].

[159] *U.S. v. Jayme*, 24 Phil. 90 (1913) [Per J. Cason, First Division].

[160] 58 Phil. 715 (1933) [Per J. Abad Santos, En Banc].

[161] Id. at 717.

[162] *Bengzon v. Inciong*, 180 Phil. 206 (1979) [Per J. Antonio, Second Division].

[163] Id. at 214.

[164] Id.

structure and operations, upgrade its human resource component to enable it to effectively and efficiently perform its functions and exercise its powers under this Code.

However, this Court cannot subscribe to the position that jurisdiction as provided in Republic Act No. 9829 should be applied retroactively. The remedial and curative character of Republic Act No. 9829 recognized in *Laigo* does not extend to the issue of jurisdiction.

First, a plain reading of the text of Republic Act No. 9829 shows that the transfer of jurisdiction over pre-need companies from the Securities and Exchange Commission to the Insurance Commission cannot be applied retroactively to pending cases.

Prior to the enactment of Republic Act No. 9829, Republic Act No. 8799 or the Securities Regulation Code governed pre-need plans. The Securities and Exchange Commission was then the agency mandated to prescribe rules and regulations governing the pre-need industry.[165]

On December 4, 2009, Republic Act No. 9829 took effect, granting the Insurance Commission the primary and exclusive supervision and regulation over all pre-need companies.[166] However, section 57 of Republic Act No. 9829 reads:

SECTION 57. *Transitory Provisions*. — Any pre-need company who, at the time of the effectivity of this Code has been registered and licensed to sell pre-need plans and similar contracts, shall be considered registered and licensed under the provision of this Code

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[165] Republic Act No. 8799 (2000), Sec. 16 provides:

SECTION 16. *Pre-Need Plans*. — No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

[166] Republic Act No. 9829 (2009), Sec. 5.

and its implementing rules and regulations and shall be subject to and governed by the provisions hereof[.]

The Commission shall constitute forthwith a special team of experts to handle all matters related to the pre-need industry and shall secure and transfer all the files and records of the SEC to the Insurance Commission within ninety (90) days after the effectivity of this Code.

Notwithstanding any provision to the contrary, all pending claims, complaints and cases filed with the SEC shall be continued in its full and final conclusion. It shall also assist the Department of Justice in criminal cases involving matters related to the pre-need industry. (Emphasis supplied)

Section 57 of Republic Act No. 9829 recognizes the Commission's jurisdiction over all pending proceedings before it and decrees the retention of jurisdiction until final disposition of the cases. Manifest is the adherence to the previously acquired jurisdiction of the Commission over pending claims. Thus, there is no basis for petitioner to claim that jurisdiction under Republic Act No. 9829 may be applied retroactively.

Second, petitioner calls this Court's attention to its pronouncement in *Laigo* that "the primary protection accorded by the Pre-Need Code to the planholders is curative and remedial and, therefore, *can be applied retroactively*."[167] We take this opportunity to explain our ruling in that case.

Laigo involves the insolvency proceedings of Legacy Consolidated Plans, Incorporated. The issue was whether Presiding Judge Reynaldo M. Laigo gravely abused his discretion in ordering the inclusion of the trust fund in its corporate assets to the prejudice of the planholders.

To support its position, petitioner quotes the following from *Laigo*:

Finally, it must be stressed that the primary protection accorded by the Pre-Need Code to the planholders is curative and remedial and, therefore, can be applied retroactively. The rule is that where

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[167] *Securities and Exchange Commission v. Laigo*, 768 Phil. 239, 269 (2015) [Per J. Mendoza, Second Division].

the provisions of a statute clarify an existing law and do not contemplate a change in that law, the statute may be given curative, remedial and retroactive effect. To review, curative statutes are those enacted to cure defects, abridge superfluities, and curb certain evils. As stressed by the Court in *Fabian v. Desierto*,

> If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be clarified as a substantive matter; **but if it operates as a means of implementing an existing right then the rule deals merely with procedure**.
>
> . . . . . .
>
> It has been said that a *remedial statute must be so construed as to make it effect the evident purpose for which it was enacted, so that if the reason of the statute extends to past transactions*, as well as to those in the future, then it will be so applied although the statute does not in terms so direct. . . .[168] (Citations omitted, emphasis in the original)

Omitted in that quotation are the following paragraphs:

> A reading of [Republic Act No. 9829] immediately shows that its provisions operate merely *in furtherance of the remedy or confirmation of the right of the planholders to exclusively claim against the trust funds* as intended by the legislature. No new substantive right was created or bestowed upon the planholders. Section 52 of [Republic Act No. 9829] only echoes and clarifies the [Securities Regulation Code's] intent to exclude from the insolvency proceeding trust fund assets that have been established "exclusively for the benefit of planholders." It was precisely enacted to foil the tactic of taking undue advantage of any ambiguities in the New Rules.
>
> Any doubt or reservation in this regard has been dispelled by [Republic Act No. 9829.] Section 57 thereof provides that "[a]ny pre-need company who, at the time of the effectivity of this Code has been registered and licensed to sell pre-need plans and similar contracts, shall be considered registered and licensed under the provision of this Code and its implementing rules and regulations and shall be subject to and governed by the provisions hereof[.]" Thus, Legacy and all other existing pre-need companies cannot claim that the provisions of [Republic Act No. 9829] are not applicable to

[168] Id. at 269-270.

them and to the claims which accrued prior to the enactment of the said law.[169] (Emphasis supplied, citations omitted)

The remedial and curative character of Republic Act No. 9829 pertains to the right of the planholders to claim against the trust fund. This Court in *Laigo* determined that the paramount consideration in requiring the establishment of a trust fund is the protection of the interests of the planholders in investment plans. What is remedial and curative is this *protection* to the planholders accorded by Republic Act No. 9829, and not jurisdiction.

Thus, the remedial and curative character of Republic Act No. 9829 does not extend to the issue of jurisdiction.

II (B)

The execution of the November 8, 2006 Resolution, as interpreted by the rehabilitation court, is unjust and inequitable for CAP Pension's planholders.

The petitioner found that CAP Pension's capital stock was impaired by ₱5,171,390,117.00, its trust fund deficient by ₱3,136,663,312.00, and the pre-need company did not set up a separate account for the Insurance Premium Fund of ₱169,453,089.00.[170] Respondent claims petitioner's findings relative to CAP Pension's financial condition are irrelevant.[171]

To reiterate, Republic Act No. 9829 vested petitioner with primary and exclusive supervision and regulation over all pre-need companies.[172] In the exercise of its regulatory function, petitioner was constrained to place CAP Pension under conservatorship upon the discovery of the financial infirmities of the pre-need company. The company's distressed state entailed petitioner's intervention to avoid serious peril to its planholders.

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[169] Id. at 270.

[170] *Rollo* (G.R. No. 218193), p. 33.

[171] Id. at 1364.

[172] Republic Act No. 9829 (2009), Sec. 5.

Per *Laigo*, this protection to the planholders is the primary consideration in the enactment of Republic Act No. 9829.

Republic Act No. 9829 was passed in response to "the chaos confounding the [pre-need] industry at the time."[173] The legislation was intended to be a stronger legal framework that shall govern the pre-need industry and primarily protect the rights of the planholders.[174] Section 2 declares the policy considerations of the law:

> SECTION 2. *Declaration of Policy*. — It is the policy of the State to *regulate the establishment of pre-need companies* and to place their operation on sound, efficient and stable basis to derive the optimum advantage from them in the mobilization of savings and to prevent and mitigate, as far as practicable, practices prejudicial to public interest and the protection of planholders.
>
> The State shall hereby regulate, *through an empowered agency*, pre-need companies based on prudential principles to promote soundness, stability and sustainable growth of the pre-need industry.[175] (Emphasis supplied)

The Insurance Commission, as the primary agency governing pre-need companies, should not be restrained from fulfilling its mandate. To rule that CAP Pension was placed under *custodia legis* by the order of the rehabilitation court is prejudicial to the interests of CAP Pension's planholders. CAP Pension's planholders need protection in the same manner and degree as respondent corporation's planholders who had been amply protected through the rehabilitation proceedings.

III

No circumstance exists to reverse the Court of Appeals' affirmation of the rehabilitation plan's extension and modification.

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[173] *Securities and Exchange Commission v. Laigo*, 768 Phil. 239, 257 (2015) [Per J. Mendoza, Second Division].

[174] Id.

[175] Republic Act No. 9829 (2009), Sec. 2.

Assailed in the Petition in G.R. No. 213130 is the June 18, 2014 Decision of the Court of Appeals in CA-G.R. SP No. 131991, affirming the September 5, 2013 Order of the Regional Trial Court of Makati City, Branch 149 granting respondent's Motion for Extension and Modification of the Rehabilitation Plan.

Petitioners claim that the rehabilitation court erred in approving the 2012 Revised Rehabilitation Plan which extended the period of rehabilitation and modified the rehabilitation plan. Petitioners insist the rehabilitation plan is speculative and incomplete as there were no sufficient evidence showing the profitability of the proposed ventures. Moreover, it allegedly includes CAP Pension's properties and is preemptive of the resolution in CA-G.R. SP No. 122979 as the latter involves the determination of the rehabilitation court's jurisdiction over CAP Pension.[176]

Respondent disputed the claim that the plan is speculative, charging bad faith to petitioner by omitting supporting evidence in the rehabilitation court.[177] Respondent counters that there is substantial basis for the rehabilitation plan's extension and modification. It insists that the 2012 plan does not include CAP Pension's properties,[178] but admits that it intends to incorporate these assets in future ventures.[179]

In petitions for review under Rule 45 of the Rules of Court, only questions of law may be raised.[180] In *Pascual v. Burgos*:[181]

> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this court" when supported by substantial evidence. Factual

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[176] *Rollo* (G.R. No. 213130), p. 35.

[177] Id. at 779.

[178] Id. at 774.

[179] Id. at 775.

[180] RULES OF COURT, Rule 45, Sec. 1.

[181] 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record[.]

These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[182] (Citations omitted)

A question of fact is involved when "doubt arises as to the truth or falsity of the alleged facts."[183] It entails an examination of the evidence on record, which the petitioner is asking this Court to do. The determination whether the rehabilitation plan is speculative and incomplete is a question of fact, involving

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[182] Id. at 182-183.

[183] *Republic v. Malabanan*, 646 Phil. 631, 637 (2010) [Per J. Villarama, Jr., Third Division].

a reassessment of the rehabilitation court's appreciation of evidence.[184]

The factual findings of the trial court, as affirmed by the Court of Appeals, are binding on this Court and will not be disturbed on appeal.[185] More so if the findings are that of a special commercial court which "has the expertise and knowledge over matters under its jurisdiction and is in a better position to pass judgment thereon."[186] Unless there is abuse in the exercise of its authority, the rehabilitation court's findings of fact should be accorded finality.

Thus, the petition in G.R. No. 213130 must be denied outright for raising issues that require a review of the evidence.

Even assuming the case can be resolved on the merits, the petition should still be denied as no sufficient grounds exist to reverse the decision of the Court of Appeals. The Court of Appeals was categorical on the propriety of the extension and modification of respondent's rehabilitation plan:

> It is clear that under Section 12, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation that it is within the power of the rehabilitation receiver to recommend amendments or modifications to the approved rehabilitation plan.
>
> "Rule 3
> General Provisions
>
> **Section 12**. *Powers and Functions of Rehabilitation Receiver*. –
>
> x x x x x x x x x
>
> (v) To recommend any modification of an approved rehabilitation plan as he may deem appropriate;"
>
> But whether such recommendation is to be accepted or rejected is subject to the discretion of the rehabilitation court.

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[184] See *Quesada v. Department of Justice*, 532 Phil. 159, 166 (2006) [Per J. Sandoval-Gutierrez, Second Division].

[185] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[186] *China Banking Corp. v. Cebu Printing and Packaging Corp.*, 642 Phil. 308, 326 (2010) [Per J. Carpio, Second Division].

"**Section 22**. *Alteration or Modification of Rehabilitation Plan*. – An approved rehabilitation plan may, upon motion, be altered or modified if, in the judgement of the court, such alteration or modification is necessary to achieve the desired targets or goals set forth therein."

The alteration or modification of the approved rehabilitation plan being left to the sole discretion of the court, its decision could not be set aside absent any proof of grave abuse thereof. We find that petitioners failed to establish any such abuse on the part of the respondent.

In this case, the designated rehabilitation receiver, Mamerto A. Marcelo, Jr., manifested in his comment his approval of the extension and modification sought by respondent [CAPPI] of its approved rehabilitation plan, although he rejected the proposal to extend it all the way until 2021, and suggested to cut it short to just three (3) years, subject to an annual review. The said rehabilitation receiver, taking into consideration the proposed Redevelopment Project, [CAPPI's]/the developer's financial projections, as well as the draft Memorandum of Agreement, Lease Agreement, and Joint Development Agreement, adequately believes that the approval of the 2012 Revised Rehabilitation Plan of [CAPPI] would be for the best interest of the planholders. Having been directly and closely involved in the rehabilitation of [CAPPI] for already quite sometime, the court a quo cannot be faulted if it opted to adopt the recommendation of the rehabilitation receiver. Being appointed by the court, and thus considered as an officer of the court, it is only appropriate that the suggestion of the rehabilitation receiver should be given weight and credence by the court. But the court a quo, in approving the 2012 Revised Rehabilitation Plan of [CAPPI] did not merely rely on the recommendation of the rehabilitation receiver, it made its own assessment and evaluation of the same and even took into account the comments of the petitioners[.][187] (Emphasis in the original)

This Court finds no reason to disturb these findings.

However, the Court of Appeals is incorrect in ruling, "[t]he fact that there are properties owned by CAP Pension which are included in the proposed redevelopment project of respondent [CAPPI] is not a sufficient ground for the disapproval of the

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[187] *Rollo* (G.R. No. 213130), pp. 58-58-A.

request for extension or modification of the rehabilitation plan[.]"[188] Again, CAP Pension's assets are not and should not be included in the rehabilitation plan.

As a final note, respondent's rehabilitation has yet to be completed since it was initiated in 2005. There had been a full-blown trial before the rehabilitation court which thoroughly assessed all the pieces of evidence presented by the parties. This Court is aware this ruling will affect thousands of planholders. At this point, to dismiss the rehabilitation proceedings because of the erroneous assumption that CAP Pension and its assets were placed under the rehabilitation court's jurisdiction would severely frustrate justice. This ruling is ultimately aimed at protecting the interests of the planholders of both pre-need companies. Thus, petitioner is directed to proceed with the conservatorship proceedings of CAP Pension. Meanwhile, respondent is ordered to continue its rehabilitation efforts to be monitored by the court of origin.

WHEREFORE, the Petition in G.R. No. 218193 is **GRANTED**. The assailed April 28, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 124031 is **REVERSED** and **SET ASIDE**.

The Petition in G.R. No. 213130 is **DENIED**. The assailed June 18, 2014 Decision of the Court of Appeals in CA-G.R. SP No. 131991 is **AFFIRMED WITH MODIFICATION**. Respondent College Assurance Plans Philippines, Inc. is permanently **ENJOINED** from including the properties of Comprehensive Annuity Plans and Pension in its rehabilitation proceedings.

The case is **REMANDED** to the Regional Trial Court, National Capital Judicial Region, Br. 149, Makati City, for its supervision over the implementation of the 2012 Revised Rehabilitation Plan.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[188] Id. at 58-A.

THIRD DIVISION

[G.R. No. 218282. September 9, 2020]

REDENTOR Y. AGUSTIN, *Petitioner*, *v.* **ALPHALAND CORPORATION, ET AL.,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISMISSAL OF REGULAR EMPLOYEES BY THE EMPLOYER REQUIRES THE OBSERVANCE OF THE TWO-FOLD DUE PROCESS; REQUISITES.— Dismissal of regular employees by the employer requires the observance of the two-fold due process, namely: (1) substantive due process; and (2) procedural due process. Alphaland failed to observe both substantive and procedural due process in dismissing Agustin from employment.

2. ID.; ID.; ID.; ID.; SUBSTANTIVE DUE PROCESS, EXPLAINED. — Substantive due process means that the dismissal must be for any of the: (1) just causes provided under Article 297 of the Labor Code or the company rules and regulations promulgated by the employer; or (2) authorized causes under Articles 298 and 299 thereof. None of these causes exist in the case at bar.

3. ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS, EXPLAINED. — Procedural due process means that the employee must be accorded due process required under Article 292(b) of the Labor Code, the elements of which are the twin-notice rule and the employee's opportunity to be heard and to defend himself. In the case of Agustin's dismissal, neither of these elements was satisfied.

4. ID.; ID.; ILLEGAL DISMISSAL; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO CERTAIN RELIEFS.— Pursuant to Article 294 of the Labor Code, an illegally dismissed employee is entitled to the following reliefs: (1) reinstatement without loss of seniority rights and other privileges; (2) full backwages, inclusive of allowances; and (3) other benefits or their monetary equivalent.

5. ID.; ID.; THE FACT THAT A PARTY DID NOT APPEAL THE DECISION OF THE LABOR ARBITER CONCERNING BACKWAGES FROM THE TIME OF HIS ILLEGAL DISMISSAL UNTIL REINSTATEMENT AS A REGULAR EMPLOYEE DOES NOT BAR THE AWARDING OF THE ADDITIONAL BACKWAGES; THE GRANT OF ADDITIONAL BACKWAGES IS NECESSARY IN ARRIVING AT A COMPLETE AND JUST RESOLUTION OF THE CASE.— Notably, the lower courts awarded backwages merely for the unexpired portion of Agustin's probationary employment. The fact that Agustin did not appeal the Decision of the LA does not bar this Court from awarding additional backwages, *i.e.*, backwages from the time of his illegal dismissal until reinstatement as a regular employee. Following the ruling in *St. Michael's Institute*, the grant of such additional backwages is "necessary in arriving at a complete and just resolution of the case" and is a relief granted by substantive law which cannot be defeated by mere procedural lapses. This award is merely a logical consequence of the finding that Agustin was a regular employee who has been illegally dismissed by Alphaland.

APPEARANCES OF COUNSEL

Añover Añover San Diego & Primavera Law Offices for petitioner.

Ponferrada Orbe & Altubar Law Offices for respondents.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the modification of the Decision[2] dated September 26, 2014 and the Resolution[3] dated April 20, 2015 of the Court of Appeals in CA-G.R. SP No. 130198. The

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[1] *Rollo*, pp. 33-47.

[2] Id. at 8-14.

[3] Id. at 25-27.

assailed issuances affirmed the Decision[4] dated January 14, 2013 and the Resolution[5] dated March 15, 2013 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 11-16616-11 (NLRC LAC No. 09-002627-12), which likewise affirmed the Decision[6] dated August 2, 2012 of the Labor Arbiter (LA).

Facts of the Case

Via a letter[7] dated July 6, 2011, respondent Alphaland Corporation (Alphaland) offered to employ petitioner Redentor Y. Agustin (Agustin) as Executive Chef, with a gross monthly salary of ₱122,500.00. The offer came with a six-month probation period.[8]

Agustin signed the letter to signify his acceptance of the job offer. As the Executive Chef, Agustin took over the Balesin Island Club's Kitchen. He organized the kitchen, prepared the job descriptions and responsibilities of each kitchen staff, conceptualized the menu, kitchen design, and managed the equipment acquisition.[9]

On November 4, 2011, barely four months from commencement of his employment, Agustin received a Notice of Termination.[10] He was informed that regular employment status cannot be granted to him because he failed to meet the standards set forth by the company for his position. Also stated is the immediate effectivity of Agustin's termination.[11]

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[4] Id. at 292-300.

[5] Id. at 333-335.

[6] Id. at 236-247.

[7] *Rollo*, pp. 206-208.

[8] Id. at 206.

[9] Id. at 85-168. Agustin submitted as evidence before the LA the kitchen organization chart and job descriptions for each kitchen staff.

[10] Id. at 169.

[11] Id.

Agustin filed a complaint for illegal dismissal against Alphaland and prayed for reinstatement and payment of backwages. He alleged that the standards set forth by Alphaland in order to qualify as regular employee were not made known to him at the time of his engagement. The letter-offer,[12] which likewise serves as the employment contract between Alphaland and Agustin, merely states:

> As an employee of **ALPHALAND CORPORATION** you are expected to render the highest quality of professional service and to always pursue the interest of the company. Any behavior or action contrary will become the basis for appropriate disciplinary action on the part of the Company including suspension and termination.[13] (Emphasis in the original)

Agustin also claimed for 13th month pay, damages, and attorney's fees.

In its Position Paper[14] submitted before the LA, Alphaland alleged that the executives of the company and the business associates assessed the variety of dishes offered by Agustin, its palatability, and the quality of his cooking. Unfortunately, Agustin's performance fell short of their expectations. The executives and business associates also voted that Agustin's performance was not apt for a high-end luxury resort. Similarly, the diners were not satisfied with the food prepared by Agustin.[15] Alphaland claimed that Agustin failed to meet the following standards in order to qualify as regular employee: (1) that he was expected to render high quality of professional service; and (2) to always pursue the interest of the company.[16] Further, Alphaland argued that Agustin's employment was validly terminated within the probationary period and in accordance with procedural due process. According to Alphaland, the two-

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[12] Id. at 227-229.

[13] Id. at 227.

[14] Id. at 177-188.

[15] Id. at 182.

[16] Id.

notice rule was not applicable to probationary employees and that procedural due process in the termination of a probationary employee merely requires a termination notice.[17]

Ruling of the Labor Arbiter

The LA issued on August 2, 2012 a Decision finding Agustin to have been illegally dismissed. The LA found that the standard provided in the appointment letter was too general and did not specify with clarity what is expected or needed for an Executive Chef. The record is also bereft of anything to show that the executives and guests did not desire much of Agustin's cooking skills.[18] Hence, Agustin was entitled to his salary for November 5, 2011 up to January 6, 2012, the unexpired portion of his probation period. As regards the 13th month pay, the LA awarded the same proportionately for the period of July 6, 2011 to January 6, 2012.[19] The claim for damages was denied for lack of factual basis.[20] The dispositive portion of the decision reads:

> **WHEREFORE, premises considered**, judgment is hereby rendered finding complainant to have been illegally dismissed. Respondent Alphaland Corporation is ordered to pay complainant the following:
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> 1. unexpired portion of his probationary employment in the amount of TWO HUNDRED FORTY FIVE THOUSAND PESOS (P245,000.00);
>
> 2. proportionate 13th month pay in the amount of SIXTY ONE THOUSAND TWO HUNDRED FIFTY PESOS (P51,250.00);
>
> 3. attorney's fees in the amount of THIRTY THOUSAND SIX HUNDRED TWENTY FIVE PESOS (P30,625.00).
>
> SO ORDERED.[21]

Alphaland appealed to the NLRC.

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[17] Id. at 182-183.

[18] Id. at 245.

[19] Id. at 246.

[20] Id. at 247.

[21] Id.

To support its claim that Agustin's performance had been subject of an assessment, Alphaland presented for the first time the affidavits of Mario A. Oreta and Conrad Nicholson M. Celdran, the President of Alphaland and Agustin's immediate supervisor, respectively. "Both attested to the fact that they were the recipients of feedbacks from guests of the Balesin Island Club about the food served being ordinary, below average, mediocre, and did not seem appropriate for a resort touted as one of the country's most exclusive and luxurious."[22]

Ruling of the National Labor Relations Commission

The NLRC denied the appeal.

In its Decision dated January 14, 2013, the NLRC agreed with the LA in finding that Alphaland failed to establish that Agustin was properly apprised beforehand of the reasonable standards set forth by the company for Agustin's position, the conditions for his employment, and the basis for his advancement. The record was bereft of any persuasive showing that the dissatisfaction on the part of the executives and the guests was real and in good faith. The NLRC also took note that the affidavits of the persons who conducted the alleged assessment were only submitted as evidence on appeal, and never before the LA. The NLRC explained that in the normal course of events, Alphaland would have at least called the attention of Agustin on the alleged assessment.[23] Aside from failure to apprise Agustin of the reasonable standards against which his performance shall be assessed, Alphaland also failed to serve upon Agustin the notice of termination within a reasonable time from the effective date of termination as required under Section 2, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code.[24] The Motion for Reconsideration[25] filed by Alphaland was denied by the NLRC in its Resolution dated March 15, 2013.

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[22] Id. at 296.

[23] Id. at 298.

[24] Id. at 297-299.

[25] Id. at 301-311.

Therefrom, Alphaland filed a Petition for *Certiorari*[26] before the CA, which rendered the assailed Decision.

Ruling of the Court of Appeals

In denying the petition, the CA held that the LA and NLRC did not err in finding that Alphaland failed to specify the necessary standards for Agustin's work as an Executive Chef.[27] The standards set forth in the employment contract indeed were too general for Agustin to be informed of what constitutes "the highest quality of professional service."[28] The NLRC correctly disregarded the Affidavits executed by the members of the Balesin Club. Such Affidavits were presented for the first time only on appeal and Alphaland did not offer any explanation for such belated submission.[29] Agustin's claims for reinstatement, additional backwages and damages cannot be granted due to Agustin's failure to appeal these awards.[30] The awards granted by the LA and affirmed by the NLRC were already final and binding.[31] The CA also denied the Motion for Reconsideration filed by Alphaland.

In his Petition, Agustin prays for reinstatement and payment of additional backwages from the date of his illegal dismissal.[32] This relief is based on the premise that he shall be deemed a regular employee because no standards were made known to him at the time of his employment.[33] Further, Agustin argues that following the ruling in the case of *St. Michael's Institute v. Santos*,[34] he may still be awarded backwages and

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[26] Id. at 336-352.

[27] Id. at 12.

[28] Id. at 13.

[29] Id. at 13-14.

[30] Id. at 14.

[31] Id.

[32] Id. at 46.

[33] Id. at 41-42.

[34] 422 Phil. 723 (2001).

reinstatement even if he did not appeal the Decisions of the LA and NLRC.[35]

This Court required the parties to file subsequent pleadings, such as Comment, Reply, and their respective Memoranda.[36] In its Memorandum, Alphaland mainly points out that Agustin did not appeal the Decision of the LA and merely included in his Opposition and Answer a prayer for relief which was not among the issues raised in the Appeal. Alphaland argues that Agustin was in effect belatedly appealing the Decision of the LA in the guise of his Opposition and Answer.[37] Agustin did not file a Petition for *Certiorari* before the CA and merely opposed Alphaland's Petition for *Certiorari* filed before the CA.[38] In his Comment opposing the said Petition, Agustin "cunningly interjected the issue of his reinstatement, and his entitlement to backwages and 13th month pay until his actual reinstatement, which issues were not covered by respondent Alphaland's Petition."[39] Moreover, Agustin's full satisfaction with the Decision of the LA is unmistakable because he has not only moved for the execution and implementation thereof, but had already received the benefits arising from the said Decision.[40]

Ruling of the Court

The petition is meritorious.

In the case of *St. Michael's Institute v. Santos*,[41] a group of teachers with regular employment status were dismissed for joining a public rally and disrupting classes.[42] The LA found

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[35] *Rollo*, pp. 43-45.

[36] Id. at 455-456.

[37] Id. at 459.

[38] Id. at 460.

[39] Id.

[40] Id. at 465.

[41] Supra note 19.

[42] Id. at 727-728.

and declared that there was just cause for the dismissal since they were guilty of dereliction of duty and insubordination.[43] On appeal, the NLRC reversed the ruling of the LA and held that the teachers had been illegally dismissed. However, the NLRC in its Decision did not award backwages. The employer in *St. Michael's Institute* filed a Petition for *Certiorari*. The CA sustained the decision of the NLRC and in addition, awarded backwages to the teachers who were illegally dismissed.[44] Undaunted, the employer filed a Petition for Review on *Certiorari* before this Court. In the said petition, the employer averred that when the CA awarded backwages in favor of the employees, it "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision."[45] To this issue, this Court ruled that the award of backwages is merely a legal consequence of the finding that the employees were illegally dismissed by the employer. In unequivocal terms, this Court explained in the said case that: "the [Court] is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests or to avoid dispensing piecemeal justice."[46]

The case of Alphaland and Agustin presents Us with a similar factual milieu. In the same vein as *St. Michael's Institute*, the case at bar involves a regular employee who was declared illegally dismissed yet was not properly awarded backwages from the time of illegal dismissal until reinstatement.

Based on two grounds, this Court holds that Agustin was a regular employee of Alphaland.

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[43] Id. at 729.

[44] Id. at 731.

[45] Id. at 735.

[46] Id.

First, The LA, NLRC, and later on the CA uniformly found that Agustin was hired from the management's standpoint as a probationary employee but was not informed of the reasonable standards by which his probationary employment was to be assessed. The standards set are too general and failed to specify with clarity what is expected of Agustin as an Executive Chef.[47] Consequently, the lower courts found that Agustin's dismissal was illegal. This finding warrants the application of the following self-explanatory provisions:

Article 296 of the Labor Code

Article 296. [281] *Probationary Employment*. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

Section 6 (d) of the Implementing Rules of Book VI, Rule I of the Labor Code

Section 6. *Probationary Employment*. — There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x x x x x x

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. **Where no standards are made known to the employee at that time, he shall be deemed a regular employee**. (Emphasis supplied).

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[47] *Rollo*, p. 245.

Considering the foregoing, the probationary period set in the contract of employment dated July 6, 2011 is therefore purposeless. In no case was Agustin hired on a probationary status by Alphaland. As of July 6, 2011, Agustin became part of Alphaland Corporation as a regular employee of the company without a fixed term of employment.

Second, Agustin served as a consultant prior to being hired as an Executive Chef allegedly on a probationary status. The Consultancy Engagement Offer[48] provides that Agustin served as a consultant from June 6, 2011 until July 5, 2011, with a salary of ₱50,000.00. Narrated in the Memorandum[49] submitted by Alphaland, Agustin as a consultant, was responsible for setting up the kitchen, choosing the equipment, laying out the job description for each kitchen staff, and the preparation of menus for all cuisines that the Club will offer. Following the completion of Agustin's tasks as the Club's consultant, Alphaland proceeded to search for an Executive Chef to head the Club's restaurants. Since the opening of the Club was fast approaching, Alphaland hired Agustin as the Executive Chef for all the Club's restaurants. Alphaland claims that since it still had to assess and determine whether Agustin's skills as Executive Chef are at par with what the Club requires, it hired Agustin as a probationary employee.[50]

We find this circumstance contrary to the ordinary course of business. Mainly, consultants are hired to provide their expert advice and opinion on what needs to be done. Records show that Agustin has been in the culinary industry for almost 19 years already, won several contests, and has served well-known establishments in the Philippines and abroad.[51] When Alphaland hired Agustin as Consultant, without doubt, it was fully aware of his qualifications and skills to set up the "kitchen" at the Balesin Island Club. This Court cannot agree that Agustin was hired as Executive Chef on probationary basis since the tasks

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[48] Id. at 226.

[49] Id. at 457-473.

[50] Id. at 462.

[51] Id. at 35.

for which Agustin was engaged as a Consultant were the very same tasks he had to do as an Executive Chef. In both engagements, Agustin was tasked to take over the kitchen planning.

Dismissal of regular employees by the employer requires the observance of the two-fold due process, namely: (1) substantive due process; and (2) procedural due process. Alphaland failed to observe both substantive and procedural due process in dismissing Agustin from employment.

Substantive due process means that the dismissal must be for any of the: (1) just causes provided under Article 297 of the Labor Code or the company rules and regulations promulgated by the employer; or (2) authorized causes under Articles 298 and 299 thereof. None of these causes exist in the case at bar.

The attendant circumstances in the instant case show that the issue of Agustin's alleged failure to meet the standards set by Alphaland as a ground for terminating employment was not proven with substantial evidence. The NLRC correctly observed that "the record is bereft of any persuasive showing that such dissatisfaction is real and in good faith, not feigned. How the assessment was made, who made it, and the result of such assessment are not known. It is only on appeal that Alphaland submitted the affidavits of Mario A. Oreta and Conrad Nicholson M. Celdran who assessed and evaluated the performance of [Agustin]. [Alphaland] offered no explanation why such affidavits were presented only on appeal. What comes clear is that the execution of these affidavits — more than one year from [Agustin's] termination — is just an afterthought x x x."[52]

Neither does the purported unsatisfactory performance of Agustin as Executive Chef fall under any of the just causes provided in Article 297 of the Labor Code, such as gross and habitual neglect or serious misconduct and similar offenses. For misconduct or improper behavior to be a just cause for dismissal, there must be a valid company rule or regulation

[52] Id. at 298.

violated. As found by the labor tribunals and by the CA, the standards set by Alphaland are too general to apprise the employee of what he is expected to do or accomplish. Expecting Agustin "to render the highest quality of professional service and to always pursue the interest of the company"[53] falls short of the required reasonable standards to be provided by the employer in order to serve as guidelines for the employee for purposes of evaluating his performance. Moreover, even if the standards for an Executive Chef need not be spelled out, Agustin has not acted in a manner contrary to basic knowledge and common sense.

Procedural due process means that the employee must be accorded due process required under Article 292 (b) of the Labor Code, the elements of which are the twin-notice rule and the employee's opportunity to be heard and to defend himself.[54] In the case of Agustin's dismissal, neither of these elements was satisfied.

Agustin's dismissal, through a Notice of Termination[55] dated November 2, 2011, took effect upon notice. Alphaland does not deny the fact that only one Notice of Termination was sent to Agustin. Without presenting any evidence, Alphaland also failed to discharge its burden of proving that it afforded Agustin the opportunity to be heard and to explain himself.

Pursuant to Article 294 of the Labor Code, an illegally dismissed employee is entitled to the following reliefs: (1) reinstatement without loss of seniority rights and other privileges; (2) full backwages, inclusive of allowances; and (3) other benefits or their monetary equivalent.

Notably, the lower courts awarded backwages merely for the unexpired portion of Agustin's probationary employment.

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[53] Id. at 182.

[54] *Pascua v. NLRC*, 351 Phil. 48 (1998); *Manila Electric Co. v. NLRC*, 506 Phil. 338 (2005); *St. Luke's Medical Center, Inc. v. Notario*, 648 Phil. 258 (2010); *Lima Land, Inc. v. Cuevas*, 635 Phil. 36 (2010).

[55] *Rollo*, p. 169.

The fact that Agustin did not appeal the Decision of the LA does not bar this Court from awarding additional backwages, *i.e.*, backwages from the time of his illegal dismissal until reinstatement as a regular employee. Following the ruling in *St. Michael's Institute*, the grant of such additional backwages is "necessary in arriving at a complete and just resolution of the case"[56] and is a relief granted by substantive law which cannot be defeated by mere procedural lapses. This award is merely a logical consequence of the finding that Agustin was a regular employee who has been illegally dismissed by Alphaland.

Agustin is thus entitled to backwages reckoned from the time he was illegally dismissed on November 4, 2011, with a ₱122,500.00 monthly salary, until his reinstatement. However, this Court finds that the award of separation pay in lieu of reinstatement will be in the best interest of both parties. This Court recognizes the fact that a continued relationship between Agustin and Alphaland is no longer viable due to the strained relations[57] and antagonism definitely brought about by the long lapse or passage of time that Agustin was out of Alphaland's employment from the date of his dismissal until the final resolution of this case.[58]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated September 26, 2014 and the Resolution dated April 20, 2015 of the Court of Appeals in CA-G.R. SP No. 130198 are hereby **AFFIRMED with MODIFICATION** in that Alphaland Corporation is **ORDERED** to pay petitioner Redentor Y. Agustin the following:

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[56] *St. Michael's Institute v. Santos,* supra note 19 at 735.

[57] *Bordomeo v. CA*, 704 Phil. 278, 300 (2013); *Naranjo v. Biomedica Health Care, Inc.*, 695 Phil. 551, 573-574 (2012); *Aliling v. Feliciano*, 686 Phil. 889, 916-917 (2012); *Velasco v. NLRC*, 492 SCRA 686, 699 (2006); *St. Luke's Medical Center, Inc. v. Notario*, 648 Phil. 258, 299-300 (2010); *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 83 (2004).

[58] *Sanoh Fulton Philippines, Inc. v. Bernardo and Taghoy*, 716 Phil. 378, 391 (2013); *Blue Sky Trading Co. v. Bias*, 683 Phil. 689, 711 (2012); *Abaria v. NLRC*, 678 Phil. 64, 96-97 (2011); *St. Luke's Medical*

(a) Backwages from the date he was illegally dismissed on November 4, 2011 until the finality of this Decision; and

(b) Separation pay computed from July 6, 2011 until the finality of this Decision, at the rate of one (1) month salary for every year of service.

The amount of ₱245,000.00 previously received by petitioner Redentor Y. Agustin by virtue of the Decision of the Labor Arbiter must be deducted from the foregoing awards.

Further, Alphaland Corporation is **ORDERED** to pay petitioner Redentor Y. Agustin legal interest of six percent (6%) *per annum* of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.[59]

The Labor Arbiter is hereby **ORDERED** to make another recomputation according to the above directives.

SO ORDERED.

Leonen (Chairperson), *Gesmundo, Lopez,*[*] and *Gaerlan, JJ.*, concur.

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[59] See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

[*] Designated as additional Member per Raffle dated June 29, 2020.

THIRD DIVISION

[G.R. No. 219025. September 9, 2020]

ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION, *Petitioner, v.* **ASIAN INSTITUTE OF MANAGEMENT, INC.,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW ON *CERTIORARI* IS CONFINED TO REVIEWING THE DETERMINATION OF THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION AND OTHER JURISDICTIONAL ERRORS ON THE PART OF THE LOWER TRIBUNAL.— It is a general rule that this Court is not a trier of facts. In reviewing a petition for review on certiorari under Rule 45, this Court is limited to determining whether the Court of Appeals was correct in finding the presence or absence of grave abuse of discretion and jurisdictional errors on the lower tribunal's part.

2. ID.; ID.; ID.; ID.; THE FACTUAL FINDINGS OF THE LABOR TRIBUNALS ARE ACCORDED RESPECT AND FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.— It is also a well-settled rule that the findings of the labor tribunals, when supported by substantial evidence, are afforded not only with respect but even finality, given their expertise in the matters within their jurisdiction. NLRC's findings are deemed generally conclusive once affirmed by the Court of Appeals.

Nevertheless, jurisprudence has laid down several exceptions that will allow this Court to review the facts of the case. Thus, when the petitioner alleges and adequately proves that there is "insufficient or insubstantial evidence on record to support the findings of the tribunal or court *a quo*," then this Court "may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction."

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICE; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; QUANTUM OF EVIDENCE; THE

PARTY ALLEGING UNFAIR LABOR PRACTICE HAS THE BURDEN OF PROVING IT BY SUBSTANTIAL EVIDENCE. — The crux of this case is whether or not respondent's actions constitute unfair labor practice. This concept is defined in Article 247 of the Labor Code of the Philippines . . . .

Unfair labor practice cases follow the general rule that the one who alleges has the burden of proving it; thus, *onus probandi* lies with petitioner to substantiate its claims of unfair labor practice through substantial evidence. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

4. ID.; ID.; ID.; ACTS THAT INTERFERE WITH THE EMPLOYEES' RIGHT TO SELF-ORGANIZATION CONSTITUTE UNFAIR LABOR PRACTICE; TEST THEREOF.— [T]he Court of Appeals failed to consider that unfair labor practice not only involves acts that violate the right to self-organization, but also covers several acts enumerated in Article 259 of the Labor Code . . . .

The law explicitly states that any act or practice that interferes or deters an employee from joining, participating, or assisting in the formation and administration of a labor organization constitutes unfair labor practice.

In *Insular Life Assurance Co., Ltd. Employees Association — NATU v. Insular Life Assurance Co. Ltd.*, this Court held that:

> The test of whether an employer has interfered with and coerced employees within the meaning of subsection (a) (1) is whether the employer has engaged in conduct which it may *reasonably* be said tends to interfere with the free exercise of employees' rights under section 3 of the Act, and it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a *reasonable* inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.

5. ID.; ID.; ID.; MANAGEMENT PREROGATIVE; TOTALITY OF CONDUCT DOCTRINE; IN DETERMINING WHETHER AN EMPLOYER HAS EXERCISED ITS MANAGEMENT PREROGATIVE IN GOOD FAITH, THE EMPLOYER'S

ACTIONS SHOULD NOT BE TAKEN AS SINGULAR, INDIVIDUAL ACTIONS, BUT MUST BE LUMPED TOGETHER WITH ITS PRIOR OR SUCCEEDING ACTS; CASE AT BAR.— Respondent asserts that all its complained acts were done in good faith and exercised per their management prerogative. However, while respondent's actions may be considered as lawful acts, they should not be taken as singular, individual actions, but must be lumped together with prior or succeeding acts of respondent or its representatives. This is based on the Totality of Conduct Doctrine which states that "the culpability of an employer's remarks were to be evaluated not only on the basis of their implicit implications, but were to be appraised against the background of and in conjunction with collateral circumstances." . . .

Respondent's questioned acts, when taken in context with the dispute between its management and that of petitioner's, indicate interference. Petitioner enumerates numerous instances to demonstrate respondent's intention of deterring petitioner's formation and administration of labor organization. Moreover, the complained acts show respondent's continuous refusal to recognize petitioner as a labor organization. This is made apparent through the letter of Sycip, then-AIM Chairman of the Board of Trustees, replying to petitioner's letter seeking recognition as a formal labor organization. . . .

. . .

Although these letters were not written by respondent, it cannot be denied that they played a role in influencing its decision. The correspondences demonstrate how the idea of a union looms over the heads of the institution and how it is treated, not as a tool to improve the working relationship between employer and employees, but as a threat to the institution's development and efficiency.

6. ID.; ID.; ID.; ID.; THE UNREASONABLE DELAY AND EVENTUAL DENIAL OF THE APPLICATION FOR FULL PROFESSORSHIP, TAKEN TOGETHER WITH OTHER ACTIONS, ARE UNFAIR LABOR PRACTICES; CASE AT BAR.— Indeed, employers have a wide latitude on how to conduct their business affairs exercising their discretion and judgment. . . .

However, management prerogative should be exercised in accordance with justice and fair play. . . .

. . .

Respondent's denial of Professor Dacanay's application for financial support was allegedly because her chosen PhD in Social Entrepreneurship was not a priority in a business school like respondent. The Court of Appeals found this to be within respondent's rights, as financial assistance was neither a customary practice nor a demandable right. However, we find that this justification is untenable since records show that another professor was approved of financial assistance for the same PhD course. . . .

. . .

On respondent's removal of Professor Manikan from the faculty line up and its assignment of another professor to teach her class, the Court of Appeals found that it had nothing to do with her membership with petitioner, and was carried out since Professor Manikan's expertise was in the fields of arts, self-mastery, and spirituality, which were less demanded by the institution.

However, we note that if the course she teaches was truly superfluous, her class should have been dissolved altogether instead of simply replacing the professor. . . .

. . .

Hence, this Court cannot agree with the Court of Appeals and the NLRC in absolving respondent of any liability. Respondent's actions, when taken together, are unfair labor practices.

7. ID.; ID.; ID.; MANAGERIAL EMPLOYEE, DEFINED; PROFESSORS AND FACULTY MEMBERS ARE NOT MANAGERIAL EMPLOYEES AND MAY THEREFORE FORM A UNION; CASE AT BAR.— Respondent's contention that professors and faculty members cannot form a union because they are managerial employees is untenable. Article 212(m) of the Labor Code defines a managerial employee as "one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees . . . [or to] effectively recommend such managerial actions[.]"

As respondent demonstrated through the years, it is respondent as the institution which controls the workload, courses, and subjects assigned to a faculty members. Moreover, respondent decides whether to amend, renew, or terminate a professor's contract altogether, leaving their faculty members at its mercy. All of these contradict its stand that the professors are managerial employees.

8. ID.; ID.; ID.; AN EMPLOYER FOUND GUILTY OF UNFAIR LABOR PRACTICE IS LIABLE FOR MORAL AND EXEMPLARY DAMAGES.— Respondent is liable to pay moral and exemplary damages. Per *SONEDCO Workers Free Labor Union v. Universal Robina Corp.*:

> Unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. As the conscience of the government, it is the Courts sworn duty to ensure that none trifles with labor rights.
>
> For this reason, we find it proper in this case to impose moral and exemplary damages on private respondent.

This Court orders the payment of moral damages of ₱100,000.00 and exemplary damages of ₱200,000.00.

APPEARANCES OF COUNSEL

Yorac Sarmiento Arroyo Chua Coronel Law Office for petitioner.

Laguesma Magsalin Consulta & Gastardo for respondent.

D E C I S I O N

LEONEN, *J.*:

An employer has a wide latitude on how to conduct its business affairs per its discretion and judgment through its management prerogative. However, such a right should be exercised in accordance with duly constituted laws, justice, and fair play.

Moreover, acts of an employer, although seemingly lawful, must be taken in consideration with the totality of its acts, including preceding and subsequent circumstances. The employer's right to management prerogative will not absolve it of liability if its acts are against the law or motivated by unlawful cause constituting unfair labor practices.

This Court resolves a Petition for Review on Certiorari[1] filed by Asian Institute of Management Faculty Association assailing the Decision[2] and Resolution[3] of the Court of Appeals. The Court of Appeals affirmed the National Labor Relations Commission's (NLRC) Decision and held that Asian Institute of Management, Inc. is not guilty of unfair labor practice.[4]

Asian Institute of Management Faculty Association (AFA) is a labor organization registered with the Department of Labor and Employment. It was formed by faculty members of Asian Institute of Management (AIM) on October 14, 2004 to act as a collective body on behalf of its members for all matters concerning their rights and interests as employees.[5]

On September 6, 2005, AFA filed a Resolution asking AIM's management to recognize it as a legitimate labor organization.[6] AIM disregarded this, but the issue was elevated to AIM's Board of Trustees, headed by Mr. Washington Sycip (Sycip). The Board

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[1] *Rollo*, pp. 28-95.

[2] Id. at 100-A-112. The February 4, 2014 Decision docketed as CA-G.R. SP No. 108497 was penned by Associate Justice Noel G. Tijam (former member of this Court) and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (former member of this Court) and Agnes Reyes-Carpio of the Seventh Division, Court of Appeals, Manila.

[3] Id. at 113-115. The June 16, 2015 Resolution docketed as CA-G.R. SP No. 108497 was penned by Associate Justice Noel G. Tijam (former member of this Court) and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (former member of this Court) and Agnes Reyes-Carpio of the Former Seventh Division, Court of Appeals, Manila.

[4] Id. at 111.

[5] Id. at 31.

[6] Id. at 102.

refused to recognize AFA for "philosophical, economic[,] and governance" considerations.[7]

On February 26, 2007 to March 3, 2007, AIM conducted a "Leadership Week" with its alumni and members of the Board of Trustees and Board of Governors as participants.[8] There, AFA, through the law firm of Yorac Arroyo Chua Caedo & Coronel, slipped a letter dated February 27, 2007 under the members of the Board of Trustees and Board of Governors' respective hotel room doors.[9] In the letter, AFA claimed that AIM failed to allocate a portion of the money received from the students' tuition fee increases to the salaries of the professors. It demanded AIM to pay them ₱984,137,921.20 worth of salary increases for the faculty and other employees.[10]

On March 8, 2007, AFA filed a Complaint for unfair labor practice against AIM. It prayed for actual, moral, and exemplary damages, as well as attorney's fees.[11]

On April 27, 2007, AIM issued Notices of Administrative Charges filed against AFA Chairman Dr. Victor Limlingan (Dr. Limlingan) and AFA President Professor Emmanuel Leyco[12] (Professor Leyco) charging them with dysfunctional behavior, a grave offense under AIM's Policy Manual for Faculty. The administrative charge was due to the distribution of the February 27, 2007 letter which allegedly meant to disrupt Leadership Week and malign the school's reputation.[13]

On May 2, 2007, Dr. Limlingan and Professor Leyco submitted their joint explanation to AIM. A few days later, AFA filed the complaint for unfair labor practice subject of this Petition.[14]

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[7] Id.

[8] Id. at 177.

[9] Id. at 10.

[10] Id. at 177.

[11] Id. at 101.

[12] Id.

[13] Id. at 1314.

[14] Id. at 177-178.

AFA stated in its Position Paper that AIM's management abused and discriminated against its members, particularly: (1) President Francis Estrada; (2) Vice-President Victor Tan; and (3) Dean Victoria Licuanan, after registering as a labor organization with the Department of Labor and Employment on December 20, 2004.[15]

To prove AIM's alleged anti-union stance, AFA enumerated the following acts of harassment:

1) Despite Prof. Jose Jesus Roces (Prof. Roces) permanent status of employment, he was assigned fewer teaching loads and was merely given a 6-month employment contract. Thereafter, he filed a Complaint for Reinstatement.
2) The Application for Full Scholarship filed by AFA's Secretary, Prof. Ma. Lisa Dacanay (Prof. Dacanay), was denied because she was a signatory of AFA's DOLE registration.
3) AFA's Vice President Dr. Gloria Chan (VP Chan), was informed that her Application for Full Professorship, would be discussed first with the Board of Trustees due to AFA's previous registration with the DOLE. Upon the denial of her application, she was not allowed to appeal the Board's decision, contrary to the AIM's prevailing rules.
4) Associate Dean Ricardo Lim (Assoc. Dean Lim) admitted and even confirmed in a meeting that Prof. Jacinto Gavino's (Prof. Gavino), research proposal was not acted upon by Dean Licuanan because of Prof. Gavino's membership with AFA.
5) Prof. Felixberto Bustos (Prof. Bustos), who was both the President of the ACT Group as well as AIM's JBF Center for Banking and Finance, was accused of abusing his authority in relation to a program entered with the Bangko Sentral ng Pilipinas on February 25, 2004, known as Chartered Financial Analyst Review (BSP Program). Allegedly, Prof. Bustos diverted the BSP Program to the ACT Group instead of promoting AIM's interest by coursing said program to the JBF Center.
6) Dr. Eduardo Morato (Dr. Morato), Prof. Alejandrino Ferreria (Prof. Ferreria) and Prof. Herminio Coloma (Prof. Coloma), key figures in the formation of AFA, were allegedly subjects of an investigation for a case on grounds of conflict of interest.

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[15] Id. at 8.

> This information was mentioned in an email which the management circulated among faculty members.[16]

On May 17, 2007, AFA filed a Petition for Certification Election with the Department of Labor and Employment, which AIM subsequently opposed, claiming that the faculty members of AIM were managerial employees prohibited from forming a union.[17]

On June 2008, the Labor Arbiter granted AFA's Complaint and held that AIM is guilty of unfair labor practice.[18] The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, this Office finds respondent Asian Institute [of] Management, Inc. to be guilty of unfair labor practice under Article 248 (a) of the Labor Code, as amended.
>
> SO ORDERED.[19]

AFA partially appealed the June 30, 2008 Decision on the award of damages and issuance of a cease and desist order. AIM appealed the Decision as well.[20]

The NLRC reversed and set aside the Labor Arbiter's findings. It found that the acts complained of were in the exercise of AIM's management prerogative.[21] The dispositive portion of the National Labor Relations Commission provides:

> WHEREFORE, the decision dated 5 June 2008 is VACATED and SET ASIDE.
>
> The complaint for unfair labor practice is DISMISSED for lack of merit.
>
> SO ORDERED.[22]

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[16] Id. at 101-102.

[17] Id. at 103.

[18] Id. at 104.

[19] Id. at 105.

[20] Id.

[21] Id. at 186-188.

[22] Id. at 189.

Upon review on certiorari, the Court of Appeals affirmed the NLRC's Decision. To be considered unfair labor practice, the Court of Appeals explained that the acts committed must "violate the workers' right to organize."[23] However, there was no indication that AIM's actions in suspending or refusing to renew the contracts of any of its teachers led to "discrimination or harassment."[24] On the contrary, AIM's exercise of its management prerogative was in good faith.[25]

The dispositive portion of the assailed Decision reads:

> WHEREFORE, the petition is DENIED. The Public Respondent's NLRC's December 18, 2008 Decision, and February 9, 2009 Resolution, in NLRC LAC Case No. 00-05-04524-07 are hereby AFFIRMED.
>
> SO ORDERED.[26]

AFA then filed a Motion for Reconsideration, which the Court of Appeals denied in its June 16, 2015 Resolution.[27]

On August 24, 2015, AFA filed their Petition for Review on Certiorari[28] before this Court.

On October 21, 2015, this Court required respondent to comment on the Petition.[29]

After requesting for additional time to Comment twice,[30] respondents filed their Comment on January 25, 2016.[31]

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[23] Id. at 106.

[24] Id. at 107.

[25] Id.

[26] Id. at 111.

[27] Id. at 113-115.

[28] Id. at 28-95.

[29] Id. at 1288.

[30] Id. at 1289-1290 and 1295-1297.

[31] Id. at 1307-1350.

On April 17, 2017, this Court required petitioner to file a reply to the comment on the petition.[32] Petitioners filed three motions for additional time to file a reply[33] before submitting its Reply on July 21, 2017.[34]

In its Petition for Review, petitioner argues that respondent's acts against it could not be considered management prerogative, as they were in bad faith and were clearly intended to harass and discriminate against petitioner, its officers, members, and organizers.[35] Moreover, it asserts that the totality of evidence it presented proves that respondent is guilty of unfair labor practice.[36]

In claiming that the Court of Appeals erred when it relied on the presumption of good faith, petitioner enumerated respondent's numerous actions that demonstrated bad faith and malice.[37] Among these, petitioner claims that the Court of Appeals ignored Sycip's categorical statement in his March 21, 2006 letter, vehemently refusing to recognize petitioner's legal personality and the rights of its members for self-organization.[38]

Petitioner submits that the Court of Appeals erred in holding that respondent's opposition against its Petition for Certification Election does not equate to unfair labor practice.[39] Further, it claims that the Court of Appeals "should have sanctioned [respondent]" for violating Section 1, Rule VIII of Department of Labor and Employment Department Order No. 40-F-03, which mandates that in certification election proceedings, "the employer shall not be considered a party with a concomitant right to oppose a petition for certification election[.]"[40]

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[32] Id. at 1687.

[33] Id. at 1688-1707.

[34] Id. at 1710-1735.

[35] Id. at 55.

[36] Id. at 56.

[37] Id. at 58.

[38] Id.

[39] Id. at 63.

[40] Id. at 64.

Petitioner also underscored that the Court of Appeals issued a January 8, 2013 Decision denying respondent's appeal in a separate petition it filed in its bid to cancel petitioner's Certificate of Registration. In this Decision, the Court of Appeals found respondent's Petition to be bereft of merit.[41]

Petitioner added that the Court of Appeals erred in disregarding the numerous complained acts of harassment and discrimination.[42]

In its Comment,[43] respondent asserts that petitioner merely rehashed the same matters already ruled upon by the Court of Appeals and the NLRC, which both absolved it of unfair labor practice.

Respondent claims that petitioner filed the complaint on unfair labor practice due to the administrative charges filed against Professor Leyco and Dr. Limlingan[44] and their eventual dismissal from respondent.[45]

Respondent further asserts that the Petition lacks the mandatory and jurisdictional requirements since the verification and certification against forum shopping attached was executed and notarized on August 20, 2015, four days earlier than the date of the Petition. Consequently, it asks that the petition be treated as an unsigned pleading.[46]

It also claimed that other than petitioner's allegations, there is no proof that respondent's actions were committed to deliberately harass and discriminate petitioner's officers and members.[47] It submitted that this was correctly found by the Court of Appeals in its assailed Decision and Resolution.[48]

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[41] Id.

[42] Id. at 67.

[43] Id. at 1307-1350.

[44] Id. at 1313.

[45] Id.

[46] Id. at 1317-1318.

[47] Id. at 1320.

[48] Id. at 1321.

Instead, they offer that the acts cited by petitioner are either false, or legitimate acts of management prerogative.[49]

For this Court's resolution are the following issues: (1) whether or not respondent committed unfair labor practice; and (2) whether or not respondent is liable for damages.

The petition is meritorious.

I

It is a general rule that this Court is not a trier of facts. In reviewing a petition for review on certiorari under Rule 45, this Court is limited to determining whether the Court of Appeals was correct in finding the presence or absence of grave abuse of discretion and jurisdictional errors on the lower tribunal's part.[50] In *Meralco Industrial v. National Labor Relations Commission*,[51] it was held:

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[52] (Citation omitted)

It is also a well-settled rule that the findings of the labor tribunals, when supported by substantial evidence, are afforded not only with respect but even finality, given their expertise in the matters within their jurisdiction. NLRC's findings are deemed generally conclusive once affirmed by the Court of Appeals.[53]

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[49] Id. at 1328.

[50] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014) [Per J. Leonen, Second Division].

[51] 572 Phil. 94-118 (2008) [Per J. Chico-Nazario, Third Division].

[52] Id. at 117.

[53] *Bankard, Inc. v. National Labor Relations Commission*, 705 Phil. 428, 436-437 (2013) [Per J. Mendoza, Third Division].

Nevertheless, jurisprudence has laid down several exceptions that will allow this Court to review the facts of the case.[54] Thus, when the petitioner alleges and adequately proves that there is "insufficient or insubstantial evidence on record to support the findings of the tribunal or court *a quo*," then this Court "may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction."[55]

II

The crux of this case is whether or not respondent's actions constitute unfair labor practice. This concept is defined in Article 247 of the Labor Code of the Philippines:

> Article 258 [247]. Concept of unfair labor practice and procedure for prosecution thereof. — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. (Citation omitted)

Unfair labor practice cases follow the general rule that the one who alleges has the burden of proving it; thus, *onus probandi* lies with petitioner to substantiate its claims of unfair labor practice through substantial evidence.[56] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[57]

Here, both the NLRC and the Court of Appeals found that petitioner failed to prove its allegations, and that respondent did not commit unfair labor practice. Both held that respondent's

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[54] *Pascual v. Burgos*, 776 Phil. 167-191 (2016) [Per J. Leonen, Second Division].

[55] Id.

[56] *UST Faculty Union v. University of Sto. Tomas*, 602 Phil. 1016, 1025 (2009) [Per J. Velasco, Jr., Second Division].

[57] *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, 476 Phil. 346, 367 (2004) [Per J. Callejo, Second Division].

actions were merely exercises of its right to management prerogative. The pertinent portion of the assailed Court of Appeals Decision reads:

> The Supreme Court has ruled that the prohibited acts considered as unfair labor practice relate to the workers' right to self-organization and to the observance of the [Collective Bargaining Agreement]. It refers to "acts that violate the worker's right to organize." Without that element, the acts, even if unfair, are not unfair labor practice. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.
>
> The employer's right to conduct its business affairs, according to its own discretion and judgment, is well-organized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees. This is a management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work related activities of the employees must be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.
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> Here, there was a dearth of evidence showing, at the very least, that [respondent's] act, either in suspending some of its teacher-employees or refusing to renew their teaching loads, amounted to discrimination or harassment. On the contrary, prerogative, was not only proper, but was done in good faith.[58]

However, the Court of Appeals failed to consider that unfair labor practice not only involves acts that violate the right to self-organization, but also covers several acts enumerated in Article 259 of the Labor Code; thus:

> Article 259. [248] *Unfair Labor Practices of Employers*. — It shall be unlawful for an employer to commit any of the following unfair labor practices:
>
> (a) *To interfere with, restrain or coerce employees in the exercise of their right to self-organization*;

[58] *Rollo*, pp. 13-14.

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or *otherwise interfere with the formation or administration of any labor organization*, including the giving of financial or other support to it or its organizers or supporters;

(e) *To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization*. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided*, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) *To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code*;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships

who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable. (Citations omitted, emphasis supplied)

The law explicitly states that any act or practice that interferes or deters an employee from joining, participating, or assisting in the formation and administration of a labor organization constitutes unfair labor practice.

In *Insular Life Assurance Co., Ltd. Employees Association—NATU v. Insular Life Assurance Co. Ltd.*,[59] this Court held that:

> The test of whether an employer has interfered with and coerced employees within the meaning of subsection (a) (1) is whether the employer has engaged in conduct which it may *reasonably* be said tends to interfere with the free exercise of employees' rights under section 3 of the Act, and it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a *reasonable* inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.[60]

Respondent asserts that all its complained acts were done in good faith and exercised per their management prerogative. However, while respondent's actions may be considered as lawful acts, they should not be taken as singular, individual actions, but must be lumped together with prior or succeeding acts of respondent or its representatives. This is based on the Totality of Conduct Doctrine which states that "the culpability of an employer's remarks were to be evaluated not only on the basis of their implicit implications, but were to be appraised against the background of and in conjunction with collateral circumstances."[61] This was demonstrated in *Insular Life Assurance, Co., Ltd. Employees Association—NATU, et al.*:

> Besides, the letters, Exhibits A and B, should not be considered by themselves alone but should be read in the light of the preceding

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[59] 147 Phil. 194 (1971) [Per J. Castro, En Banc].

[60] Id. at 208-209.

[61] Id. at 209.

and subsequent circumstances surrounding them. The letters should be interpreted according to the "totality of conduct doctrine,"

> Under this 'doctrine' expressions of opinion by an employer which, though innocent in themselves, frequently were held to be culpable because of the circumstances under which they were uttered, the history of the particular employer's labor relations or anti-union bias or because of their connection with an established collateral plan of coercion or interference.[62]

Respondent's questioned acts, when taken in context with the dispute between its management and that of petitioner's, indicate interference. Petitioner enumerates numerous instances to demonstrate respondent's intention of deterring petitioner's formation and administration of labor organization. Moreover, the complained acts show respondent's continuous refusal to recognize petitioner as a labor organization. This is made apparent through the letter of Sycip, then-AIM Chairman of the Board of Trustees, replying to petitioner's letter seeking recognition as a formal labor organization. Sycip's March 21, 2006 letter states:

> While the Board does not object to an association(s) formed by the Faculty to promote the personal and professional development of its members, it categorically objects to the establishment of a union/ collective bargaining unit for a number of philosophical, economic and governance considerations. Management and I would be more than happy to discuss these with any member of the Faculty. Incidentally, these objections are also shared by the AIM Alumni Association (I believe you were provided a copy of their March 3, 2006 letter[.])[63]

As mentioned in the letter, respondent's Alumni Association expressed its concerns against the unionizing of petitioner in its March 3, 2006 letter:

> Accordingly, the board expressed, and would want to register its deep concern for the following reasons:

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[62] Id. at 209.

[63] *Rollo*, p. 284.

1. The apparent contradiction between a unionized Faculty and Graduate School of Management (especially one that purports to be a leading Asian Business School).

2. The conviction that it would be difficult, if not impossible to mobilize badly needed support from the alumni and business community (for recruitment, placement, grants and other types of financing) for a unionized AIM.

Recognizing the importance of alumni/business support suggested by the Institute's Strategic Plan (where we have been invited to participate[)] we believe the unionization of AIM's Faculty would obviate much of our efforts to mobilize such support. We would very much appreciate your conveying our sentiments to the rest of the Board of Trustees.[64]

The Alumni Association's letter clearly objected to petitioner's intent to unionize, short of withdrawing their support to their alma mater if petitioner is successful in their endeavor for a union.

This sentiment was also shared by Wyeth, one of respondent's clients. This was conveyed in its March 28, 2006 Letter[65] stating:

1. We believe AIM has best capability of providing us with required "institutional" education/training;
2. However, we have a concern in principle:

. . . . . .

c. We, however, are aware of a deep division in AIM's faculty and/or constituency, where the threat of creation of a union or whatever guise of collective bargaining hangs painfully over the institution.
d. We have a concern that our key people would be educated in an environment that would be divisive, or even non-optimal.
e. Our concern is deepened by the experience of divisiveness, confrontation to the point of virtual enterprise paralysis as brought about by previous confrontations between Wyeth and its 3 unions. We've seen how debilitating, if not outright destructive these could be.[66]

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[64] Id. at 281.

[65] Id. at 282-283.

[66] Id.

Although these letters were not written by respondent, it cannot be denied that they played a role in influencing its decision. The correspondences demonstrate how the idea of a union looms over the heads of the institution and how it is treated, not as a tool to improve the working relationship between employer and employees, but as a threat to the institution's development and efficiency.

Thus, respondent's questioned actions towards petitioner's different officers and prominent personalities must not be taken individually. Instead, they must be taken in light of these statements by key members of respondent's management and administration, and *vis-à-vis* the preceding and subsequent attending circumstances, in accordance with the totality of conduct doctrine.

Respondent claims that the acts petitioner complained of were not unfair labor practices, but valid and legitimate exercises of management prerogative done in good faith.[67] We hold that this contention does not hold water.

Indeed, employers have a wide latitude on how to conduct their business affairs exercising their discretion and judgment. This was enunciated in *Philcom Employees Union v. Philippine Global Communications*:[68]

> The Court has always respected a company's exercise of its prerogative to devise means to improve its operations. Thus, we have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, supervision and transfer of employees, working methods, time, place and manner of work.
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> This is so because the law on unfair labor practices is not intended to deprive employers of their fundamental right to prescribe and enforce such rules as they honestly believe to be necessary to the proper, productive and profitable operation of their business.[69] (Citations omitted)

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[67] Id. at 1328.

[68] 527 Phil. 540 (2006) [Per J. Carpio, Third Division].

[69] Id. at 562-563.

However, management prerogative should be exercised in accordance with justice and fair play.[70] *Philippine Airlines, Inc. v. Dawal*[71] discussed that the employer's right to management prerogative will not absolve it of liability if its acts are against the law or motivated by unlawful causes:

> [Philippine Airlines'] claim of management prerogative does not automatically absolve it of liability. Management prerogative is not unbridled and limitless. Nor is it beyond this [C]ourt's scrutiny. Where abusive and oppressive, the alleged business decision must be tempered to safeguard the constitutional guarantee of providing "full protection to labor." Management prerogative cannot justify violation of law or the pursuit of any arbitrary or malicious motive.[72] (Citations omitted)

Below are instances which we deem invalid exercises of management prerogative, and constitute unfair labor practices.

For instance, the two-year delay on then-Vice Chairman Dr. Gloria Chan's (Dr. Chan) application for full professorship was unreasonably and purposely stretched out. Respondent claims that this is the ordinary process for an application for full professorship. On the other hand, petitioner asserts that respondent's two-year delay in addressing Dr. Chan's application for full-professorship, and its eventual denial, were motivated by its anti-union stance.[73] This is confirmed in Dean Licuanan's e-mail in response to Dr. Chan's inquiry on the status of her application:

> No, I am not seeking a policy against promotion of AFA members. What I specifically said is that I AM IN A QUANDARY AS TO HOW TO ACT IN LIGHT OF AFA REGISTERING AS A LABOR UNION WITH DOLE. . . . Being in a quandary I want to seek advice from others including the Trustees, since I genuinely do not know what to do.[74] (Citation omitted)

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[70] *Julie's Bakeshop v. Arnaiz*, 682 Phil. 95, 111 (2012) [Per J. Del Castillo, First Division].

[71] 781 Phil. 474 (2016) [Per J. Leonen, Second Division].

[72] Id. at 501.

[73] Id. at 71.

[74] *Rollo*, p. 71.

Respondent stresses that the delay was not done intentionally, since it takes several months to convene the Permanent Rank and Tenure Committee composed of 10 full professors for deliberations. However, records show that the deliberations on Dr. Chan's application took place two years after its submission.[75]

Respondent further underscores how two union members of the Permanent Rank and Tenure Committee voted to deny Dr. Chan's application, and that another union member, Professor Jacinto Gavino, was granted full professorship. Thus, it claims that there was no discrimination against union members.[76] Nevertheless, this Court notes that Dr. Chan was a more prominent figure in the union, and thus more susceptible to being a target of unfair labor practice to serve as an example to the other members of the labor organization.

Respondent's denial of Professor Dacanay's application for financial support was allegedly because her chosen PhD in Social Entrepreneurship was not a priority in a business school like respondent.[77] The Court of Appeals found this to be within respondent's rights, as financial assistance was neither a customary practice nor a demandable right.[78] However, we find that this justification is untenable since records show that another professor was approved of financial assistance for the same PhD course.

In addition, respondent's act of circulating an e-mail to all its faculty members on November 11, 2005, informing petitioner's President, Professor Herminio Coloma, and active members Dr. Eduardo Morato and Prof. Alejandrino Ferreria, that they will be subjected to an investigation for alleged acts of conflict of interest — only to not pursue the investigation without retracting its statement, displays respondent's intent

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[75] Id. at 710.

[76] Id. at p. 1330.

[77] Id. at p. 15.

[78] Id.

to malign and discredit the officers and active members of the labor organization.[79]

Furthermore, the non-renewal of Professor Jesus Roces's (Professor Roces) and Professor Cecile Manikan's (Professor Manikan) contracts, both of whom are petitioner's tenured professors and active members, is likewise suspicious.[80] In the assailed decision, it was found that their termination was well-within respondent's right to regulate the work assignments of its professors.[81]

As to Professor Roces, the Court of Appeals found that he was properly removed from his post since he garnered a unanimous vote for termination from the Permanent Rank and Tenure Committee, with two votes coming from two of petitioner's members.[82]

However, in the separate case of *Asian Institute of Management v. The National Labor Relations Commission and Jose Jesus F. Roces*,[83] the Court of Appeals affirmed the NLRC's finding that Professor Roces's termination was illegal for not following substantial and procedural due process.[84]

On respondent's removal of Professor Manikan from the faculty line up and its assignment of another professor to teach her class, the Court of Appeals found that it had nothing to do with her membership with petitioner, and was carried out since Professor Manikan's expertise was in the fields of arts, self-mastery, and spirituality, which were less demanded by the institution.[85]

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[79] Id. at 711.

[80] Id. at 712 and 718.

[81] Id. at 14 and 16.

[82] Id. at 14.

[83] Id. at 1109-1130.

[84] Id. at 1125.

[85] Id. at 16.

However, we note that if the course she teaches was truly superfluous, her class should have been dissolved altogether instead of simply replacing the professor. Moreover, there is no truth to the assertion that the courses she taught were not in demand, as students of petitioner's institution formally filed a petition asking for Professor Manikan's reinstatement.[86] Similarly, members of the department that Professor Manikan was part of, the Center for Development Management, vehemently opposed respondent's action through a public statement in support of Professor Manikan.[87]

Another act of harassment was inserting a warning letter in the 201 file of Professor Leyco for allegedly "inciting students to take sides" in relation to Professor Manikan's case.[88] However, no investigation took place before this was indicated in the permanent file of Professor Leyco.[89]

Similarly, the one-year suspension without pay of Dr. Limlingan and Professor Leyco for their February 27, 2007 letter is a form of union busting. Respondent declared that their act was meant to disrupt Leadership Week and malign the school's reputation; thus, administratively penalizing them with the suspension without pay.[90]

However, the suspension was found to be illegal by the Court of Appeals in *Victor Limlingan, et al. v. National Labor Relations Commission, et al.*, docketed as CA-G.R. SP No. 106714. In the decision which has now reached finality, the Court of Appeals held that although Dr. Limlingan and Professor Leyco should have exercised more prudence in the circulation of their demands to the management, it cannot be considered dysfunctional behavior deserving of a year-long suspension.[91] Instead, Dr.

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[86] Id. at 718.

[87] Id. at 719.

[88] Id. at 79.

[89] Id.

[90] Id. at 1314.

[91] Id. at 1162.

Limlingan and Professor Leyco were meted with a formal reprimand.[92]

This Court agrees that the distribution of the February 27, 2007 letter, despite its discordant sentiments toward management, is not sufficient justification for their suspension based on dysfunctional behavior. We hold that respondent's act of suspending Dr. Limlingan and Professor Leyco was motivated by its anti-union stance.

Hence, this Court cannot agree with the Court of Appeals and the NLRC in absolving respondent of any liability. Respondent's actions, when taken together, are unfair labor practices. The Court of Appeals erred in finding that the acts were valid exercises of their management prerogative. While we respect employer's discretion in deciding what is best for their operations, this cannot be left unbridled and unchecked. Although respondent's actions may appear legal, we must determine whether these were discriminatory against union officers or its members. Since their actions are motivated by ill will, we find that their acts were unjust.

Aside from the discrimination petitioner's various officers and key members were subjected to, respondent made their antagonism towards the unionization of its institution patently clear through their continuous opposition to formally recognize petitioner as a labor organization.

On May 17, 2007, petitioner filed a Petition for Certification Election with the Department of Labor and Employment. However, this was met with vehement opposition from respondent on the ground that petitioner's members are managerial employees, and thus, prohibited from forming a union.[93]

Unsatisfied with this, respondent filed a Petition for Cancellation of Certificate of Registration of petitioner on July 11, 2007. This was granted by the Department of Labor and Employment's Regional Director, but reversed by the Bureau

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[92] Id. at 1165.

[93] Id. at 10.

of Labor Relations on appeal.[94] The same ruling was sustained by the Court of Appeals in *In Re: Petition for Cancellation of Certificate of Registration No. NCR-UR-12-4075-2004 issued to Asian Institute of Management Faculty Association (AIMFA)*.[95]

Respondent's contention that professors and faculty members cannot form a union because they are managerial employees is untenable. Article 212 (m) of the Labor Code defines a managerial employee as "one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees . . . [or to] effectively recommend such managerial actions[.]"

As respondent demonstrated through the years, it is respondent as the institution which controls the workload, courses, and subjects assigned to a faculty member. Moreover, respondent decides whether to amend, renew, or terminate a professor's contract altogether, leaving their faculty members at its mercy. All of these contradict its stand that the professors are managerial employees.

All told, applying the totality of conduct doctrine, it is apparent that respondent's acts amount to interference which constitutes unfair labor practices under Article 259 (a) of the Labor Code of the Philippines.

Respondent is liable to pay moral and exemplary damages. Per *SONEDCO Workers Free Labor Union v. Universal Robina Corp.*:[96]

> Unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. As

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[94] Id. at 1206.

[95] Id. at pp. 1203-1212.

[96] 796 Phil. 817-840 (2016).

the conscience of the government, it is the Courts sworn duty to ensure that none trifles with labor rights.

For this reason, we find it proper in this case to impose moral and exemplary damages on private respondent.[97] (Citation omitted)

This Court orders the payment of moral damages of ₱100,000.00 and exemplary damages of ₱200,000.00.

Thus, we find that the Court of Appeals' ruling cannot stand and must be reversed.

WHEREFORE, premises considered, the Petition is **GRANTED**. The February 4, 2014 Decision and June 16, 2015 Resolution in CA-G.R. SP No. 108497 of the Court of Appeals are **REVERSED** and **SET ASIDE**. Respondent Asian Institute of Management, Inc. is **GUILTY** of unfair labor practice under Article 259 (a) of the Labor Code and is **ORDERED** to pay petitioner Asian Institute of Management Faculty Association moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱200,000.00.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[97] Id. at 839 *citing Nueva Ecija Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 44 (2000) [Per J. Quisumbing, Second Division].

THIRD DIVISION

[G.R. No. 219872. September 9, 2020]

MAXIMINA T. MABUTE FOR AND IN BEHALF OF HER FOUR MINOR CHILDREN NAMELY: MARIE JIMINA, MARY JAIMIELYN, MARIE JANINE AND MARY JEAN, ALL SURNAMED MABUTE, *Petitioners*, *v.* **BRIGHT MARITIME CORPORATION AND/OR EVALEND SHIPPING CO., S.A. AND DESIREE P. SILLAR,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DEATH BENEFITS AND OTHER REMUNERATIONS; TWO ELEMENTS THAT MUST CONCUR FOR THE CLAIM TO PROSPER; CASE AT BAR.— Based on [Section 20 of the POEA-SEC], death benefits and other remunerations may be claimed when the seafarer died of a: (a) work-related death; and (b) the death occurred during the term of the contract. For death to be considered work-related, it must have resulted from a work-related injury or illness.

In Jaime's death certificate, his illness of hepatocellular carcinoma (cancer of the liver) is identified as the "antecedent cause" or that which triggered the cardiorespiratory arrest that led to his death. Applying the definition of work-related death entitlement to benefits, it is relevant to determine if the illness, hepatocellular carcinoma, is work-related.

2. ID.; ID.; ID.; ID.; WORK AGGRAVATION THEORY; PROBABILITY OF WORK-CONNECTION IS THE TEST OF PROOF IN COMPENSATION PROCEEDINGS.— Albeit Jaime ha[d] a pre-existing Hepatitis B infection, such does not prove that Jaime's working condition did not aggravate the infection. Under the work aggravation theory, the condition/illness suffered by the seafarer shall be compensable when it is shown that the seafarer's work may have contributed to the establishment or, at the very least, aggravation of any pre-existing

disease. Reasonable proof of work-connection must be shown; direct causal relation is not required. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

3. ID.; ID.; ID.; ID.; ID.; IN THIS CASE, THE SEAFARER'S WORKING CONDITION AGGRAVATED HIS PRE-EXISTING ILLNESS, WHICH HASTENED THE DEVELOPMENT OF A SERIOUS DISEASE.— In this case, it is highly probable that Jaime's working condition aggravated his Hepatitis B infection, which hastened the development of liver cancer. The World Health Organization explains that an infection of Hepatitis B can cause chronic infection and puts people at high risk of death from cirrhosis and liver cancer. A Hepatitis B infection lasting for 6 months or more is considered a chronic infection. The condition lingers because the immune system cannot fight off the infection, yet it is possible not to exhibit symptoms. Here, Jaime's Hepatitis B infection was found not to be monitored or controlled with vaccination since 2007. Four years later, or in May 2011, Jaime probably did not exhibit symptoms and was therefore, assessed in his PEME as fit to work and deployed to work as chief engineer. A chief engineer is a managerial position ultimately responsible for the entire technical operations of the vessel. Jaime's stressful and strenuous tasks in his employment, poor diet, coupled with his compromised immune system due to his existing chronic Hepatitis B infection, probably caused, or at least aggravated, the Hepatitis B infection to develop liver cancer. Notably, while on board the vessel and six months into his 9-month contract, Jaime experienced stomach pain, loss of appetite and, later, yellowish discoloration of his skin, enlarged abdomen and dark colored urine, which are all identified by the American Cancer Society as common signs of liver cancer. As symptoms of Jaime's hepatocellular carcinoma manifested on board the vessel, logically, his pre-existing illness was aggravated by his working conditions.

4. ID.; ID.; ID.; ID.; CARCINOMA IS DISPUTABLY PRESUMED AS WORK-RELATED IN THIS CASE.— [A] causal connection between the work of Jaime and his illness that led to his death was established. Nevertheless, hepatocellular carcinoma, although not a listed illness in Section 32-A of the POEA-SEC, is disputably presumed as work-related pursuant to Section 20(A)(4) of the POEA-SEC. The mere statement by the company-

designated physician that liver cancer is not work-related and cannot develop overnight fail to convince Us to overturn the presumption, especially, with the foregoing discussions.

5. ID.; ID.; ID.; ID.; AN EMPLOYER WHO ADMITS A PHYSICIAN'S "FIT TO WORK" ASSESSMENT OF A SEAFARER PRIOR TO ENGAGEMENT BINDS ITSELF TO THAT CONCLUSION AND ITS NECESSARY CONSEQUENCES. — [A]s an employer is expected to know the physical demands of a seafarer's engagement, it is then equally expected to peruse the results of PEMEs to ensure that, health-wise, its recruits are up to par. The PEME must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea. Thus, considering that Jaime is a first-time hire of BMC and was in his 50's, these circumstances should have made the recruiting employer examine further Jaime's medical conditions, particularly, by conducting an exhaustive blood examination in the PEME, which could have revealed his latent Hepatic Liver Disease. Nonetheless, Jaime's fit-to-work PEME assessment of the company-designated physician was admitted by the company. An employer who admits a physician's "fit to work" determination binds itself to that conclusion and its necessary consequences. This includes compensating the seafarer for the aggravation of negligently or deliberately overlooked conditions. BMC, in hiring Jaime, takes the seafarer as it finds him and assumes the risk of liability.

6. ID.; ID.; ID.; ID.; THE DEATH OF A SEAFARER OCCURRING AFTER THE TERMINATION OF THE EMPLOYMENT CONTRACT ON ACCOUNT OF A WORK-RELATED ILLNESS IS COMPENSABLE; EMPLOYER MUST COMPENSATE HIS HEIRS.— The second requirement for entitlement to death benefits is that the seafarer's death must have occurred during the term of the contract. Jaime's contract was initially for four months beginning May 2011. His contract was later extended for another five months ending in February 2012. On January 1, 2012, Jaime arrived in the Philippines as he was medically repatriated. Under Section 18(B) of the POEA-SEC, the employment of the seafarer is terminated effective upon arrival at the point of hire when the seafarer signs off and is disembarked for medical reasons. Although the seafarer's service with the company may have ended pursuant to said section, this does not automatically absolve the employer from

the claims of the seafarer. In fact, Section 20 of the POEA-SEC provides in detail the liabilities of the employer, compensation and benefits to be paid by the same to the seafarer for work-related injuries/ illnesses during the term of his contract. Section 32-A of the POEA-SEC also considers the possibility of compensation for the death of a seafarer occurring after the termination of the employment contract on account of a work-related illness. Requisites for compensability must be complied with, which in this case, have been satisfied as seen from the discussions above. Notably, Jaime passed away a few days after his repatriation and medical treatment with the company-designated physician. BMC does not dispute this fact and did not even allege or prove that Jaime's death is attributable to his own fault or negligence. We are convinced that BMC must compensate the heirs of Jaime as his death resulted from a work-aggravated illness.

7. ID.; REMEDIAL LAW; CIVIL PROCEDURE; FINALITY OF DECISIONS; PRINCIPLE OF LIBERALITY; TO DEPRIVE THE HEIRS OF DEATH BENEFITS AND OTHER REMUNERATION IN VIEW OF THEIR FAILURE TO TIMELY FILE A MOTION FOR RECONSIDERATION WOULD BE AN INJUSTICE.— Anent BMC's claim that the NLRC decision has attained finality for failure of Jaime's heirs to timely file a motion for reconsideration to said Decision, We cannot subscribe to the same. When the strict and literal application of the rules would result in inequitable consequences against labor, we apply the principle of liberality because the liberal interpretation stems from the mandate that the workingman's welfare should be the primordial and paramount consideration. We clearly find that the heirs of Jaime are entitled to payment of death benefits and other remuneration. To deprive them of such in view of a procedural lapse would be an injustice.

APPEARANCES OF COUNSEL

Linsangan, Linsangan & Linsangan Law Office for petitioners.
Balbin Lucman & Partners for respondents.

D E C I S I O N

CARANDANG, *J.*:

The instant petition[1] assails the Decision[2] dated December 19, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 132854, denying payment of death benefits and other remunerations to the heirs of Jaime M. Mabute (Jaime) under Section 20 (B) (1) of the Philippine Overseas Employment Administration—Standard Employment Contract (POEA-SEC).

Facts of the Case

In May 2011, the late Jaime was employed for the first time by respondent Bright Maritime Corporation (BMC) for and on behalf of its principal Evalend Shipping Company. Jaime was deployed as Chief Engineer on board MV Go Public with a contract term of four months. His contract was later extended for another five months, which would end in February 2012.[3]

On November 21, 2011, while on board the vessel, Jaime suffered from stomach pain and loss of appetite. He had difficulty in performing his functions as Chief Engineer because he was weak. He also suffered significant weight loss.[4] Petitioner's heirs claim that Jaime was not examined by the physician on board the vessel, and only took multivitamins because of his poor diet.[5]

Sometime in December 2011, Jaime noticed the yellowish discoloration of his skin, enlarged abdomen and dark colored urine. As a result, he was admitted to a hospital in China for six days where he was found to be suffering from "anemia,"

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[1] *Rollo*, pp. 3-20.

[2] Penned by Associate Justice Magdangal M. De Leon with the concurrence of Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez; id. at 25-37.

[3] Id. at 118.

[4] Id.

[5] Id. at 6.

"elevated liver profiles," and "dyslipidemia." Jaime was also found to have a "hepatic mass" for which he was recommended for medical repatriation to the Philippines.[6]

On January 1, 2012, Jaime arrived in the Philippines and was immediately admitted to the University of Santo Tomas Hospital for treatment. He was found afflicted with Hepatitis B Infection since 2007 without vaccination and constant monitoring.[7] In a Medical Progress Report dated January 10, 2012,[8] the company physician found Jaime to be suffering from Hepatocellular Carcinoma, stage 4.[9] The company-designated physician opined in the report that the cause of liver cancer is usually cirrhosis or scarring of the liver which is a result of Hepatitis B or C virus infection, among other causes. The company-designated physician expounded that Jaime's untreated Hepatitis B probably made him at risk for liver cancer, and that "liver cancer is not acquired overnight." His condition was assessed as "non-work-related."[10] On January 11, 2012, Jaime was discharged from the hospital, but his health continued to deteriorate. He consulted other doctors and *albularyo*, but there was still no improvement in his health. On January 18, 2012, Jaime passed away due to cardio respiratory arrest and hepatocellular carcinoma.[11]

Petitioner Maximina Mabute (Maximina), wife of Jaime, filed a complaint with the National Labor Relations Commission (NLRC) against private respondents. She claimed payment for death benefits pursuant to the POEA-SEC, benefits for her children, burial assistance, moral and exemplary damages, and attorney's fees.[12]

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[6] Id. at 7.

[7] Id. at 118.

[8] Id. at 82-83.

[9] Id. at 83.

[10] Id.

[11] Id. at 125.

[12] Id. at 119-120.

BMC, on the other hand, denied payment of said benefits on the ground that the disease or the cause of Jaime's death is not work-related.[13] BMC claims that it has defrayed all the hospitalization and medical expenses incurred during the treatment of Jaime amounting to ₱234,965.25.[14]

On January 7, 2013,[15] the Labor Arbiter (LA) dismissed the complaint of Maximina for lack of merit, but awarded payment of US$1,000.00 in its Philippine Peso equivalent as burial benefits.[16] The LA held that for a death of a seafarer to be compensable, two conditions must be met: (1) the cause of the seafarer's death must be work-related; and (2) the death occurred during the term of the contract.[17] Both conditions were not present. Based on the certificate of death of Jaime, the immediate cause of his death was due to a cardio respiratory arrest that took place on January 18, 2012, after Jaime had been repatriated from the vessel. Said cardiac arrest could not be attributed to the medical reasons for Jaime's repatriation specifically, the findings of anemia, elevated liver profiles and dyslipidemia. In the same vein, the antecedent cause of Jaime's death, which is the Hepatocellular Carcinoma (cancer of the liver) is not an occupational disease listed under Section 32-A of the POEA-SEC. In fact, the company-designated physician assessed that Jaime's diagnosed illness is not work-related. The labor arbiter did not find any basis to establish the causal connection that would have caused or aggravated the liver carcinoma of Jaime.[18]

Maximina appealed the Decision of the LA with the NLRC, which was denied.[19] The NLRC affirmed the finding of the LA

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[13] Id. at 119.

[14] Id. at 67.

[15] Id. at 116-123.

[16] Id. at 123.

[17] Id. at 120-121.

[18] Id. at 121-122.

[19] Id. at 107-116.

that Jaime's occupation was not reasonably established as the cause of his sickness or disease.[20]

Maximina filed a Petition for *Certiorari* with the CA, which was denied. The CA affirmed the ruling of the labor tribunals holding that Maximina failed to prove that the risk of contracting the disease, liver cancer, was increased by the conditions under which Jaime worked. The CA held that Maximina cannot only rely on the presumption of causality under the POEA-SEC. There was no credible information showing the relation between Jaime's illness and his work. The fact that a fit-to-work pre-employment medical examination (PEME) had been issued prior to his deployment cannot be used as conclusive proof that Jaime was free from any ailment. The PEME is not exploratory in nature and is not intended to be totally an in-depth and thorough examination of an applicant's medical condition. The CA did not award death benefits but affirmed the award of burial benefits and also awarded attorney's fees because Maximina was forced to litigate in order to protect her and her children's interests.[21]

Unconvinced by the decision of the CA, Maximina filed the instant petition with this Court. Maximina and the heirs claim entitlement to payment of death benefits, other money claims and damages because Jaime contracted his illness during his employment with BMC. Maximina emphasizes that Jaime was declared by the company fit-to-work in his PEME. The fact that Jaime later experienced pain and weakness of the body while performing his duties on board the vessel only proves that he acquired his disease during his employment. Assuming that Jaime was suffering from an ailment contracted prior to employment, the illness may still be compensable where there is proof showing acceleration of the illness during employment.[22] Maximina asserts that what could have caused or aggravated in developing liver cancer was Jaime's food intake on board

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[20] Id. at 113-114.

[21] Id. at 33-34.

[22] Id. at 15.

the vessel, exposure to toxins, strenuous tasks, fatigue, and sleepless nights, among other risk factors.[23]

It is Maximina's position that the assessments of the company-designated physicians should not be considered for lack of factual or medical basis. There were no tests or evaluations conducted to show that the causes of Jaime's death of cardiopulmonary arrest and hepatocellular carcinoma, are not work-related. Finally, Jaime's illness is disputably presumed to be work-related under the provisions of the POEA-SEC.[24]

In a Resolution[25] dated 05 October 2015, this Court denied Maximina's Petition for Review under Rule 45 of the Rules of Court for failure to show any reversible error in the assailed decision of the Court of Appeals.[26]

On reconsideration, Maximina reiterates the issues raised in her petition.[27] In a Resolution[28] dated January 18, 2016, this Court reinstated the petition and ordered private respondents to file a Comment.

BMC, for its part, argues that suffering from body weakness and stomach pain while on board the vessel cannot amount to a finding that Jaime's liver cancer is work-related.[29] Although the POEA-SEC provides a disputable presumption of work-relatedness for illnesses not listed in said law, such presumption does not do away with the claimant's burden of proof showing any causal connection between the work of the seafarer and one's illness. Maximina failed to present evidence as to how Jaime's work exposed him to risk factors that could have led to his illness. Therefore, Maximina and heirs are not entitled

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[23] Id. at 13, 16.

[24] Id. at 13-14.

[25] Id. at 51.

[26] Id.

[27] Id. at 53-59.

[28] Id. at 64.

[29] Id. at 75.

to payment of death benefits and their other money claims.[30] BMC also presents the company-designated physician's assessment explaining that the detected and untreated Hepatitis B Infection of Jaime made him at risk for liver cancer. The cause of his death was not work-related.[31]

Procedurally, BMC argues that the petition should be dismissed outright because the motion for reconsideration of petitioners before the NLRC was belatedly filed. In addition, the verification in said pleading was not signed by petitioner herself but her counsel. In view of these procedural defects, the Decision of the NLRC attained finality.[32]

Ruling of the Court

The pertinent portions of the POEA-SEC[33] read:

Section 20. COMPENSATION AND BENEFITS

x x x x

B. Compensation and Benefits for Death

1. In case of **work-related death of the seafarer, during the term of his contract**, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US Dollars (US$50,000) and an additional amount of Seven Thousand US Dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x

4. The other liabilities of the employer when **the seafarer dies as a result of work-related injury or illness during the term of employment** are as follows:

x x x x

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[30] Id. at 76-77.

[31] Id. at 82-83.

[32] Id. at 86-87.

[33] Memorandum Circular No. 10, Series of 2010.

c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US Dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment. (Emphasis supplied)

Based on the aforequoted provisions, death benefits and other remunerations may be claimed when the seafarer died of a: (a) work-related death; and (b) the death occurred during the term of the contract. For death to be considered work-related, it must have resulted from a work-related injury or illness.[34]

In Jaime's death certificate,[35] his illness of hepatocellular carcinoma (cancer of the liver) is identified as the "antecedent cause" or that which triggered the cardiorespiratory arrest that led to his death. Applying the definition of work-related death entitlement to benefits, it is relevant to determine if the illness, hepatocellular carcinoma, is work-related. BMC argues that Jaime's liver cancer is not work-related as stated in the medical report of the company-designated physician.[36] The company-designated physician also opined that liver cancer cannot be acquired overnight.[37] BMC emphasizes that Jaime's liver cancer was probably caused by the "Hepatitis B Infection since last 2007 with no vaccination and constant monitoring."[38]

Albeit Jaime had a pre-existing Hepatitis B infection, such does not prove that Jaime's working condition did not aggravate the infection. Under the work aggravation theory,[39] the condition/illness suffered by the seafarer shall be compensable when it is shown that the seafarer's work may have contributed to the establishment or, at the very least, aggravation of any pre-existing disease.[40] Reasonable proof of work-connection

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[34] *Canuel v. Magsaysay Maritime Corporation*, 745 Phil. 252, 261-263 (2014).

[35] *Rollo*, p. 125.

[36] Id. at 82-83.

[37] Id.

[38] Id. at 83; emphasis omitted.

[39] *Jebsens Maritime, Inc. v. Babol*, 707 Phil. 210, 225 (2013).

[40] *See Magsaysay Maritime Services v. Laurel*, 707 Phil. 210 (2013).

must be shown; direct causal relation is not required.[41] Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[42] In this case, it is highly probable that Jaime's working condition aggravated his Hepatitis B infection, which hastened the development of liver cancer. The World Health Organization explains that an infection of Hepatitis B can cause chronic infection and puts people at high risk of death from cirrhosis and liver cancer.[43] A Hepatitis B infection lasting for 6 months or more is considered a chronic infection.[44] The condition lingers because the immune system cannot fight off the infection,[45] yet it is possible not to exhibit symptoms.[46] Here, Jaime's Hepatitis B infection was found not to be monitored or controlled with vaccination since 2007. Four years later, or in May 2011, Jaime probably did not exhibit symptoms and was therefore, assessed in his PEME as fit to work and deployed to work as chief engineer. A chief engineer is a managerial position[47] ultimately responsible for the entire technical operations of the vessel. Jaime's stressful and strenuous tasks in his employment, poor diet, coupled with his compromised immune system due to his existing chronic Hepatitis B infection, probably caused, or at least aggravated, the Hepatitis B infection to develop liver cancer. Notably, while on board the vessel and six months into his 9-month contract, Jaime experienced stomach pain, loss of appetite and, later, yellowish discoloration of his skin, enlarged abdomen and dark colored urine, which are all identified by the American Cancer Society as common

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[41] *Skippers United Pacific, Inc. v. Lagne*, August 20, 2018, G.R. No. 217036.

[42] Id.

[43] Hepatitis B. Key Facts, <https://www.who.int/news-room/fact-sheets/detail/hepatitis-b> (last visited June 10, 2019).

[44] Id.

[45] Id.

[46] Id. Acute vs. Chronic Hepatitis B, <https://www.hepb.org/what-is-hepatitis-b/what-is-hepb/acute-vs-chronic/> (last visited June 10, 2019).

[47] *Association of Marine Officers and Seamen of Reyes and Lim Co. v. Laguesma*, 309 Phil. 415, 422-423 (1994).

signs of liver cancer.[48] As symptoms of Jaime's hepatocellular carcinoma manifested on board the vessel, logically, his pre-existing illness was aggravated by his working conditions.

From the discussion above, a causal connection between the work of Jaime and his illness that led to his death was established. Nevertheless, hepatocellular carcinoma, although not a listed illness in Section 32-A of the POEA-SEC, is disputably presumed as work-related pursuant to Section 20 (A) (4) of the POEA-SEC. The mere statement by the company-designated physician that liver cancer is not work-related and cannot develop overnight fail to convince Us to overturn the presumption, especially, with the foregoing discussions.

Further, as an employer is expected to know the physical demands of a seafarer's engagement, it is then equally expected to peruse the results of PEMEs to ensure that, health-wise, its recruits are up to par.[49] The PEME must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea.[50] Thus, considering that Jaime is a first-time hire of BMC and was in his 50's,[51] these circumstances should have made the recruiting employer examine further Jaime's medical conditions, particularly, by conducting an exhaustive blood examination in the PEME, which could have revealed his latent Hepatic Liver Disease. Nonetheless, Jaime's fit-to-work PEME assessment of the company-designated physician was admitted by the company. An employer who admits a physician's "fit to work" determination binds itself to that conclusion and its necessary consequences. This includes compensating the seafarer for

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[48] Signs and Symptoms of Liver Cancer, <https://www.cancer.org/cancer/liver-cancer/detection-diagnosis-staging/signs-symptoms.html> (last visited June 10, 2020).

[49] *Manansala v. Marlow Navigation Phil., Inc.*, 817 Phil. 84, 104 (2017).

[50] Id.

[51] Id. at 125. Death Certificate of Jaime Mabute states that he was born on October 4, 1958. He was hired by BMC in May 2011, which makes him 53 years old.

the aggravation of negligently or deliberately overlooked conditions.[52] BMC, in hiring Jaime, takes the seafarer as it finds him and assumes the risk of liability.

The second requirement for entitlement to death benefits is that the seafarer's death must have occurred during the term of the contract. Jaime's contract was initially for four months beginning May 2011. His contract was later extended for another five months ending in February 2012. On January 1, 2012, Jaime arrived in the Philippines as he was medically repatriated. Under Section 18 (B) of the POEA-SEC,[53] the employment of the seafarer is terminated effective upon arrival at the point of hire when the seafarer signs-off and is disembarked for medical reasons. Although the seafarer's service with the company may have ended pursuant to said section, this does not automatically absolve the employer from the claims of the seafarer. In fact, Section 20 of the POEA-SEC provides in detail the liabilities of the employer, compensation and benefits to be paid by the same to the seafarer for work-related injuries/illnesses during the term of his contract. Section 32-A of the POEA-SEC also considers the possibility of compensation for the death of a seafarer occurring after the termination of the employment contract on account of a work-related illness.[54] Requisites for compensability[55]

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[52] *Supra* note 48.

[53] Section 18. Termination of Employment. —

x x x x

B. The employment of the seafarer is also terminated effective upon arrival at the point of hire for any of the following reasons:

1. When the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 A [5] of this Contract.

x x x x

[54] *Talosig v. United Philippine Lines, Inc.*, 739 Phil. 744, 780 (2014).

[55] Section 32-A. Occupational Diseases. — For an occupational disease and the resulting disability **or death** to be compensable, all the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to described risks;

must be complied with, which in this case, have been satisfied as seen from the discussions above. Notably, Jaime passed away a few days after his repatriation and medical treatment with the company-designated physician. BMC does not dispute this fact and did not even allege or prove that Jaime's death is attributable to his own fault or negligence. We are convinced that BMC must compensate the heirs of Jaime as his death resulted from a work-aggravated illness.

Anent BMC's claim that the NLRC decision has attained finality for failure of Jaime's heirs to timely file a motion for reconsideration to said Decision, We cannot subscribe to the same. When the strict and literal application of the rules would result in inequitable consequences against labor, we apply the principle of liberality[56] because the liberal interpretation stems from the mandate that the workingman's welfare should be the primordial and paramount consideration.[57] We clearly find that the heirs of Jaime are entitled to payment of death benefits and other remuneration. To deprive them of such in view of a procedural lapse would be an injustice.

Finally, We cannot award the Philippine Currency equivalent of US$7,000.00 for the four children of Jaime. Under Section 20 (B) (1) of the POEA-SEC, the employer shall pay this additional benefit for four children of the deceased seafarer, who are under 21 years of age. We do not find any record or basis showing that the four children of Jaime are within the age requirement.

WHEREFORE, the petition is **GRANTED**. The Decision dated December 19, 2014 of the Court of Appeals in CA-G.R. SP No. 132854 is **REVERSED and SET ASIDE**. The Heirs of Jaime Mabute, namely, Maximina T. Mabute, and

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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.

[56] *Canuel v. Magsaysay Maritime Corporation*, 745 Phil. 252, 268 (2014).

[57] *Opinaldo v. Ravina*, 719 Phil. 584, 599 (2014).

her children, Marie Jimina, Mary Jaimielyn, Marie Janine and Mary Jean, all surnamed Mabute are awarded with the payment of death benefits in the Philippine currency equivalent of US$50,000.00 and burial expenses in the Philippine currency equivalent of US$1,000.00.

SO ORDERED.

Leonen, Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 240137. September 9, 2020]

DEPARTMENT OF FINANCE-REVENUE INTEGRITY PROTECTION SERVICE, *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN AND MIRIAM R. CASAYURAN,** *Respondents*.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 6713 (THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); STATEMENT OF ASSETS, LIABILITIES, AND NET WORTH (SALN); ACTIONS FOR NON-FILING OF SALN; PRESCRIPTIVE PERIOD.— The Ombudsman is correct in ruling that Casayuran can no longer be penalized for nonfiling of her SALNs for CYs 1995, 1997, and 1998 under R.A. 6713. In the case of *Del Rosario v. People*, We explained that the prescriptive period for filing an action for violation of Section 8 of R.A. 6713 is eight (8) years pursuant to Section 1 of Act No. 3326. Based on Section 2 of the same law, the period shall begin to run either from the day of the commission of the violation of the law or, if the violation be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The second mode is an exception to the first and is known as the discovery rule or the blameless ignorance doctrine.

2. ID.; ID.; ID.; ID.; ID.; BLAMELESS IGNORANCE DOCTRINE; THIS DOCTRINE IS INAPPLICABLE WHEN THE BASIS OF THE CRIME CAN BE PLAINLY DISCOVERED OR IS READILY AVAILABLE TO THE PUBLIC.— In *Del Rosario*, We refused to apply the blameless ignorance doctrine in determining when prescription should run against the petitioner who failed to file her SALN. Section 8 of R.A. 6713 itself makes the SALNs accessible to the public for copying or inspection at reasonable hours. The basis of the crime could thus be plainly discovered or were readily available to the public. That being the case, prescription shall run from the commission of the offense, which in this case was the non-filing of the SALN. The DOF-RIPS filed their complaint on October 17, 2013, or more

than a decade after Casayuran failed to file her 1995, 1997, and 1998 SALN. Consequently, the Ombudsman was correct in ruling that the action for such violation has prescribed.

3. ID.; FALSIFICATION OF PUBLIC DOCUMENTS; FALSIFICATION BY PUBLIC OFFICER, EMPLOYEE, OR NOTARY OR ECCLESIASTIC MINISTER; ELEMENTS THEREOF; CASE AT BAR.— Article 171, in general, requires the presence of the following elements: (a) the offender is a public officer, employee, or notary public; (b) he or she takes advantage of his or her official position; and (c) he or she falsifies a document by committing any of the acts enumerated in Article 171. . . .

. . .

Even so, Casayuran cannot be held liable under paragraph 4 of Article 171 of the RPC. While there is no question that Casayuran is a public officer, her failure to declare the Sentra in her SALNs for 2007, 2010, 2011, and 2012 is not tantamount to taking advantage of her position as Customs Operations Officer III. A public officer is said to have taken advantage of his or her position if he or she has the duty to make or prepare or otherwise to intervene in the preparation of a document or if he or she has the official custody of the document which he or she falsifies.

4. ID.; ID.; ID.; MAKING UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS; ELEMENTS THEREOF.— Paragraph 4 of Article 171, in particular, has the following elements: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he or she has legal obligation to disclose the truth of the facts narrated by him or her: and c) the facts narrated by him or her are absolutely false. The penalty for violation of paragraph 4 Article 171 is *prisión mayor* and a fine not to exceed ₱5,000.00.

5. ID.; ID.; FALSE TESTIMONY IN OTHER CASES AND PERJURY IN SOLEMN AFFIRMATION; ELEMENTS THEREOF; IF THE VIOLATION IS PUNISHABLE BY A HEAVIER PENALTY UNDER ANOTHER LAW, THE RESPONDENT SHALL BE PROSECUTED UNDER THE LATTER STATUTE; CASE AT BAR.— Article 183 of the RPC, which imposes the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum, require the

existence of the following elements: (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. There must be a willful assertion of a falsehood in the statement under oath or in an affidavit, which in this case is the SALN.

. . .

. . . Casayuran cannot be held liable under Article 183 of the RPC. The disclosure of a public officer or employee's properties is required under Sec. 8 of R.A. 6713. Failure to comply with this provision is punishable by imprisonment of five (5) years or a fine not exceeding ₱5,000.00 or both, at the discretion of the court, under Sec. 11 of R.A. 6713. The same provision provides that "if the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute." Casayuran may also be held liable for her failure to disclose all her properties in her SALNs for 2007, 2010, 2011, and 2012 under Article 183 of the RPC. Casayuran certified in her SALNs for 2007, 2010, 2011, and 2012 that her properties are limited to those stated in her SALNs even though she also owns the Sentra. Her SALN were required by law and were subscribed and sworn to before a person administering the oath. Article 183 imposes a penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum, or four (4) months and one (1) day to two (2) years and four (4) months. This is clearly less than the penalty imposed under R.A. 6713. Pursuant to Section 11 of R.A. 6713, Casayuran cannot be prosecuted under Article 183.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE IS A FINDING OF FACT WHICH IS GENERALLY NOT REVIEWABLE BY THE SUPREME COURT.— Probable cause is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime

for which he or she was prosecuted. It requires more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic. It is well settled that the determination of the existence of probable cause is a finding of fact which is generally not reviewable by this Court. The Court shall only interfere when there is a clear showing of grave abuse of discretion.

7. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; PUBLIC OFFICERS OR EMPLOYEES ARE REQUIRED TO FILE SALN REGARDLESS OF THEIR POSITIONS.— Except for those who serve in an honorary capacity, laborers and casual or temporary workers, every public officer or employee is required to file their SALN pursuant to the Constitution, R.A. Nos. 3019 and 6713. Thus, Casayuran's position is irrelevant with respect to the requirement of filing a SALN because she must file it so long as she is a public officer or employee. Her position as a Customs Operations Officer III does not give her any specific power or function when it comes to her SALN. She is similarly situated with every other public officer or employee.

8. ID.; REPUBLIC ACT NO. 1379 (AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR); FORFEITURE OF UNEXPLAINED WEALTH; PRESUMPTION OF UNLAWFUL ACQUISITION, WHEN APPLICABLE.— In order for the presumption in Section 2 [of R.A. 1379] to apply, the following must be shown: (1) the offender is a public officer or employee; (2) he or she must have acquired a considerable amount of money or property during his incumbency; and (3) said amount is manifestly out of proportion to his or her salary as such public officer or employee and to his or her other lawful income and the income from legitimately acquired property. If the foregoing are proven, the properties unlawfully acquired shall be forfeited in favor of the state.

9. ID.; ID.; ID.; ID.; LAWFUL INCOME, HOW ESTABLISHED. — To establish the lawful income of Casayuran, we refer to Section 3 of R.A. 1379 which requires that the approximate amount of property the official has acquired during his or her

> incumbency in his or her past and present offices and employments, and the total amount of his or her government salary and other proper earnings and incomes from legitimately acquired property, must be stated in a petition filed under such law. . . .
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> . . .
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> All told, Casayuran's lawful income does not appear to be sufficient to pay for the cost of the assets that she purchased. She neither refuted that she made these purchases nor showed that her lawful income was adequate. Consequently, We cannot agree with the Ombudsman that there is no reason to charge Casayuran for forfeiture under Section 2 of R.A. 1379. The amount of property that Casayuran acquired seems to be manifestly out of proportion with her lawful income.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for *Certiorari*[1] assailing the Joint Resolution[2] dated September 30, 2016 and the Joint Order[3] dated February 28, 2017 of respondent Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0371 and OMB-C-F-13-0014. The Ombudsman dismissed the complaint[4] filed by petitioner Department of Finance-Revenue Integrity Protection Service (DOF-RIPS) against respondent Miriam Y. Casayuran (Casayuran), under the following cases:

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[1] *Rollo*, pp. 3-49.

[2] Penned by Graft Investigation and Prosecution Officer III Francisco Alan L. Molina, with the approval of Overall Deputy Ombudsman Melchor Arthur H. Carandang; id. at 56-69.

[3] Id. at 70-77.

[4] Id. at 78-94.

A) In OMB-C-C-13-0371, for violation of Section 7 of Republic Act No. (R.A.) 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," and Section 8 of R.A. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees; and Articles 171 and 183 of the Revised Penal Code (RPC) (Criminal Charges);[5]

B) In OMB-C-A-13-0346, for violation of Executive Order (EO) No. 6 dated March 12, 1986 and the Reasonable Office Rules and Regulations, as well as Grave Misconduct and Serious Dishonesty (Administrative Charge);[6] and

C) In OMB-C-F-13-0014, Section 2 of R.A. 1379 (Forfeiture Case).[7]

Antecedents

Casayuran was appointed as Clerk II in the Bureau of Customs (BOC) on February 13, 1990.[8] On April 24, 1996, she purchased Condominium Unit No. 1615-D, located at the 16th floor of Central Park Condominium, Jorge St., Pasay City, with an area of 21 square meters for ₱506,100.00 (Pasay condominium). Its terms of payment are as follows: (1) ₱76,000.00 as downpayment; (2) on or before March 15, 1996, 24 monthly installments of ₱5,500.00; and (3) on or before March 15, 1998, 180 monthly installments of ₱5,457.00.[9]

On January 26, 1998, Casayuran was appointed as Customs Operations Officer III.[10] In the same year, she purchased a house and lot located at Phase K-1, Lot No. 31, Stallion Homes 600,

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[5] Id. at 87-91.

[6] Id. at 91-92.

[7] Id. at 87-88.

[8] Id. at 145.

[9] Id. at 146-150.

[10] Id. at 145.

San Jose Del Monte, Bulacan, for ₱271,000.00 (Bulacan property). It was payable for 25 years, in 300 monthly installments of ₱3,938.40.[11]

Sometime in 2003, Casayuran purchased a Toyota Revo (Revo) worth ₱675,000.00.[12] To pay for the Revo, she obtained a loan from the bank amounting to ₱420,000.00.[13]

In 2007, Casayuran purchased a Nissan Sentra (Sentra) worth ₱660,000.00, for which she made a down payment of ₱132,000.00.[14] She also executed a Promissory Note with Chattel Mortgage[15] in favor of Robinson's Savings Bank which mandated her to pay the remaining balance of ₱528,000.00 in 48 equal monthly installments of ₱15,728.00.[16]

Casayuran purchased a Nissan X-Trail (X-Trail) worth ₱1,473,544.00 on April 10, 2010. She paid a down payment of ₱217,000.00 and executed a Promissory Note with Chattel Mortgage in favor of Philippine Savings Bank to cover the balance of ₱1,256,544.00.[17] The balance was to be paid in 48 monthly installments of ₱26,178.00.[18]

On October 17, 2013, the DOF-RIPS, through Graft Prevention and Control Officers Josefel C. Gadin and Eduardo G. Josue, filed a Complaint-Affidavit[19] initiating criminal, administrative, and forfeiture charges against Casayuran.[20] The DOF-RIPS alleged the following violations of Casayuran:

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[11] Id. at 151-153.

[12] Id. at 59.

[13] Id. at 136.

[14] Id. at 157.

[15] Id. at 155-156.

[16] Id. at 155.

[17] Id.

[18] Id. at 159.

[19] Id. at 78-92.

[20] Id. at 57.

1) Criminal charges
   a. Section 8 of R.A. 6713 in relation to Section 7 of R.A. 3019 — Casayuran did not file her Statement of Assets, Liabilities, and Net Worth (SALN) for the calendar years (CY) 1995, 1997, and 1998, as per the certification of the Human Resources Management Division of the BOC and the May 28, 2013 letter of the OMB's Public Assistance Bureau.[21]
   b. Articles 171 and 183 of the RPC — Casayuran, as a government employee, was duty-bound to disclose the truth in her SALN. However, she did not disclose her Bulacan property in her SALN for CY 1998 onwards and the Sentra in her SALN for CYs 2007, 2010, and 2011.[22]

2) Forfeiture charge under Section 2 of R.A. 1379 — Casayuran acquired wealth that was manifestly out of proportion to her lawful income,[23] as illustrated below:

Year	Monthly Salary as per SALN and/or Service Record(in PhP)	Properties Acquired with Total Amounts (in PhP)	Monthly Amortization based on Deeds of Sale/Mortgages (in PhP)	Monthly Amortization Payments based on loan reduction amounts in SALN(in PhP)
1990-1993	2,250.00	-	-	-
1994	3,072.00	-	-	-
1995	4,072.00	-	-	-
1996	5,095.00	Pasay Condominium (506,100.00) payable until 2013 Downpayment: 76,000.00	5,500.00	4,793.75
1997	5,895.00	-	5,500.00	4,793.75

[21] Id. at 83, 87-90.

[22] Id. at 84-85, 90-91.

[23] Id. at 80-83, 87.

1998	12,206.00	Bulacan property (271,000.00) until 2023	5,500.00 3,938.40 9,438.40	4,793.75 3,938.40 8,633.15
1999	13,200.00	-	5,457.00 3,938.40 9,395.40	0.00 3,938.40
2000	13,400.00	-	5,457.00 3,938.40 9,395.40	4,166.67 3,938.40 8,105.07
2001	14,070.00	-	5,457.00 3,938.40 9,395.40	0.00 3,938.40
2002	14,070.00	-	5,457.00 3,938.40 9,395.40	4,166.67 3,938.40 8,105.07
2003	14,083.00	Revo (675,000.00) until 2006	5,457.00 3,938.40 12,916.67 22,312.07	0.00 3,938.40 12,916.67 16,855.07
2004	14,811.00	-	5,457.00 3,938.40 10,000.00 19,395.00	3,333.33 3,938.40 10,000.00 17,271.73
2005	14,100.00	-	5,457.00 0.00 16,833.33 22,290.33	3,750.00 0.00 16,833.33 20,583.33
2006	14,811.00	-	5,457.00 0.00 8,166.67 13,632.67	2,916.67 8,166.67 11,083.34
2007	15,577.92	Sentra (660,000.00) Downpayment: 132,000.00 Balance payable in 48 monthly installments of P15,728.00	5,457.00 15,728.00 21,185.00	-
2008	17,511.00	-	5,457.00 15,728.00 21,185.00	13,400.00
2009	19,546.50	-	5,457.00 15,728.00 21,185.00	19,933.33
2010	19,681.76	X-Trail (1,256,544.00) Downpayment: 217,000.00	5,457.00 15,728.00 26,178.00 47,363.00	21,666.67 4,712.00 26,378.67

		Balance payable in 48 monthly installments of 26,178.00		
2011	23,803.67	-	5,457.00 26,178.00 31,635.00	0.00 57,500.00
2012	25,767.00	-	5,457.00 26,178.00 31,635.00	17,500.00[24]

3) Administrative Charge
   a. Grave Misconduct and Serious Dishonesty — Casayuran acquired wealth disproportionate to her lawful income. She also failed to file her SALN for CYs 1995, 1997, and 1998 and to declare her Bulacan property and her Sentra.[25]
   b. Grave Misconduct, Serious Dishonesty, violation of EO No. 6 dated March 12, 1986 and violation of Reasonable Office Rules and Regulations — Casayuran failed to secure travel authority for her six (6) trips outside the country from 1996 to 2009.[26]

Casayuran did not file a counter-affidavit.[27]

Ruling of the Ombudsman

On September 30, 2016, the Ombudsman dismissed the complaint against Casayuran.[28] The Ombudsman found that neither probable cause nor substantial evidence exists against her.[29] The Ombudsman agreed that she failed to file her SALNs but held that the action had prescribed for being filed 8 years after Casayuran's violation of R.A. 6713.[30] Since the charge

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[24] Id. at 34-37. Emphasis omitted.

[25] Id. at 80-83, 85, 90-91.

[26] Id. at 85-87, 91.

[27] Id. at 61.

[28] Supra note 2.

[29] *Rollo*, p. 62.

[30] Id. at 65.

for R.A. 6713 was dismissed, the charge for violation of R.A. 3019 must likewise be dismissed.[31]

As for the properties she acquired that were manifestly out of proportion to her lawful income, the Ombudsman held as follows: (1) for the Bulacan property, the DOF-RIPS failed to prove that she actually owns it considering that the Deed of Conditional Sale was cancelled in 2005 due to her failure to settle the amortizations, and they also failed to present proof that she paid any of the monthly amortizations; (2) for the Pasay condominium, Casayuran had sufficient money to pay for it because her salary grew from ₱60,864.00 in January 1996 to ₱309,204.00 in June 2012. This amount does not even include her bonuses and allowances.[32] In addition, Casayuran obtained loans to pay for the condominium unit;[33] (3) for the Revo, the DOF-RIPS failed to prove that Casayuran paid its monthly amortizations. What was established though was that she mortgaged it to the bank. And in 2003, she received ₱37,000.00 in allowances and bonuses which she could have used to augment her savings by ₱58,000.00;[34] (4) for the Sentra, Casayuran had ₱195,000.00 in cash as of December 31, 2006 which she could have used to pay for its downpayment. She also earned ₱226,970.00 in 2007 and had savings of ₱165,000.00. In 2008, she had ₱475,000.00 in cash, part of which could have been from the sale of the Revo, and her attrition reward of ₱288,040.00. Further, the DOF-RIPS failed to prove that Casayuran paid the monthly amortizations for the Sentra;[35] (5) for the X-Trail, the DOF-RIPS likewise did not prove that Casayuran paid its monthly amortizations. She also had ₱550,000.00 in cash in 2009 and ₱950,000.00 in 2010. The DOF-RIPS failed to prove that she did not sell the Sentra and used its proceeds to purchase

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[31] Id. at 66.

[32] Id. at 62.

[33] Id. at 62-63.

[34] Id. at 63.

[35] Id. at 63-64.

the X-Trail. In contrast, it was shown that Casayuran obtained loans.[36]

With respect to Casayuran's failure to obtain a travel authority, the Ombudsman dismissed it because the DOF-RIPS filed its complaint more than a year from the occurrence of the act complained of.[37]

The DOF-RIPS filed a Motion for Reconsideration[38] which the Ombudsman denied in its Joint Order[39] dated February 28, 2017. As such, they filed the instant petition before this Court to assail the ruling of the Ombudsman insofar as the criminal and forfeiture charges are concerned. The ruling of the Ombudsman with respect to the administrative charges against Casayuran is not included in their petition before this Court.

The Ombudsman filed a Manifestation[40] that it will no longer file a comment to the petition because it would be prudent for it to not participate in the case so as to not advocate for either the innocence or culpability of Casayuran. As for Casayuran, We imposed a fine of ₱1,000.00 upon her due to her failure to file her comment despite being required to do so, and consequently dispensed with her comment in Our March 11, 2019 Resolution.[41]

The DOF-RIPS argues in its petition that the prescriptive period for Casayuran's non-filing of her SALNs for CYs 1995, 1997, and 1998 should be counted from the time that it was discovered, which was either on January 18, 2013, the date when the BOC certified her non-filing, or on May 30, 2013, the date when Casayuran received a letter from the Ombudsman regarding her failure to file the SALNs. The State has no duty

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[36] Id. at 64-65.

[37] Id. at 67-68.

[38] Id. at 107-126.

[39] Supra note 3.

[40] *Rollo*, pp. 177-179.

[41] Id. at 190.

to monitor if all public officers have filed their SALN.[42] Moreover, the dismissal of the action under R.A. 6713 does not necessarily result in the dismissal of the action under R.A. 3019 even though they penalize the same act.[43]

The DOF-RIPS further argues that the Ombudsman failed to discuss its findings on the charge against Casayuran for violation of Articles 171 and 183 of the RPC.[44] In any case, Casayuran should be charged for violating the RPC because she did not disclose the Bulacan property in her SALNs.[45]

The DOF-RIPS also argues that Casayuran should be charged under R.A. 1379. It has successfully shown that she acquired a considerable amount of money or property during her incumbency that is manifestly out of proportion with her salary and other lawful income. The Ombudsman should not have just taken a look at the increase in Casayuran's income but the increase in her spending as well. In addition, it should not have speculated on the purpose of the loans acquired by Casayuran and the reason for the non-declaration of her properties.[46]

Issue

The issue before Us is whether the Ombudsman erred in dismissing the criminal and forfeiture charges against Casayuran.

Ruling of the Court

We partially grant the petition.

I. Violation of Section 7 of R.A. 3019 and Section 8 of R.A. 6713

The DOF-RIPS argued that Casayuran should be charged with violating Section 7 of R.A. 3019 and Section 8 of R.A. 6713

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[42] Id. at 21-22.

[43] Id. at 23.

[44] Id. at 26-28.

[45] Id. at 32-33.

[46] Id. at 34-45.

due to the non-filing of her SALN for the years 1995, 1997, and 1998.

Section 8 of R.A. 6713 states:

> Section 8. *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.
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Meanwhile, Section 7 of R.A. 3019 states:

> Section 7. *Statement of Assets and Liabilities.* — Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year; *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.

The Ombudsman is correct in ruling that Casayuran can no longer be penalized for nonfiling of her SALNs for CYs 1995, 1997, and 1998 under R.A. 6713. In the case of *Del Rosario v. People*,[47] We explained that the prescriptive period for filing an action for violation of Section 8 of R.A. 6713 is eight (8) years pursuant to Section 1 of Act No. 3326.[48] Based

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[47] G.R. No. 199930, June 27, 2018.

[48] Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (*a*)

on Section 2[49] of the same law, the period shall begin to run either from the day of the commission of the violation of the law or, if the violation be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The second mode is an exception to the first and is known as the discovery rule or the blameless ignorance doctrine. In *Del Rosario*, We refused to apply the blameless ignorance doctrine in determining when prescription should run against the petitioner who failed to file her SALN. Section 8 of R.A. 6713 itself makes the SALNs accessible to the public for copying or inspection at reasonable hours. The basis of the crime could thus be plainly discovered or were readily available to the public. That being the case, prescription shall run from the commission of the offense, which in this case was the non-filing of the SALN.[50] The DOF-RIPS filed their complaint on October 17, 2013, or more than a decade after Casayuran failed to file her 1995, 1997, and 1998 SALN. Consequently, the Ombudsman was correct in ruling that the action for such violation has prescribed.

II. Paragraph 4 of Article 171 and false testimony in other cases and perjury in solemn affirmation under Article 183 of the RPC.

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after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (*b*) after four years for those punished by imprisonment for more than one month, but less than two years; (*c*) after eight years for those punished by imprisonment for two years or more, but less than six years; and (*d*) after twelve years for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

[49] Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

[50] Supra note 47.

Articles 171 and 183 of the RPC provide:

Article 171. *Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister.* — The penalty of *prisión mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x

4. Making untruthful statements in a narration of facts; x x x

Article 183. *False Testimony in Other Cases and Perjury in Solemn Affirmation.* — The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

Article 171, in general, requires the presence of the following elements: (a) the offender is a public officer, employee, or notary public; (b) he or she takes advantage of his or her official position; and (c) he or she falsifies a document by committing any of the acts enumerated in Article 171.[51] Paragraph 4 of Article 171, in particular, has the following elements: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he or she has legal obligation to disclose the truth of the facts narrated by him or her: and (c) the facts narrated by him or her are absolutely false.[52] The penalty for violation of paragraph 4 Article 171 is *prisión mayor* and a fine not to exceed ₱5,000.00.

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[51] *Garcia-Diaz v. Sandiganbayan*, G.R. Nos. 193236 & 193248-49, September 17, 2018.

[52] *Galeos v. People*, 657 Phil. 500, 520 (2011).

Article 183 of the RPC, which imposes the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum, require the existence of the following elements: (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.[53] There must be a willful assertion of a falsehood in the statement under oath or in an affidavit, which in this case is the SALN.[54]

Probable cause is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he or she was prosecuted. It requires more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.[55] It is well settled that the determination of the existence of probable cause is a finding of fact which is generally not reviewable by this Court. The Court shall only interfere when there is a clear showing of grave abuse of discretion.[56]

In this case, while the Ombudsman did not expressly state that there is no probable cause to charge Casayuran with violation of Articles 171 and 183 of the RPC, it did find that the DOF-RIPs failed to prove that Casayuran owns the Bulacan property since its Deed of Conditional Sale was cancelled in 2005.[57]

The Ombudsman further held that Casayuran did not have to declare the Sentra in her SALN for CY 2007. Civil Service Commission (CSC) Resolution No. 1300173, which required

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[53] *Union Bank of the Philippines v. People*, 683 Phil. 108, 117 (2012).

[54] *Office of the Ombudsman v. Capulong*, 729 Phil. 553, 565 (2014).

[55] *Joson v. Office of the Ombudsman*, 784 Phil. 172, 185 (2016).

[56] Id.

[57] *Rollo*, p. 66.

the disclosure of personal properties subject of a mortgage, was promulgated only on January 24, 2013. Prior to that, no rule or regulation governed the declaration of movable property bought through financing.[58] Further, there is no proof that Casayuran retained ownership of the Sentra in 2010 and 2011. The Motor Vehicle Inquiry Detail submitted by the DOF-RIPS was not issued by the Land Transportation Office or properly authenticated by the persons who issued it.[59]

The filing of a SALN under oath is required by the Constitution[60] itself, as well as R.A. Nos. 3019 and 6713. It must be sworn and its contents must be true and detailed.[61] Casayuran never declared the Bulacan property in any of her SALNs.[62] However, the DOF-RIPS did not submit proof that she acquired ownership of the Bulacan property. Under the Deed of Conditional Sale,[63] a Deed of Absolute Sale shall only be executed in favor of Casayuran if she has fully paid the purchase price together with the interest, taxes, and other charges due.[64] The Deed of Conditional Sale was subsequently cancelled because Casayuran was unable to pay her obligation for the Bulacan property.[65] As such, it appears that the title to the Bulacan

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[58] Id. at 66-67.

[59] Id. at 67.

[60] Article XI, Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

[61] *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842 (2007).

[62] *Rollo*, pp. 131-144.

[63] Id. at 151-153.

[64] Id. at 152.

[65] Records, p. 64.

property was never transferred to Casayuran. Hence, she was not obligated to declare the Bulacan property in her SALN.

As for the Sentra, Casayuran did not refute the authenticity of the Vehicle Sales Invoice[66] showing that she purchased it in September 2007. It is true that CSC Resolution No. 1300173, which requires the declaration of personal properties subject of a mortgage in the SALN, was only enacted on January 24, 2013. Nonetheless, the Certificate of Registration[67] dated December 10, 2007 submitted by the DOF-RIPS clearly indicates Casayuran as the owner of the Sentra even though it is encumbered to Robinsons Savings Bank.[68] Casayuran only declared the Sentra in her SALNs for 2008 and 2009. Though she no longer declared the Sentra in her SALN for 2010 to 2012, she neither argued nor presented proof that she no longer owned the Sentra beginning 2010. That being the case, Casayuran should have declared the Sentra in her SALN for 2007, 2010, 2011, and 2012, which are the SALNs covered by the complaint filed on October 17, 2013.

Even so, Casayuran cannot be held liable under paragraph 4 of Article 171 of the RPC. While there is no question that Casayuran is a public officer, her failure to declare the Sentra in her SALNs for 2007, 2010, 2011, and 2012 is not tantamount to taking advantage of her position as Customs Operations Officer III. A public officer is said to have taken advantage of his or her position if he or she has the duty to make or prepare or otherwise to intervene in the preparation of a document or if he or she has the official custody of the document which he or she falsifies.[69] In *People v. Sandiganbayan*,[70] We held that failure to show the involvement of one of the accused, Mayor Quintin B. Saludaga, in the issuance of the official receipt subject

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[66] *Rollo*, p. 157.

[67] Id. at 158.

[68] Id.

[69] Supra note 52.

[70] 765 Phil. 845 (2015).

of the complaint means that there was also failure to establish that he took advantage of his position. Accordingly, he cannot be held liable for falsification of public documents.[71]

Except for those who serve in an honorary capacity, laborers and casual or temporary workers,[72] every public officer or employee is required to file their SALN pursuant to the Constitution, RA Nos. 3019 and 6713. Thus, Casayuran's position is irrelevant with respect to the requirement of filing a SALN because she must file it so long as she is a public officer or employee. Her position as a Customs Operations Officer III does not give her any specific power or function when it comes to her SALN. She is similarly situated with every other public officer or employee. Hence, it cannot be said that Casayuran took advantage of her position when she failed to declare the Sentra in her SALNs for 2007, 2010, 2011, and 2012. Due to the absence of the element of taking advantage of one's position, there can be no finding of probable cause against Casayuran for violation of Article 171.

Likewise, Casayuran cannot be held liable under Article 183 of the RPC. The disclosure of a public officer or employee's properties is required under Sec. 8 of R.A. 6713. Failure to comply with this provision is punishable by imprisonment of five (5) years or a fine not exceeding ₱5,000.00 or both, at the discretion of the court, under Sec. 11 of R.A. 6713. The same provision provides that "if the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute." Casayuran may also be held liable for her failure to disclose all her properties in her SALNs for 2007, 2010, 2011, and 2012 under Article 183 of the RPC. Casayuran certified in her SALNs for 2007, 2010, 2011, and 2012 that her properties are limited to those stated in her SALNs even though she also owns the Sentra. Her SALN were required by law and were subscribed and sworn to before a person administering the oath. Article 183 imposes a penalty of *arresto mayor* in its maximum

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[71] Id.

[72] Republic Act No. 6713, Section 8 (a).

period to *prisión correccional* in its minimum, or four (4) months and one (1) day to two (2) years and four (4) months. This is clearly less than the penalty imposed under R.A. 6713. Pursuant to Section 11 of R.A. 6713, Casayuran cannot be prosecuted under Article 183.

III. Section 2 of R.A. 1379

Section 2 of R.A. 1379 states:

> Section 2. *Filing of petition.* — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided*, That no such petition shall be filed within one year before any general election or within three months before any special election.
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> x x x x

In order for the presumption in Section 2 to apply, the following must be shown: (1) the offender is a public officer or employee; (2) he or she must have acquired a considerable amount of money or property during his incumbency; and (3) said amount is manifestly out of proportion to his or her salary as such public officer or employee and to his or her other lawful income and the income from legitimately acquired property.[73]

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[73] *Office of the Ombudsman v. Peliño*, 575 Phil. 221, 241-242 (2008).

If the foregoing are proven, the properties unlawfully acquired shall be forfeited in favor of the state.[74]

There is no question that the first requirement exists. What is in contention is if Casayuran obtained a considerable amount of money or property during her incumbency and if it is manifestly out of proportion with her salary.

To establish the lawful income of Casayuran, we refer to Section 3 of R.A. 1379 which requires that the approximate amount of property the official has acquired during his or her incumbency in his or her past and present offices and employments, and the total amount of his or her government salary and other proper earnings and incomes from legitimately acquired property, must be stated in a petition filed under such law. The DOF-RIPS submitted Casayuran's Personal Data Sheet, Service Record in the BOC, her Certificates of Compensation for CYs 2003, 2007, 2008, and 2010, and her SALNs for 1996, 1999-2012. It did not present her SALN for CYs 1990 to 1994 despite the fact that the certifications from the BOC and the Ombudsman state that only the SALNs for CYs 1995, 1997, and 1998 were unavailable.

The Ombudsman justified Casayuran's ability to purchase the Pasay condominium on the following grounds: (1) based on her Service Record, her salary grew from ₱60,864.00 in January 1996 to ₱309,204.00 in June 2012. In addition to these amounts, she also received allowances and bonuses; (2) based on her SALNs for 1998 and 1998, she obtained a ₱200,000.00 loan to pay for the condominium; (3) based on her SALN for 2000, she obtained a ₱100,000.00 loan from the Government Service Insurance System (GSIS) which she could have used

[74] Section 6. *Judgment.* — If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State: *Provided*, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both.

to pay for the installment; and (4) based on her service record, she was receiving an annual salary of ₱173,400.00 from July 1, 2001 to January 25, 2004.[75]

According to the Contract to Sell, the purchase price of the Pasay condominium was ₱506,100.00. Casayuran had to make a downpayment of ₱76,000.00 and pay the remaining amount in installments. Based on her SALN for 1996, Casayuran had cash amounting to ₱170,000.00,[76] which is enough for the downpayment of the Pasay condominium. However, as of December 31, 1996, her annual basic salary was only ₱61,140.00 or ₱5,095.00 per month.[77] Casayuran had to pay a monthly installment of ₱5,500.00 until March 15, 1996 and ₱5,457.00 onwards. Clearly, her basic salary is not enough to cover the monthly installment for the Pasay condominium. Casayuran failed to refute this by showing that her lawful income is sufficient to cover the monthly installment for the Pasay condominium and any other expenses she may have had.

In 2003, Casayuran purchased the Revo for ₱675,000.00, ₱420,000.00 of which was covered by a loan. Based on her SALN for 2002, Casayuran had cash amounting to ₱405,000.00.[78] This could cover the ₱255,000.00 remaining balance for the Revo. Nonetheless, it does not appear that Casayuran's lawful income was enough to pay her monthly installment for the Revo of ₱18,750.00. Casayuran received a total compensation of ₱206,274.00 in 2003 based on the Certificate of Compensation issued by the BOC.[79] Her basic salary was ₱169,176.00, which means she received a monthly salary of ₱14,098.00. Clearly, this is not enough to cover the monthly installment for the Revo. In addition to this, Casayuran's SALN for 2003 shows that she was still paying the monthly amortization for the Pasay

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[75] *Rollo*, pp. 62-63.

[76] Id. at 131.

[77] Id. at 145.

[78] Id. at 135.

[79] Id. at 154.

condominium and had an existing loan with the GSIS. She also had an outstanding obligation of ₱28,000.00 for insurance.[80] The allowances and bonuses amounting to ₱37,098 that Casayuran received are not enough to cover these liabilities. Casayuran did not explain if she had other sources of lawful income or disposed of any other property so that she can satisfy her outstanding obligations.

Casayuran purchased the Sentra in 2007 for ₱660,000.00. She made a downpayment of ₱132,000.00 and had to pay ₱15,728.00 per month for the remaining balance. Based on her SALN for 2006, she had cash amounting to ₱195,000.00.[81] Thus, it can be said that she had enough money to pay for the downpayment. Casayuran received ₱188,214.00 as her basic salary, or ₱15,684.50 per month, and ₱38,756.00 as bonuses and allowances, for a total compensation of ₱226,970.00 in 2007.[82] But she had the following liabilities based on her SALN for 2007: (1) GSIS loan of ₱60,000.00; (2) Citibank loan of ₱15,000.00; and (3) Personal loan of ₱260,000.00.[83] Casayuran's lawful income is manifestly inadequate to cover her outstanding obligations. She could have clarified why this is not the case but did not do so.

In 2010, Casayuran purchased the X-Trail for ₱1,473,544.00. She paid ₱270,000.00 for the downpayment and had to pay ₱41,906.00 as her monthly amortization. Her SALN for 2009 shows that she had ₱550,000.00 in cash[84] while the Certificate of Compensation for 2010 states that she received ₱256,863.00 as her basic salary, or ₱21,405.25 per month, and ₱71,549.00 as bonuses and allowances.[85] Casayuran's lawful income was barely enough to cover her expenses for the X-Trail. To make

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[80] Id. at 136.

[81] Id. at 139.

[82] Records, p. 43.

[83] *Rollo*, p. 140.

[84] Id. at 142.

[85] Records, p. 45.

matters worse, she also had the following liabilities in 2010 based on her SALN for that year: (1) GSIS loan of ₱83,000.00; (2) Citibank loan of ₱40,000.00; (3) personal loan of ₱150,000.00; (4) Provident loan of ₱14,000.00; (5) ₱60,000.00 for her credit card; (6) ₱50,000.00 for St. Joseph Multipurpose Cooperative; and (7) ₱25,000.00 for Pag-IBIG Fund.[86] Casayuran should have explained how her lawful income was able to cover her outstanding obligations.

All told, Casayuran's lawful income does not appear to be sufficient to pay for the cost of the assets that she purchased. She neither refuted that she made these purchases nor showed that her lawful income was adequate. Consequently, We cannot agree with the Ombudsman that there is no reason to charge Casayuran for forfeiture under Section 2 of R.A. 1379. The amount of property that Casayuran acquired seems to be manifestly out of proportion with her lawful income.

In sum, the Ombudsman was correct in dismissing the criminal charges for violation of Section 8 of R.A. 6713, in relation to Section 7 of R.A. 3019 and Articles 171 and 183 of the RPC against Casayuran. However, the Ombudsman erred in refusing to file a petition for forfeiture under R.A. 1379 against her. Hence, the Ombudsman should file a petition for forfeiture under R.A. 6713 against Casayuran.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Joint Resolution dated September 30, 2016 and the Joint Order dated February 28, 2017 of the Office of the Ombudsman in OMB-C-C-13-0371 and OMB-C-F-13-0014 are **AFFIRMED** insofar as it dismissed the criminal charges against respondent Miriam R. Casayuran for violation of Section 8 of Republic Act No. 6713, in relation to Section 7 of Republic Act No. 3019 for non-filing of her Statements of Assets, Liabilities and Net Worth for calendar years 1995, 1997, and 1999, and Articles 171 and 183 of the Revised Penal Code. It is **MODIFIED** with respect to the forfeiture charge under Section 2 of Republic Act 1379. The Office of

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[86] *Rollo*, p. 143.

the Ombudsman is **ORDERED** to file the necessary petition for forfeiture under Section 2 of Republic Act No. 1379 before the proper court.

SO ORDERED.

Leonen (Chairperson), *Gesmundo, Zalameda,* and *Gaerlan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 242882. September 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **DIOSDADO JAGDON, JR.,** *Accused-Appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON CARRY GREAT WEIGHT AND RESPECT DUE TO THE UNIQUE OPPORTUNITY AFFORDED TO THEM TO OBSERVE THE WITNESSES PLACED ON THE STAND; THIS RULE FINDS AN EVEN MORE STRINGENT APPLICATION WHERE THE SAID FINDINGS ARE SUSTAINED BY THE COURT OF APPEALS.— At the outset, *We* stress that assessment of the credibility of witnesses is a task most properly within the domain of trial courts. Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded to them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. This rule finds an even more stringent application where the said findings are sustained by the CA, as in the instance case.

2. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS.— Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. The elements necessary in every prosecution for statutory rape are: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.

3. ID.; ACTS OF LASCIVIOUSNESS; PROPER DESIGNATION AND IMPOSABLE PENALTY WHEN COMMITTED AGAINST A CHILD UNDER 12 YEARS OLD.— When acts of lasciviousness is committed against a child under 12 years old, the designation

of the crime committed shall be Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610. Meanwhile, Section 5(b) of RA 7610 provides that when the victim of Acts of Lasciviousness is under 12 years of age, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period.

4. ID.; ID.; ELEMENTS.— Acts of Lasciviousness under the RPC has the following elements: (1) that the offender commits any act or lewdness; (2) that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.

5. ID.; ID.; ID.; NOT PRESENT IN THE CASE AT BAR.— Accused-appellant, however, cannot be convicted of Sexual Assault because the information (Criminal Case No. B-01592) charged him with Acts of Lasciviousness only. Sexual assault is a crime undoubtedly greater than Acts of Lasciviousness. While it is true that the crime of acts of lasciviousness is necessarily included in the crime of sexual assault, the crime of sexual assault however is not subsumed in the crime of acts of lasciviousness.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; VARIANCE AS TO THE TIME AND DATE OF THE LASCIVIOUS CONDUCT, THE NUMBER OF TIMES IT WAS COMMITTED OR THE GARMENTS WHICH THE ACCUSED OR THE COMPLAINANT WORE AT THE TIME OF THE INCIDENT DO NOT GENERALLY DIMINISH THE COMPLAINANT'S CREDIBILITY.— It is already settled that variance as to the time and date of the lascivious conduct, the number of times it was committed or the garments which the accused or the complainant wore at the time of the incident do not generally diminish the complainant's credibility. Here, accused-appellant merely alleges an inconsistency as to the number of times he molested BBB. Interestingly, nowhere in the information does it negate the possibility that BBB had been molested by accused-appellant more than once. More so, such variance as to the number of times accused-appellant molested BBB does not change the proven fact that indeed accused-appellant molested BBB.

7. ID.; EVIDENCE; DENIAL AND ALIBI; REQUISITES; NOT PRESENT IN THE CASE AT BAR.— For alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. Here, accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was working in x x x when the rape incident took place in x x x. Too, it only takes him a little more than an hour to get to x x x from x x x. This fact did not make it impossible for him to arrive in x x x just in time to rape AAA.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

This appeal assails the Decision[1] dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02327 which affirmed the Joint Decision[2] dated December 18, 2012 of the Regional Trial Court (RTC) of [redacted] in Criminal Case Nos. B-01591 and B-01592, finding Diosdado Jagdon, Jr. (accused-appellant) guilty beyond reasonable doubt of the crimes of Rape and Acts of Lasciviousness. The CA sentenced accused-appellant to the penalty of *reclusion perpetua* for the crime of Rape and modified his sentence for the crime

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[1] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edward B. Contreras and Louis P. Acosta, concurring; *rollo*, pp. 4-19.

[2] Penned by Executive Presiding Judge Antonio D. Marigomen; CA *rollo*, pp. 45-55.

of Acts of Lasciviousness to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum.

The Proceedings Before the Trial Court

The Charges

Two separate *Informations* for Rape and Acts of Lasciviousness were filed against accused-appellant involving two minors, *viz.*:

Criminal Case No. B-01591

That sometime in the third week of January, 2003 at noon, in [redacted], Philippines, and within the jurisdiction of this Honorable Court, 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 [AAA],[3] a 9 year old minor, against her will and consent.

CONTRARY TO LAW.[4]

Criminal Case No. B-01592

That sometime in the third week of January 2003, in the evening, in [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with lewd design, lick the [genitalia] of [BBB], a 6 [year] old girl, against her will and consent.

CONTRARY TO LAW.[5]

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[3] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records, and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

[4] CA *rollo*, p. 90.

[5] Id. at 91.

On arraignment, accused-appellant pleaded not guilty to both charges. Joint trial ensued.

The Prosecution's Version

Accused-appellant was the live-in partner of the aunt of AAA's father, who happened to be their neighbor. One afternoon in the later part of January 2003, nine (9)-year-old AAA was just near her home in [redacted] when accused-appellant suddenly brought her inside a pigpen. There, accused-appellant started licking AAA's vagina then proceeded to insert his penis into her vagina. He continued with this motion for several times. AAA struggled and experienced pain during the penetration with accused-appellant proving too strong for her. After satisfying his bestial desires, accused-appellant gave AAA some cash and told her not to tell anyone about what happened.[6]

This incident was witnessed by AAA's younger sister, BBB, who was then on the road across the pigpen. BBB saw accused-appellant sitting inside the pigpen licking AAA's genitals while the latter was standing. Thereafter, she saw accused-appellant exit the pigpen. Her sister also left and joined a group of children who were playing nearby.[7]

Around the same week in January 2003, while six (6)-year-old BBB was playing alone outside their house, accused-appellant called her and instructed her to go inside. While inside the house, with the front door open, accused-appellant made BBB lie on a bed. He removed her skirt and underwear. He started licking BBB's vagina and inserted his finger into it. Thereafter, accused-appellant gave her ₱3.00 and told her not to tell her mother about what happened.[8]

Sometime in February 2003, due to an argument AAA and BBB had, BBB went and told their mother, CCC, that AAA had been having sex with accused-appellant. AAA was brought

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[6] Id. at 47.

[7] Id. at 92.

[8] Id. at 91-92.

to a local government hospital to undergo a medical examination. In her provisional medical certificate, the examining doctor found indications suggestive of sexual abuse. This was confirmed by Dr. Naomi Poca[9] (Dr. Poca) of Vicente Sotto Memorial Medical Center.[10]

AAA disclosed that the incident in the pigpen witnessed by her sister was not an isolated one. Accused-appellant had been sexually ravishing her for quite some time. This usually occurs inside the pigpen, her house, accused-appellant's house or at a nearby banana grove. After each incident, accused-appellant would usually give her money.[11]

The Defense's Version

Accused-appellant admitted that AAA was only nine (9) years old at the time of the rape incident and that BBB is younger than AAA, but he denied authorship of the crimes committed against the two minor victims.[12] He claimed that when the rape incident happened, he was at his workplace in [redacted]. It is worthy to note that [redacted] (where the rape incident took place) and [redacted] are adjacent municipalities. People can reach [redacted] from [redacted] by riding a jeepney or *habal-habal*. According to accused-appellant, it normally takes him more than an hour of travel both to and from [redacted].[13]

Accused-appellant also imputes ill motive on the part of AAA and BBB's parents. He claims that the charges against him were merely concocted due to his estranged relationship with AAA, who was prone to speaking bad words, and with AAA and BBB's family, on account of political issues.[14]

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[9] Also referred to as Dr. Naome Poca in some parts of the records.

[10] CA *rollo*, pp. 52-53, 92.

[11] Id. at 92.

[12] TSN, June 21, 2012, pp. 5, 8.

[13] CA *rollo*, p. 52.

[14] Id. at 92.

The RTC's Ruling

After due proceedings, the RTC rendered a verdict of conviction against accused-appellant for both charges of Rape and Acts of Lasciviousness. The trial court was convinced that both the crimes of Rape and Acts of Lasciviousness charged against accused-appellant were duly proven beyond reasonable doubt.

The dispositive portion of the trial court's Joint Decision[15] dated December 18, 2012 reads:

> WHEREFORE, premises considered, accused Diosdado Jagdon, Jr. is hereby found guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced to suffer the penalty of [*Reclusion Perpetua*].
>
> Further, accused is hereby ordered to pay to private complainant [AAA] the amount of [₱]50,000.00 as court indemnity and [₱]50,000.00 as moral damages.
>
> With respect to the crime of Acts of Lasciviousness, in relation to RA 7610, he is hereby sentenced to suffer the penalty of 4 years, 2 months and 1 day to 6 years, the maximum period of *[prision correccional]*.
>
> Pursuant to Circular No. 4-92, as amended by Circular No. 63-92 of the Court Administrator, the Jail Warden of the Cebu Provincial Detention and Rehabilitation Center (CPDRC), Cebu City, is hereby directed to immediately transfer the accused to the custody of the National Bilibid Prison, Muntinlupa City, Metro Manila.
>
> Let a copy of the decision be furnished the Jail Warden CPDRC for his information, guidance and compliance.
>
> SO ORDERED.[16]

Dissatisfied, accused-appellant appealed to the CA.

The CA's Ruling

The CA affirmed accused-appellant's conviction for both crimes of Rape and Acts of Lasciviousness with modification as to the penalty for Acts of Lasciviousness.

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[15] Id. at 45-55.

[16] Id. at 54-55.

The dispositive portion of the Decision[17] dated June 29, 2018 reads:

> IN LIGHT OF ALL THE FOREGOING, the assailed Decision dated December 18, 2012, of the Regional Trial Court, Branch 61, Dakit, Bogo, Cebu in Criminal Cases Nos. B-01591 and B-01592, is AFFIRMED with MODIFICATIONS. Accused-Appellant DIOSDADO JAGDON JR. is found GUILTY of the crime of rape against AAA, and is sentenced to the penalty of *reclusion perpetua*. He is ordered to pay AAA the amounts of Seventy Five Thousand Pesos (Php75,000.00) as civil indemnity, Seventy Five Thousand Pesos (Php75,000.00) as moral damages, and Seventy Five Thousand Pesos (Php75,000.00) as exemplary damages.
>
> Accused-Appellant DIOSDADO JAGDON JR. is further found GUILTY of the crime of acts of lasciviousness against BBB, and is sentenced to the penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period as maximum. He is ordered to pay BBB the amounts of Twenty Thousand Pesos (PhP20,000.00) as civil indemnity, Fifteen Thousand Pesos (PhP15,000.00) as moral damages, Fifteen Thousand Pesos (PhP15,000.00) as exemplary damages and Fifteen Thousand Pesos (PhP15,000.00) as fine.
>
> All awards of damages are subjected to legal interest at the rate of six percent (6%) *[per annum]* from the date of finality of this decision until fully paid.
>
> SO ORDERED.[18]

The CA held that AAA's testimony, coupled with her declaration of her minority at the time of the rape incident, as well as accused-appellant's open admission of such during trial, elucidates with sufficiency all the elements for the charge of rape — sexual copulation by accused-appellant with a girl below 12 years of age.[19]

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[17] Id. at 89-104.

[18] Id. at 103-104.

[19] Id. at 98.

It further held that all the elements of the crime of acts of lasciviousness were duly proven by accused-appellant's act of intentionally inserting his finger into BBB's vagina and licking the same. Such conduct definitely exhibits accused-appellant's intent to abuse, degrade, and harass BBB's person and extract arousal or sexual gratification.[20]

The Present Appeal

Accused-appellant now seeks affirmative relief from this Court and prays anew for his acquittal. In compliance with Resolution[21] dated January 10, 2019, accused-appellant manifested that in lieu of supplemental briefs, he is adopting his brief filed before the CA.[22] On the other hand, the Office of the Solicitor General (OSG) manifested that it will no longer file a supplemental brief since all the issues raised by accused-appellant have already been sufficiently addressed in its plaintiff-appellee's brief likewise filed before the CA.[23]

Issue

The issue for the Court's resolution is whether or not the CA erred in affirming accused-appellant's conviction for the crimes of Rape and Acts of Lasciviousness.

Ruling

The instant appeal lacks merit. Modifications, however, as to the nomenclature of the crime in Criminal Case No. B-01591 for Rape and nomenclature of the crime and award of damages in Criminal Case No. B-01592 for Acts of Lasciviousness are in order.

At the outset, *We* stress that assessment of the credibility of witnesses is a task most properly within the domain of trial courts. Factual findings of the trial court carry great weight

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[20] Id. at 101-102.

[21] *Rollo*, p. 25.

[22] Id. at 34.

[23] Id. at 27.

and respect due to the unique opportunity afforded to them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. This rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case.[24]

Criminal Case No. B-01591 — Statutory Rape.

Rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[25] *viz.*:

> Article 266-A. Rape; *When and How Committed*. — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The *information* filed against accused-appellant in Criminal Case No. B-01591 alleged that AAA was only nine (9) years old at the time of the incident. Clearly, the charge was for Statutory Rape under Article 266-A (1) (d) of the RPC.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.[26]

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[24] *People v. Gerola*, 813 Phil. 1055, 1063 (2017).

[25] The Anti-Rape Law of 1997, approved on September 30, 1997.

[26] *People v. Udtohan*, 815 Phil. 449, 459 (2017).

The elements necessary in every prosecution for statutory rape are: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority.[27] Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.[28]

Here, both these elements are present in this case.

The element of age.

In statutory rape cases, the best evidence to prove the age of the offended party is the latter's birth certificate. But in certain cases, the Court admits of exceptions. In *People v. Pruna*,[29] this Court have set guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, among which:

> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, **the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused**.[30] (Emphasis supplied)

Here, the prosecution failed to present and offer in evidence AAA's birth certificate. Nonetheless, AAA testified as to her minority at the time of the rape incident, while accused-appellant expressly admitted that AAA was only nine (9) years old at that time, *viz.*:

Q: Will you agree with me that at the time of the incident, the age of [AAA] is 9 years old?
A: Yes.

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[27] *People v. Eulalio*, G.R. No. 214882, October 16, 2019.

[28] *People v. Pacayra*, 810 Phil. 275, 288 (2017).

[29] 439 Phil. 440 (2002).

[30] Id. at 458.

Q: And you will agree with me that [AAA] has a younger sister named [BBB].
A: Yes.

Q: And [BBB] is younger than [AAA]?
A: Yes.[31] (Emphases supplied)

The prosecution may have been unable to present AAA's birth certificate or other authentic document such as a baptismal certificate during trial, however, such failure to present relevant evidence will not deter this Court from upholding that statutory rape was indeed committed by accused-appellant because he himself admitted in his testimony in open court that AAA was only nine (9) years old at the time of the rape incident. In the Court's view, this admission from accused-appellant, taken with the testimony of AAA, sufficiently proved that AAA was under 12 years of age at the time of the rape incident.[32]

The element of carnal knowledge.

Both the RTC and the CA gave credence to AAA's testimony. She was able to fully and sufficiently establish the fact that accused-appellant had carnal knowledge of her. As correctly found by the CA, AAA was categorical in detailing her harrowing experiences in the hands of accused-appellant, even under the pain of a grueling cross-examination. Her testimony that accused-appellant inserted his penis into, and licked her vagina, was straightforward. Significantly, AAA's Provisional Medical Certificate states "*Medical Evaluation (sic) suggestive of sexual abuse*," which medical finding was affirmed and confirmed by Dr. Poca of Vicente Sotto Memorial Medical Center.[33]

We find that the prosecution, through AAA's categorical and straightforward testimony, was able to sufficiently establish that accused-appellant had carnal knowledge of AAA. AAA testified that she was ravished by accused-appellant more than once and detailed the last rape incident, *viz.*:

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[31] TSN, June 21, 2012, p. 8.

[32] See *People v. Padigos*, 700 Phil. 368, 377 (2012).

[33] CA *rollo*, pp. 53, 92.

FISCAL MACIAS:

Q- Can you tell us what did the accused do to you?

(Witness cried and refused to answer the question.)

FISCAL MACIAS:

Your Honor, I would like to manifest that the witness cried and cannot answer the question.[34]

x x x x

FISCAL MACIAS:

Q- During the last hearing, you said that he opened you and tried to insert his [penis] into your vagina, who is this person you are referring to?
A- Junior.

Q- Is Junior present in this court room today?
A- Yes, he is around.

Q- Kindly point to Junior if he is around.
A- Yes, he is here inside the chamber.
(Witness pointing to accused and when asked answered the name Diosdado Jagdon, Jr.)

Q- You said [that] the accused tried to [insert his] penis into your vagina, did the accused succeeded in inserting his penis into your vagina?
A- Yes, Sir.

Q- Do you or how did you feel when the [penis] of the accused was inserted into your vagina?
A- It was painful.

Q- After the accused inserted his [penis] into your vagina, what else did he do afterwards?
A- He opened my vagina and then he licked it.
(WITNESS is showing [her] tongue out as if licking.)

FISCAL MACIAS:

Q- After the accused licked your vagina, what else did he do?
A- No more but he kept on repeating licking my vagina.

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[34] TSN, August 17, 2005, p. 4.

Q- What was your position when the accused licked and inserted his [penis] into your vagina?
A- I was lying down.[35]

x x x x

Q- How many times did the accused rape you?
A- Several times.[36]

x x x x

Q- During the last rape incident, what did the accused do to you?
A- When he opened my vagina, he licked my vagina.

Q- What did he do next?
A- His penis banged my vagina. (dumbol-dumbol.)

Q- And what did you feel when the accused banged his [penis] to your vagina?
A- I felt pain.

Q- Why did you feel pain?
(witness failed to answer the question.)

Q- Was it prior or was it because the [penis] of the accused was inserted into your vagina?
A- Yes.

Q- What did you do when the accused inserted his penis into your vagina?
A- I was struggling.

Q- And the accused was strong?
A- Yes.[37] (Emphases supplied)

AAA's testimony was clear, convincing, and straightforward. Accused-appellant ravished her more than once. During the last incident accused-appellant inserted his penis into her vagina, fully satisfying the element of carnal knowledge in statutory rape.

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[35] TSN, December 14, 2005, pp. 2-6.

[36] Id. at 8-9.

[37] Id. at 13-15.

Moreover, records disclose that AAA cried and refused to answer when she was asked "*Can you tell us what did the accused do to you?*" during her direct examination. The hearing was even reset because of her crying. Such spontaneous emotional outburst strengthens her credibility. This Court has held that the crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[38]

In *People v. Ronquillo*,[39] the Court discussed:

> This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[40]

In a bid to exonerate himself from the statutory rape charge, accused-appellant challenges the testimony of AAA that he raped her in the pigpen, a place which was open to the view of their neighbors. He posits that it is quite mind-boggling that a rapist would just attack his victim without even thinking of the possibility that he can easily be caught by the people around.[41]

To further his chance for exoneration, accused-appellant also point to the testimony of AAA's sister, BBB, that AAA immediately joined and played with the children in the area after the alleged rape incident. He argues that it is inconceivable

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[38] *People v. Ortiz*, 614 Phil. 625, 634-635 (2009).

[39] 818 Phil. 641 (2017).

[40] Id. at 651-652, citing *People v. Closa*, 740 Phil. 777, 785 (2014).

[41] CA *rollo*, p. 38.

for anyone to still be able to play with others after an unusual and harrowing experience.[42]

Lastly, accused-appellant relies heavily on BBB's testimony that she saw accused-appellant merely kissing her sister's vagina while accused-appellant was sitting and her sister standing. He maintains that assuming that an incident indeed transpired between accused-appellant and AAA, the same does not constitute rape because BBB testified that accused-appellant was merely kissing AAA's vagina.[43]

Accused-appellant's arguments failed to persuade.

For one, as explained in *People v. Agudo*,[44] this Court has long found and held that:

> Rapists are not deterred from committing the odious act of sexual abuse by the mere presence of people nearby or even family members; rape is committed not exclusively in seclusion. Several cases instruct [Us] that lust is no respecter of time or place and rape defies constraint of time and space.[45]

Thus, the fact that the subject rape incident happened in a place which was open to the view of their neighbors does not negate the fact that accused-appellant indeed raped AAA.

For another, the fact that AAA immediately joined and played with the children in the area after the rape incident does not run counter to AAA's claim that she was ravished by accused-appellant. *We* note AAA's testimony that she was ravished by accused-appellant several times and the rape incident subject of this instant case only pertains to the last one, which may have produced lesser pain on the part of AAA compared to the first few incidents. Too, although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the

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[42] Id. at 39.

[43] Id. at 39-40.

[44] 810 Phil. 918 (2017).

[45] Id. at 929.

charge, it is, however, inaccurate to say that there is a typical reaction or norm of behavior among rape victims. The workings of the human mind and body when placed under emotional stress are unpredictable.[46]

In *People v. Ramos*,[47] the Court further discussed:

> Some victims may shout, some may faint, while others may be shocked into insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind. Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience.[48]

Still for another, as correctly found by the CA, the alleged inconsistency between the testimony of AAA that accused-appellant inserted the tip of his penis into her vagina while inside the pigpen, and that of her sister BBB, who narrated that she only saw accused-appellant sitting down, licking AAA's vagina while the latter was standing near him, is not fatal to the finding of guilt of accused-appellant. BBB's testimony itself reveals that she did not actually see accused-appellant and her sister enter the pigpen nor did she testify that she saw the whole occurrence. *We* agree with the CA's finding that the fact that BBB witnessed a portion of it — one which did not include the penetration of her sister's genitals, does not negate the fact that accused-appellant indeed sexually ravished AAA.[49]

We note however that although AAA testified and established that she was ravished by accused-appellant several times, the latter can only be convicted of one count of statutory rape since the information filed against him in Criminal Case No. B-01591 charges him of only one count.

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[46] See *People v. Ortiz*, supra note 38, at 634-635.

[47] G.R. No. 210435, August 15, 2018.

[48] Id.

[49] *Rollo*, p. 15.

Criminal Case No. B-01592
— Acts of Lasciviousness.

When acts of lasciviousness is committed against a child under 12 years old, the designation of the crime committed shall be Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610.[50] Meanwhile, Section 5 (b) of RA 7610[51] provides that when the victim of Acts of Lasciviousness is under 12 years of age, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period.[52]

Acts of Lasciviousness under the RPC has the following elements: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[53]

Both the RTC and the CA gave credence to BBB's straightforward and candid testimony. BBB recounted her ordeal in the hands of accused-appellant, *viz.*:

FISCAL TEJANO:
Q- And can you please tell us, what did Diosdado do against you?

FISCAL TEJANO:
I would like to make of record, your Honor, that the private complainant [BBB] is crying.

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[50] See *People v. Tulagan,* G.R. No. 227363, April 16, 2019.

[51] Special Protection of Children Against Abuse, Exploitation and Discrimination Act. Approved on June 17, 1992.

[52] *People v. Udtohan,* supra note 26, at 458.

[53] Id.

COURT:
Noted. Witness may answer.

Witness:
A- He lick my vagina.[54]

x x x x

FISCAL TEJANO:
Q- Can you tell us [BBB] where did this incident happened wherein Diosdado Jagdon licked your vagina?
A- In our house.

Q- Where is your house located?
A- [redacted].[55]

x x x x

Q- Can you tell the court, how did (sic) exactly did Diosdado Jagdon licked your vagina?
A- He called me and instructed to go inside our house.

Q- Since according to you, he instructed you to get inside, did you get inside?
A- Yes.

Q- When you were already inside the house, what happened?
A- He instructed me to lie down.

Q- Where did he told you to lie down?
A- In the bed.

Q- And what did he do next?
A- He removed my skirt.

Q- After he removed your skirt, what did he do next?
A- He removed my panty.

Q- After he removed your panty, what did he do to you?
A- He licked my vagina and then he inserted his finger to my vagina.

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[54] TSN, April 8, 2010, p. 3.

[55] Id. at 4.

Q- What did you feel when Diosdado Jagdon, Jr. inserted his finger into your vagina?
A- I felt pain.[56] (Emphasis supplied)

BBB candidly narrated, and successfully established, accused-appellant's lascivious conduct towards her. Accused-appellant licked, and inserted his finger into her vagina. A perusal of BBB's testimony reveals that accused-appellant committed the crime of Sexual Assault against her by inserting his finger inside her vagina. Accused-appellant, however, cannot be convicted of Sexual Assault because the information (Criminal Case No. B-01592) charged him with Acts of Lasciviousness only.

Sexual assault is a crime undoubtedly greater than Acts of Lasciviousness. While it is true that the crime of acts of lasciviousness is necessarily included in the crime of sexual assault, the crime of sexual assault however is not subsumed in the crime of acts of lasciviousness.

In *Andaya v. People*,[57] the Court ruled:

> The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. x x x.[58]

Thus, in Criminal Case No. B-01592, accused-appellant can be convicted, and herein found guilty of, Acts of Lasciviousness only.

Variance as to the number of times BBB was molested does not affect BBB's credibility and is likewise not fatal to the case.

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[56] Id. at 4-5.

[57] 526 Phil. 480 (2006).

[58] Id. at 497.

Accused-appellant points to the alleged inconsistency between the *Information* for Acts of Lasciviousness filed against him and the Sworn Statement executed by BBB. The Information (Criminal Case No. B-01592) charges accused-appellant with single count of Acts of Lasciviousness, while BBB's Sworn Statement reveals that she was molested by him twice. The Court does not see this as fatal to BBB's credibility.

It is already settled that variance as to the time and date of the lascivious conduct, the number of times it was committed or the garments which the accused or the complainant wore at the time of the incident do not generally diminish the complainant's credibility.[59] Here, accused-appellant merely alleges an inconsistency as to the number of times he molested BBB. Interestingly, nowhere in the information does it negate the possibility that BBB had been molested by accused-appellant more than once. More so, such variance as to the number of times accused-appellant molested BBB does not change the proven fact that indeed accused-appellant molested BBB.

Accused-appellant's defenses of denial, alibi, and ill motive on the part of AAA and BBB's parents are inherently weak.

Accused-appellant denies the charge of statutory rape against him. He claims that he was at his workplace located in [redacted] when the rape incident happened. He, however, presented no other witness to corroborate such claim.

In *Ronquillo*,[60] the Court ruled:

> It is well-settled that denial is an "intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility." Alibi, on the other hand, is the "weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected. x x x.[61]

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[59] See *People v. Wilson*, 378 Phil. 1023, 1038-1039 (1999).

[60] Supra note 39.

[61] Id. at 652.

For alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission."[62] Here, accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was working in [redacted] when the rape incident took place in [redacted]. Too, it only takes him a little more than an hour to get to [redacted] from [redacted]. This fact did not make it impossible for him to arrive in [redacted] just in time to rape AAA.

Between AAA's direct, positive, straightforward, and categorical testimony and accused-appellant's bare, self-serving, and uncorroborated alibi, the former will prevail.

In a desperate attempt to exonerate himself from criminal liability, accused-appellant imputes ill motive on the part of AAA and BBB's family in filing the criminal charges against him. He alleged that the charges against him was merely concocted due to his estranged relationship with AAA who was prone to speaking bad words, and the political differences between him and the victims' family. Notably, however, accused-appellant failed to present any clear and convincing proof that AAA, BBB, and their family were moved by hatred or revenge. Thus, accused-appellant's bare allegation of ill motive on the part of the victims and their family must fail.[63]

Given the foregoing, the CA correctly affirmed accused-appellant's conviction for Statutory Rape and Acts of Lasciviousness Under Article 336 of the RPC in relation to Section 5 (b) of RA 7610.

Penalties and Damages.

Statutory Rape is punishable by *reclusion perpetua* under Article 266-B of the RPC, as amended, in relation to Section

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[62] Id.

[63] *See People v. Gani*, 710 Phil. 467, 475 (2013).

5 (b), Article III of RA 7610. Thus, the CA correctly sentenced accused-appellant to suffer the penalty of *reclusion perpetua* for being guilty beyond reasonable doubt of the crime of Statutory Rape. *People v. Jugueta*[64] provides for the following damages when the penalty imposed in rape cases is *reclusion perpetua*: civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱75,000.00.

As earlier mentioned, when the victim of Acts of Lasciviousness is under 12 years old, the penalty shall be *reclusion temporal* in its medium period. Accordingly, the Court finds that the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum, imposed by the CA against accused-appellant is proper, considering that there is no aggravating circumstance present in the case. For Acts of Lasciviousness in relation to Section 5 (b) of RA 7610 where the victim is under 12 years old, *People v. Tulagan*[65] provides for the following damages: civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, and exemplary damages in the amount of ₱50,000.00.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated June 29, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02327 is hereby **AFFIRMED WITH MODIFICATIONS**. The Court finds accused-appellant Diosdado Jagdon, Jr. **GUILTY** beyond reasonable doubt of:

1. Statutory Rape in Criminal Case No. B-01591 and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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[64] 783 Phil. 806 (2016).

[65] Supra note 50.

2. Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610 in Criminal Case No. B-01592 and is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum. Accused-appellant is ordered to pay BBB ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson) and *Hernando, J.*, concur.

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 243146. September 9, 2020]

MR. AMOR VELASCO, SPOUSES GEORGE VELASCO, MRS. NOLFE VELASCO, [HEIRS OF FRANCISCO VELASCO], SPOUSES ROLANDO SABATIN, SPOUSES ALEXIS CASTRO, SPOUSES MELVIN MARON, SPOUSES REGARDO DUYANIN, SPOUSES MARCELO IGNACIO, SPOUSES EDGARDO DUYANIN, SPOUSES ALFREDO MARON, SPOUSES JOSE RAQUINO, SPOUSES ROGEL FELIX, SPOUSES DANNY SANTOS, SPOUSES RICARDO MANABAT, SPOUSES LEONARDO MARTIN, SPOUSES BENJAMIN SARMIENTO, SPOUSES ROLANDO IGNACIO, SPOUSES SUSTACIO IGNACIO, SPOUSES RODRIGO CARLOS, SPOUSES EUSEBIO COLLADO, SPOUSES EDGARDO RULLAN, SPOUSES NELSON ORPIANO, SPOUSES PONCIANO COLLADO, SPOUSES JOEL COLLADO, SPOUSES EDWIN ALEGORA, SPOUSES ELPIDIO PEREZ, SR., SPOUSES BIGHANI VELASCO, SPOUSES REGGIE VELASCO AND SPOUSES ISAGANI IGNACIO,[*] *Petitioners*, *v.* **REBECCA MAGPALE, represented by PILIPINAS MAGPALE-UY**, *Respondent*.

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[*] "Spouses Rolando Sabatin, Spouses Alexis Castro, Spouses Melvin Maron, Spouses Regardo Duyanin, Spouse Marcelo Ignacio, Spouses Edgardo Duyanin, Spouses Alfredo Maron, Spouses Jose Raquino, Spouses Rogel Felix, Spouses Danny Santos, Spouses Ricardo Manabat, Mr. Amor Velasco, Spouses George Velasco, Mrs. Nolfe Velasco, Spouses Leonardo Martin, Spouses Benjamin Sarmiento, Spouses Rolando Ignacio, Spouses Sustacio Ignacio, Spouses Rodrigo Carlos, Spouses Eusebio Collado, Spouses Edgardo Rullan, Spouses Nelson Orpiano, Spouses Ponciano Collado, Spouses Joel Collado, Spouses Edwin Alegora, Spouses Elpidio Perez, Sr., Spouses Bighani Velasco, Spouses Reggie Velasco and Spouses Isagani Ignacio" in the Petition for Review on *Certiorari*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL MATTERS ARE NOT PROPER SUBJECTS OF AN APPEAL; EXCEPTIONS; CASE AT BAR.— [A] petition for review under Rule 45 is limited only to questions of law. Factual questions are not property subject of an appeal by *certiorari.* This Court will not review facts, as it is not our function to analyse or weigh all over again evidence already considered in the proceedings below. However, this rule is subject to certain exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*, to wit: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on 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 CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.

Here, We deem it proper to review the factual findings of the CA and the trial courts since there was misapprehension of facts and CA's ruling overlooked and misappreciated certain facts and was premised on the supposed absence of evidence but is contradicted by the evidence on record.

2. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; PRINCIPLE OF INDEFEASIBILITY OF A TORRENS TITLE; DIRECT AND COLLATERAL ATTACK ON THE CERTIFICATE OF TITLE, DISTINGUISHED; A CERTIFICATE OF TITLE CANNOT BE COLLATERALLY ATTACKED.— [W]e emphasize that this Court is not unmindful of the principle of indefeasibility

of a Torrens title and Section 48 of Presidential Decree No. 1529, which provides that a certificate of title shall not be subject to collateral attack. A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law. An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceedings is nevertheless made as an incident thereof.

3. ID.; ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR RECOVERY OF POSSESSION; COUNTERCLAIM; A COUNTERCLAIM IS A DIRECT ATTACK AGAINST A CERTIFICATE OF TITLE WHERE THE NULLITY OF SUCH TITLE IS RAISED AS A DEFENSE; CASE AT BAR.— [J]urisprudence is replete with cases where this Court held that a counterclaim can be treated as a direct attack against a title where the nullity of such title is raised as a defense. Thus, in the case of *Heirs of Santiago v. Heirs of Santiago*, this Court stated that "while the original complaint filed by the petitioners was for recovery of possession, or *accion publiciana*, and the nullity of the title was raised merely as respondents' defense, we can rule on the validity of the title because of the counterclaim filed by respondents." Also in the case of *Development Bank of the Philippines v. Court of Appeals*, this Court ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. Similarly, in the recent case of *Heirs of Cascayan v. Sps. Gumallaoi*, this Court held that "when a complaint for recovery of possession is filed against a person in possession of a parcel of land under claim of ownership, he or she may validly raise nullity of title as a defense and, by way of counterclaim, seek its cancellation." Applying the foregoing rulings to the present case, We deem that petitioners' counterclaim assailing the validity of respondent's title for having been issued based on a deed of partition where Francisco Velasco's signature was falsified or forged is a direct attack

on respondent's title which should have been passed upon by the trial courts and the appellate court.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; CIVIL LAW; SUCCESSION; CO-OWNERSHIP; UPON THE DEATH OF A CO-OWNER, HIS UNDIVIDED RIGHT TO THE CO-OWNED PROPERTY IS TRANSFERRED TO HIS HEIRS, WHO SHOULD BE INCLUDED IN THE PARTITION THEREOF; A FORGED DEED OF PARTITION IS NULL AND VOID; CASE AT BAR.— Indeed, this Court cannot close its eyes to the glaring fact that there appears a signature of Francisco in the Extrajudicial Partition with Subdivision Agreement and Waiver of Rights executed in 1992, which could not have been his genuine signature since he already died on March 9, 1982 or 10 years before the execution of the questionable document. This significant fact had been overlooked and brushed aside by the trial courts and the appellate court. It is settled that the death of a person terminates contractual capacity. Clearly, Francisco could not have given his consent and acquiescence to the extrajudicial partition, and his undivided right to the property has already been transferred to his heirs, herein petitioners, Nolfe, George, Amor, Merlita, and Milagros Velasco who should have been included in the execution of the partition agreement. If one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and, therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein.

5. ID.; ID.; ID.; ID.; ID.; ID.; A DEED OF PARTITION IS UNENFORCEABLE AGAINST THE HEIRS OF A CO-OWNER WHO HAVE NOT CONSENTED AND PARTICIPATED IN THE EXECUTION THEREOF; CASE AT BAR.— In the assailed partition agreement, the entire property was divided into three lots, Lot No. 3360-A-2-A, Lot No. 3360-A-2-B and Lot No. A-2-C, each containing an area of 19,785 square meters. The share allotted to Francisco, was included in Lot No. 3360-A-2-B, but petitioners and his heirs claim that they have been in possession of the property allotted to respondent situated in that portion denominated as Lot 3360-A-2-C and that they have not given their consent to the subdivision agreement allotting the disputed portion to respondent. In the case of *Pedrosa v. Court of Appeals*, it was

held that a deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious. Upon Francisco's death, his right to the property was already transferred to his heirs, herein petitioners, Nolfe, George, Amor, Merlita, and Milagros Velasco who should have been included in the execution of the deed of partition. Considering that the heirs of Francisco have neither knowledge nor participation in the extrajudicial partition, the same is not binding upon them and could not be enforced against them. Hence, respondent does not have the right to recover possession of the disputed property from the heirs of Francisco and the other petitioners who derived their right of possession from the heirs of Francisco.

6. ID.; ID.; ID.; AN ACTION FOR RECOVERY OF POSSESSION CANNOT BE BASED ON A VOID CERTIFICATE OF TITLE ARISING FROM A FALSIFIED EXTRA-JUDICIAL PARTITION; CASE AT BAR.— The extra-judicial partition with subdivision agreement which contains a forged or falsified signature of Francisco, one of the registered co-owners, is unenforceable against his heirs and is only binding upon the other co-owners who participated in the execution of the deed of partition. Clearly, TCT No. 15102, the certificate of title issued to respondent pursuant to the assailed fraudulent partition agreement, may not be enforced against the heirs of Francisco who have not participated and consented to the partition agreement. Thus, TCT No. 15102, being issued based on falsified extra-judicial partition is void and cannot be the basis for respondent to recover possession. Consequently, respondent's action to recover possession against petitioners based on the assailed certificate of title over the disputed property must fail.

7. ID.; ID.; ID.; THE CO-OWNERS' RESPECTIVE SHARES IN THE PROPERTY OWNED IN COMMON CAN ONLY BE ASCERTAINED THROUGH PARTITION; CASE AT BAR.— Here, there is no doubt that the heirs of Francisco and respondent are recognized co-owners of their respective shares of the original property covered by TCT No. (NT-31597) 11472. The only controversy between petitioners and respondent lies in the determination of the specific portion of the property designated as the share of the heirs and children of Francisco *vis-à-vis* the portion of the property allotted to respondent. We note that when respondent's predecessor-in-interest, Leoncia

and her brothers and sisters, purchased the disputed property, there was no specific identification of the portion acquired by them but only that they acquired one-third share of a parcel of land, denominated as Lot 3360-A-2. Hence, their respective shares can only be ascertained through the proper partition of the subject property with the participation of all the indispensable parties in this case.

8. ID.; ID.; ID.; AN ACTION FOR PARTITION INVOLVES AN IDENTIFICATION OF THE PARTICULAR PORTION OF THE PROPERTY ASSIGNED TO EACH CO-OWNER; CASE AT BAR.— Generally, an action for partition may be seen to simultaneously present two issues: *first*, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned; and *second*, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of what portion should go to which co-owner. In this case, a proper partition should be conducted with the participation and consent of the heirs of Francisco, to determine the agreed specific portion of the property pertaining to them and that which is acquired by respondent. The right of possession of the other petitioners who are tenants of the children of Francisco or were allowed by them to occupy the subject lots will only be determined after the portion pertaining to the heirs of Francisco has been ascertained in a partition.

9. ID.; ID.; ID.; THE DETERMINATION OF THE SPECIFIC PORTION OF THE CO-OWNED PROPERTY PERTAINING TO EACH CO-OWNER IS A QUESTION OF FACT TO BE RESOLVED BY THE TRIAL COURT; CASE AT BAR.— For sure, this determination of the specific portions assigned to petitioners and respondent involves a factual issue which must be determined by the trial court. Thus, this Court deems it proper to remand the case to the trial court in order to conduct a partition and to determine the specific portion of the property pertaining to the respective parties. Upon remand, the RTC should comply with the express terms of Section 2, Rule 69 of the Rules of Court. . . .

Thus, in order to completely settle the issue, and considering that the portion allotted to Francisco's share in Lot 3360-A-2-B, by way of partition was done without the participation of petitioners, notwithstanding their occupation of a part of Lot 3360-A-2-C, allotted to respondent, We deem it proper to order

the partition of the property involving the two lots, Lot 3360-A-2-B and Lot 3360-A-2-C, to arrive at a just and proper adjudication of their respective shares with the consent and acquiescence of all the parties involved.

APPEARANCES OF COUSEL

Jose C. Felimon for petitioners.
Jesus G. Villamar for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before us is a Petition for Review on *Certiorari*[1] seeking to reverse and set aside the Decision[2] dated August 31, 2018 and the Resolution[3] dated November 21, 2018 of the Court of Appeals (CA) in CA-G.R. No. SP No. 151683. The CA denied the petition for review filed by petitioners and affirmed the Decision[4] dated May 8, 2017 and the Order[5] dated June 29, 2017 of the Regional Trial Court (RTC) of San Jose City, Nueva Ecija, Branch 38 which ordered petitioners to remove their structures and to vacate the premises of a parcel of land covered by Transfer Certificate of Title (TCT) No. 15102 registered in the name of Rebecca Magpale (respondent).

Petitioners Amor Velasco, Nolfe Velasco and George Velasco are children of Francisco Velasco (Francisco), one of the registered owners of the original property covered by TCT No. NT-31597 (11472),[6] while the other petitioners, spouses Rolando

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[1] *Rollo*, pp. 13-25.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Rodil V. Zalameda (now a Member of this Court) and Marie Christine Azcarraga-Jacob; id. at 61-73.

[3] Id. at 74-76.

[4] Id. at 129-133.

[5] Id. at 138.

[6] Id. at 130.

Sabatin, spouses Melvin Maron, spouses Marcelo Ignacio, spouses Alfredo Maron, spouses Rogel Felix, spouses Ricardo Manabat, spouses Leonardo Martin, spouses Rolando Ignacio, spouses Rodrigo Carlos, spouses Edgardo Rullan, spouses Ponciano Collado, spouses Edwin Alegora, spouses Bighani Velasco, spouses Isagani Ignacio, spouses Alexis Castro, spouses Regardo Duyanin, spouses Edgardo Duyanin, spouses Jose Raquino, spouses Danny Santos, spouses Benjamin Sarmiento, spouses Sustacio Ignacio, spouses Eusebio Collado, spouses Nelson Orpiano, spouses Joel Collado, spouses Elpidio Perez, Sr. and spouses Reggie Velasco are tenants and occupants of the 6,595 square meter portion titled in the name of respondent and have built their houses thereon. They claim ownership and right of possession of the subject property through their predecessor-in-interest, Francisco.[7]

Facts of the Case

Respondent is the registered owner of a 6,595 square-meter parcel of land located at Barrio Galilea, San Jose City, Nueva Ecija, a portion of Lot 3360-A-2-C of the subdivision plan (LRC) Psd-138355, and covered by TCT No. 15102.[8] Said TCT No. 15102 also covered two parcels of land containing an area of 6,595 square meters registered in the names of Gavino Velasco and Demetria Velasco, respectively.[9]

Before the entire property was subdivided, it was previously covered by TCT No. NT-31597 (11472)[10] denominated as Lot 3360-A-2 of the subdivision plan (LRC) Psd-9098, being a portion of Lot 3360-A described on plan Psd-19224, LRC (GLRO) Cad. Record No. 270 situated in the Barrio of Galilea, Municipality of San Jose, Province of Nueva Ecija, with a total area of 59,355 square meters. The title was issued in the names of Leoncia Velasco (Leoncia) married to Benigno Magpale

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[7] Id. at 63.

[8] Records, p. 7.

[9] Id.

[10] Id. at 252-253.

(Benigno); Gavino Velasco, married to Felicisima Ordono; Demetria Velasco; Narcisa Velasco and minors Almario Velasco and Arceli Velasco who are represented by their mother, Esperanza Velasco; Hermogenes Velasco; Francisco; Bridario Velasco; Eugenio Arenas; Felicidad Velasco; Esperanza Arenas; Bonifacio Arenas; and Julian Arenas, who are co-owners thereof, pro indiviso. The title was issued after spouses Leoncia and Benigno together with Leoncia's brothers and sisters, Gavino, Demetria, Narcisa, Almario and Arceli had purchased one-third share of the aforementioned property. Thereafter, Narcisa died single and without any debts and issues while Almario and Arceli, together with their mother, Esperanza Velasco, died in a vehicular accident.[11]

On April 9, 1992, an Extra Judicial Partition with Subdivision Agreement and Waiver of Rights[12] was executed by respondent, Clemencia Magpale, Benigno, Romeo Magpale, Filipinas Magpale, Gavino Velasco, Demetria Velasco, Hermogenes Velasco, Francisco, Bridario Velasco, Felicidad Velasco, Eugenio Arenas, Esperanza Arenas, Bonifacio Arenas, and Julian Arenas, wherein they agreed to subdivide the entire property covered by TCT No. NT-31597 (11472), into three lots, to wit: (1) **Lot-3360A-2-A** or one-third portion with an area of **19,785** square meters was assigned to Eugenio, Esperanza, Bonifacio and Julian, all surnamed Arenas; (2) **Lot-3360-A-2-B** with an area of **19,785** square meters was assigned to Hermogenes, Francisco, Bridario and Felicidad, all surnamed Velasco, and (3) **Lot-3360-A-2-C** with an area of **19,785** square meters was assigned to the children of Leoncia and Benigno, namely Clemencia, Benigno, Jr., Romeo, Filipinas and herein respondent, together with their co-owners, Gavino and Demetria. The third lot, Lot-3360-A-2-C was further subdivided into three equal portions containing an area of 6,595 square meters each. The northern portion of the lot was assigned to Gavino Velasco; the middle part was given to Demetria Velasco while the southeastern portion part was allotted to the

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[11] Id.

[12] Id. at 136-139.

heirs of Leoncia and Benigno who in turn executed a waiver of rights of their respective shares in favor of their sister, herein respondent. The Extra Judicial Partition executed by respondent, *et al.*, was annotated on TCT No. (NT-31597) 11472 as Entry No. 35019/11472 on April 23, 1992. As a result, TCT No. (NT-31597) 11472 was cancelled and TCT Nos. 15102, 15103 and 15260 were issued. The herein subject certificate of title, TCT No. 15102 was registered in the names of respondent, Demetria Velasco, and Gavino Velasco on September 23, 1992.[13]

We illustrate as follows:

TCT (NT-31597) 11474 Total Area 59,355 square meters (original property) Registered in the names of Leoncia, Gavino, Demetria, Almario (10yrs), Arceli (8yrs) represented by their mother Esperanza, Francisco, Bridario, Hermogenes, Eugenio, Felicidad (Velascos), Esperanza, Bonifacio and Julian (Arenas)

EXTRAJUDICIAL PARTITION with Subdivision Agreement and Waiver of Rights executed on April 9, 1992 (Annotated as Entry No. 35019/11472 on TCT (NT-31597) 11474 on April 23, 1992)

Lot-3360-A-2-A 19785 sq. m.	**Lot-3360-A-2-B** 19785 sq. m.	**Lot-3360-A-2-C** 19785 sq. m. **(TCT No. 5102)**
Eugenio	Hermogenes	Gavino 6,595 (northern)
Esperanza	**Francisco (petitioners)**	Demetria 6,595 (middle)
Bonifacio	Bridario	**Rebecca 6,595 (south) formerly Leoncia's share)-disputed portion**
Julian	Felicidad[14]	

[13] Id.

[14] Id.

On July 16, 2010, respondent filed a Complaint[15] for Recovery of Possession before the Municipal Trial Court in Cities (MTCC) of San Jose City, Nueva Ecija, against petitioners, spouses Rolando Sabatin, et al., docketed as Civil Case No. (10) 3885. In her complaint, respondent alleged, *inter alia*, that: (1) she is the owner of the 6,595-square meter southern portion of the land covered by TCT No. 15102; (2) that the entire parcel of land was the subject of Civil Case No. 2681 for unlawful detainer entitled "*Rebecca Magpale v. Guillermo Duyanin, et al.*," which was decided in favor of respondent and possession of the parcel of land was restored to her in September 2007; (3) that not long after the said restoration of possession, petitioners invaded the same portion and constructed their houses thereon without her knowledge and consent; (4) that respondent sent formal demands for petitioners to remove their structures on her property and vacate it but they refused to do so; and (5) that the market value of the property was ₱18,200.00 with an assessed value of ₱7,280.00. Respondent prayed that petitioners or any person acting on their behalf be ordered to remove their structures and vacate the property and pay respondent rentals from the time of the filing of the complaint until possession of the property had been restored to respondent.[16]

In their Answer,[17] petitioners denied all the allegations of the respondent and alleged that as early as in the 80's, petitioners have been in actual possession of the area they occupied. They averred that petitioners Nolfe, George, Milagros, Amor and Merlita, all surnamed Velasco, are the co-owners of the subject property as they are the children of the late Francisco, a co-owner of the property covered by TCT No. (NT-31597) 11472. After Francisco's death in 1982, respondent caused the execution of an Extra-Judicial Partition with Subdivision Agreement and Waiver of Rights in 1992,[18] making it appear that Francisco

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[15] Id. at 2-4.

[16] Id.

[17] Id. at 22-31.

[18] Id. at 136-139. Exh. "11".

participated therein, to the prejudice of his children. Petitioners presented the Death Certificate[19] of Francisco showing that he died on March 9, 1982. Francisco, during his lifetime was allowed to construct his house by the other co-owners and thereafter his children, on the area assigned to him as his share in the co-ownership. The other petitioners are either tenants of the children of Francisco and the rest were allowed to construct their houses by the children of Francisco upon the assurance that they will buy the areas occupied by them.

As Compulsory Counterclaim,[20] petitioners Velasco, *et al.* assail the validity and issuance of TCT No. 15102 in the name of respondent. They alleged that:

x x x x

16. Defendants Nolfe, George, Milagros, Amor, and Merlita, all surnamed Velasco, hereby replead by reference the allegations of the foregoing Answer, Special, Affirmative and Alternative defenses, and in addition thereto, hereby alleges that:

17. They are directly attacking the validity and issuance of T.C.T. No. 15102 in the name of the plaintiff, as it was issued upon, and by virtue of, a falsified document the execution of which was engineered, conceived and made by plaintiff, by making Francisco Velasco to have participated thereon as alive, when in truth and in fact he died long ago on March 9, 1982, which is 10 years after Francisco Velasco died on March 9, 1982;

x x x x[21]

Petitioners prayed in their Answer that respondent be ordered to reconvey title to petitioners Nolfe, George, Milagros, Amor and Merlita Velasco, and that the complaint for recovery of possession filed respondent be dismissed. In the alternative, petitioners pray that respondent be ordered to sell the portion of the parcel of land occupied by the other petitioners.[22]

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[19] Id. at 194, Exh. "7".

[20] Id. at 26.

[21] Id.

[22] Id. at 26-27.

Respondent died on April 1, 2011.[23] She was substituted by her children, Arthur M. Nidoy, Benjamin M. Nidoy, and Cecille Nidoy-Guarino. The aforesaid children executed a Special Power of Attorney dated April 11, 2011 and appointed Pilipinas Magpale-Uy, their mother's sister, as their Attorney-in-fact.[24]

Initially, the MTCC of San Jose City, Branch 1 issued a Decision[25] dated May 18, 2015 dismissing the case for recovery of possession against petitioners for lack of jurisdiction.[26] It held that the allegation of petitioners that respondent's title is void cannot be validly adjudged in the case for recovery of possession as it can only be raised in a direct action with the main objective of attacking the validity of respondent's title.[27]

On appeal, the RTC San Jose City, Nueva Ecija, Branch 39 issued a Decision[28] dated May 31, 2016 setting aside the Decision of the MTCC and held that the MTCC has jurisdiction over the case. The RTC remanded the case to the court *a quo* for further disposition.[29]

In a Decision[30] dated November 7, 2016, the MTCC of San Jose City, Branch 1, ruled in favor of respondent and ordered petitioners to remove their structures and vacate the subject premises.[31] The trial court held that TCT No. 15102 registered in the name of respondent and two others, Demetria and Gavino, is conclusive evidence of respondent's ownership of the land and being one of the registered owners, respondent has the right to enjoy and to recover it from its possessors, herein

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[23] See Death Certificate; id. at 108.

[24] See Motion for Substitution; id. at 113.

[25] Penned by Judge Analie C. Aldea-Arocena; id. at 313-324.

[26] Id. at 324.

[27] Id. at 323.

[28] Penned by Presiding Judge Cynthia Martinez-Florendo; records, Vol. 3, pp. 351-359.

[29] Id. at 358-359.

[30] Id. at 366-375.

[31] Id. at 375.

petitioners.[32] The trial court further held that petitioners' allegation that respondent's title is void cannot be validly adjudged in this case for recovery of possession and can only be raised in a direct action with the main objective of attacking the validity of respondent's title. The MTCC ordered petitioners to pay rentals of ₱200.00 monthly from the filing of the complaint on July 16, 2010 until possession has been restored to respondent. The MTCC held that respondent had the better right to possess the property because she is the registered owner of the lot under TCT No. 15102, the validity of which cannot be collaterally attacked.[33] The dispositive portion of the decision states:

> WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendants as follows:
>
> 1. Ordering the defendants and any other person acting in their behalves to remove their structures and vacate the premises of the 6,595, sq. m. lot covered by TCT No. 15102 which is registered in the name of the plaintiff;
>
> 2. Ordering the defendants to pay rentals of Php200.00 monthly from the filing of the complaint on 16 July 2010 until possession of the premises has been restored to the plaintiff.
>
> SO ORDERED.[34]

Petitioners appealed the Decision of the MTCC to the RTC. In a Decision[35] dated May 8, 2017, the RTC of San Jose City, Branch 38 affirmed the Decision of the MTCC. The RTC agreed with the MTCC that respondent had a better right to possess the property because she is the registered owner.[36] The RTC held that the allegation of petitioners that the title of respondent is void for being issued based on a falsified extra-judicial partition

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[32] Id. at 373.

[33] Id. at 373-374.

[34] Id. at 375.

[35] CA *rollo*, pp. 73-77.

[36] Id. at 75.

is a collateral attack on TCT No. 15102 which it cannot pass upon and may be made in a direct proceeding for cancellation of title. The RTC then ruled that as the lawful owner, respondent has the right to eject the defendants.[37] Petitioners filed a motion for reconsideration of the said decision but the RTC denied the same in an Order[38] dated June 29, 2017.

Thereafter, petitioners elevated their case to the CA. They asserted that their compulsory counterclaim is considered a direct attack on respondent's title and that the MTCC and the RTC both erred in ordering them to remove their structures and vacate the subject property since respondent failed to establish her cause of action as there was no demand sent to petitioners.[39]

In the assailed Decision[40] dated August 31, 2018, the CA likewise denied petitioners' appeal and affirmed the RTC's Decision ordering petitioners to remove their structures and vacate the subject property.[41] The CA cited Section 48 of Presidential Decree No. 1529 which provides that a certificate of title shall not be subject to collateral attack. The appellate court held that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears. The CA then held that respondent being the registered owner of the subject property is entitled to all the attributes of ownership, including possession. The CA added that even granting that petitioners' counterclaim in their answer may be considered a permissible direct attack to the validity of TCT No. 15102, there would still be no basis to reverse the ruling of the MTCC and the RTC.[42] The CA noted that petitioner's counterclaim failed to allege the assessed value of the property, which is indispensable to show that the

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[37] Id. at 75-76.

[38] Id. at 82.

[39] Id. at 24-26.

[40] Supra note 2.

[41] CA *rollo*, p. 73.

[42] Id. at 69-70.

counterclaim is within the jurisdiction of the MTCC. Moreover, the CA noted that in the proceedings before the MTCC, the judicial affidavits of petitioners George Velasco, Milagros Velasco Maron, Nolfe Velasco and Merlita Velasco Alegora do not suffice to prove falsification.[43]

Petitioner filed a motion for reconsideration of the said Decision but it was denied by the CA in a Resolution[44] dated November 21, 2018.

Hence, petitioners filed the present petition asserting that the CA erred in denying their petition and affirming the Decision of the RTC granting the complaint for recovery of possession of respondent despite petitioners' claim that TCT No. 15102 was issued based on a falsified deed of partition. They insist that their compulsory counterclaim is considered as direct attack on the validity of the title of respondent.[45] They pointed out that the document "Extra-Judicial Partition with Subdivision Agreement and Waiver of Rights" was signed 10 years after Francisco died. The falsification of the said document was clandestinely or surreptitiously made, with a deceased person included as having participated in violation of the law, justice and equity. Furthermore, petitioners argued that there is no evidence to support respondent's cause of action for recovery of possession because there was no proof of demand before the complaint was filed.[46]

Respondent filed a Comment[47] maintaining that the compulsory counterclaim of petitioners contained in their answer to the complaint was a collateral attack and could not be considered as direct attack to the title of respondent.[48]

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[43] Id. at 71-72.

[44] Id. at 74-76.

[45] Id. at 21.

[46] Id. at 23-24.

[47] Id. at 142-143.

[48] Id.

The issues to be resolved in this petition are: (1) whether petitioners' counterclaim assailing the certificate of title issued to respondent may be considered a direct attack on the title of respondent which may be resolved in the case for recovery of possession filed by respondent; and (2) whether the CA erred in affirming the ruling of the MTCC and the RTC that respondent has proven her cause of action to recover possession of the disputed property from petitioners.

Ruling of the Court

The petition has merit.

Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not property subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyse or weigh all over again evidence already considered in the proceedings below. However, this rule is subject to certain exceptions.[49] Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*,[50] to wit: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on 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

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[49] *Gatan v. Vinarao*, 820 Phil. 257 (2017).

[50] 269 Phil. 225, 232 (1990).

of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.[51]

Here, We deem it proper to review the factual findings of the CA and the trial courts since there was misapprehension of facts and CA's ruling overlooked and misappreciated certain facts and was premised on the supposed absence of evidence but is contradicted by the evidence on record.

In the present case, there is no dispute that respondent is one of the registered owners of the parcel of land covered by TCT No. 15102. As such, the MTCC, the RTC, and the CA ruled that respondent's title gives her the better right to possess the disputed portion occupied by petitioners. However, petitioners have consistently assailed the validity of respondent's title for having been issued based on a document of partition purportedly signed by petitioners' predecessor-in-interest, Francisco, who had already died at the time of the execution of the document. The appellate court and the trial courts ruled that petitioners' attack on the validity of respondent's title is a collateral attack on the title which the court cannot entertain since TCT No. 15102 is conclusive evidence of respondent's ownership of the land. They further ruled that the allegation that respondent's title is void cannot be validly adjudged in the case for recovery of possession as it can only be raised in a direct action with a main objective of attacking the validity of respondent's title.

We do not agree. First, we emphasize that this Court is not unmindful of the principle of indefeasibility of a Torrens title and Section 48 of Presidential Decree No. 1529,[52] which provides that a certificate of title shall not be subject to collateral attack.[53] A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law.[54] An action is an attack on a title when the object of the action is to nullify

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[51] Id.

[52] Amending and Codifying the Laws Relative to Registration of Property and for other Purposes.

[53] *Hortizuela v. Tagufa*, 754 Phil. 499, 504 (2015).

[54] *Wee v. Mardo*, 735 Phil. 420, 431 (2014).

the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceedings is nevertheless made as an incident thereof.[55]

However, jurisprudence is replete with cases where this Court held that a counterclaim can be treated as a direct attack against a title where the nullity of such title is raised as a defense. Thus, in the case of *Heirs of Santiago v. Heirs of Santiago*,[56] this Court stated that while the original complaint filed by the petitioners was for recovery of possession, or *accion publiciana*, and the nullity of the title was raised merely as respondents' defense, we can rule on the validity of the title because of the counterclaim filed by respondents. Also in the case of *Development Bank of the Philippines v. Court of Appeals*,[57] this Court ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. Similarly, in the recent case of *Heirs of Cascayan v. Sps. Gumallaoi*,[58] this Court held that when a complaint for recovery of possession is filed against a person in possession of a parcel of land under claim of ownership, he or she may validly raise nullity of title as a defense and, by way of counterclaim, seek its cancellation. Applying the foregoing rulings to the present case, We deem that petitioners' counterclaim assailing the validity of respondent's title for having been issued based on a deed of partition where Francisco Velasco's signature was falsified or forged, is a direct attack on respondent's title which should have been passed upon by the trial courts and the appellate court.

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[55] *Berboso v. Cabral*, 813 Phil. 405, 422 (2017).

[56] 452 Phil. 238, 253 (2003).

[57] 387 Phil. 283, 300 (2000).

[58] 812 Phil. 108, 127 (2017).

As gleaned from the averments of the petitioners, Francisco, and thereafter, his children, petitioners Nolfe, George, Milagros, Amor and Merlita Velasco, constructed their houses on the disputed property which was designated by the other co-owners as their father's share in the property. Respondent sought to recover possession of the property occupied by petitioners, asserting that she is now the registered owner of the said property. Petitioners, however, assert that respondent's title, TCT No. 15102, is void since it is based on falsified Extra-Judicial Partition with Subdivision and Waiver of Rights.

We find merit in petitioners' claim.

Indeed, this Court cannot close its eyes to the glaring fact that there appears a signature of Francisco in the Extrajudicial Partition with Subdivision Agreement and Waiver of Rights executed in 1992, which could not have been his genuine signature since he already died on March 9, 1982 or 10 years before the execution of the questionable document. This significant fact had been overlooked and brushed aside by the trial courts and the appellate court. It is settled that the death of a person terminates contractual capacity. Clearly, Francisco could not have given his consent and acquiescence to the extrajudicial partition, and his undivided right to the property has already been transferred to his heirs, herein petitioners, Nolfe, George, Amor, Merlita, and Milagros Velasco who should have been included in the execution of the partition agreement. If one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and, therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein.[59]

In the case of *Roman Catholic Bishop of Tuguegarao v. Prudencio*[60] this Court explained the effect when one of the co-owners of a property was not included in the partition agreement. This Court ruled in this wise:

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[59] See *Heirs of Arao v. Heirs of Eclipse*, G.R. No. 211425, November 19, 2018.

[60] G.R. No. 187942, September 7, 2016.

Considering that respondents-appellees have neither knowledge nor participation in the Extra-Judicial Partition, the same is a total nullity. It is not binding upon them. Thus, in the Heirs of Neri vs. Heirs of Hadji Yusop Uy, which involves facts analogous to the present case, we ruled that:

x x x [I]n the execution of the Extra Judicial Settlement of the Estate with Absolute Deed of Sale in favor of spouses Uy, all the heirs of Anunciacion should have participated. Considering that Eutropia and Victorio were admittedly excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity.

x x x x

It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void, as far as the plaintiffs were concerned. The rule covers only valid partitions. **The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. x x x [A]s the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution."**[61] (Emphasis supplied)

In the assailed partition agreement, the entire property was divided into three lots, Lot No. 3360-A-2-A, Lot No. 3360-A-2-B and Lot No. A-2-C, each containing an area of 19,785 square meters. The share allotted to Francisco, was included in Lot No. 3360-A-2-B, but petitioners and his heirs claim that they have been in possession of the property allotted to respondent situated in that portion denominated as Lot 3360-A-2-C and that they have not given their consent to the subdivision agreement allotting the disputed portion to respondent. In the case of *Pedrosa v. Court of Appeals*,[62] it was held that a deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious. Upon Francisco's death, his right to the property was already transferred to his heirs, herein

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[61] Id.

[62] 406 Phil. 167, 176-177 (2001).

petitioners, Nolfe, George, Amor, Merlita, and Milagros Velasco who should have been included in the execution of the deed of partition. Considering that the heirs of Francisco have neither knowledge nor participation in the extrajudicial partition, the same is not binding upon them and could not be enforced against them. Hence, respondent does not have the right to recover possession of the disputed property from the heirs of Francisco and the other petitioners who derived their right of possession from the heirs of Francisco.

The extra-judicial partition with subdivision agreement which contains a forged or falsified signature of Francisco, one of the registered co-owners, is unenforceable against his heirs and is only binding upon the other co-owners who participated in the execution of the deed of partition. Clearly, TCT No. 15102, the certificate of title issued to respondent pursuant to the assailed fraudulent partition agreement, may not be enforced against the heirs of Francisco who have not participated and consented to the partition agreement. Thus, TCT No. 15102, being issued based on falsified extra-judicial partition is void and cannot be the basis for respondent to recover possession. Consequently, respondent's action to recover possession against petitioners based on the assailed certificate of title over the disputed property must fail.

Here, there is no doubt that the heirs of Francisco and respondent are recognized co-owners of their respective shares of the original property covered by TCT No. (NT-31597) 11472. The only controversy between petitioners and respondent lies in the determination of the specific portion of the property designated as the share of the heirs and children of Francisco *vis-à-vis* the portion of the property allotted to respondent. We note that when respondent's predecessor-in-interest, Leoncia and her brothers and sisters, purchased the disputed property, there was no specific identification of the portion acquired by them but only that they acquired one-third share of a parcel of land, denominated as Lot 3360-A-2. Hence, their respective shares can only be ascertained through the proper partition of the subject property with the participation of all the indispensable parties in this case.

Generally, an action for partition may be seen to simultaneously present two issues: *first*, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned; and *second*, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of what portion should go to which co-owner.[63] In this case, a proper partition should be conducted with the participation and consent of the heirs of Francisco, to determine the agreed specific portion of the property pertaining to them and that which is acquired by respondent. The right of possession of the other petitioners who are tenants of the children of Francisco or were allowed by them to occupy the subject lots will only be determined after the portion pertaining to the heirs of Francisco has been ascertained in a partition. For sure, this determination of the specific portions assigned to petitioners and respondent involves a factual issue which must be determined by the trial court. Thus, this Court deems it proper to remand the case to the trial court in order to conduct a partition and to determine the specific portion of the property pertaining to the respective parties. Upon remand, the RTC should comply with the express terms of Section 2, Rule 69 of the Rules of Court, which provides:

> Section 2. Order for partition, and partition by agreement thereunder. — If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among the parties in interest. Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by the parties, and such partition together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated.
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> x x x x
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> Section 3. Commissioners to make partition when parties fail to agree. — If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them

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[63] Heirs of Morales v. Agustin, G.R. No. 224849, June 6, 2018.

to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct.

Thus, in order to completely settle the issue, and considering that the portion allotted to Francisco's share in Lot 3360-A-2-B, by way of partition was done without the participation of petitioners, notwithstanding their occupation of a part of Lot 3360-A-2-C, allotted to respondent, We deem it proper to order the partition of the property involving the two lots, Lot 3360-A-2-B and Lot 3360-A-2-C, to arrive at a just and proper adjudication of their respective shares with the consent and acquiescence of all the parties involved.

WHEREFORE, in view of the foregoing, the Decision dated August 31, 2018 and the Resolution dated November 21, 2018 of the Court of Appeals in CA-G.R. SP No. 151683 are hereby **SET ASIDE**. Transfer Certificate of Title No. 15102 is hereby declared **NULL** and **VOID** for having been issued pursuant to a falsified extrajudicial deed of partition. Accordingly, Civil Case No. (10) 3885, respondent's complaint for recovery of possession against petitioners is hereby **DISMISSED** for lack of merit.

This case is **REMANDED** to the Regional Trial Court of San Jose City, Nueva Ecija, Branch 38 and said court is **DIRECTED** to order the conduct of partition of Lot No. 3360-A-2-B and Lot No. 3360-A-2-C of the original lot covered by Transfer Certificate of Title No. NT-31597 (11472) and determine the portion pertaining to the share of the heirs of Francisco Velasco, namely Nolfe, George, Milagros, Amor, and Merlita, all surnamed Velasco, in the disputed property *vis-a-vis* the portion acquired by respondent Rebecca Magpale. For this purpose, the said court shall appoint Commissioners and proceed in accordance with Sections 2 to 13 of Rule 69 of the Rules of Civil Procedure.

SO ORDERED.

Leonen, Caguioa,[**] *Gesmundo,* and *Gaerlan, JJ.*, concur.

[**] Designated as additional Member.

SECOND DIVISION

[G.R. No. 244340. September 9, 2020]

PLANTERS DEVELOPMENT BANK, now CHINA BANK SAVINGS, INC., *Petitioner*, *v*. **SPOUSES ARCHIMEDES S. INONCILLO and LIBORIA V. MENDOZA, represented by ROBERTO V. AQUINO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW CAN BE RAISED THEREIN, AS THE SUPREME COURT IS NOT A TRIER OF FACTS AND IT CANNOT RULE ON QUESTIONS WHICH DETERMINE THE TRUTH OR FALSEHOOD OF ALLEGED FACTS.— The question of whether the signatures of respondent Spouses on the SPA and the mortgage agreement is a forgery or not is factual in nature and is beyond the Court's jurisdiction in the present petition. As a rule, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. While the rule admits of some exceptions, none is applicable in the present case. Again, the Supreme Court is not a trier of facts and it cannot rule on questions which determine the truth or falsehood of alleged facts. The determination of which is best left to the courts below. Also, this Court has accorded finality to the factual findings of the trial courts, more so, as in the instant case, when such findings are affirmed by the CA.

2. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; GENUINENESS OF HANDWRITING; THE ONE ALLEGING FORGERY HAS THE BURDEN OF ESTABLISHING HIS CASE BY PREPONDERANCE OF EVIDENCE AND THE FACT OF FORGERY CAN ONLY BE ESTABLISHED BY COMPARISON BETWEEN THE ALLEGED SIGNATURE AND THE AUTHENTIC AND GENUINE SIGNATURE OF THE PERSON WHOSE SIGNATURE IS THEORIZED TO HAVE BEEN

FORGED.— It is well-entrenched in this jurisdiction that forgery cannot be presumed and may only be proven by clear, positive, and convincing evidence. Thus, the one alleging forgery has the burden of establishing his or her case by preponderance of evidence. 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 to have been forged.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; ATTORNEY'S FEES AND LITIGATION EXPENSES; THE AWARD THEREOF IS JUSTIFIED WHEN A PARTY IS COMPELLED TO LITIGATE AND TO ENGAGE THE SERVICES OF COUNSEL.— As regards the award of attorney's fees and litigation expenses, the Court finds the same proper as it is in accordance with Article 2208 (2) of the Civil Code. x x x [T]he award thereof is justified, considering that respondent Spouses were compelled to litigate and to engage the services of counsel. Thus, they must be recompensed for the consequent expenses brought about by the litigation of this case.

APPEARANCES OF COUNSEL

Janda Pacis Pagtakhan & Danting for petitioner.
Ramos & Ramos Law Office for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated June 29, 2018 and the Resolution[3] dated January 10, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 100540, which

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[1] *Rollo*, pp. 30-46.

[2] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan (now a Member of the Court), concurring; id. at 48-59.

[3] Id. at 61-63.

affirmed *in toto* the Decision[4] dated February 8, 2013 of the Regional Trial Court (RTC) of Malolos City, Branch 15.

Facts

The present case stemmed from a complaint for annulment or declaration of nullity of mortgage and damages with application for preliminary injunction and prayer to issue a temporary restraining order filed by respondents Spouses Archimedes S. Inoncillo (Archimedes) and Liboria V. Mendoza (Liboria; collectively, respondent Spouses), represented by Roberto Aquino, against petitioner Planters Development Bank (PDB), now China Bank Savings, Inc.; then defendants Spouses Rolando S. Inoncillo (Rolando) and Elsa T. Inoncillo (Elsa; collectively, Spouses Inoncillo), and Notary Public Julius Carmelo J. Banez.

Respondent Spouses claimed to be the registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-101817 issued by the Registry of Deeds of Bulacan. Respondent Spouses alleged that Rogelio S. Inoncillo (Rogelio), the brother of Archimedes, was the one who processed the titling of the subject lot. Rolando, another brother of Archimedes, took the Owner's copy of the TCT from Rogelio under the pretext that he would deliver the same to Archimedes.[5]

On August 15, 1997, Spouses Inoncillo obtained a ₱1,600,000.00 loan with PDB, covered by a promissory note and a loan agreement. To secure the loan obligation, Spouses Inoncillo executed a mortgage agreement over two (2) parcels of land: Lot 1, which is covered under TCT No. T-74306; and Lot 2, which is covered under TCT No. T-101817 registered under the name of respondent Spouses. On January 15, 1997, Rolando presented to PDB a Special Power of Attorney[6] (SPA),which was purportedly executed by Archimedes authorizing the former to mortgage the real property covered

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[4] Penned by Judge Alexander P. Tamayo; id. at 151-161.

[5] Id. at 151.

[6] Not attached to the *rollo*.

under TCT No. T-101817 and to sign any and all documents related thereto. On July 12, 1997, Rolando submitted to PDB another SPA still executed by Archimedes reiterating the same purpose as the first SPA. Sometime in March 1998, Spouses Inoncillo defaulted on the payment of their loan, thus, PDB foreclosed the mortgaged property.[7]

Respondent Spouses denied having executed any SPA and having participated in the execution of the mortgage agreement. They only learned that their property was mortgaged to PDB when they arrived from the United States in October 1997 when they were about to pay the subject property's realty taxes. Thus, respondent Spouses filed a complaint before the RTC asserting that their signatures on the SPA and the mortgage agreement were forged and that such mortgage agreement is void and produces no force and effect.[8]

RTC Ruling

The RTC ruled in favor of respondent Spouses. The RTC found that the copy of TCT No. T-101817 given by Rolando to PDB was not genuine as confirmed by the Register of Deeds. The RTC held that even to the naked eye, the signatures found on the SPA and on the mortgage agreement were different with the signatures of respondent Spouses appearing in the records of the case. The RTC likewise relied on the following pieces of evidence to support the conclusion of forgery, to wit: (a) vehement denial of respondent Spouses in signing the SPA and the mortgage agreement; (b) respondent Spouses were out of the country during the execution of the SPA and the mortgage agreement; (c) the subject TCT No. T-101817 was only issued on March 15, 1997, whereas, the SPA was executed on January 15, 1997; and (d) hostile witness Elsa also admitted to not knowing whether respondent Spouses signed the SPA and mortgage agreement.

The RTC went on to declare that PDB is not a mortgagee in good faith having failed to exercise the required degree of

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[7] *Rollo*, pp. 35-37.

[8] Id. at 157.

caution in ascertaining the genuineness and extent of authority of Spouses Inoncillo to mortgage the subject property. Thus, the forged SPA and mortgage agreement were declared void *ab initio* and cannot be made the subject of a foreclosure proceeding. The *fallo* of the RTC Decision reads as follows:

> **WHEREFORE**,in view of the foregoing, judgment is hereby rendered in favor of plaintiffs Archimedes and Liboria Inoncillo and against defendant Planters Development Bank by:
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> 1. declaring the mortgage dated August 15, 1997 on the property covered and described in TCT No. T-101817 as null and void;
> 2. ordering the injunction issued as permanent thereby enjoining the defendants Planters Development Bank and Notary Public from proceeding with the scheduled auction sale of the subject property under TCT No. T-101817 of the Registry of Deeds of Bulacan; and
> 3. ordering defendant Planters Development Bank to pay [₱]50,000.00 as attorney's fees and [₱]20,000.00 as litigation expenses.
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> SO ORDERED.[9]

CA Ruling

On appeal, the CA affirmed *in toto* the findings of the RTC. The CA opined that the lack of technical examination of the questioned signatures by a handwriting expert does not make the findings of the RTC irregular and invalid. As a rule, when the authenticity of handwriting is involved, a court is bound to make its own independent assessment of the evidence submitted before it and need not always resort to handwriting examiners or document experts. The CA likewise affirmed the award of attorney's fees and litigation expenses as respondent Spouses were compelled to litigate and engage the services of a counsel.

Aggrieved, PDB elevated the case before the Court *via* Rule 45 of the Rules of Court asserting that the CA gravely erred in declaring the mortgage agreement null and void and

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[9] Id. at 160-161.

in ordering it to pay respondent Spouses attorney's fees and litigation expenses.

The Court's Ruling

The petition is without merit.

The question of whether the signatures of respondent Spouses on the SPA and the mortgage agreement is a forgery or not is factual in nature and is beyond the Court's jurisdiction in the present petition. As a rule, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. While the rule admits of some exceptions, none is applicable in the present case.[10]

Again, the Supreme Court is not a trier of facts and it cannot rule on questions which determine the truth or falsehood of alleged facts. The determination of which is best left to the courts below. Also, this Court has accorded finality to the factual findings of the trial courts, more so, as in the instant case, when such findings are affirmed by the CA.[11]

Herein, PDB insists that the present petition falls under the exceptions, considering that the CA committed misapprehension of facts when it affirmed the findings of the RTC. PDB contends that respondent Spouses failed to prove their claim of forgeries on the questioned documents, considering that the documents they presented did not overturn the presumption of regularity of the mortgage agreement. PDB theorized that the persons indicated in the Bureau of Immigration (BOI) certifications are not respondent Spouses based on the following reasons: *first*, the certification issued by the BOI indicated one Levy M. Inoncillo, whereas respondent is Liboria M. Inoncillo; and *second*, both Archimedes and Levy were indicated as American citizens in the BOI certifications, whereas, the nationality of Archimedes in TCT No. T-101817 is Filipino and the nationality of Liboria

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[10] See *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602.

[11] See *Coro v. Nasayao*, G.R. No. 235361, October 16, 2019.

in the Supplement to the SPA[12] executed on February 13, 1999 is also Filipino.[13]

It is well-entrenched in this jurisdiction that forgery cannot be presumed and may only be proven by clear, positive, and convincing evidence. Thus, the one alleging forgery has the burden of establishing his or her case by preponderance of evidence. 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 to have been forged.[14]

Section 22, Rule 132 of the Revised Rules of Court provides that:

> Section 22. *How genuineness of handwriting proved.* — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given **by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge**. (Emphasis supplied)

In the present case, no technical examination was done by an expert witness on the questioned signatures as it was the RTC Judge who personally conducted an examination of the questioned signatures on the SPA and the mortgage agreement and compared it with respondent Spouses' signatures appearing in the records of the case. An excerpt of the RTC Decision is hereby reproduced, thus:

> To contradict the execution of said documents, plaintiffs vehemently denied having executed the Special Power of Attorney (Exh. C) and the Mortgage (Exh. B) with defendant bank. Even to the naked eye,

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[12] Not attached to the *rollo*.

[13] *Rollo*, pp. 40-41.

[14] *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855-856 (2015).

a comparison between the signatures of the debtors-mortgagors appearing in both documents and plaintiffs' signatures appearing in the records of this case would lead to a conclusion that the signatures were not written or affixed by one and the same person. Defendant Elsa Inoncillo herself, as a hostile witness, denied having knowledge as to who signed under the names of plaintiffs are (sic) mortgagors. The lack of consent is further sealed by the Certification of the Bureau of Immigration as to the pertinent dates which confirmed that plaintiffs could not have been personally present in the country to sign the SPA and mortgage.[15]

From the foregoing, after the conduct of an examination, the RTC found the signatures of respondent Spouses on the questioned SPA and mortgage agreement as forgeries. The certification of the BOI merely supported respondent Spouses' claim that they were not in the Philippines when the questioned documents were executed.

A cursory reading of the present petition would show that PDB is not assailing the personal examination of the trial court of respondent Spouses' signatures on the questioned documents as its main contention revolves around the probative value of the BOI certifications, which were offered to prove that respondent Spouses were out of the country when the questioned SPA and mortgage agreement were executed. Not only are these issues raised for the first time on appeal, again, these are factual matters that are beyond the ambit of the Court in a petition for review on *certiorari*.

Nonetheless, even if the BOI certifications will not be given credence or probative weight, there were other evidence on record that supported the RTC and the CA's findings that the questioned signatures were indeed forgeries, to wit: (a) the examination conducted by the RTC Judge of the questioned signatures by comparing the signatures found on the SPA and mortgage agreement with the evidence on record;[16] (b) the testimony of the hostile witness, Elsa, that she did not see

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[15] *Rollo*, p. 159.

[16] Id. at 84.

who signed the SPA and the mortgage agreement;[17] and (c) the SPA dated January 15, 1997, which was issued for the purpose of mortgaging the subject property, was executed before the issuance of TCT No. T-101817, which was issued only on March 15, 1997.[18] Although there was another SPA, which was issued on July 12, 1997, it merely highlighted the defect of the previously issued SPA.

As regards the award of attorney's fees and litigation expenses, the Court finds the same proper as it is in accordance with Article 2208 (2) of the Civil Code.[19] As explained in the assailed CA Decision, the award thereof is justified, considering that respondent Spouses were compelled to litigate and to engage the services of counsel. Thus, they must be recompensed for the consequent expenses brought about by the litigation of this case.

WHEREFORE, premises considered, this Court resolves to **DENY** the petition. The Decision dated June 29, 2018 and the Resolution dated January 10, 2019 of the Court of Appeals in CA-G.R. CV No. 100540 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson) and *Hernando, J.*, concur.

Inting, J., on official leave.

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[17] Id. at 156.

[18] Id. at 159.

[19] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or incur expenses to protect his interest;

THIRD DIVISION

[A.C. No. 10204. September 14, 2020]

JUDGE ROSEMARIE V. RAMOS, Regional Trial Court, Branch 19, Bangui, Ilocos Norte, *Complainant*, *v*. **ATTY. VICENTITO M. LAZO,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS ARE PROHIBITED FROM ENGAGING IN ACTIVITIES "AIMED AT DEFIANCE OF THE LAW OR AT LESSENING CONFIDENCE IN THE LEGAL SYSTEM."— Significantly, a lawyer is an "officer of the court" and is "an agency to advance the ends of justice." This sacred role is enshrined in the first Canon of the Code of Professional Responsibility, which reminds lawyers of their fundamental duty to "x x x uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." To achieve this end, Rule 1.02 prohibits lawyers from engaging in activities "aimed at defiance of the law or at lessening confidence in the legal system."

2. ID.; ID.; ID.; LAWYERS MUST HELP BUILD THE HIGH ESTEEM AND REGARD TOWARDS THE COURTS AND JUDICIAL OFFICERS.— Likewise, a lawyer must uphold the dignity and authority of the courts to which he owes fidelity, and preserve the people's faith in the judiciary. It is every lawyer's sworn and moral duty to help build the high esteem and regard towards the courts that is essential to the proper administration of justice. In line with this, Canon 11 mandates that lawyers shall observe and maintain the respect due to the courts and judicial officers. Relative thereto, Rules 11.04 and 13.02 forbid lawyers from attributing to a Judge "motives not supported by the record or have no materiality to the case"; and "[making] any public statements in the media regarding a pending case tending to arouse public opinion for or against a party," respectively. Furthermore, Rule 11.05 ordains that any grievances against judges must be submitted to the proper authorities only.

3. ID.; ID.; ID.; A LAWYER HAS THE RIGHT TO CRITICIZE THE ACTS OF THE COURTS AND JUDGES IN RESPECTFUL TERMS AND THROUGH LEGITIMATE CHANNELS.— [A] lawyer's duty to respect the courts and its officers does not require blind reverence. The Code does not aim to cow lawyers into silence. In fact, in *Judge Lacurom v. Atty. Jacoba and Atty. Velasco*, this Court recognized the right of a lawyer, both as an officer of the court and as a citizen, to criticize the acts of courts and judges in respectful terms and through legitimate channels. Criticisms, if warranted, must be respectful and ventilated through the proper forum.

4. ID.; ID.; ID.; UNSUBSTANTIATED ACCUSATIONS AGAINST JUDGES SPURRED BY ILL-MOTIVES WARRANT ADMINISTRATIVE SANCTIONS.— [T]he lawyer's right to criticize judges and the limits thereof have been the subject of numerous rulings. In all of these, this Court struck a balance between the lawyer's right to respectfully voice his/her opinions without denigrating the administration of justice. Reprisals that transgress the boundaries of decency and fair play are unwarranted.

. . .

Markedly, unsubstantiated accusations against judges spurred by ill-motives warrant administrative sanctions.

5. ID.; ID.; ID.; GRAVE ACCUSATIONS AGAINST A JUDGE SHOULD NOT BE IRRESPONSIBLY DANGLED BEFORE THE PUBLIC, BUT SHOULD BE VENTILATED BEFORE THE OCA; CASE AT BAR.— To begin with, as a lawyer, Atty. Lazo knew that his grievances against Judge Ramos should be ventilated by filing a complaint before the OCA. No matter how noble his intentions were, he had no reason to disregard the proper protocol, and to malign and degrade Judge Ramos outside of legitimate channels. Nothing prevented him from directly filing a complaint before the OCA if he truly believed in his cause. In fact, he did file a complaint, albeit belatedly, after already tarnishing Judge Ramos' character in public. Worse, he knew that the media was present during the hearings. Their presence fueled the rapid spread of rumors and malicious imputations against Judge Ramos.

. . .

> Undoubtedly, Atty. Lazo's utterances incited public defiance and eroded the public's confidence in the court. His unsubstantiated insinuations of bias, prejudice and bribery in exchange for favorable resolutions are grave accusations that should not have been irresponsibly dangled before the public. If he sincerely desired to hold Judge Ramos accountable for her purportedly illegal acts, then he should have directly filed a case before the OCA. The substance of his rants were judicial errors, which may only be resolved by the Court, and not by the public. Airing them out in public did nothing but destroy the people's faith and trust in the judiciary, whereas filing the proper complaint would have brought a fair and just resolution to the case.

D E C I S I O N

GAERLAN, *J.*:

This resolves the Verified Disbarment Complaint/Letter Affidavit (With Urgent Prayer for Injunction/Gag Order)[1] filed by Judge Rosemarie V. Ramos (Judge Ramos) against Atty. Vicentito M. Lazo (Atty. Lazo) for violation of the Code of Professional Responsibility.

The Antecedents

On September 9, 2013, Atty. Lazo, a member of the *Sangguniang Panlalawigan* of Ilocos Norte delivered a speech during the Question and Privilege Hour of the *Sangguniang Panlalawigan*. In his Speech, he related that in Criminal Case Nos. 2131-2131-19, pending before the Regional Trial Court (RTC), Branch 19, Bangui, Ilocos Norte, Presiding Judge Ramos issued an Order inhibiting from the case in view of a report made to the OIC Prosecutor that she received ₱2,000,000.00 in exchange for the acquittal of the four accused. He urged Judge Ramos to inhibit, and implored the *Sangguniang Panlalawigan* to monitor the case closely to avoid the possibility of money changing hands.[2]

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[1] *Rollo*, pp. 1-16.

[2] Id. at 35-37.

Subsequently, on September 16, 2013, Atty. Lazo again delivered a speech[3] before the *Sangguniang Panlalawigan* regarding Criminal Case No. 1962 for illegal sale of dangerous drugs decided by Judge Ramos. Atty. Lazo intimated that there was something "fishy" about the case.[4] Allegedly, the case was re-opened to receive newly discovered evidence, which eventually resulted to an acquittal. Atty. Lazo theorized that the reversal was due to Judge Ramos' personal bias in favor of the accused's relative who is "very, very, very, very close" to her.[5] He likewise mentioned a rumor about justice for sale at Judge Ramos' sala. Accordingly, Atty. Lazo implored his colleagues to scrutinize the case and file a complaint against Judge Ramos before the Office of the Court Administrator (OCA).[6] In both instances, the media was present during the delivery of Atty. Lazo's speeches.[7]

Thereafter, the *Sangguniang Panlalawigan* passed Provincial Resolution No. 011-2013 entitled *"A Resolution Imploring the Honorable Supreme Court to Conduct an Investigation to Determine the Moral Fitness and Competence of Judge Rosemarie V. Ramos to Continue to Sit as Presiding Judge of the Regional Trial Court, Branch 19 in Bangui, Ilocos Norte."*[8] However, the Complaint was returned for failure to comply with the required form.[9]

On December 9, 2013, Atty Lazo, in his personal capacity, filed an administrative complaint against Judge Ramos. The case was docketed as OCA IPI No. 13-4177-RTJ.[10]

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[3] Id. at 38-42.

[4] Id. at 40.

[5] Id. at 41.

[6] Id. at 203.

[7] Id. at 3.

[8] Id. at 70-72.

[9] Id. at 61-62.

[10] Id.

Meanwhile, Judge Ramos filed a Verified Disbarment Complaint/Letter Affidavit (With Urgent Prayer for Injunction/ Gag Order)[11] dated October 3, 2013 against Atty. Lazo. She alleged that Atty. Lazo violated Canons 1, Rule 1.02; Canon 11, Rules 11.04 and 11.05; and Canon 13, Rule 13.02 of the Code of Professional Responsibility. She claimed that Atty. Lazo helplessly slandered and insulted her in public out of personal interest and pure malice. She likewise charged Atty. Lazo of "maliciously flaunting his unfounded, baseless and highly speculative imputations"[12] against her in the public and the media, thereby stirring "anti-sentiments against her"[13] and the office she holds.[14]

IBP Report and Recommendation

On July 15, 2016, IBP Commissioner Peter M. Bantilan (Commissioner Bantilan) issued a Report and Recommendation[15] recommending Atty. Lazo's suspension from the practice of law for a period of one year. Commissioner Bantilan opined that Atty. Lazo was compelled by bad faith and malice in delivering his speeches.[16] He knew fully well that the media was present and he attempted to publicize allegations of bribery and suspicions of irregularity in the cases handled by Judge Ramos. In turn, his acts destroyed the integrity of the RTC of Bangui, Ilocos Norte and cast doubt on the court's ability to exercise fairness and deliver justice.[17] He transgressed the Code of Professional Responsibility which mandates that a lawyer must promote respect for the courts, legal processes, and judicial officers, and shall not attribute to a judge motives not supported by the records or have no materiality to the case. Moreover,

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[11] Id. at 1-16.

[12] Id. at 8.

[13] Id.

[14] Id. at 8-9.

[15] Id. at 201-206.

[16] Id. at 206.

[17] Id. at 204-205.

his concerns about Judge Ramos' illicit conduct should have been resolved by submitting a grievance before this Court.[18]

The dispositive portion of the Report and Recommendation reads:

> WHEREFORE, it is respectfully recommended the herein respondent be declared guilty of violating Canon 1, Rule 1.02, Canon 11, Rule 11.04, Rule 11.05, and Rule 13.02 of the Code of Professional Responsibility for which he should be suspended from the practice of law for a period of one (1) year with a stern warning that a repetition of the same or similar wrongdoing will be dealt with more severely.[19]

IBP Board of Governors Resolution

On May 27, 2017, the IBP Board of Governors passed a Resolution[20] dismissing the Complaint, *viz.*:

> *RESOLVED to REVERSE the recommendations of the Investigating Commissioner and to* ***DISMISS*** *the complaint.*
>
> *RESOLVED FURTHER to direct CIBD Assistant Director Leo B. Malagar to prepare an extended resolution explaining the Board's action.*[21]

In an Extended Resolution[22] dated June 23, 2019, the IBP Board of Governors explained that Atty. Lazo, as a member of the *Sangguniang Panlalawigan*, was well-within his rights to make a privileged speech subject to the limitations of its rules of procedure, laws and the Constitution. The manner in which Atty. Lazo delivered his speeches did not violate the Code of Professional Responsibility or Rule 138, Section 27 of the Rules of Court. In the same vein, he may not be faulted for the presence of the media because all the sessions of the *Sangguniang Panlalawigan* are open to the public.[23]

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[18] Id. at 205.

[19] Id. at 206.

[20] Id. at 199-200.

[21] Id. at 199.

[22] Id. at 207-210.

[23] Id. at 210.

Issue

The main issue raised in the instant case is whether or not Atty. Lazo is administratively liable for violating Canon 1, Rule 1.02, Canon 11, Rules 11.04 and 11.05, Canon 13, Rule 13.02 of the Code of Professional Responsibility.

Ruling of the Court

The Court finds Atty. Lazo administratively liable.

A Lawyer Owes the Court Fidelity and Respect

Significantly, a lawyer is an "officer of the court" and is "an agency to advance the ends of justice."[24] This sacred role is enshrined in the first Canon of the Code of Professional Responsibility, which reminds lawyers of their fundamental duty to "x x x uphold the Constitution, obey the laws of the land and promote respect for law and legal processes."[25] To achieve this end, Rule 1.02 prohibits lawyers from engaging in activities "aimed at defiance of the law or at lessening confidence in the legal system."[26]

Likewise, a lawyer must uphold the dignity and authority of the courts to which he owes fidelity, and preserve the people's faith in the judiciary.[27] It is every lawyer's sworn and moral duty to help build the high esteem and regard towards the courts that is essential to the proper administration of justice.[28] In line with this, Canon 11 mandates that lawyers shall observe and maintain the respect due to the courts and judicial officers.[29] Relative thereto, Rules 11.04 and 13.02 forbid lawyers from

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[24] *Kenneth R. Mariano v. Atty. Jose N. Laki*, A.C. No. 11978 [Formerly CBD Case No. 10-2769], September 25, 2018.

[25] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

[26] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1, Rule 1.02.

[27] *Re: Letter dated 21 February 2005 of Atty. Noel S. Sorreda,* 502 Phil. 292, 302 (2005).

[28] Id.

[29] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 11.

attributing to a Judge "motives not supported by the record or have no materiality to the case";[30] and "[making] any public statements in the media regarding a pending case tending to arouse public opinion for or against a party," respectively.[31] Furthermore, Rule 11.05 ordains that any grievances against judges must be submitted to the proper authorities only.[32]

Compliance with the above-mentioned rules of conduct is essential for the proper administration of justice. Respect towards the courts guarantees the stability of the judicial institution, without which, it would be resting on a very shaky foundation.[33] A lawyer must build and not destroy the high esteem and regard towards the judiciary.[34] "To undermine the judicial edifice 'is disastrous to the continuity of government and to the attainment of the liberties of the people.'"[35]

Remarkably, in *Re: Letter of Atty. Noel S. Sorreda*,[36] this Court, citing the case of *Rheem of the Phil., Inc., et al. v. Ferrer, et al.*,[37] reminded lawyers of their fundamental duty to respect the courts and its judicial officers:

> By now, a lawyer's duties to the Court have become commonplace. Really, there could hardly be any valid excuse for lapses in the observance thereof. Section 20(b), Rule 138 of the Rules of Court, in categorical terms, spells out one such duty: 'To observe and maintain the respect due to the courts of justice and judicial officers.' As explicit

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[30] Id., id., Rule 11.04.

[31] Id., Canon 13, Rule 13.02.

[32] Id., Canon 11, Rule 11.05.

[33] *Judge Madrid v. Atty. Dealca*, 742 Phil. 514, 529 (2014), citing *Roxas v. De Zuzuarregui, Jr.*, 554 Phil. 323, 341-342 (2007).

[34] *Kenneth R. Mariano v. Atty. Jose N. Laki*, supra note 24, citing *Cruz v. Justice Alifio-Hormachuelos, et al.*, 470 Phil. 435, 445 (2004), citing *Surigao Mineral Reservation Board v. Cloribel*, No. L-27072, January 9, 1970, 31 SCRA 1, 16-17.

[35] Id.

[36] *Re: Letter dated 21 February 2005 of Atty. Noel S. Sorreda*, supra note 27.

[37] 125 Phil. 551 (1967).

is the first canon of legal ethics which pronounces that '[i]t is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.' That same canon, as a corollary, makes it peculiarly incumbent upon lawyers to support the courts against 'unjust criticism and clamor.' And more. The attorney's oath solemnly binds him to a conduct that should be 'with all good fidelity x x x to the courts.' Worth remembering is that the duty of an attorney to the courts 'can only be maintained by rendering no service involving any disrespect to the judicial office which he is bound to uphold.[38]

Unsubstantiated Criticisms and Unfounded Personal Attacks Against Judges Degrade the Administration of Justice

Notably, a lawyer's duty to respect the courts and its officers does not require blind reverence. The Code does not aim to cow lawyers into silence. In fact, in *Judge Lacurom v. Atty. Jacoba and Atty. Velasco*,[39] this Court recognized the right of a lawyer, both as an officer of the court and as a citizen, to criticize the acts of courts and judges in respectful terms and through legitimate channels.[40] Criticisms, if warranted, must be respectful and ventilated through the proper forum.

Remarkably, the lawyer's right to criticize judges and the limits thereof have been the subject of numerous rulings. In all of these, this Court struck a balance between the lawyer's right to respectfully voice his/her opinions without denigrating the administration of justice. Reprisals that transgress the boundaries of decency and fair play are unwarranted.

In *Re: Matter of Proceedings for Disciplinary Action Against Atty. Vicente Raul Almacen*,[41] this Court elaborately discussed the dichotomy between fair criticism and slander:

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[38] Supra at 301-302.

[39] *Judge Lacurom v. Atty. Jacoba*, 519 Phil. 195 (2006).

[40] Id. at 209.

[41] Phil. 562 (1970).

Criticism of the courts has, indeed, been an important part of the traditional work of the bar. In the prosecution of appeals, he points out the errors of lower courts. In written for law journals he dissects with detachment the doctrinal pronouncements of courts and fearlessly lays bare for all to see that flaws and inconsistence" of the doctrines.
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x x x x x x x x x

Hence, as a citizen and as Officer of the court a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he 'professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen.'

Above all others, the members of the bar have the best opportunity to become conversant with the character and efficiency of our judges. No class is less likely to abuse the privilege, as no other class has as great an interest in the preservation of an able and upright bench.

To curtail the right of a lawyer to be critical of the foibles of courts and judges is to seal the lips of those in the best position to give advice and who might consider it their duty to speak disparagingly. "Under such a rule," so far as the bar is concerned, "the merits of a sitting judge may be rehearsed, but as to his demerits there must be profound silence."

But it is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.[42] (Emphasis supplied and citations omitted)

Markedly, unsubstantiated accusations against judges spurred by ill-motives warrant administrative sanctions. In *Ret. Judge Alpajora v. Atty. Calayan*,[43] the lawyer made unsupported allegations in his pleading, claiming that the Presiding Judge

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[42] Id. at 579-580.

[43] 823 Phil. 93 (2018).

antedated an Order, was in cahoots with, had "deplorable close ties with the adverse counsels," and coached said counsels.[44] This Court noted that the allegations were unsupported by evidence and reminded the lawyer of Canon 11 and Rule 11.04, which mandates maintaining respect due to the Courts and judicial officers, and abstaining from attributing to a Judge motives not supported by the records and bear no materiality to the case.[45]

A similar ruling was rendered in *Cañete v. Atty. Puti*,[46] where the lawyer imputed abuse of discretion, partiality and bias against the Judge. This Court declared that criticisms must be made respectfully and aired through legitimate channels, and further reminded the lawyer of Canon 11 of the Code of Professional Responsibility:

> While a lawyer, as an officer of the court, has the right to criticize the acts of courts and judges, the same must be made respectfully and through legitimate channels. In this case, Atty. Puti violated the following provisions in the Code of Professional Responsibility:
>
> > CANON 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.
> >
> > Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.
> >
> > Rule 11.04 - A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.[47]

In the same vein, *In Re: Letter of Atty. Noel S. Sorreda*,[48] this Court acknowledged the right of lawyers to criticize judges, yet at the same time cautioned that said right does not grant an unbridled license to malign and insult the court and its officers:

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[44] Id. at 109.

[45] Id. at 110, citing *Judge Madrid v. Atty. Dealca*, supra note 33.

[46] A.C. No. 10949 [Formerly CBD Case No. 13-3915], August 14, 2019.

[47] Id.

[48] Supra note 27, citing *In the Matter of Proceedings for Disciplinary Action against Atty. Wenceslao Laureta, etc.*, 232 Phil. 353 (1987).

Atty. Sorreda, as a citizen and as an officer of the court, is entitled to criticize the rulings of this Court, to point out where he feels the Court may have lapsed with error. But, certainly, this does not give him the unbridled license to insult and malign the Court and bring it into disrepute. Against such an assault, the Court is duty-bound 'to act to preserve its honor and dignity . . . and to safeguard the morals and ethics of the legal profession'[49] (Emphasis supplied)

Moreover, in *Re: Supreme Court Resolution dated 28 April 2003*,[50] the lawyer made baseless accusations of bribery and corruption against a Member of this Court, to which this Court articulately responded:

In general, courts will not act as overly sensitive censors of all private conversations of lawyers at all times, just to ensure obedience to the duty to afford proper respect and deference to the former. Nevertheless, this Court will not shy away from exercising its disciplinary powers whenever persons who impute bribery to judicial officers and bring such imputations themselves to the court's attention through their own pleadings or motions.[51]

Furthermore, in *Alfonso Choa v. Judge Roberto Chiongson*,[52] this Court administratively sanctioned a lawyer for making malicious and unfounded criticisms of personal bias against a judge:

As an officer of the court and its indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to its officers. This does not mean, however, that a lawyer cannot criticize a judge.

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Proscribed then are, inter alia, the use of unnecessary language which jeopardizes high esteem in courts, creates or promotes distrust

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[49] Id. at 301, citing supra at 369-370.

[50] *In Re: Supreme Court Resolution Dated 28 April 2003 in G.R. Nos. 145817 and 145822,* 685 Phil. 751 (2012).

[51] Id. at 783.

[52] *Choa v. Judge Tiongson*, 329 Phil. 270 (1996).

in judicial administration, or tends necessarily to undermine the confidence of people in the integrity of the members of this Court and to degrade the administration of justice by this Court; or of offensive and abusive language; or abrasive and offensive language; or of disrespectful, offensive, manifestly baseless, and malicious statements in pleadings or in a letter addressed to the judge or of disparaging, intemperate, and uncalled-for remarks.[53] (Citations omitted)

Verily, in the cases cited, the malicious imputations were made against Judges/Justices in varying forms, *i.e.*, verbal attacks, pleadings, administrative complaints and letters. However, despite the diverse modes of attack, the rules have remained consistent — lawyers owe respect and fidelity to the courts; the right to criticize is not an unbridled freedom to malign and slander the courts and its officers; and criticisms must be supported by evidence and ventilated in the proper forum.

The Statements of Atty. Lazo Defamed Judge Ramos and Tarnished Her Judicial Office

Similar to the afore-cited cases, Atty. Lazo hurled baseless accusations against Judge Ramos, accusing her of bribery, corruption, bias, prejudice and immorality. These serious allegations were aired in public, without affording Judge Ramos an opportunity to defend herself. The statements circulated in the community, thereby resulting to infamy and misgivings about her ability to render a fair judgment. Some utterances were even calculated to humiliate her.

In his defense, Atty. Lazo claims that he was merely performing his duty to protect the people of Ilocos Norte.

His excuse fails to persuade.

To begin with, as a lawyer, Atty. Lazo knew that his grievances against Judge Ramos should be ventilated by filing a complaint before the OCA. No matter how noble his intentions were, he had no reason to disregard the proper protocol, and to malign and degrade Judge Ramos outside of legitimate

[53] Id. at 276-279.

channels. Nothing prevented him from directly filing a complaint before the OCA if he truly believed in his cause. In fact, he did file a complaint, albeit belatedly, after already tarnishing Judge Ramos' character in public. Worse, he knew that the media was present during the hearings. Their presence fueled the rapid spread of rumors and malicious imputations against Judge Ramos.

The statements made by Atty. Lazo exceeded the limits of fair comment. He publicly attacked the manner in which Judge Ramos was handling her pending cases. In his first speech delivered on September 9, 2013, he discussed Criminal Case Nos. 2131-2131-19, involving four Chinese nationals who were apprehended with high-powered firearms and explosives. In this case, he related that Judge Ramos issued an Order of Inhibition in response to an allegation that she received ₱2,000,000.00 from the Chinese accused. He further declared that money might change hands, imputing bribery and corruption against Judge Ramos. He likewise cast doubt on her ability to render a fair decision, urging that the case should be closely monitored, "so that if ever a decision is rendered it would be like 'caesar's wife,' which is beyond suspicion x x x."[54]

In his defense, Atty. Lazo claims that his speech concerning Criminal Case Nos. 2131-2131-19, was uttered in connection with an Ordinance the Provincial Board was passing, entitled, "*An Ordinance Creating the Provincial Anti-Private Armed Group Council of the Province of Ilocos Norte under the Office of the Provincial Governor to Identify and Prosecute Private Armed Groups and Individuals, Guns-for-Hire and, Other Organized Crime Groups Operating in the Province and Providing Funds Therefor*."[55] This measure was enacted to address the existence of private armed groups and other organized crime groups operating within the province.[56]

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[54] *Rollo*, p. 37.

[55] Id. at 65-69.

[56] Id. at 58.

It is difficult to see how the pending case before Judge Ramos is closely connected with the Ordinance. The issue regarding Judge Ramos' inhibition and the accusation of bribery bore no relation to the Ordinance. At best, the statements were off tangent.

Furthermore, bad faith and malice were likewise apparent in the second speech delivered by Atty. Lazo on September 16, 2013, where he discussed the case of illegal sale of dangerous drugs resolved by Judge Ramos. He stated that the accused was acquitted due to Judge Ramos' close personal relations with a relative of the accused. He hinted that the accused is a relative of a "very, very, very, very close friend of the Presiding Judge," a statement imputing illicit relations and personal prejudice. In his Comment he explained that said relative of the accused was Judge Ramos' driver, who was also known to be the Judge's lover.[57] He likewise maliciously ascribed irregularity in the proceedings, saying "I smell fish in this case. There is something fishy here."[58]

Undoubtedly, Atty. Lazo's utterances incited public defiance and eroded the public's confidence in the court. His unsubstantiated insinuations of bias, prejudice and bribery in exchange for favorable resolutions are grave accusations that should not have been irresponsibly dangled before the public. If he sincerely desired to hold Judge Ramos accountable for her purportedly illegal acts, then he should have directly filed a case before the OCA. The substance of his rants were judicial errors, which may only be resolved by the Court, and not by the public. Airing them out in public did nothing but destroy the people's faith and trust in the judiciary, whereas filing the proper complaint would have brought a fair and just resolution to the case. In fact, the Court takes judicial notice of its Resolution dated August 19, 2019 in OCA IPI No. 13-4177-RTJ, entitled *"Atty. Vicentito M. Lazo v. Judge Rosemarie V. Ramos, Regional Trial Court, Branch 19, Ilocos Norte,"* dismissing Atty. Lazo's administrative complaint for gross ignorance of the law, gross immorality and abuse of authority against Judge Ramos.

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[57] Id. at 62-63.

[58] Id. at 40.

Additionally, Atty. Lazo's privilege to speak before the *Sangguniang Panlalawigan* should not have been used as a vehicle to ridicule and degrade Judge Ramos. Regardless of his conviction in the righteousness of his cause, there was no excuse to vilify Judge Ramos and her judicial office in public. He cannot conveniently claim that his speeches were uttered in the performance of his official duty.

In fine, Atty. Lazo violated Canon 1, Rule 1.02, Canon 11, Rule 11.04, Rule 11.05, and Rule 13.02 of the Code of Professional Responsibility when he uttered baseless and unsubstantiated grave accusations against Judge Ramos before the public and in the presence of the media. In turn, his acts not only maligned Judge Ramos, but tarnished her judicial office, and undermined the people's confidence in the integrity of the judicial officers and in the administration of justice. Accordingly, he must be suspended from the practice of law for a period of one (1) year.

WHEREFORE, Atty. Vicentito M. Lazo is hereby found **GUILTY** of violating the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of one (1) year, effective immediately upon receipt of this Decision.

Atty. Vicentito M. Lazo is **DIRECTED** to inform the Court of the date of his receipt of this Decision to determine when his suspension shall take effect.

Let copies of this Decision be furnished to: (i) the Office of the Bar Confidant to be appended to Atty. Lazo's personal record as an attorney; (ii) the Integrated Bar of the Philippines for its information and guidance; and (iii) the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Leonen (Chairperson), *Gesmundo, Carandang,* and *Zalameda, JJ.*, concur.

SECOND DIVISION

[A.C. No. 10738. September 14, 2020]

MARCELINA ZAMORA, *Complainant*, *v.* **ATTY. MARILYN V. GALLANOSA,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AS LAWYERS ARE BOUND TO CONDUCT THEIR LEGAL SERVICES IN A DIGNIFIED MANNER, THEY ARE PROHIBITED FROM SOLICITING LEGAL BUSINESS.— [L]awyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares. To allow lawyers to advertise their talents or skills is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called. Thus, lawyers in making known their legal services must do so in a dignified manner. They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers. Rule 2.03 of the CPR explicitly states that "[a] lawyer shall not do or permit to be done any act designed primarily to solicit legal business." Thus, "ambulance chasing," or the solicitation of almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed.

2. ID.; ID.; PRACTICE OF LAW; CONCEPT.— Case law states that the "practice of law" means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. Thus, to engage in the practice of law is to perform acts which are usually performed by members of the legal profession requiring the use of legal knowledge or skill, and embraces, among others: (*a*) the preparation of pleadings and other papers incident to actions and special proceedings; (*b*) the management of such actions and proceedings on behalf of clients before judges and courts; and (*c*) advising clients, and all actions taken for them in matters connected with the law, where the work done involves the determination by the trained legal mind of the legal effects of facts and conditions.

3. ID.; ID.; LAWYER-CLIENT RELATIONSHIP, ESTABLISHED IN THIS CASE.— A lawyer-client relationship was established from the very first moment respondent discussed with complainant the labor case of her husband and advised her as to what legal course of action should be pursued therein. By respondent's acquiescence with the consultation and her drafting of the position paper which was thereafter submitted in the case, a professional employment was established between her and complainant. To constitute professional employment, it is not essential that the client employed the attorney professionally on any previous occasion, or that any retainer be paid, promised, or charged. The fact that one is, at the end of the day, not inclined to handle the client's case, or that no formal professional engagement follows the consultation, or no contract whatsoever was executed by the parties to memorialize the relationship is hardly of consequence. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession. x x x There being a lawyer-client relationship existing between the parties, respondent was duty-bound to file the appeal she had agreed to prepare in the case at the soonest possible time, in order to protect the client's interest. Her failure to do so made her liable for transgressing Canon 17 which enjoins lawyers to be mindful of the trust and confidence reposed on them, as well as Rule 18.03 of the CPR which prohibits lawyers from neglecting legal matters entrusted to them.

4. ID.; ID.; STEALING ANOTHER LAWYER'S CLIENT AND PROMISING BETTER SERVICES CONSTITUTE VIOLATION OF RULE 8.02 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [T]he Court finds that respondent is likewise guilty of violation of Rule 8.02 of the CPR. Settled is the rule that a lawyer should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services. It is undisputed that respondent was aware of the professional relationship between the PAO and complainant/her husband with respect to the labor case, yet, she assumed the drafting of a new position paper, especially to replace the one originally filed by the PAO.

APPEARANCES OF COUNSEL

Baby Perian Arcega for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant controversy stemmed from a complaint[1] for disciplinary action filed by complainant Marcelina Zamora (complainant) against respondent Atty. Marilyn V. Gallanosa (respondent), for allegedly violating multiple provisions of the Code of Professional Responsibility (CPR).

The Facts

Complainant averred[2] that sometime in June 2012, outside the office of Labor Arbiter Virginia T. Luyas-Azarraga (LA Azarraga) of the National Labor Relations Commission where her husband's illegal dismissal case against DM Consunji, Inc. was pending, respondent approached her and inquired about the said case and the "papers" that she has. When she showed respondent the Position Paper prepared by the Public Attorney's Office (PAO) for the case, the latter remarked, "*[W]alang kadating dating ang ginawa ng abogado mong PAO, matatalo ang demanda mo dyan*[.]"[3] Respondent further inquired about the pieces of evidence in the case, to which complainant replied that she provided them to the lawyer from the PAO but the latter did not attach the same to the position paper. Respondent then remarked, "*[K]aya hindi niya ikinabit[,] ayaw niya kalabanin ang arbiter na humawak ng papel mo kasi magkakasabwat yang mga yan. Yong arbiter na humawak ng papel mo at saka [attorney] ng kumpanya. Alam ko yan kasi dati akong government pero umalis na ako kasi nga ayaw ko yong ginagawa nila, nag pro-labor na lang ako[.]*"[4] Respondent thus opined that complainant should change the position paper and, subsequently, listed the documents to be attached to the

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[1] See Sinumpaang Salaysay dated February 20, 2015; *rollo*, pp. 1-6.

[2] See complainant's Position Paper dated September 23, 2016; id. at 198-216.

[3] Id. at 1.

[4] Id.

new position paper, assuring the latter that once said documents were completed, she will surely win the case.[5]

A week later, complainant went to respondent's office at the Pacific Century Tower in Quezon City. She confirmed whether it was possible to replace the position paper she had already submitted, to which respondent replied, "*Pwede. Eto nga, tumatawag ako ng ibang hahawak*," giving her the impression that another Labor Arbiter will handle the case. When she asked how much respondent's professional fee was, the latter informed her that the same shall be twenty percent (20%) (of the judgment award) but on a contingent basis, *i.e.*, payable only after the case is won, hence, she need not pay anything while the new position paper was being drafted.[6]

Complainant returned after a week to get the new position paper, and was instructed to submit the same to LA Azarraga. The opposing counsel did not object to the replacement, however, before accepting the same, LA Azarraga asked complainant whether respondent will attend the next hearing, which was confirmed by the latter when asked via cellphone call. However, respondent failed to appear at the next scheduled hearing, resulting to the submission of the case for resolution sans hearing.[7]

Subsequently, complainant received notice of the decision in the case. When she informed respondent thereof, the latter instructed her to email a copy as she has not yet received her copy. She was assured by respondent that the necessary appeal would be filed, however, the reglementary period lapsed without an appeal being perfected. When she confronted respondent, the latter denied being complainant's lawyer since she did not sign the position paper and never received any fees therefor. Complainant thus went to the radio program of Mr. Raffy Tulfo, whose staff referred her to the PAO Central Office which, in

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[5] See id. at 199-200.

[6] See id. at 200-201.

[7] See id. at 201-202.

turn, wrote respondent a letter about the appeal. However, the latter maintained that she is not complainant's lawyer.[8]

Nonetheless, complainant prevailed upon respondent to agree to file an appeal after the latter comes back from Bicol where she was attending to some family matters. Upon respondent's return, complainant called her but was informed that the appeal was already too late. Instead, respondent offered to negotiate with the opposing party's counsel for a higher amount of financial aid than what was awarded in the decision, but she failed to do so despite complainant's numerous follow-ups, which were eventually ignored.[9] Hence, the instant complaint averring that respondent violated the following Rules and Canons of the CPR, to wit:

1. Rule 2.03 of the CPR when she solicited legal business on a contingent basis;
2. Canon 17 of the CPR when she denied any professional relations with complainant;
3. Rule 3.01 of the CPR when she made it appear with great certainty that she will win the case;
4. Rule 18.03 of the CPR when she abandoned the case and allowed the appeal period to lapse;
5. Rules 8.01 and 8.02, Canon 8 of the CPR when she maligned the position paper prepared by the PAO and made baseless accusations against the Labor Arbiter, the corporate lawyer, and the PAO; and
6. Rule 15.06 of the CPR when she assured the admission by the Labor Arbiter of a new position paper, thereby implying that she has influence over the said official.[10]

In a Resolution[11] dated December 9, 2015, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

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[8] See id. at 202-203.

[9] See id. at 204.

[10] See id. at 267-268.

[11] See Notice of Resolution; id. at 117.

For her part, respondent maintained[12] that she is not complainant's lawyer and denied having offered her professional services as a lawyer in the labor case of complainant's husband. While she admitted having prepared the position paper in the case, the same was free of charge as a way of extending help to complainant. She did not sign the pleading or entered her appearance in the case, nor was there any discussion or agreement on the compensation.[13]

The IBP's Report and Recommendation

In a Report and Recommendation[14] dated January 30, 2017, the IBP found the charges to be well-founded. It held that: *(a)* the series of exchanges between the parties, such as the visits for advice and guidance at respondent's office, as well as the telephone calls and text exchanges between complainant and respondent; and *(b)* respondent's drafting and preparation of the position paper and instructions to file the same before the office of the Labor Arbiter in lieu of the earlier position paper filed in the case, clearly demonstrate a lawyer-client relationship between them because the acts of respondent constitute rendering legal services.[15] Thus, it recommended that respondent be suspended from the practice of law for six (6) months, with a warning that a repetition of the same or similar act in the future shall be dealt with severely.[16]

In a Resolution[17] dated August 31, 2017, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner.

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[12] See respondent's undated Position Paper notarized on October 1, 2016; id. at 222-234.

[13] See id. at 228-229.

[14] Id. at 264-272. Penned by Commissioner Rogelio N. Wong.

[15] See id. at 270-271.

[16] See id. at 272.

[17] See Notice of Resolution issued by IBP Assistant National Secretary Doroteo B. Aguila; id. at 263.

Dissatisfied, respondent filed a Motion for Reconsideration[18] but the same was denied in a Resolution[19] dated December 6, 2018; hence, this petition.[20]

The Issue Before the Court

The essential issue in this case is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

We adopt the findings of the IBP on the unethical conduct of respondent.

Canons of the CPR are rules of conduct all lawyers must adhere to, including the manner by which lawyers' services are to be made known. Thus, Canon 3 of the CPR provides:

> CANON 3 — A LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OR STATEMENT OF FACTS.

Time and again, lawyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares. To allow lawyers to advertise their talents or skills is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called.[21] Thus, lawyers in making known their legal services must do so in a dignified manner. They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers.[22]

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[18] Dated December 11, 2017. Id. at 273-282.

[19] See Notice of Resolution issued by IBP Assistant National Secretary Doroteo B. Aguila; id. at 329.

[20] See Petition for Review dated July 25, 2019; id. at 238-249.

[21] *Linsangan v. Tolentino*, 614 Phil. 327, 333 (2009); citations omitted.

[22] *Palencia v. Linsangan*, A.C. No. 10557, July 10, 2018, 871 SCRA 440, 453.

Rule 2.03 of the CPR explicitly states that "[a] lawyer shall not do or permit to be done any act designed primarily to solicit legal business." Thus, "ambulance chasing," or the solicitation of almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed.[23]

In this case, respondent admitted having met complainant (albeit under different circumstances as claimed by complainant), advised the latter to see her in her office so they can discuss her husband's labor case, and prepared the position paper for the case,[24] all of which constitute practice of law. Case law states that the "practice of law" means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. Thus, to engage in the practice of law is to perform acts which are usually performed by members of the legal procession requiring use of legal knowledge or skill,[25] and embraces, among others: *(a)* the preparation of pleadings and other papers incident to actions and special proceedings; *(b)* the management of such actions and proceedings on behalf of clients before judges and courts; and *(c)* advising clients, and all actions taken for them in matters connected with the law, where the work done involves the determination by the trained legal mind of the legal effects of facts and conditions.[26]

A lawyer-client relationship was established from the very first moment respondent discussed with complainant the labor case of her husband and advised her as to what legal course of action should be pursued therein. By respondent's acquiescence with the consultation and her drafting of the position paper which was thereafter submitted in the case, a professional employment was established between her and complainant. To constitute professional employment, it is not essential that the client employed the attorney professionally on any previous

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[23] *Palencia v. Linsangan,* id. at 454.

[24] See *rollo*, pp. 224-225.

[25] *Cayetano v. Monsod*, 278 Phil. 235, 243 (1991).

[26] See id. at 242. See also *Bonifacio v. Era*, 819 Phil. 170, 181 (2017).

occasion, or that any retainer be paid, promised, or charged.[27] The fact that one is, at the end of the day, not inclined to handle the client's case, or that no formal professional engagement follows the consultation, or no contract whatsoever was executed by the parties to memorialize the relationship is hardly of consequence.[28] To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.[29]

Corollarily, the Court finds that respondent is likewise guilty of violation of Rule 8.02[30] of the CPR. Settled is the rule that a lawyer should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services.[31] It is undisputed that respondent was aware of the professional relationship between the PAO and complainant/her husband with respect to the labor case, yet, she assumed the drafting of a new position paper, especially to replace the one originally filed by the PAO.

There being a lawyer-client relationship existing between the parties, respondent was duty-bound to file the appeal she had agreed to prepare in the case at the soonest possible time, in order to protect the client's interest. Her failure to do so made her liable for transgressing Canon 17 which enjoins lawyers to be mindful of the trust and confidence reposed on them, as well as Rule 18.03[32] of the CPR which prohibits lawyers from neglecting legal matters entrusted to them.

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[27] *Burbe v. Magulta*, 432 Phil. 840, 848 (2002).

[28] *Hadluja v. Madianda*, 553 Phil. 221, 227 (2007).

[29] See *Santos v. Navarro*, A.C. No. 12178, October 16, 2019, citing *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064, 1068 (2002).

[30] Rule 8.02 — A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer, however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

[31] *Linsangan v. Tolentino,* supra note 21, at 334, citing Agpalo, LEGAL AND JUDICIAL ETHICS, 7th Edition (2002), p. 101.

[32] 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 *Hernandez v. Padilla*,[33] a lawyer who similarly denied the existence of any lawyer-client relationship with the complainant and was negligent in handling his client's case was suspended from the practice of law for six (6) months and sternly warned that a repetition of the same or a similar offense will be dealt with more severely. Consistent with this case, the Court agrees with the IBP's recommendation to suspend respondent for the same period.

WHEREFORE, respondent Atty. Marilyn V. Gallanosa is found **GUILTY** of violating Rules 2.03, 8.02, and 18.03, and Canon 17 of the Code of Professional Responsibility. Accordingly, she is hereby **SUSPENDED** from the practice of law for a period of six (6) months, effective immediately upon her receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

She is **DIRECTED** to immediately file a Manifestation to the Court that her suspension has started, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel.

Let copies of this Decision be furnished the Office of the Bar Confidant to be entered in respondent's personal record as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the office of the Court Administrator for circulation to all Courts.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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[33] 688 Phil. 329 (2012).

SECOND DIVISION

[A.M. No. P-20-4055. September 14, 2020]
(Formerly OCA IPI No. 16-4544-P)

FERDINAND VALDEZ, *Complainant*, *v.* **COURT STENOGRAPHER I ESTRELLA B. SORIANO, 1ST MUNICIPAL CIRCUIT TRIAL COURT (MCTC), BAGABAG-DIADI, NUEVA VIZCAYA,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; SHOULD RELATE TO OR BE CONNECTED WITH THE PERFORMANCE OF THE OFFICIAL FUNCTIONS AND DUTIES OF A PUBLIC OFFICER.— Misconduct is defined as the violation of an established and definite rule of action, a forbidden act, a dereliction from duty, an unlawful behavior, willful in character, improper and wrong. It is well to clarify, however, that 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. Without the nexus between the act complained of and the discharge of duty, the charge of misconduct shall necessarily fail.

2. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; WHEN THE MISCONDUCT COMMITTED IS NOT IN CONNECTION WITH THE PERFORMANCE OF DUTY, THE PROPER DESIGNATION OF THE OFFENSE SHOULD BE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE WHICH DEALS WITH THE DEMEANOR OF A PUBLIC OFFICER THAT TARNISHES THE IMAGE AND INTEGRITY OF HIS PUBLIC OFFICE.— [C]ase law instructs that where the misconduct committed was not in connection with the performance of duty, the proper designation of the offense should not be Misconduct, but rather, Conduct Prejudicial to the Best Interest of the Service. While there is no hard and fast rule as to what acts or omissions constitute the latter offense, jurisprudence provides that the same "deals with [the] demeanor

of a public officer which 'tarnishe[s] the image and integrity of his/her public office.'" Examples of acts or omissions constituting Conduct Prejudicial to the Best Interest of the Service are as follows: seeking the assistance of an elite police force for a purely personal matter; changing the internet protocol (IP) address on a work computer to gain access to restricted websites; fencing in a litigated property in order to assert ownership; brandishing a gun and threatening the complainants during a traffic altercation; participating in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family; and forging some receipts to avoid the employee's private contractual obligations. Here, x x x Soriano's x x x acts could not amount to administrative misconduct, as it is not within her duties as a court stenographer to collect or receive any amount from any party-litigant even during or after the termination of the case. Rather, the Court finds Soriano liable for Conduct Prejudicial to the Best Interest of the Service. x x x [H]er acts of receiving the money and making Valdez believe that she will deliver the payment of the judgment obligation but failed to do so tarnished the image and integrity of her public office. Valdez entrusted the payment of the judgment obligation to her because she is a court employee who had assured that the same will be delivered to the bank. Thus, her failure to fulfill such promise and timely deliver the money to the bank reflected badly not only on her integrity, but more importantly, diminished the faith of the people in the Judiciary, thereby prejudicing the best interest of the administration of justice.

3. ID.; ID.; ID.; ID.; CLASSIFIED AS A GRAVE OFFENSE; PENALTY.— Under Section 50 (B) (10) of the 2017 Rules on Administrative Cases in the Civil Service, Conduct Prejudicial to the Best Interest of the Service is classified as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense. Considering that this is Soriano's first administrative case, the Court finds the penalty of suspension of six (6) months and one (1) day proper.

4. ID.; ID.; COURT PERSONNEL; ALL COURT PERSONNEL ARE EXPECTED TO EXHIBIT THE HIGHEST SENSE OF HONESTY AND INTEGRITY NOT ONLY IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES BUT

ALSO IN THEIR PERSONAL AND PRIVATE DEALINGS WITH OTHER PEOPLE TO PRESERVE THE COURT'S GOOD NAME AND STANDING.— [T]he conduct required of court personnel, from the presiding judge to the lowliest of clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. All court personnel are expected to exhibit the highest sense of honesty and integrity not only in the performance of their official duties but also in their personal and private dealings with other people to preserve the Court's good name and standing. This is because the image of a court of justice is mirrored in the conduct, official or otherwise, of the men and women who work there. Thus, any impression of impropriety, misdeed or negligence must be avoided.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is the administrative complaint filed by Ferdinand Valdez (Valdez) against Estrella B. Soriano (Soriano), Court Stenographer I, 1st Municipal Circuit Trial Court, Bagabag-Diadi, Nueva Vizcaya (MCTC), for violation of Republic Act No. 6713 (RA 6713) or the Code of Conduct and Ethical Standards for Public Officials and Employees.[1]

The Facts

In his Affidavit-Complaint,[2] Valdez claimed that he is one of the defendants in a civil case for Collection of Sum of Money filed by Rural Bank of Bagabag (NV), Inc. (bank) before the MCTC, docketed as Civil Case No. 1163, entitled "*Rural Bank of Bagabag (NV), Inc. v. Ferdinand Valdez and Rose Calip*." On April 2, 2013, the MCTC rendered its Judgment,[3] ordering them, among others, to pay the principal

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[1] Enacted on February 20, 1989.

[2] Executed on October 13, 2015. *Rollo*, pp. 2-3.

[3] Copy of the Judgment, id. at 7-8. Penned by Judge Bill D. Buyucan.

loan of ₱16,000.00, plus 21% interest per annum, computed until the date of payment.[4] Thus, on August 8, 2013, Valdez went to the court to inquire where he could pay the amount stated in the judgment. Soriano managed to convince him to hand over to her the amount of ₱16,000.00 representing the payment of the judgment obligation with a promise to deliver the same to the bank, as evidenced by the Acknowledgment Receipt[5] signed by the former. However, Valdez was surprised when he was summoned by the bank about his unpaid judgment obligation, as shown by the Certification[6] from the bank dated August 7, 2014.[7] Consequently, he immediately went to the MCTC to confront Soriano but the latter did not give an adequate explanation. Further, he alleged that because of Soriano's action, his obligation incurred penalties and interests and that it was only with the help of Atty. Celerino Jandoc (Atty. Jandoc) that he managed to recover his money from Soriano, who, for fear of an administrative case, hastily went to the bank and paid the amount of ₱16,000.00 for and in behalf of his wife, Amelia Valdez.[8]

In her Comment[9] dated April 6, 2016, Soriano denied the allegations, and instead asserted that on August 8, 2013, Valdez went to the court to inquire as to where he could pay the judgment obligation in Civil Case No. 1163. In response, she told him that he could either pay directly to the bank or leave the payment with the court so that the bank could claim the amount upon notice. She also argued that Valdez opted to leave the amount of ₱16,000.00 with her since she was the only employee available to receive it. Upon receipt thereof, she immediately notified the bank, through its then President

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[4] Id. at 8.

[5] Dated August 8, 2013. Id. at 4.

[6] Id. at 5.

[7] Stated as August 7, 2014 in the OCA Report, id. at 21.

[8] Id. at 2-3. See also id. at 20-21.

[9] Id. at 11-13.

and General Manager Pura C. Romero (Romero), who assured her that a collector would be sent to the court to collect the payment. Meanwhile, she kept the money inside a sealed office drawer for safekeeping. She likewise averred that she consistently reminded Romero who, in turn, repeatedly assured her that the bank would be sending someone to collect the payment. Thereafter, Atty. Jandoc came to the court on behalf of Valdez informing her that his client received a letter from the bank regarding the unsettled obligation. She informed him that the payment was never received by the bank despite repeated notices to its President and General Manager. She further alleged that out of goodwill and without waiting for the bank representative, she personally delivered the money to the bank and even paid the interests and penalties thereon[10] as a gesture that she has no ulterior motive in keeping the money.[11]

Replying[12] to Soriano's Comment, Valdez belied the former's claim and pointed out that in an Affidavit[13] dated April 29, 2016, Romero, in fact, stated among others, that since August 8, 2013, she was never notified by Soriano about the payment he made to the court. Moreover, he stressed that since the bank is a mere walking distance from the court, Soriano could have easily delivered the payment without any difficulty. Valdez also stressed that it took Soriano more than a year to do so and it was only after she was confronted and threatened with an administrative case that she hastily delivered the payment to the bank.[14]

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[10] See copy of the Official Receipts. Id. at 15-15-A.

[11] Id. at 11-12. See also id. at 21.

[12] See Comment dated May 2, 2016. Id. at 17-18.

[13] Id. at 19. Further, she claimed that as President/General Manager, it was her duty to oversee the day to day operations of the bank and she knows for a fact that Valdez has an outstanding loan in the bank which was under litigation.

[14] Id. at 17. See also id. at 21-22.

The Action and Recommendation of the OCA

In a Report[15] dated May 16, 2019, the OCA recommended, *inter alia*, that Soriano be found guilty of simple misconduct and be suspended from the service for a period of one (1) month and one (1) day without pay and benefits, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.[16]

The OCA found that Soriano indeed received the amount of ₱16,000.00 from Valdez as payment for the judgment obligation with a promise to deliver the same to the bank and that she kept the same for more than a year, notwithstanding the short walking distance from the court to the bank. Moreover, it noted that accepting money from the losing litigant in Civil Case No. 1163 as payment of the judgment obligation is not part of her duties as a court stenographer since there is nothing that authorizes a stenographer to collect or receive any amount from any party-litigant even during or after the termination of the case. Consequently, the OCA held that her acts of receiving the money and making Valdez believe that she will deliver the payment of the judgment obligation amounted to Conduct Prejudicial to the Best Interest of the Public Service as they tend to create in the minds of the public the impression that she would benefit from the transaction.[17]

Nonetheless, considering that Soriano's acts were not shown to be of such gravity as to cause gross prejudice or amount to corruption, clear intent to violate the law, or flagrant disregard of an established rule, the OCA recommended that she be found guilty of simple misconduct, and considering that this is her first administrative case, she be suspended from the service for a period of one (1) month and one (1) day,[18]

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[15] Id. at 20-24. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva.

[16] Id. at 24.

[17] See id. at 22-23.

[18] Id. at 24.

pursuant to the Revised Rules on Administrative Cases in Civil Service.[19]

The Court's Ruling

At the outset, the Court notes that while the OCA found that Soriano's acts of receiving the money and making Valdez believe that she will deliver the payment of the judgment obligation constituted Conduct Prejudicial to the Best Interest of the Service,[20] it nevertheless recommended that she be found administratively liable for Simple Misconduct instead, considering that said acts were not shown to be of such gravity as to cause gross prejudice or amount to corruption, clear intent to violate the law, or flagrant disregard of an established rule.[21]

After a judicious perusal of the records, the Court hereby adopts the factual findings of the OCA, but modifies Soriano's administrative liability, as will be explained hereunder.

Misconduct is defined as the violation of an established and definite rule of action, a forbidden act, a dereliction from duty, an unlawful behavior, willful in character, improper and wrong.[22] It is well to clarify, however, that 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. Without the nexus between the act complained of and the discharge of duty, the charge of misconduct shall necessarily fail.[23]

In this regard, case law instructs that where the misconduct committed was not in connection with the performance of duty, the proper designation of the offense should not be Misconduct,

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[19] Promulgated on November 8, 2011.

[20] *Rollo*, p. 23.

[21] Id. at 24.

[22] *Gonzales v. Escalona*, 587 Phil. 448, 461 (2008). See also *Office of the Ombudsman v. Faller*, 786 Phil. 467, 479 (2016).

[23] See *Daplas v. Department of Finance*, 808 Phil. 763, 772 (2017).

but rather, Conduct Prejudicial to the Best Interest of the Service.[24] While there is no hard and fast rule as to what acts or omissions constitute the latter offense, jurisprudence provides that the same "deals with [the] demeanor of a public officer which 'tarnishe[s] the image and integrity of his/her public office.'"[25] Examples of acts or omissions constituting Conduct Prejudicial to the Best Interest of the Service are as follows: seeking the assistance of an elite police force for a purely personal matter; changing the internet protocol (IP) address on a work computer to gain access to restricted websites; fencing in a litigated property in order to assert ownership;[26] brandishing a gun and threatening the complainants during a traffic altercation; participating in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family;[27] and forging some receipts to avoid the employee's private contractual obligations.[28]

Here, the Court agrees with the OCA's findings that Soriano received the amount of ₱16,000.00 from Valdez with the promise that she will promptly deliver the same to the bank in satisfaction of the latter's judgment obligation. However, despite the lapse of more than one (1) year from her receipt thereof and the short walking distance between the court and the bank, she failed to deliver the amount and only did so after she was threatened with an administrative complaint. Notably, she did not proffer any justifiable explanation for her failure to deliver the money and worse, because of the delay in its delivery to the bank, the judgment obligation already earned interests and penalties. Evidently, her actions were not only improper, but also violative of the norm of public accountability for which she should thus be held administratively liable.

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[24] See *Heirs of Celestino Teves v. Felicidario*, 721 Phil. 70, 81-83 (2013).

[25] *Fajardo v. Corral*, 813 Phil. 149, 158-159 (2017).

[26] *Abos v. Borromeo IV*, 765 Phil. 10, 17-18 (2015); citations omitted.

[27] See *Largo v. Court of Appeals*, 563 Phil. 293, 305-306 (2007).

[28] *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 80 (2015); citation omitted.

Nonetheless, Soriano's foregoing acts could not amount to administrative misconduct, as it is not within her duties as a court stenographer to collect or receive any amount from any party-litigant even during or after the termination of the case. Rather, the Court finds Soriano liable for Conduct Prejudicial to the Best Interest of the Service. As illustrated by the above-mentioned examples, her acts of receiving the money and making Valdez believe that she will deliver the payment of the judgment obligation but failed to do so tarnished the image and integrity of her public office. Valdez entrusted the payment of the judgment obligation to her because she is a court employee who had assured that the same will be delivered to the bank. Thus, her failure to fulfill such promise and timely deliver the money to the bank reflected badly not only on her integrity, but more importantly, diminished the faith of the people in the Judiciary, thereby prejudicing the best interest of the administration of justice.[29]

Under Section 50 (B) (10) of the 2017 Rules on Administrative Cases in the Civil Service, Conduct Prejudicial to the Best Interest of the Service is classified as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense. Considering that this is Soriano's first administrative case,[30] the Court finds the penalty of suspension of six (6) months and one (1) day proper.

As a final word, this Court has often stressed that the conduct required of court personnel, from the presiding judge to the lowliest of clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. All court personnel are expected to exhibit the highest sense of honesty and integrity not only in the performance of their official duties but also in their personal and private dealings with other people to preserve the Court's good name and standing. This is because the image of a court of justice is mirrored in

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[29] See *Ito v. De Vera*, 540 Phil. 23, 33-34 (2006).

[30] See *rollo*, p. 24.

the conduct, official or otherwise, of the men and women who work there. Thus, any impression of impropriety, misdeed or negligence must be avoided.[31]

WHEREFORE, the Court finds Estrella B. Soriano, Court Stenographer I, 1st Municipal Circuit Trial Court, Bagabag-Diadi, Nueva Vizcaya **GUILTY** of Conduct Prejudicial to the Best Interest of the Service. Accordingly, she is **SUSPENDED** for a period of six (6) months and one (1) day without pay, with **WARNING** that a repetition of the same or similar act would warrant a more severe penalty.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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[31] See *Abos v. Borromeo IV*, supra note 26, at 19-20.

FIRST DIVISION

[G.R. No. 203471. September 14, 2020]

VIRGILIO A. BOTE, *Petitioner, v.* **SAN PEDRO CINEPLEX PROPERTIES, INC.,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991 (RA 7160); DOCTRINE OF CONDONATION; CORRECTLY APPLIED BY THE COURT OF APPEALS (CA) IN THIS CASE BY VIRTUE OF PETITIONER'S RE-ELECTION; HOWEVER, IN APPLYING THE DOCTRINE THE CA NEED NOT DISTINGUISH BETWEEN PETITIONER'S ACTS COMMITTED IN OFFICIAL AND PRIVATE CAPACITIES.— The CA correctly held that Bote may no longer be held administratively liable for violation of 444(b)(2)(iv) of R.A. 7160 and abuse of authority by reason of his re-election. After all, the doctrine of condonation, prior to its abandonment in *Carpio-Morales v. Court of Appeals,* operates as a complete extinguishment of administrative liability for the misconduct committed by an elective official during his previous term. However, in applying the doctrine in this case, the CA need not draw a distinction between the acts committed by Bote in his official and private capacities considering that there is no basis to hold him administratively liable for culpable violation of the Constitution for the illegal and oppressive acts which he committed in his private capacity.

2. ID.; 1987 CONSTITUTION; BILL OF RIGHTS; INTENDED TO PRESERVE AND GUARANTEE THE LIFE, LIBERTY, AND PROPERTY OF PERSONS AGAINST INTRUSION OF THE STATE OR PERSON ACTING IN ITS BEHALF; WHERE A PERSON WAS ACTING IN HIS PERSONAL CAPACITY INVOLVING A PRIVATE PROPERTY, THE BILL OF RIGHTS ARE INAPPLICABLE.— [Section 1, Article III] is part of the Bill of Rights enshrined in the 1987 Philippine Constitution. The Bill of Rights was intended to preserve and guarantee the life, liberty, and property of persons against unwarranted intrusions of the State. In the absence of government interference, the liberties guaranteed by the

> Constitution cannot be invoked against the State, or its agents. Stated differently, the Bill of Rights cannot be invoked against private individuals, or in cases where there is no participation by the State either through its instrumentalities or persons acting on its behalf. x x x There is no dispute that Bote, at the time of the incident, was a municipal mayor— a government official. However, the records are bereft of any indication that, during the incident, he was acting as such, or on behalf of or upon authority of the State. Indeed, as factually found by the CA, Bote was acting as a *private individual* or in his personal capacity, and the incident arose from a *private dispute* between Bote and SPCPI involving a *private property*. While his wrongful acts may give rise to criminal, civil, and administrative liabilities at the same time, each must be determined in accordance with applicable law. Here, it is clear that the private character of Bote's acts makes the Bill of Rights inapplicable.

APPEARANCES OF COUNSEL

The Law Firm of Perlas De Guzman & Partners for petitioner.
Balgos Gumaru & Jalandoni for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Through the instant Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court, petitioner Virgilio A. Bote (Bote) assails the Decision[1] dated April 30, 2012 and Resolution[2] dated September 7, 2012 rendered by the Court of Appeals, Tenth Division (CA), in CA-G.R. SP No. 120472, which modified the Decision[3] dated March 22, 2010 of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in Case

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[1] *Rollo*, pp. 40-58. Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a Member of this Court) and concurred in by Associate Justice Jose C. Reyes, Jr. (also a Member of this Court) and Associate Justice Agnes Reyes-Carpio.

[2] Id. at 59-65.

[3] Id. at 107-115.

No. OMB-L-A-09-0561-J, and held that Bote is guilty of culpable violation of the Constitution punishable with the penalty of suspension from office without pay for a period of two months.

The Facts of the Case

This Petition stemmed from an administrative complaint filed by Rolando C. Salonga on behalf of respondent San Pedro Cineplex Properties, Inc. (SPCPI) against Bote, then incumbent mayor of General Tinio, Nueva Ecija, for violation of Section 444(b)(2)(iv) of Republic Act No. (R.A.) 7160,[4] abuse of authority, and culpable violation of the Constitution.

Bote and SPCPI had a legal dispute over a real property located in Landayan, San Pedro, Laguna.[5] Bote is the representative of the heirs of Manuel Humada Enano (Enano), who claimed to be the rightful owners of the disputed property. On September 8, 2009, the trial court, in a quieting of title case, rendered a decision in favor of the heirs of Enano.[6]

SPCPI alleged that on September 12, 2009, before it even learned of the decision of the trial court, Bote went to the disputed property and brought along with him a group of armed men to harass the security guards hired by the SPCPI to secure the premises.[7] The armed men allegedly destroyed the fence and

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[4] *Section 444*. The Chief Executive: Powers, Duties, Functions and Compensation. –

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(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(2) Enforce all laws and ordinances relative to the governance of the municipality and the exercise of its corporate powers provided for under Section 22 of this Code implement all approved policies, programs, projects, services and activities of the municipality and, in addition to the foregoing, shall:

x x x x x x x x x

(iv) Be entitled to carry the necessary firearm within his territorial jurisdiction;

[5] *Rollo*, p. 40.

[6] Id.

[7] Id.

tried to enter the premises.[8] When the security guards hired by SPCPI from Defense Specialist Corporation (DSC) tried to stop the armed men, the latter started firing at them.[9] As a result, the DSC security guards filed criminal charges for attempted murder against Bote and the armed men. The criminal charges against Bote were later on dismissed.[10]

SPCPI also filed the instant administrative case against Bote. SPCPI averred that Bote: (a) violated Section 444(b)(2)(iv) of R.A. 7160 when he brought his firearm to the location of the disputed property which is outside his territorial jurisdiction as a mayor;[11] (b) abused his position as mayor of General Tinio, Nueva Ecija, when in order to obtain the assistance of the Philippine National Police (PNP), he sent PSSupt. Manolito Labrador (PSSupt. Labrador) a letter containing the following: "*I believe that this extension [of donated land] being an incumbent Municipal Mayor will help a quick police action to our citizenry in Region IV-A*;"[12] and (c) committed illegal and oppressive acts amounting to culpable violation of the Constitution.

Bote denied the accusations against him and interposed that it was the other way around. According to Bote, he hired Spyeagle Security Agency (SSA) to guard the disputed property. On or about 11:30 p.m. of September 12, 2009, a group of armed men suddenly fired upon the SSA security guards, forcing the latter to seek cover.[13] When the firing ceased, two of the armed men introduced themselves as members of DSC and gave them five days to vacate the premises.[14] This incident prompted Bote to build a wall around the property.[15]

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[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id. at 41-42.

[15] Id. at 42.

On September 17, 2009, while Bote's workers were constructing a wall on the perimeter of the premises, two men from DSC arrived together with armed men.[16] This time, they also harassed the workers. Because of the threats, Bote averred that he was forced to seek the assistance of the local police to prevent any untoward incident from happening.[17]

Bote belied the accusations against him and claimed that he did not have any firearm registered under his name, and that he was not even present in any of the incidents.[18] Thus, he could not have violated Section 444(b)(2)(iv) of R.A. 7160. On the charge of abuse of authority, Bote argued that he wrote a letter to PSSupt. Labrador, not to secure the property, but the community.[19] He further stressed that he never intended to use his influence as a mayor for which reason he used the letterhead of Agua Tierra Oro Mina (ATOM) Development Corporation in seeking police assistance.[20]

Ruling of the Ombudsman

In a Decision dated March 22, 2010, the Ombudsman dismissed the administrative complaint for lack of substantial evidence.[21] The Ombudsman held that SPCPI failed to present proof that Bote held a firearm during the incident, and that Bote used his position as municipal mayor in obtaining the assistance of the local police. The Ombudsman, however, did not rule on the charge for culpable violation of the Constitution.

SPCPI sought reconsideration of the decision, but the same was denied in an Order[22] dated May 18, 2011. Anent the charge

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[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Supra note 3.

[22] Id. at 116-121.

of culpable violation of the Constitution, the Ombudsman held that SPCPI failed to specify which Constitutional provision was actually violated. Nonetheless, the illegal and oppressive actions allegedly committed by Bote fall squarely within the definition of misconduct. The Ombudsman further held that the imposition of administrative charge against Bote has been rendered moot and academic by his re-election as mayor.

Aggrieved, SPCPI filed a petition for *certiorari*[23] with the CA.

Ruling of the Court of Appeals

In a Decision[24] dated April 30, 2012, the CA modified the Ombudsman Decision. The CA affirmed the dismissal of the administrative charges for violation of Section 444(b)(2)(iv) of R.A. 7160 and abuse of authority on the basis of his re-election, but held petitioner guilty of committing illegal and oppressive acts amounting to culpable violation of the Constitution. According to the CA, the illegal and oppressive acts of Bote did not bear a direct relation to his office as municipal mayor and were committed by him in his private capacity. As such, said acts, which did not amount to "misconduct," were not condoned by reason of his re-election.

Bote sought reconsideration of the CA Decision, but the same was denied in a Resolution[25] dated September 7, 2012.

Hence, this Petition.[26]

Issue

Whether the CA erred in modifying the Ombudsman Decision and in holding Bote guilty of culpable violation of the Constitution.

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[23] Id. at 66-106.

[24] Supra note 1.

[25] Supra note 2.

[26] Id. at 10-39.

The Court's Ruling

Bote argues that the CA erred in holding him guilty of committing illegal and oppressive acts since he was only exercising his right to exclude respondent from the disputed property following the favorable decision of the trial court.[27] He also claims that the question on whether his acts amounted to a culpable violation of the Constitution is still premature considering that the issue on the ownership over the property has not yet been resolved with finality.[28] Finally, Bote asserts that, contrary to the findings of the CA, the charges against him only consist of one continuous act taken as a whole which are all deemed condoned by his re-election.[29]

In its Comment,[30] SPCPI seeks the dismissal of the Petition on the ground that it raises questions of fact which are inappropriate in a petition for review on *certiorari* under Rule 45. SPCPI further contends that the acts of petitioner amounting to culpable violation of the Constitution were directed at persons so far outside his jurisdiction as municipal mayor such that his constituents cannot be expected or presumed to be aware of such.[31] Thus, the latter cannot condone what they do not even know.[32] In turn, Bote fortifies his arguments in his Reply.[33]

The Petition has merit.

Bote was charged with three distinct offenses: (1) violation of Section 444(b)(2)(iv) of R.A. 7160; (2) abuse of authority; and (3) culpable violation of the Constitution—all of which are grounds to remove or discipline an elective local official under Section 60 of R.A. 7160, *viz.*:

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[27] Id. at 22-23.

[28] Id. at 30.

[29] Id. at 31.

[30] Id. at 543-555.

[31] Id.

[32] Id.

[33] Id. at 568-574.

Section 60. *Grounds for Disciplinary Actions*. — An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

a) Disloyalty to the Republic of the Philippines;
b) Culpable violation of the Constitution;
c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
d) Commission of any offense involving moral turpitude or an offense punishable by at least *prision mayor*;
e) **Abuse of authority;**
f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the *sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan*, and *sangguniang barangay*;
g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
h) Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court. (Emphasis supplied.)

The Ombudsman, in an Order dated May 18, 2011, applied the doctrine of condonation to bar all the foregoing administrative charges against petitioner. According to the Ombudsman, re-election to office serves to condone whatever misconduct a public officer may have committed during his previous term, thus:

Finally, as regards the incomplete resolution of the complainant's grievance, we submit that the discussion on the charge of misconduct is broad enough to cover the other accusations against respondent. Further, while the complainant insists on charging the respondent with culpable violation of the constitution, he failed to specify which provision was actually violated. To elucidate, illegal and oppressive actions allegedly committed by the respondent fall squarely within the definition of misconduct which covers a wide latitude of infractions. This Office did not actually disregard the last charge but incorporated it with the offense of Misconduct.

More importantly, the imposition of the administrative charge against the [petitioner] has been rendered moot and academic by the re-election of the [petitioner] Mayor. As held in the case of *Aguinaldo vs. Santos, et al.,* re-election to office serves to condone whatever misconduct a public officer may have committed during his previous term in office.[34] (Citation omitted.)

On the other hand, the CA held that the doctrine of condonation only applies to administrative liability arising from "misconduct" or acts committed in relation to public office. The CA found that the illegal and oppressive acts, the acts alleged to constitute culpable violation of the Constitution, were committed by Bote in his private capacity, and therefore not subject to condonation. The CA held thus:

WE are cognizant of the rule that "a re[-]elected local official may not be held administratively accountable for misconduct committed during his prior term of office. The rationale for this holding is that when the electorate put him back into the office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still re-elects him, then such re-election is considered a condonation of his past misdeeds."

The question now that comes to fore is: What is the kind of "misconduct" that is condoned in case of the public official's re-election?

In the old case of *Lacson vs. Roque*, misconduct in an administrative case has been defined in this wise —

> "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as only affects his character as a private individual. In such cases, it has been said all times, it is necessary to separate the character of the man from the character of the officer. (Mechem, supra, section 457.) "It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office [x x x]" (43, Am. Jur., 39, 40)."

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[34] Supra note 22.

In another case, misconduct means an improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. 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.

Guided by the foregoing standard on what constitutes misconduct, for the doctrine of condonation to apply, the malfeasance, misfeasance or non-feasance committed by the elective official should have a direct relation to his official function or have adversely affected the performance of his official duties.

x x x x x x x x x

This brings Us now to the charge for illegal and oppressive acts amounting to culpable violation of the Constitution where [petitioner] intruded into [respondent's] property and physically dispossessed it of its physical possession by fencing it and putting equipment, container vans and bulldozers and deploying his security guards therein. It should be noted that said acts cannot be linked with his office as a municipal mayor as he committed the same as a private individual claiming a private property as his.[35]

The CA correctly held that Bote may no longer be held administratively liable for violation of 444(b)(2)(iv) of R.A. 7160 and abuse of authority by reason of his re-election. After all, the doctrine of condonation, prior to its abandonment in *Carpio-Morales v. Court of Appeals*,[36] operates as a complete extinguishment of administrative liability for the misconduct committed by an elective official during his previous term. However, in applying the doctrine in this case, the CA need not draw a distinction between the acts committed by Bote in his official and private capacities considering that there is no

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[35] Id. at 51-53.

[36] 772 Phil. 672 (2015).

basis to hold him administratively liable for culpable violation of the Constitution for the illegal and oppressive acts which he committed in his private capacity.

SPCPI accused Bote of committing illegal and oppressive acts, amounting to culpable violation, when he physically dispossessed SPCPI of the disputed property with the assistance of armed men.[37] As found by the CA—

> On this note, WE painstakingly reviewed the record and evidence submitted and found that petitioner's allegation of illegal and oppressive acts committed by private respondent which amount to culpable violation of the Constitution is predicated on the incident that happened on the wee hours of September 12 and 13, 2009. As averred by petition, the municipal mayor, who was armed and accompanied by about thirty (30) other armed men tried to enter its premises and when prevented by its guards, he shouted that he is Mayor Bote and is the owner of the subject property. He then ordered his men to cut the barbed wire fencing petitioner's premises. When the guards tried to stop them, they pointed their guns at them, constraining them to run to cover themselves from the shots being fired. Thereafter, private respondent took over the Dela Rosa Transit Terminal which is part of petitioner's property by parking several trucks and a container van therein. In fact, this was the subject of a Forcible Entry suit instituted by petitioner against private respondent before the Municipal Trial Court of San Pedro, Laguna wherein the former obtained a favorable judgment, thus, ordering the latter to vacate the premises and remove the fence he built, the equipment, container vans, bulldozers and all security guards it deployed and brought inside the property.[38]

SPCPI alleged that, through the foregoing acts, Bote violated its rights under Section 1, Article III of the 1987 Philippine Constitution, which reads as follows:

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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[37] Supra note 5.

[38] Id. at 55-56.

The foregoing provision is part of the Bill of Rights enshrined in the 1987 Philippine Constitution. The Bill of Rights was intended to preserve and guarantee the life, liberty, and property of persons against unwarranted intrusions of the State. In the absence of government interference, the liberties guaranteed by the Constitution cannot be invoked against the State,[39] or its agents. Stated differently, the Bill of Rights cannot be invoked against private individuals, or in cases where there is no participation by the State either through its instrumentalities or persons acting on its behalf. As aptly held by the Court in *Atienza v. Commission on Elections*,[40] *viz.*:

> The constitutional limitations on the exercise of the state's powers are found in Article III of the Constitution or the Bill of Rights. The Bill of Rights, which guarantees against the taking of life, property, or liberty without due process under Section 1 is generally a limitation on the state's powers in relation to the rights of its citizens. The right to due process is meant to protect ordinary citizens against arbitrary government action, but not from acts committed by private individuals or entities. In the latter case, the specific statutes that provide reliefs from such private acts apply. The right to due process guards against unwarranted encroachment by the state into the fundamental rights of its citizens and cannot be invoked in private controversies involving private parties.[41] (Citation omitted.)

There is no dispute that Bote, at the time of the incident, was a municipal mayor—a government official. However, the records are bereft of any indication that, during the incident, he was acting as such, or on behalf of or upon authority of the State. Indeed, as factually found by the CA, Bote was acting as a *private individual* or in his personal capacity, and the incident arose from a *private dispute* between Bote and SPCPI involving a *private property*. While his wrongful acts may give rise to criminal, civil, and administrative liabilities at the same time, each must be determined in accordance with applicable law.

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[39] *People v. Marti*, 271 Phil. 51, 58 (1991).

[40] 626 Phil. 654 (2010).

[41] Id. at 672-673.

Here, it is clear that the private character of Bote's acts makes the Bill of Rights inapplicable. Thus, while SPCPI can continue to insist that Bote violated its rights through his alleged illegal and oppressive acts, SPCPI cannot invoke Section 1, Article III of the 1987 Constitution to sustain an administrative case against Bote. SCPCI may find redress through a civil or criminal suit, but not through an administrative one.

In sum, there is, and there can be, no "culpable violation of the Constitution" for which Bote may be administratively disciplined. Therefore, for lack of cause of action, the administrative charge against Bote for culpable violation of the Constitution should be dismissed.

WHEREFORE, this Court resolves to **GRANT** the Petition for Review on *Certiorari*. The Decision dated April 30, 2012 and Resolution dated September 7, 2012 rendered by the Court of Appeals, Tenth Division, in CA-G.R. SP No. 120472 are hereby **ANNULLED** and **SET ASIDE**, and the administrative complaint against petitioner Virgilio A. Bote, **DISMISSED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, Inting,[*] and *Lopez, JJ.*, concur.

[*] Designated additional Member per Raffle dated July 27, 2020.

SECOND DIVISION

[G.R. No. 225404. September 14, 2020]

MELCHOR M. QUEMADO, SR., *Petitioner*, *v.* **SANDIGANBAYAN [SIXTH DIVISION] and PEOPLE OF THE PHILIPPINES,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN (OMB); DELAY IN THE DISPOSITION OF CASES BEFORE THE OMB BEGINS TO RUN ON THE DATE OF FILING OF A FORMAL COMPLAINT BY A PRIVATE COMPLAINANT OR THE FILING BY THE FIELD INVESTIGATION OFFICER WITH THE OMB OF A FORMAL COMPLAINT BASED ON ANY ANONYMOUS COMPLAINT OR AS A RESULT OF ITS *MOTU PROPRIO* INVESTIGATIONS.— In *Magante v. Sandiganbayan (Third Division) (Magante)*, the Court (Third Division) clarified that delay in the disposition of cases before the OMB begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. Thus, the period spent for fact finding investigations of the OMB prior to the filing of the formal complaint by the Field Investigation Office is irrelevant in determining inordinate delay. Consistent with *Magante* is the subsequent *En Banc* Decision in *Cagang v. Sandiganbayan (Fifth Division) (Cagang)*. It declared as *abandoned* the ruling in *People v. Sandiganbayan, et al*. that fact-finding investigations are included in the period for the determination of inordinate delay. x x x In deciding to abandon the ruling, the Court in *Cagang* ratiocinated that the proceedings at the fact-finding stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused.

2. ID.; ID.; ID.; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; INORDINATE DELAY; DETERMINED NOT THROUGH MERE MATHEMATICAL RECKONING BUT THROUGH THE EXAMINATION OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE.— The Court is mindful of the duty of the OMB under the 1987 Constitution (Constitution) and RA 6770, otherwise known as "The Ombudsman Act of 1989," to act promptly on complaints brought before it. Specifically, Section 16, Article III of the Constitution guarantees to all persons the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. Thus, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice, including the Ombudsman. Further, the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed [, pursuant to] x x x Section 12, Article XI of the Constitution x x x. [T]he above constitutional mandate x x x [is magnified by] Section 13 of RA 6770 x x x. However, the duty of the OMB to act promptly on complaints before it should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. It bears stressing that inordinate delay is determined not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. It is the duty of the courts to appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution should be able to satisfactorily explain the reasons for the delay and that the accused did not suffer prejudice as a result.

3. ID.; ID.; ID.; ID.; ID.; FACTORS; MUST BE TAKEN INTO CONSIDERATION IN TREATING PETITIONS INVOKING THE RIGHT TO SPEEDY DISPOSITION OF CASES.— Jurisprudence has listed the following factors to consider in treating petitions invoking the right to speedy deposition of cases: (1) length of the delay, (2) reasons for the delay, (3) assertion of right by the accused, and (4) prejudice to the respondent. Taking these factors into consideration, the

Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the Information by the OMB.

4. ID.; ID.; ID.; ID.; ID.; DEEMED VIOLATED ONLY WHEN THE PROCEEDING IS ATTENDED BY VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAYS.— [T]he constitutional right to speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays. Here, the Court does not find the period in question to be vexatious, capricious, or oppressive to petitioner as would warrant the dismissal of the case on the ground of inordinate delay. As stated by the prosecution, with respect to the period covering 2013 to 2016, the records will support the necessary delay that attended the resolution of the PACPO's complaint. Notably, petitioner's failure to file his counter-affidavit did not help and even contributed to the delay in the resolution of the complaint. The prosecution also explained that the levels of review that the case had to undergo were necessary to ensure that the probable cause finding and the indictment of petitioner will stand the grueling and exacting standards of trial. Moreover, apart from the volume of documents that the OMB had to peruse, worthy of note is the fact that the COA did not submit an audit report on the alleged conflict of interest in the contract executed by and between petitioner and Hayward Travelodge. Taking these into account, the Court finds justifiable the period of time that the OMB spent for the resolution of the complaint.

APPEARANCES OF COUNSEL

Avila Tamayo Law Office for petitioner.
Office of the Special Prosecutor for respondents.

R E S O L U T I O N

INTING, *J.*:

This resolves the Petition for *Certiorari* and Prohibition[1] filed by Melchor M. Quemado, Sr. (petitioner) pursuant to

[1] *Rollo*, pp. 3-15.

Rule 65 of the Rules of Court assailing the Resolutions[2] dated April 11, 2016 and June 13, 2016[3] issued by the *Sandiganbayan* (SB)-Sixth Division in SB-16-CRM-0051 for violation of Section 3 (e) of Republic Act No. (RA) 3019.[4] The assailed Resolution denied petitioner's Motion to Dismiss[5] on the ground of inordinate delay in the disposition of the case.

The Antecedents

In a Letter[6] dated September 25, 2006, addressed to the Office of the Ombudsman (OMB)-Visayas, the members of the *Sangguniang Bayan* of the Municipality of Sta. Fe, Leyte called attention to the "irregular and unnecessary transaction" entered into by petitioner, who was then the mayor of the municipality. The letter, which the OMB received on the same date, alleged, among others, that: (1) as local chief executive, petitioner approved the rental of an office space in Hayward Travelodge to be used by those involved in the preparation of a feasibility study of the municipality's Infrastructure for Rural Productivity Enhancement Sector Project; (2) the rental was unnecessary since an office space is readily available in the municipality, while Hayward Travelodge is 21 kilometers away; (3) Hayward Travelodge is owned by petitioner's brother, Anastacio M. Quemado; (4) the payment for the rent in the amount of ₱16,000.00 was made out to petitioner who also received the check therefor. The letter was docketed as CPL-V-06-0627 and treated as a regular complaint requiring further factual inquiry.[7]

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[2] *Id.* at 19-20; issued by Associate Justice Rodolfo A. Ponferrada, Chairperson, and Associate Justices Oscar C. Herrera, Jr. and Karl B. Miranda, Members.

[3] *Id.* at 49-51.

[4] Entitled "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.

[5] *Rollo*, pp. 22-25.

[6] *Id.* at 26-27.

[7] As culled from the Comment (On the Petition for *Certiorari* and Prohibition), *id.* at 78-79.

On October 20, 2006, the OMB-Visayas endorsed the letter to the Commission on Audit (COA)-Regional Office No. VIII for the conduct of an audit examination on the alleged conflict of interest in the contract executed by and between petitioner and Hayward Travelodge.[8]

As it appeared that the COA took no action on the endorsement, Graft Investigation & Prosecution Officer (GIPO) II Alfred Yann G. Oguis (GIPO Oguis) submitted a Final Evaluation Report[9] dated October 23, 2012. In the report, GIPO Oguis recommended that CPL-V-06-0627 be "considered closed and terminated, without prejudice to the COA adverse report on the matter."[10] The recommendation was based on an evaluation of the letter dated September 25, 2006 and the finding that therein complainants "appear to be reporting a case for Malversation of Public Funds" against petitioner, but the concurrence of the elements of the crime is wanting.[11]

On February 1, 2013, Ombudsman Conchita Carpio-Morales (Ombudsman Carpio-Morales) approved with modification the recommendation of the OMB-Visayas. Ombudsman Carpio-Morales wrote the following marginal note:

> Dismissal of malversation case is in order. But DO Visayas is directed to consider if violation of Sec. 3(e) of RA 3019 and of the provisions of RA 9184 lies against respondent. DO Visayas is given thirty (30) days to submit its report hereon.[12] (Underscoring in the original.)

Subsequently, GIPO Oguis submitted another Final Evaluation Report[13] dated February 25, 2013, which treated the letter dated September 25, 2006 as a complaint for: (1) malversation of public funds; and (2) violation of RA 3019. In the report, GIPO

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[8] *Id.* at 79.

[9] *Id.* at 97-100.

[10] *Id.* at 99.

[11] *Id.* at 79.

[12] *Id.* at 100.

[13] *Id.* at 28-32.

Oguis found sufficient basis for further proceedings and recommended that:

> x x x the subject CPL be UPGRADED for preliminary investigation for possible violation of Sec. 3(e) of RA 3019, as amended, in relation to RA 9184, and administrative adjudication for a possible offense of Grave Misconduct/Conduct Prejudicial to the Best Interest of the Service against Melchor M. Quemado, Sr., Municipal Mayor of Sta. Fe, Province of Leyte.[14]

On June 17, 2013, Ombudsman Carpio-Morales approved the Final Evaluation Report dated February 25, 2013.[15]

Meanwhile, on February 28, 2013, Graft Investigation Officer (GIO) III Rosemarie Semblante Tongco (Tongco) of the OMB-Visayas executed an Affidavit[16] to support the upgrading of the case for purposes of conducting a preliminary investigation on the alleged violation of Section 3 (e) of RA 3019, as amended, in relation to RA 9184 known as the "Government Procurement Reform Act."[17] GIO Tongco's Affidavit was filed before the OMB-Visayas on March 11, 2013 and docketed as OMB-V-C-13-0185.[18] In view thereof, the Public Assistance and Corruption Prevention Office (PACPO) of the OMB-Visayas became the nominal complainant in the case against petitioner for violation of RA 3019.[19]

Preliminary investigation ensued. On September 2, 2013, the OMB-Visayas issued an Order[20] directing petitioner to file his counter-affidavit and other controverting evidence within

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[14] *Id.* at 32.

[15] *Id.*

[16] *Id.* at 33-35.

[17] 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.

[18] *Rollo*, p. 80.

[19] *Id.*

[20] *Id.* at 101.

10 days from receipt thereof. Despite due receipt on October 18, 2013, petitioner did not file a counter-affidavit.[21]

In the Resolution[22] dated April 25, 2014, GIPO II Portia Pacquiao-Suson (Pacquiao-Suson) found probable cause against petitioner for one count of violation of Section 3 (e) of RA 3019, in relation to RA 9184, with respect to the questionable rental of office space in Hayward Travelodge. Ombudsman Carpio-Morales approved GIPO Pacquiao-Suson's Resolution on December 15, 2014.[23]

In the course of the preparation and review of the Information against petitioner, the Office of the Special Prosecutor submitted a Memorandum[24] dated December 22, 2015, forwarding the revised Information[25] to Ombudsman Carpio-Morales. In turn, Ombudsman Carpio-Morales approved the Information on December 29, 2015.[26] Subsequently, it was filed before the SB on February 2, 2016.[27]

Petitioner was arraigned on March 9, 2016. Thereafter, on April 8, 2016, he filed a Motion to Dismiss[28] alleging that there was inordinate delay in the disposition of the case amounting to a violation of his constitutional right to the speedy disposition of his case.

On April 11, 2016, the SB rendered the assailed Resolution[29] denying the Motion to Dismiss and striking down the claim of inordinate delay. Petitioner filed a Motion for Reconsideration,[30]

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[21] *Id.* at 80.

[22] *Id.* at 36-43.

[23] *Id.* at 42.

[24] *Id.* at 102.

[25] *Id.* at 103-105.

[26] *Id.* at 105.

[27] *Id.* at 103.

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

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

[30] *Id.* at 45-47.

but the SB denied it in the subsequent Resolution[31] dated June 13, 2016.

Hence, this petition raising a lone issue for resolution, to wit:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTIONS WITHOUT CONSIDERING THE ENTIRE FACTS OF THE CASE AND IN CONTRAST TO THE SUPREME COURT DECISION OF WHICH THE CHAIRMAN OF THE RESPONDENT COURT WAS THEN AN ASSOCIAQTE *[sic]* JUSTICE OF THE SANDIGANBAYAN FIRST DIVISION.[32]

Petitioner contends that there was an unreasonable delay of almost 10 years, counted from the letter dated September 25, 2006 sent by the members of the *Sangguniang Bayan* of the Municipality of Sta. Fe, Leyte to the OMB-Visayas until the filing of the Information before the SB on February 2, 2016. Petitioner also asserts that the SB gravely abused its discretion when it selected facts that would support its Resolution denying his Motion to Dismiss. Further, he avers that the pronouncement of the SB is not consistent with the Court's Decision in *People v. Sandiganbayan, et al.*,[33] which declared as follows:

> The guarantee of the speedy disposition of cases under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.[34]

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[31] *Id.* at 49-51; penned by Associate Justice Rodolfo A. Ponferrada, Chairperson, with Associate Justices Oscar C. Herrera, Jr. and Karl B. Miranda, concurring.

[32] *Id.* at 8.

[33] 723 Phil. 444 (2013).

[34] *Id.* at 447.

The Court's Ruling

The petition has no merit.

In *Magante v. Sandiganbayan (Third Division)*[35] *(Magante)*, the Court (Third Division) clarified that delay in the disposition of cases before the OMB begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations.[36] Thus, the period spent for fact finding investigations of the OMB prior to the filing of the formal complaint by the Field Investigation Office is irrelevant in determining inordinate delay.[37]

Consistent with *Magante* is the subsequent *En Banc* Decision in *Cagang v. Sandiganbayan (Fifth Division)*[38] *(Cagang)*. It declared as *abandoned* the ruling in *People v. Sandiganbayan, et al.*[39] that fact-finding investigations are included in the period for the determination of inordinate delay.

Significantly, the abandoned ruling in *People v. Sandiganbayan, et al.* is the one being invoked by petitioner in the instant case. In deciding to abandon the ruling, the Court in *Cagang* ratiocinated that the proceedings at the fact-finding stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused.[40]

In addition, *Cagang* pronounced:

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[35] G.R. Nos. 230950-51, July 23, 2018.

[36] *Id.*

[37] *Id.*

[38] G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018.

[39] *People v. Sandiganbayan, et al.*, *supra* note 33.

[40] *Magante v. Sandiganbayan (Third Division), et al.*, *supra* note 35.

The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.[41]

Applying the foregoing pronouncements in the case at bar, the Court affirms the SB's finding that there was no inordinate delay. The SB aptly ruled, thus:

The Court is not inclined to give due course to the Motion it appearing that the complaint-affidavit of the *PACPO* was filed before the [OMB] on March 11, 2013, and the corresponding Information was filed in Court on February 2, 2016.

Thus, it took the [OMB] less than three (3) years to conduct and terminate the preliminary investigation. Such period of time can hardly be considered "inordinate" delay that would violate the right of the accused-movant to a speedy disposition of his case and warrant the dismissal of the case.

That the letter-complaint of the six (6) SB Members of Sta. Fe, Leyte dated September 25, 2006, was presumably filed before the *PACPO* on said date should not be considered in computing the period in the conduct of the preliminary investigation as it was only a fact finding examination/investigation; and hence, the preliminary investigation proper commenced to run only on March 11, 2013, after the *PACPO* terminated its fact finding examination/investigation and filed before the [OMB] its complaint-affidavit against the accused-movant for preliminary investigation.[42] (Italics omitted.)

The Court is mindful of the duty of the OMB under the 1987 Constitution (Constitution) and RA 6770,[43] otherwise known

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[41] *Cagang v. Sandiganbayan (Fifth Division)*, *supra* note 38.

[42] *Rollo*, p. 50.

[43] Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes," approved on November 17, 1989.

as "The Ombudsman Act of 1989," to act promptly on complaints brought before it. Specifically, Section 16, Article III of the Constitution guarantees to all persons the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.[44] Thus, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice,[45] including the Ombudsman.

Further, the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed. Section 12, Article XI of the Constitution commands:

> Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

To magnify the above constitutional mandate, Section 13 of RA 6770 provides:

> Section 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

However, the duty of the OMB to act promptly on complaints before it should not be mistaken with a hasty resolution of cases

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[44] *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 61 (2013).

[45] *Roquero v. The Chancellor of UP-Manila*, 628 Phil. 628, 639 (2010).

at the expense of thoroughness and correctness.[46] It bears stressing that inordinate delay is determined not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.[47] It is the duty of the courts to appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution should be able to satisfactorily explain the reasons for the delay and that the accused did not suffer prejudice as a result.[48]

Jurisprudence has listed the following factors to consider in treating petitions invoking the right to speedy disposition of cases: (1) length of the delay, (2) reasons for the delay, (3) assertion of right by the accused, and (4) prejudice to the respondent.[49] Taking these factors into consideration, the Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the Information by the OMB.

It is notable that on September 2, 2013, the OMB-Visayas issued an Order directing petitioner to file his counter-affidavit and other controverting evidence within 10 days from receipt thereof. However, petitioner did not file a counter-affidavit despite due receipt of the Order on October 18, 2013. Further, it is worth mentioning that petitioner had the opportunity to seek reconsideration or move for a reinvestigation of the draft resolution approved by Ombudsman Carpio-Morales. Pursuant to Section 7 (a), Rule II of Administrative Order No. 07, otherwise

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[46] *Raro v. The Honorable Sandiganbayan (Second Division), et al.*, 390 Phil. 917, 948 (2000), citing *Dansal v. Hon. Fernandez*, 383 Phil. 897, 908 (2000).

[47] *Cagang v. Sandiganbayan*, *supra* note 38.

[48] *Id.*

[49] See *Revuelta v. People*, G.R. No. 237039, June 10, 2019; *Cagang v. Sandiganbayan*, *supra* note 38, citing *Barker v. Wingo*, 407 U.S. 514 (1972) in *Martin v. Ver*, 208 Phil. 658, 664 (1983); *Magante v. Sandiganbayan*, *supra* note 33; and *The Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008), citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

known as the *Rules of Procedure of the Office of the Ombudsman*, petitioner could have filed a motion for reconsideration or reinvestigation of the Resolution dated April 25, 2014, which Ombudsman Carpio-Morales approved on December 15, 2014, within five days from notice thereof with the OMB. He chose not to do so. Instead, he waited until the Information was filed against him with the SB on February 2, 2016.

Additionally, the constitutional right to speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.[50] Here, the Court does not find the period in question to be vexatious, capricious, or oppressive to petitioner as would warrant the dismissal of the case on the ground of inordinate delay. As stated by the prosecution, with respect to the period covering 2013 to 2016, the records will support the necessary delay that attended the resolution of the PACPO's complaint.[51] Notably, petitioner's failure to file his counter-affidavit did not help and even contributed to the delay in the resolution of the complaint. The prosecution also explained that the levels of review that the case had to undergo were necessary to ensure that the probable cause finding and the indictment of petitioner will stand the grueling and exacting standards of trial.[52] Moreover, apart from the volume of documents that the OMB had to peruse, worthy of note is the fact that the COA did not submit an audit report on the alleged conflict of interest in the contract executed by and between petitioner and Hayward Travelodge.[53] Taking these into account, the Court finds justifiable the period of time that the OMB spent for the resolution of the complaint.

On the other hand, petitioner failed to raise specific instances demonstrating that the proceedings were attended by vexatious,

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[50] *People v. The Sandiganbayan, Fifth Division, et al.*, 791 Phil. 37, 53 (2016).

[51] *Rollo*, p. 85.

[52] *Id.*

[53] *Id.*

capricious, and oppressive delays. Furthermore, he failed to adequately show that he was prejudiced by the alleged delay.

Accordingly, the Court holds that the SB did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Dismiss.[54]

WHEREFORE, the Petition is **DISMISSED**. The Resolutions dated April 11, 2016 and June 13, 2016 issued by the *Sandiganbayan*-Sixth Division in SB-16-CRM-0051 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

[54] *Id.* at 22-24.

FIRST DIVISION

[G.R. No. 233194. September 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ALMAR LAGRITA y FLORES and REX MIER (ACQUITTED),** *Accused,* **ARVIN ALBARAN,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE FLIGHT OF AN ACCUSED, IN THE ABSENCE OF A CREDIBLE EXPLANATION, WOULD BE A CIRCUMSTANCE FROM WHICH AN INFERENCE OF GUILT MAY BE ESTABLISHED.— Another factor that would militate against appellant's version is the fact that even when he learned the day after such fateful encounter that the person he allegedly struck with a firewood died, he did not voluntarily surrender himself to the police or the authorities to prove his innocence. In fact, he was only arrested two years after the incident. Jurisprudence has repeatedly declared that flight is a veritable badge of guilt and negates the plea of self-defense. The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."

2. ID.; ID.; CREDIBILITY OF WITNESSES; WHEN THE ISSUE OF CREDIBILITY IS DECISIVE OF THE GUILT OR INNOCENCE OF THE ACCUSED, IT IS DETERMINED BY THE CONFORMITY OF THE CONFLICTING CLAIMS AND RECOLLECTIONS OF THE WITNESSES TO COMMON EXPERIENCE AND TO THE OBSERVATION OF MANKIND AS PROBABLE UNDER THE CIRCUMSTANCES.— [T]he issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. It has been appropriately emphasized that "[w]e have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is

repugnant to these belongs to the miraculous and is outside of judicial cognizance."

3. ID.; ID.; ID.; WHEN IT COMES TO CREDIBILITY, THE TRIAL COURT'S ASSESSMENT DESERVES GREAT WEIGHT, AND IS EVEN CONCLUSIVE AND BINDING, IF NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE.— We x x x find the evidence presented by the prosecution to be more credible than that of the appellant. As the RTC found, witnesses Pesania and Lapuz were positive and straightforward in declaring that appellant's group arrived at the store where they, together with victim Reynald, were having a conversation; that without provocation, Lagrita struck Reynald's nape with a piece of firewood which caused the latter's death. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. Here, we find no cogent reason to deviate from the findings of both lower courts.

4. ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE THAT THE WITNESSES FOR THE PROSECUTION WERE TAINTED BY ILL MOTIVE, IT IS PRESUMED THAT THEY WERE NOT SO ACTUATED AND THEIR TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT.— [T]he records failed to show any ill motive on the part of the prosecution witnesses to falsely testify against all the accused. Jurisprudence also tells us that where there is no evidence that the witnesses for the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In fact, Lagrita and Mier even declared that they did not know nor had any fight with the two prosecution witnesses before the fateful incident happened on April 21, 2007.

5. CRIMINAL LAW; CONSPIRACY; NEED NOT BE PROVED BY DIRECT EVIDENCE FOR IT MAY BE INFERRED

FROM THE CONCERTED ACTS OF THE ACCUSED, INDUBITABLY REVEALING THEIR UNITY OF PURPOSE, INTENT AND SENTIMENT IN COMMITTING THE CRIME. — Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It comes to life at the very instant the plotters agree, expressly or implied, to commit the felony and forthwith, to actually pursue it. Conspiracy need not be proved by direct evidence. It may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime. Thus, it is not required that there was an agreement for an appreciable period prior to the occurrence, it is sufficient that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution.

6. ID.; ID.; ONE WHO PARTICIPATED IN THE MATERIAL EXECUTION OF THE CRIME BY STANDING GUARD OR LENDING MORAL SUPPORT TO THE ACTUAL PERPETRATION THEREOF IS CRIMINALLY RESPONSIBLE TO THE SAME EXTENT AS THE ACTUAL PERPETRATOR, ESPECIALLY IF THEY DID NOTHING TO PREVENT THE COMMISSION OF THE CRIME.— While it was only Lagrita who struck Reynald which caused his death, appellant and Mier are also liable since the act of Lagrita is the act of all co-conspirators. Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime. Hence, appellant's liability is based on his being a co-conspirator. However, since Mier had already been acquitted by the RTC which is already final and executory, only appellant should be held liable as a co-conspirator.

7. ID.; TREACHERY; THE ESSENCE OF TREACHERY IS THAT THE ATTACK IS DELIBERATE AND WITHOUT WARNING, DONE IN A SWIFT AND UNEXPECTED WAY, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE.— [T]reachery attended the commission of the crime that qualified the killing of Reynald to murder. Paragraph 16,

Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. Here, Reynald was just talking with Pesania and Lapuz in front of the store when appellant, Lagrita and Mier arrived. Lagrita then went at Reynald's back and without any warning, hit him on his nape with a piece of firewood. Reynald was completely unaware that such attack was coming, hence, he had no opportunity at all to defend himself. Lagrita deliberately and consciously adopted such mode of attack in order to avoid any risk to himself which may arise from any defense that Reynald might make.

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.*:

Before us is an appeal of accused-appellant Arvin Albaran from the Decision[1] dated May 8, 2017 of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 01340-MIN, which affirmed with modifications the Judgment[2] dated February 21, 2013 of the Regional Trial Court *(RTC)*, Branch 11, Davao City, finding him and co-accused Almar Lagrita guilty beyond reasonable doubt of the crime of Murder, and acquitting co-accused Rex Mier.

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[1] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo*, pp. 3-7.

[2] Per Judge Virginia Hofileña-Europa; Docketed as Criminal Case No. 61,284-07; CA *rollo*, pp. 46-53.

Appellant, together with Lagrita and Mier, were charged with murder in an Information dated April 23, 2007, the accusatory portion of which reads:

> That on or about April 21, 2007, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused Almar Lagrita, armed with an ipil-ipil firewood, conspiring and confederating with all the other above-named accused, with intent to kill and with treachery, willfully, unlawfully and feloniously struck with said Ipil-ipil firewood the nape of one Reynald Giron, which caused the latter's death.
>
> Contrary to law.[3]

Upon arraignment, all three accused,[4] duly assisted by their respective counsels, entered a plea of not guilty. Trial thereafter ensued.

The prosecution presented the testimonies of Police Chief Inspector Alex Uy (*PCI Uy*), PO3 Gennie Palma (*PO3 Palma*), Rogelio Giron, Angela Abariento, Jomar Pesania (*Pesania*),[5] and Benjie Lapuz (*Lapuz*).[6] Their testimonies established the following facts:

At 9:30 in the evening of April 21, 2007, Reynald Giron (*victim Reynald*) together with Lapuz, who was seated beside him, and Pesania, were having a conversation in front of Jeffrey store located at Phase 2, Molave Homes, Indangan, Davao City.[7] Later, the group of Lagrita, Mier and appellant arrived at the store.[8] Reynald and Lapuz then stood up thinking that the group would buy something.[9] Lagrita went behind Reynald and

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[3] Records, p. 1.

[4] Lagrita was arraigned on May 7, 2007, *id*. at 20; Mier on July 31, 2009, *id*. at 97; Appellant Albaran on September 4, 2009, *id*. at 112.

[5] Sometimes spelled as "Pisana" in some parts of the records.

[6] Sometimes spelled as "Lapus" in some parts of the records.

[7] TSN, September 3, 2007, pp. 14-15; TSN, September 23, 2007, p. 34; TSN, September 14, 2007, pp. 5-8.

[8] TSN, September 3, 2007, p. 16.

[9] TSN, September 14, 2009, p. 12.

suddenly, with a piece of firewood, struck the latter on the lower portion of the back of his neck causing him to fall on the ground.[10] Mier, with appellant standing by, warned Reynald's companions, Pesania and Lapuz, saying "*ayaw Kalampag*" (*don't react or resist*).[11] Lagrita, using the same firewood, also struck Lapuz hitting him on his forehead, right shoulder, and neck. Lapuz then fell down on his buttocks while parrying the attack.[12] Lagrita, appellant and Mier fled the scene together. Lapuz then helped Reynald who was then bleeding from his neck.[13] While Pesania ran to the house of his uncle-in-law Rodil Giron, who is the brother of Reynald, to inform him of what happened, and together they went back to the crime scene,[14] and saw Reynald lying face down on the ground and was no longer breathing.

PO3 Palma and another policeman of the Buhangin Police Precinct were dispatched to the crime scene and they saw overturned chairs and disarrayed pieces of firewoods. It was learned that Lagrita, Mier and appellant were the suspects in striking or hitting the victim. The policemen went to Lagrita's house and invited him to the station for questioning and later turned him over to the investigation officer. PO3 Palma recovered from the crime scene the piece of firewood with traces of blood which was allegedly used in striking Reynald's nape.[15]

PCI Uy, a Medico-Legal Officer of Davao City, conducted an autopsy on Reynald's corpse. He found a contusion and lacerated wounds at the back area of the head, but found no external injuries like contusion or wound as well as internal injuries in the body.[16] He certified that the cause of Reynald's

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[10] TSN, September 3, 2007, p. 22; TSN, September 23, 2007, pp. 37-41.

[11] TSN, September 3, 2007, p. 22; TSN, September 8, 2009, p. 16.

[12] TSN, September 3, 2007, p. 24; TSN, September 23, 2007, pp. 39-40.

[13] TSN, September 23, 2007, p. 41.

[14] *Id*. at 24.

[15] TSN, September 4, 2007, pp. 5-15.

[16] TSN, September 3, 2007, pp. 6-7.

death was intracranial hemorrhage secondary to traumatic blunt injuries.[17]

Rogelio[18] and Angela,[19] victim Reynald's brother and sister, respectively, testified on the expenses incurred for the funeral and burial of Reynald, but were not able to present all the receipts thereof.

On the other hand, the defense presented a totally different scenario.

Lagrita testified that he only started living in Molave Homes, Indangan, Davao City on April 4, 2007 and had stayed there for only two weeks.[20] At 9:00 p.m. of April 21, 2007, he was at home waiting for the call of his wife when a patrol car passed by and the policemen asked him if he knew a certain Rex Mier who had a tattoo.[21] He denied knowing him, but he was still brought to the station since he had a tattoo on his right arm and was detained.[22] Later, witnesses Pesania and Lapuz arrived at the station and confirmed that he was not Rex Mier, but claimed that he was also with the latter. He was shocked to learn of the murder charge.[23] He denied knowing Pesania and Lapuz as he met them only at the police station.

Mier narrated that at 8:00 p.m. of April 21, 2007, he was on his way home to New Corella, Davao del Norte, coming from Cabantian, Davao, and decided to stop by Molave Homes, Indangan, to visit his older brother Reynaldo Mier who, however, was not around.[24] He then went to Jeffrey's store at 9:30 p.m. to buy cigarettes and saw five (5) people drinking, which included

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[17] Records, p. 12.

[18] TSN, October 8, 2007, p. 4.

[19] TSN, November 19, 2007, p. 10.

[20] TSN, October 6, 2008, p. 4.

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

[22] *Id*. at 11-12.

[23] *Id*. at 14.

[24] TSN, May 31, 2010, pp. 6-8.

Lapuz, a co-worker at Molave Homes where he used to work.[25] He then proceeded home at 10:00 p.m. He only learned of the murder charge against him upon his arrest on his wedding day.[26]

Appellant admitted that he knew his co-accused Mier, being his cousin, but denied knowing his co-accused Lagrita. On the night of April 21, 2007, he was on his way home from his aunt's house and passed by Jeffrey's store in Molave Homes to buy noodles.[27] He saw people drinking outside the store and was invited by the victim for a drink, but he refused. When he was about to leave, victim Reynald prevented him and suddenly punched him on his left jaw. He fell on the ground and Reynald started kicking him. He then saw pieces of firewood piled at the store and took one piece and hit Reynald on his chest.[28] When Reynald turned his back on him to get a piece of wood, he struck the former's nape.[29] He was then attacked by Reynald's companions so he tried to strike them back and ran away. He did not intend to kill Reynald, but was merely defending himself, and denied conspiring with the other co-accused.[30]

On February 21, 2013, the RTC issued its Judgment, the dispositive portion of which reads:

> Wherefore, in view of all the foregoing, judgment is hereby rendered finding Almar Lagrita and Arvin Albaran GUILTY beyond reasonable doubt of the crime of MURDER as penalized under Art. 248 of the Revised Penal Code. They are hereby sentenced to suffer the penalty of *reclusion perpetua*.
>
> They are, likewise, sentenced to pay the heirs of the deceased Reynald Giron, jointly and severally, the amount of FIFTY THOUSAND (P50,000.00) PESOS as civil indemnity and the further sum of THIRTY [-] FIVE THOUSAND FIVE HUNDRED THIRTY-FOUR [PESOS] and FIFTY-FOUR CENTAVOS (P35,534.54) as actual damages.

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

[26] *Id*. at 11.

[27] TSN, March 14, 2011, p. 4.

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

[29] *Id*. at 7-8.

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

Accused Rex Mier is hereby ACQUITTED for failure of [the] prosecution to establish his guilt beyond reasonable doubt.

The City Warden of the Davao City Jail is hereby ordered to release Rex Mier from detention immediately unless he is being held for another crime.

SO ORDERED.[31]

The RTC gave credence to the testimonies of prosecution witnesses Pesania and Lapuz that they saw Lagrita hit Reynald on the nape causing the latter to fall on the ground unconscious and died. It found their testimonies to be positive and straightforward. The RTC did not accept appellant's claim of self-defense finding that even if Reynald first attacked him, there was unreasonable necessity of striking Reynald on the nape with a wood which was fatal.

The RTC found the presence of treachery when Lagrita picked up a piece of firewood and struck Reynald on the nape knowing that it would incapacitate the latter; and the attack was sudden and Reynald was hit from behind.

The RTC ruled that the prosecution failed to establish conspiracy among the accused. However, since appellant admitted that he hit Reynald with a piece of firewood without intending to cause his death, the RTC held that Lagrita and appellant acted on their own volition. On the other hand, it found that Mier was not categorically mentioned by the witnesses as having hit Reynald and was not shown to have conspired and participated in the killing.

Lagrita and appellant filed a Notice of Appeal. However, the Appellant's Brief filed with the CA pertained only to appellant Albaran.

On May 8, 2017, the CA rendered its assailed Decision, the decretal portion of which reads:

WHEREFORE, the appeal is DENIED. The February 21, 2013 Judgment of the Regional Trial Court, Branch 11, Davao City in

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[31] CA *rollo*, pp. 52-53.

Criminal Case No. 61,284-07 for MURDER is AFFIRMED with MODIFICATIONS. The accused are ORDERED to pay, jointly and severally, the victim's heirs P50,000.00 as moral damages, P30,000.00 as exemplary damages, and P75,000.00 as civil indemnity, in addition to the award of actual damages of P35,534.54. All monetary awards shall earn an interest of 6% per annum from the finality of this judgment until fully paid.[32]

The CA rejected appellant's allegations of unlawful aggression on the part of victim Reynald as it was not corroborated by any evidence other than his self-serving testimony which was short of the required clear and convincing evidence. It found unmeritorious appellant's contention that his testimony should be given more credence than that of the prosecution's version which is replete with inconsistencies; and found the testimonies of the prosecution witnesses to be consistent and coherent on substantial points and the noted discrepancies were sufficiently explained and justified.

The CA, nevertheless, ruled that granting, in line with appellant's defense, that it was the victim who started the commotion, the unlawful aggression had already ceased to exist when he struck the victim's nape.

The CA found the presence of treachery as the attack on Reynald was done not only in an unexpected and swift manner but with the means that would make him improbable to perceive it.

Dissatisfied, appellant files the instant appeal.

Appellant and the Office of the Solicitor General were required to submit their Supplemental Briefs, if they so desire.[33] However, both parties filed their respective Manifestations that they are no longer filing Supplemental Briefs, thus adopting the allegations and arguments in their respective Briefs filed with the CA.

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[32] *Rollo*, p. 26.

[33] Resolution dated October 2, 2017, *id.* at 33.

Appellant contends that the CA erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt and when it failed to appreciate his claim of self-defense.

Appellant argues that prosecution witnesses Pesania and Lapuz gave conflicting testimonies on material points, *i.e.*, on the malefactors, and the attending circumstances prior to the striking of a piece of firewood on the victim Reynald. As to Pesania, appellant claims that during his testimony on September 8, 2009, he categorically declared that it was Lagrita who struck Reynald on the nape with the use of a piece of firewood. However, when he was asked during the earlier hearing held on September 3, 2007 as to who he was referring to when he said that they immediately struck without saying anything, his answer was Tata Mier. With respect to Lapuz, appellant avers that while Lapuz identified Lagrita as the one who struck Reynald, he had also said that appellant struck them. Hence, appellant alleges that with the cited material inconsistencies, it can be gainfully said that these witnesses' account on the occurrence which led to the demise of Reynald cannot be appreciated against him.

We are not convinced.

We have gone over the records of the case and found that the alleged inconsistencies cited by appellant were properly explained by the witnesses in their subsequent testimonies. As to Pesania, he declared in his testimony on September 3, 2007, that it was Tata Mier who struck them. Upon a follow up question on him, he declared that Tata Mier struck nobody.[34] He was then asked to explain the contradiction of his statement and he said that he was nervous.[35] However, after he was no longer feeling nervous,[36] he had unequivocally identified Lagrita as the one who struck Reynald.[37] In fact, when he was called again

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[34] TSN, September 3, 2007, p. 16.

[35] *Id*. at 19.

[36] *Id*. at 20.

[37] *Id*. at 21.

to testify two years after the arrest of appellant and Mier, he never wavered in his identification of Lagrita as the one who struck Reynald despite the intense cross examinations of the two defense counsels.

On the other hand, we found that Lapuz had also consistently identified Lagrita as the one who struck Reynald and him. While he had mentioned once that appellant had struck them, he clarified that it was because the accused were in a group and they were together.[38] However, he clearly declared throughout his testimony that it was Lagrita who struck Reynald. In fact, he tapped Lagrita's shoulder when he was asked to identify the latter.[39]

While Pesania and Lapuz had positively identified Lagrita as the one who struck Reynald with a piece of firewood that caused his death on the night of April 21, 2007, appellant, however, testified and insisted that he was the one who struck Reynald in self-defense. He stated that on the night of April 21, 2007, he passed by a store on his way home to buy noodles when he noticed five people drinking outside the store. He was then invited by the victim Reynald, who was already intoxicated, for a drink but he refused; that Reynald got angry and punched him and continued to kick him even when he was already on the ground. He fell down near the pieces of wood that the store was selling, picked up a piece of firewood and hit Reynald on the chest; and that when Reynald turned his back and took a piece of wood, he then struck him on the nape.[40]

Appellant's narration was not at all proven by the evidence on record. Notably, the alleged drinking session among the victim Reynald and his companions never happened. Witness Pesania denied that they were drinking on that fateful night,[41] which found corroboration from PO3 Palma when he testified that he only saw upturned chairs and disarrayed pieces of firewood at

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[38] TSN, September 14, 2009, p. 24.

[39] TSN, September 14, 2009, p. 6; TSN, September 23, 2007, pp. 35-36.

[40] TSN, March 14, 2011, pp. 7-8.

[41] TSN, September 8, 2009, pp. 14, 39.

the crime scene,[42] and the firewood used in striking Reynald. We quote, with approval, the CA's disquisition on this matter, thus:

> It bears noting that when PO3 Jennie Palma and his team arrived at the crime scene, it was still in disarray. The said authorities saw firewood and chairs scattered. Even the weapon used was still there. Apparently, the scene was left as it was after the commotion. Yet, the authorities, upon inspecting the area, found neither glasses nor liquor bottles or anything that would indicate that there were people drinking there at that time. It is also highly unlikely, if not absurd, that the said victims or the store owner took pains to hide the liquor bottles but left everything else in a mess. In short, the evidence clearly supports the witnesses' attestations that they were not drinking at the time of the incident.
>
> Consequently, accused-appellant did not adequately establish, at the outset, that the victims were indeed drinking then. Such failure is fatal because it belies the accused-appellant's version of events upon which his claim of self-defense is mainly anchored. The evidence on record shows not even the slightest suggestion that the victims were drinking at the time of the fateful incident. Thus, the truthfulness of accused-appellant's story is aptly disrupted. Evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[43]

Furthermore, appellant's allegation that he also hit Reynald on the chest with a piece of firewood was also belied by PCI Uy's Medico-Legal Report dated April 30, 2007 where he stated that there were no remarkable findings noted on the chest and abdomen and other extremities of Reynald, but only contusion and lacerated wound along the posterior midline of the occipital region.[44] Such finding even corroborated the prosecution witnesses' testimonies that Reynald was only hit on the nape once by Lagrita.

Another factor that would militate against appellant's version is the fact that even when he learned the day after such fateful

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[42] TSN, September 4, 2007, p. 7.

[43] *Rollo*, p. 18. (Citations omitted)

[44] Records, p. 30.

encounter that the person he allegedly struck with a firewood died,[45] he did not voluntarily surrender himself to the police or the authorities to prove his innocence. In fact, he was only arrested two years after the incident. Jurisprudence has repeatedly declared that flight is a veritable badge of guilt and negates the plea of self-defense.[46] The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."[47]

Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances.[48] It has been appropriately emphasized that "[w]e have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."[49]

We, therefore, find the evidence presented by the prosecution to be more credible than that of the appellant. As the RTC found, witnesses Pesania and Lapuz were positive and straightforward in declaring that appellant's group arrived at the store where they, together with victim Reynald, were having a conversation; that without provocation, Lagrita struck Reynald's nape with a piece of firewood which caused the latter's death. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with

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[45] TSN, March 14, 2011, p. 15.

[46] *People v. Danilo Japag and Alvin Liporada,* G.R. No. 223155, July 23, 2018.

[47] *Id.*

[48] *Medina, Jr. v. People,* 724 Phil. 226, 238 (2014).

[49] *Id*., citing Salonga, Philippine Law on Evidence, 3rd Ed., 1964, p. 774, quoting New Jersey Vice Chancellor Van Fleet in Daggers v. Van Dyck, 37 N.J. Eq. 130.

arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[50] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[51] Here, we find no cogent reason to deviate from the findings of both lower courts.

Moreover, the records failed to show any ill motive on the part of the prosecution witnesses to falsely testify against all the accused. Jurisprudence also tells us that where there is no evidence that the witnesses for the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.[52] In fact, Lagrita[53] and Mier[54] even declared that they did not know nor had any fight with the two prosecution witnesses before the fateful incident happened on April 21, 2007.

The RTC did not find conspiracy in the killing of Reynald. It found Lagrita as the one who hit Reynald with a piece of firewood that caused the latter's death and found him guilty of murder. It also convicted appellant of murder based on his admission of killing Reynald in self-defense which was not proved. It then acquitted Mier for failure of the prosecution to prove his guilt beyond reasonable doubt. On the other hand, while the CA discussed the failure of appellant to prove his claim of self-defense, it did not make any finding of fact on whether there was conspiracy among the accused, thus affirming the RTC finding of the absence of conspiracy.

We find that conspiracy attended the killing of Reynald.

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[50] *People v. Lusabio, Jr., et al.*, 619 Phil. 558, 584 (2009), citing *People v. Escultor,* 473 Phil. 717, 730 (2004).

[51] *People v. Ballesta,* 588 Phil. 87, 103 (2008).

[52] *People v. Dadao, et al.*, 725 Phil. 298, 310-311 (2014).

[53] TSN, October 6, 2008, p. 18.

[54] TSN, May 31, 2010, p. 15.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It comes to life at the very instant the plotters agree, expressly or implied, to commit the felony and forthwith, to actually pursue it.[55] Conspiracy need not be proved by direct evidence. It may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime.[56] Thus, it is not required that there was an agreement for an appreciable period prior to the occurrence, it is sufficient that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution.[57]

In this case, it was established that appellant, together with Lagrita and Mier, arrived at Jeffrey's store where Reynald and his companions were conversing. Lagrita then went at the back of Reynald and without any warning, hit him with a piece of firewood which caused him to fall on the ground. Appellant and Mier were standing in front of the victim and his companions, and undoubtedly, their presence gave Lagrita the moral support he needed as they were of equal number with the victim's group. Their act of staying in close proximity while the crime is being executed served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof.[58] In fact, appellant did not prevent Lagrita from hitting the victim with a piece of firewood, while Mier even uttered "*ayaw Kalampag*" (*don't react or resist*)".[59] Notably,

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[55] *People v. Sinda*, 400 Phil. 440, 449 (2000), citing See Article 8, Revised Penal Code; *People v. Quitlong,* 354 Phil. 372, 390 (1998).

[56] *People v. Albao,* 350 Phil. 573, 602 (1998); *People v. Leangsiri,* 322 Phil. 226, 242 (1996); *People v. Salison, Jr.*, 324 Phil. 131, 146 (1996); *People v. Sumampong,* 352 Phil. 1080, 1087 (1998).

[57] *People v. Hubilla, Jr.*, 322 Phil. 520, 532 (1996); *People v. Obello*, 348 Phil. 88, 103-104 (1998).

[58] *People v. Lababo,* G.R. No. 234651, June 6, 2018, 865 SCRA 609, 629, citing see *People v. Campos, et al.*, 668 Phil. 315, 331 (2011).

[59] TSN, September 3, 2007, p. 22; TSN, September 8, 2009, p. 16.

after the victim fell on the ground, Lagrita also hit Lapuz. Appellant, together with Lagrita and Mier, ran together.[60]

While it was only Lagrita who struck Reynald which caused his death, appellant and Mier are also liable since the act of Lagrita is the act of all co-conspirators. Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime.[61] Hence, appellant's liability is based on his being a co-conspirator. However, since Mier had already been acquitted by the RTC which is already final and executory, only appellant should be held liable as a co-conspirator.

We agree with the RTC and the CA that treachery attended the commission of the crime that qualified the killing of Reynald to murder. Paragraph 16, Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[62]

Here, Reynald was just talking with Pesania and Lapuz in front of the store when appellant, Lagrita and Mier arrived. Lagrita then went at Reynald's back and without any warning, hit him on his nape with a piece of firewood. Reynald was completely unaware that such attack was coming, hence, he had no opportunity at all to defend himself. Lagrita deliberately and consciously adopted such mode of attack in order to avoid

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[60] TSN, September 14, 2009, pp. 20-21.

[61] *People v. Lababo, supra* note 58.

[62] *People v. Racal,* 817 Phil. 665, 677 (2017), citing *People v. Las Piñas, et al.*, 739 Phil. 502, 524 (2014).

any risk to himself which may arise from any defense that Reynald might make.

Since there is treachery that attended the killing of Reynald, the RTC and the CA correctly convicted appellant of murder. Article 248 of the Revised Penal Code prescribes that the penalty for Murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense, the RTC correctly imposed the penalty of *reclusion perpetua* conformably to Article 63 of the Revised Penal Code.

As to the award of damages, we deem it proper to modify the CA's award of moral and exemplary damages to ₱75,000.00 each in line with our ruling in *People v. Jugueta*.[63] The CA's award of ₱75,000.00 as civil indemnity is sustained.

The CA affirmed the RTC's award of actual damages in the amount of ₱35,534.54. The settled rule is that when actual damages are proven by receipts during the trial amount to less than the sum allowed by the Court as temperate damages, the award of temperate damages is justified in lieu of actual damages which is of a lesser amount.[64] Prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in murder cases. Hence, we find it proper to award Reynald's heirs the amount of ₱50,000.00 as temperate damages, in lieu of actual damages.

The difference between the modified awards herein granted and that of the CA's shall be the sole liability of appellant Albaran.[65]

We sustain the CA's award of interest at the rate of six percent (6%) *per annum* on all monetary awards imposed.

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[63] 783 Phil. 806 (2016).

[64] *People v. Racal, supra* note 62, at 685.

[65] Sec. 11. *Effect of appeal by any of several accused.* –

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

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WHEREFORE, the instant appeal is **DENIED**. The Decision dated May 8, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01340-MIN is **AFFIRMED**. Appellant Arvin Albaran is found guilty beyond reasonable doubt as a co-conspirator in the crime of murder. He is hereby **ORDERED** to **SOLIDARILY PAY,** with co-accused Almar Lagrita, the victim's heirs the amounts of ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, ₱75,000.00 as civil indemnity and ₱35,534.54 as temperate damages.

However, appellant Arvin Albaran is further **ORDERED** to **PAY** the amounts of ₱25,000.00 moral damages, ₱45,000.00 exemplary damages and ₱14,465.46 temperate damages. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* reckoned from the finality of this Decision until their full payment.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 233234. September 14, 2020]

NAPOLEON C. TOLOSA, JR., *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN and ELIZABETH B. TATEL,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; WHEN IT IS ALLEGED THAT THE OMBUDSMAN HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ITS ADJUDICATION OF CRIMINAL CASES, THE PROPER REMEDY IS A PETITION FOR *CERTIORARI* UNDER RULE 65.— It is settled that the proper remedy in cases in which it is alleged that the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in its adjudication of criminal cases is a petition for *certiorari* under Rule 65 before the Court.

2. ID.; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT); EFFECTIVITY AND FINALITY OF DECISIONS; A DECISION OF THE OMBUDSMAN ABSOLVING THE RESPONDENT OF THE ADMINISTRATIVE CHARGE IS FINAL AND UNAPPEALABLE, AND THE PROPER PROCEDURE TO QUESTION THE DECISION IS TO FILE A PETITION FOR *CERTIORARI* UNDER RULE 65 BEFORE THE COURT OF APPEALS.— As regards administrative cases, it is x x x settled that appeals from decisions of the Ombudsman in administrative disciplinary cases should be elevated to the CA under Rule 43 of the Rules of Court. However, we must stress that a decision of the Ombudsman absolving the respondent of the administrative charge is final and unappealable x x x [,] as stated under Section 7, Rule III of the Ombudsman Rules x x x. The basis for the said rule of procedure is Section 27 of R.A. No. 6770 or the Ombudsman Act x x x. Based on the aforementioned rule and statute, it is clearly implied that a decision of the Ombudsman absolving the respondent of the administrative charge is final and is not subject to appeal. x x x [T]he decision

of the Ombudsman which absolved respondent of the administrative charge is final and is not subject to appeal. We emphasize that though final and unappealable in the administrative level, the decision of administrative agencies is still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion. Again, the proper procedure is to file a petition for *certiorari* under Rule 65 before the CA to question the Ombudsman's decision of dismissal of the administrative charges.

3. ID.; CONSTITUTIONAL LAW; CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; ENDOWED WITH WIDE LATITUDE IN THE EXERCISE OF ITS INVESTIGATORY AND PROSECUTORY POWERS TO PASS UPON CRIMINAL COMPLAINTS INVOLVING PUBLIC OFFICIALS AND EMPLOYEES, SUCH THAT THE DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS OR NOT IS A FUNCTION THAT BELONGS TO THE OMBUDSMAN.— [W]e agree with the findings of the Ombudsman, and as affirmed by the CA, that there was no probable cause to indict respondent for violation of R.A. No. 6713, and that the administrative charges of grave misconduct and dishonesty were not established by substantial evidence. It is settled that the Ombudsman is endowed with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. To be specific, the determination of whether probable cause exists or not is a function that belongs to the Ombudsman. "In other words, the Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not." A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and that there is enough reason to believe that [it] was committed by the accused. It need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt. In this case, the Ombudsman dismissed the criminal complaint against respondent for lack of probable cause based on its appreciation of the evidence presented.

4. ID.; ID.; ID.; ID.; ID.; THE COURT DOES NOT INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF THE EXISTENCE OR ABSENCE OF PROBABLE CAUSE AND IT IS ONLY WHEN THERE IS A CLEAR CASE OF GRAVE ABUSE OF DISCRETION WILL THE COURT INTERFERE. — [The] circumstances sufficiently x x x [show] that it was proper for the Ombudsman to dismiss the criminal charges against respondent for lack of probable cause. We are mindful that a finding of probable cause, or lack of it, is a finding of fact which is generally not reviewable by this Court. Only when there is a clear case of grave abuse of discretion will the Court interfere, which is not so in this case. As a general rule, this Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. It must be stressed that the Court is not a trier of facts, and it reposes immense respect to the factual determination and appreciation made by the Ombudsman.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Pascua Enriquez-Pascua Law Office for private respondent.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the *Decision*[2] dated April 7, 2017 and Resolution[3] dated July 31, 2017 of the Court of Appeals - Cagayan de Oro City (CA) in CA-G.R. SP No. 06172-MIN, which affirmed the Joint-Resolution[4] dated November 20, 2013 and Joint-Order[5] dated February 24, 2014 of the Office of the Ombudsman—

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

[2] Penned by Associate Justice Ronaldo B. Martin, with Associate Justices Edgardo T. Lloren and Perpetua T. Atal-Paño, concurring; id. at 28-43.

[3] Id.; id. at 45-46.

[4] Id. at 403-413.

[5] Id. at 434-436.

Mindanao (Ombudsman) in OMB-P-C-10-0432-C and OMB-P-A-10-0471-C, dismissing the criminal and administrative complaints against respondent Elizabeth B. Tatel (respondent).

Factual Antecedents

Petitioner Napoleon C. Tolosa, Jr. (petitioner) filed his Affidavit-Complaint[6] dated March 22, 2010 before the Ombudsman, charging the respondent for violation of Republic Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, docketed as OMB-P-C-10-0432-C, and the offense of grave misconduct, docketed as OMB-P-A-10-0471-C.

In the said Affidavit-Complaint, petitioner averred that respondent is the Chief Administrative Officer for Finance of the Department of Education (DepEd), Regional Office (RO) IX in Zamboanga City, who controls and supervises the sub-offices of the Regional Budget and Finance Division of DepEd IX, including the Regional Payroll Services Unit. Petitioner added that respondent is also the Team Leader of the Automatic Payroll Deduction System (APDS) Task Force, and that said task force monitors and conducts spot checking of the operations of all private lending institutions which are duly accredited with the DepEd's APDS. Petitioner alleged that respondent, in blatant disregard of existing DepEd Rules, obtained a monetary loan in the amount of ₱150,000.00 from One Network Bank (ONB), Zamboanga City on October 23, 2008. He claimed that ONB is among the accredited lending institutions involved in lending activities with the teachers of DepEd RO IX. Petitioner further alleged that in an attempt to hide the illegal loan, respondent coursed her loan payments through ONB's branch in Davao City instead of the usual salary deduction. Furthermore, according to petitioner, respondent created a conflict of interest when she availed of the said loan, and had compromised her position as the team leader of the APDS Task Force when she solicited and accepted a loan from said bank.[7] As such, petitioner

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[6] Id. at 59-63.

[7] Id. at 29-30.

prayed that preliminary investigation be conducted against the respondent for violation of Section 7 (d) of R.A. No. 6713, and that formal administrative investigation be also conducted on the same person as she had violated DepEd Order No. 49, series of 2006.[8]

In her Counter-Affidavit[9] dated July 6, 2010, respondent admitted that she obtained the loan but maintained that she did not violate any law, rule or regulation in incurring the same. Respondent stated that as team leader of the APDS Task Force, her function, and that of the members, was to monitor and conduct spot checking on the operations of all accredited private lending institutions. She added that said task force does not recommend or decide the private lending institutions that are to be included in the APDS, as this is being provided in the memorandum of agreement between the DepEd and the private lending institutions concerned. Respondent averred that the task force does not determine the amount to be deducted from the salary of the borrower, as this is stipulated between a borrower and the lending institution in an Authority to Deduct executed by the borrower at the time the loan is incurred. As such, said task force's monitoring and checking consists of seeing to it that the lending institutions satisfy the requirements contained in a memorandum of agreement, such as whether it has a business permit, office facilities, and other required forms.[10]

Respondent asserted that there is no conflict of interest because she does not own a single share of stock in ONB nor is she an officer of the said bank. Respondent also asserted that she did not violate R.A. No. 6713, as she obtained the loan in her personal capacity and not in the course of her official duty. Respondent added that she has not taken advantage of her position or used her position as team leader of the APDS Task Force to secure better terms than those enjoyed by other borrowers. Also, she stated that availing the loan was encouraged under DepEd

[8] Id. at 61-62.

[9] Id. at 95-103.

[10] Id. at 30-31.

Memorandum No. 570, series of 2008, and when the regional task force was created, the members were not disqualified from availing the said loans. Furthermore, respondent contended that she did not violate DepEd Order No. 49, and claimed that the APDS Task Force does not have any business relations with ONB. She explained that the monthly collection received by the DepEd is denominated as a service fee and not a form of profit, and that said task force does not realize any income for facilitating the payment. In addition, respondent averred that the complaints filed against her are part of the continuing acts of retaliation and harassment perpetrated by the petitioner, his wife and other DepEd officials, after she wrote to the DepEd Secretary in 2008, disclosing anomalous transactions in the DepEd that involved petitioner's wife and several officials. Respondent further averred that she had been subjected to various baseless complaints by the petitioner and his wife before several government agencies.[11] Lastly, she countered that petitioner be charged for violation of R.A. No. 1405. Thus, respondent prayed that the complaints filed against her be dismissed.[12]

The Ombudsman then directed the parties to submit their respective verified position papers, as regards the administrative case.[13]

Thereafter, in his position paper dated February 19, 2011, petitioner raised the matter of the alleged discrepancy in respondent's Statement of Assets, Liabilities and Net Worth (SALN) dated April 29, 2009, particularly her failure to disclose the salary loan in the amount of ₱150,000.00 from ONB. Petitioner maintained that said loan was solicited and received by respondent, and that her loan bypassed the usual process applied to ordinary DepEd personnel.[14]

On November 20, 2013, the Ombudsman issued the Joint-Resolution dismissing the criminal and administrative complaints

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[11] Id.

[12] Id. at 101-102.

[13] Id. at 408.

[14] Id.

against respondent. The Ombudsman found that there is no apparent prohibition for respondent to obtain a loan from ONB, and held that there is no evidence to support petitioner's allegation that the respondent solicited the loan obtained from said bank. The Ombudsman ruled that the evidence presented by petitioner does not sustain a finding of probable cause for violation of Section 7 (d) of R.A. No. 6713, and that no substantial evidence was presented to prove the allegation that respondent committed dishonesty for failure to include in her SALN in 2010 the loan she had obtained. As to the counter-charge against petitioner, the Ombudsman stated that respondent should file a separate affidavit-complaint for such matter. The Ombudsman disposed of the case as follows:

> **WHEREFORE, ON THE FOREGOING**, for want of evidence sufficient to engender a finding of probable cause for the criminal charge, the criminal case is **DISMISSED**. For want of substantial evidence to warrant the conduct of further proceedings, the administrative case is likewise **DISMISSED**.
>
> SO RESOLVED.[15]

Petitioner thereafter filed a motion for reconsideration, but the same was denied by the Ombudsman.

Undaunted, petitioner filed a Petition for Review under Rule 43 of the Rules of Court before the CA to assail the Ombudsman's Joint-Resolution and Joint-Order.[16]

In the assailed Decision dated April 7, 2017, the CA denied the petition. The CA found that petitioner availed of the wrong remedy when he filed the petition for review under Rule 43 of the Rules of Court. It ruled that the proper remedy to assail the Ombudsman's Joint-Resolution is to file a petition for *certiorari* under Rule 65 of the same Rules with the Supreme Court since the respondent has been exonerated of the administrative charge, which is final and unappealable, and that the criminal complaint against her was dismissed. The CA then stated that while the

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[15] Id. at 412.

[16] Id. at 438-453.

petition should have been dismissed outright, a review of the substantial merits still yielded the same conclusion with that of the Ombudsman, that there was no probable cause to indict the respondent for violation of R.A. No. 6713, and no substantial evidence was presented to establish the administrative charges. The CA also held that the Ombudsman did not act with grave abuse of discretion when it rendered its decision, and ruled in this wise:

> **WHEREFORE**, foregoing premises considered, the petition is **DENIED**. The Joint-Order dated February 24, 2014 and Joint-Resolution dated November 20, 2013 of the Office of the Ombudsman in OMB-P-C-10-0432-C and OMB-P-A-10-0471-C are **AFFIRMED *in toto***.
>
> SO ORDERED.[17]

Petitioner moved for reconsideration,[18] but was denied by the CA, in the assailed Resolution dated July 31, 2017.

Hence, petitioner comes to this Court raising the following assignment of errors:

I.

WHETHER THE HONORABLE [CA] COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT THE DECISION OF THE OMBUDSMAN IS FINAL AND UNAPPEALABLE AND THE PROPER REMEDY SHOULD BE A PETITION FOR *CERTIORARI* UNDER RULE 65.

II.

WHETHER THE HONORABLE [CA] COMMITTED REVERSIBLE ERROR IN FINDING NO PROBABLE CAUSE TO INDICT RESPONDENT OF VIOLATING SECTION[S] 7 (D) AND 8 (A) OF R.A. NO. 6713.

III.

WHETHER THE HONORABLE [CA] ERRED IN FINDING NO SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT

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[17] Id. at 43.

[18] Id. at 47-58.

ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT AND DISHONESTY.[19]

The Court's Ruling

The Petition must be denied for lack of merit.

We address the first error raised by petitioner. Petitioner contends that he availed of the proper remedy in assailing the Joint-Resolution and Joint-Order of the Ombudsman when he filed his Petition of Review under Rule 43 of the Rules of Court before the CA. He insists that a different remedy is provided for in joint administrative and criminal cases, and anchors such assertion citing the case of *Cortes v. Ombudsman*,[20] wherein he is given the option to either file a petition for review under Rule 43 of the Rules of Court with the CA or directly file a *certiorari* petition under Rule 65 of the same Rules before the Court. As such, the petitioner asserts that the CA erred in ruling that he availed of a wrong remedy and that his petition should have been dismissed outright.[21]

Petitioner's contention is wrong.

We emphasize that while the criminal and administrative cases filed against respondent were jointly decided by the Ombudsman, in its Joint-Resolution dated November 20, 2013 and Joint-Order dated February 24, 2014, the fact remains that these two cases are separate, and the law provides different remedies or has proper modes of appeal for each case.

It is settled that the proper remedy in cases in which it is alleged that the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in its adjudication of criminal cases is a petition for *certiorari* under Rule 65 before the Court.[22]

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[19] Id. at 9-10.

[20] 710 Phil. 699 (2013).

[21] *Rollo*, pp. 10-13.

[22] *Paran v. Manguiat*, G.R. Nos. 200021-22, August 28, 2019, citing *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101, 112 (2002).

As regards administrative cases, it is likewise settled that appeals from decisions of the Ombudsman in administrative disciplinary cases should be elevated to the CA under Rule 43 of the Rules of Court.[23] However, we must stress that a decision of the Ombudsman absolving the respondent of the administrative charge is final and unappealable.[24] As stated under Section 7, Rule III of the Ombudsman Rules, *viz.*:[25]

> SEC. 7. *Finality and execution of decision*. — Where the respondent is **absolved** of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be **final and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770. (Emphasis Supplied)

The basis for the said rule of procedure is Section 27 of R.A. No. 6770[26] or the Ombudsman Act:

> Section 27. Effectivity and Finality of Decisions. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> x x x x x x x x x
>
> Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

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[23] Id.

[24] *Tolentino v. Loyola*, 670 Phil. 50, 59 (2011).

[25] Ombudsman Administrative Order No. 7, Series of 1990 (Rules of Procedure of the Office of the Ombudsman), as amended by Ombudsman Order No. 17, Series of 2003 (Amendment of Rule III, Administrative Order No. 7).

[26] Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," OTHERWISE KNOWN AS "THE OMBUDSMAN ACT OF 1989."

Based on the aforementioned rule and statute, it is clearly implied that a decision of the Ombudsman absolving the respondent of the administrative charge is final and is not subject to appeal. In *Reyes, Jr. v. Belisario*,[27] this Court elucidated such legal principle, to wit:

> Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Abalos*, if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.
>
> The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect the reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension of a fine equivalent to one month salary.
>
> The absence of any statutory right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. Over and above our statutes is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides. A petition for *certiorari* is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (i.e., without the appropriate legal power to resolve a case), or in excess of jurisdiction (i.e., although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner equivalent to lack of

[27] 612 Phil. 937, 953-955 (2009).

jurisdiction). The Rules of Court and its provisions and jurisprudence on writs of *certiorari* fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules. The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA.

A judicious review of the records reveal that the CA did not err in holding that petitioner availed of the wrong remedy when he filed a petition for review under Rule 43 of the Rules of Court to assail the Ombudsman's decision of dismissal of the criminal and administrative charges.

Here, petitioner did not file a petition for *certiorari* under Rule 65 of the Rules of Court but rather opted to file a petition for review under Rule 43 of the same Rules before the CA.

We agree with the CA when it stated that petitioner's reliance on *Cortes* to justify his resort to said court *via* a petition for review under Rule 43 is misplaced. It was proper for the CA to rule that a petition for review is not available since the Ombudsman's decision which absolved respondent of the administrative charge is final and unappealable.[28] To reiterate, the correct procedure to assail the Ombudsman's decision of dismissal of the administrative charge is to file a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.[29]

Yet, petitioner still insists that the CA is wrong when it ruled that the Ombudsman's decision which exonerated respondent of the administrative charge is final and unappealable.[30] In fact, we are perplexed with petitioner's argument, particularly when he stated this in his Petition — the Ombudsman can render a decision of acquittal that will be final, executory and unappealable only when the decision rendered must impose public censure, reprimand, suspension of not more than one month, or a fine

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[28] *Rollo*, pp. 36-37.

[29] *Joson v. Office of the Ombudsman*, 784 Phil. 172, 190 (2016).

[30] *Rollo*, pp. 14-16.

equivalent to one month's salary.[31] The Court cannot allow such misleading statement or erroneous interpretation of the Ombudsman's Rules of Procedure, as well as settled legal doctrines on the proper remedy to question the exoneration of a respondent in an administrative case. It is clear in this case that petitioner failed to comply with such basic procedural rule when he filed a petition for review, and on that score, should have been dismissed outright by the CA. Indubitably, the CA was correct when it stated that petitioner should have filed a petition for *certiorari* under Rule 65 with this Court to assail the Ombudsman's Joint-Resolution and Joint-Order which had dismissed the criminal and administrative complaints against respondent. Thus, the CA correctly ruled that petitioner availed of the wrong remedy.

We note that not only did petitioner's recourse to the CA improper, his Petition for Review under Rule 43 also failed to address or show any grave abuse of discretion on the part of the Ombudsman when it rendered its rulings. "By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[32]

At any rate, we agree with the findings of the Ombudsman, and as affirmed by the CA, that there was no probable cause to indict respondent for violation of R.A. No. 6713, and that the administrative charges of grave misconduct and dishonesty were not established by substantial evidence.

It is settled that the Ombudsman is endowed with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. To be specific, the determination of whether probable cause exists or not is a function that belongs to the Ombudsman. "In other words, the Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not."[33]

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[31] Id. at 15.

[32] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591 (2007).

[33] Supra note 29; citing *Casing v. Hon. Ombudsman*, 687 Phil. 468, 475 (2012).

A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and that there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt.[34]

In this case, the Ombudsman dismissed the criminal complaint against respondent for lack of probable cause based on its appreciation of the evidence presented.

Records reveal that the respondent was able to prove that, as head of the Regional APDS Task Force, she does not have the authority to regulate or to cause the revocation of accredited lending institutions nor recommend for its reactivation. The Ombudsman found that the arguments and evidence adduced by petitioner to support his allegation that respondent obtained an illegal loan and had violated the code of ethics of public officials were self-serving and uncorroborated. In addition, the Ombudsman correctly held that there is no apparent prohibition for respondent to obtain a loan from ONB, and after a thorough review, neither does the alleged DepEd order, policies, and issuances show that the budget officers are prohibited from obtaining loans from lending institutions merely based on being tasked with effecting deductions from the salaries of DepEd personnel who incurred loans from said lending institutions.[35]

In addition, aside from petitioner's bare allegation, the Ombudsman found no evidence to prove that the respondent solicited the loan from ONB. It added that being a loan, it can only be surmised that respondent applied for the loan and was granted the same being qualified. There is also no showing that respondent's designation as team leader of the task force was the factor which prompted ONB to grant her a loan. As it appears, the interest of respondent's loan is the same with everyone else, and save for the fact that the payment is not done through a salary deduction, the loan does not show that

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[34] *Navaja v. De Castro*, 761 Phil. 142, 157 (2015).

[35] *Rollo*, pp. 39-40.

it is unique or in any way different from the other loans extended to DepEd personnel.[36]

Indeed, these circumstances sufficiently shows that it was proper for the Ombudsman to dismiss the criminal charges against respondent for lack of probable cause. We are mindful that a finding of probable cause, or lack of it, is a finding of fact which is generally not reviewable by this Court. Only when there is a clear case of grave abuse of discretion will the Court interfere, which is not so in this case. As a general rule, this Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. It must be stressed that the Court is not a trier of facts, and it reposes immense respect to the factual determination and appreciation made by the Ombudsman.[37]

However, according to petitioner, the CA committed a reversible error when it affirmed the Ombudsman's findings since had the Ombudsman weighed the evidence presented and properly appreciated the facts, it would have found that probable cause exists to indict the respondent.[38]

It is clear from petitioner's contention that he is questioning the correctness of the appreciation of facts by the Ombudsman. The issue that petitioner had raised touched on the factual findings of the Ombudsman, and to stress, these are not reviewable by this Court via *certiorari*.[39] Hence, the CA correctly affirmed the Ombudsman's dismissal of the criminal charges against respondent, and that no grave abuse of discretion attended the said ruling of the Ombudsman.

With regard to the dismissal of the administrative charges, we agree with the Ombudsman's findings that petitioner had failed to adduce substantial evidence to prove his allegations

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[36] Id. at 39-40.

[37] Supra note 29.

[38] *Rollo*, pp. 16-20.

[39] Supra note 29; citing *Brito v. Office of the Deputy Ombudsman for Luzon*, 554 Phil. 112, 127 (2007).

against respondent. More importantly, said dismissal has already attained finality since the petitioner failed to file a petition for *certiorari* before the CA.

As discussed earlier, the decision of the Ombudsman which absolved respondent of the administrative charge is final and is not subject to appeal. We emphasize that though final and unappealable in the administrative level, the decision of administrative agencies is still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion.[40] Again, the proper procedure is to file a petition for *certiorari* under Rule 65 before the CA to question the Ombudsman's decision of dismissal of the administrative charges. Here, the respondent did not file the said petition. Accordingly, the Ombudsman's decision which exonerated the respondent from said administrative charges had already become final. In any case, we deem it proper to uphold the findings of the Ombudsman as it did not act with grave abuse of discretion when it rendered its rulings.

All told, the CA did not err when it rendered the assailed Decision and Resolution.

WHEREFORE, the Petition is **DENIED**. The Decision dated April 7, 2017 and the Resolution dated July 31, 2017 of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 06172-MIN are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

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[40] Supra note 29; citing *Orais v. Almirante*, 710 Phil. 662, 673 (2013).

FIRST DIVISION

[G.R. No. 233596. September 14, 2020]

OFFICE OF THE OMBUDSMAN, *Petitioner*, *v.* **VLADIMIR L. TANCO,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN FOR THE COURT IS NOT A TRIER OF FACTS AND IT IS NOT ITS FUNCTION TO REVIEW EVIDENCE ON RECORD AND ASSESS THE PROBATIVE WEIGHT THEREOF; EXCEPTION.— [I]n petitions filed under Rule 45 of the Rules of Court, only questions of law may be raised. This is because the Court is not a trier of facts and it is not its function to review evidence on record and assess the probative weight thereof. The task of the Court is limited to the review of errors of law that the appellate court might have committed. However, an exception lies in this case where the findings of the CA contradict those of the Ombudsman.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; REFERS TO THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IN ADMINISTRATIVE PROCEEDINGS.— "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion." In cases before the Ombudsman, jurisprudence teaches that the fundamental rule in administrative proceedings is that the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. Indeed, Section 27 of the Ombudsman Act is absolute in that findings of fact by the Ombudsman when supported by substantial evidence are conclusive. In contrast, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; TO WARRANT

DISMISSAL FROM THE SERVICE, THE MISCONDUCT MUST BE GRAVE, AND THERE IS GRAVE MISCONDUCT WHEN IT INVOLVES ANY OF THE ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW OR TO DISREGARD ESTABLISHED RULES, WHICH MUST BE ESTABLISHED BY SUBSTANTIAL EVIDENCE.— Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." "To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling." There is grave misconduct when it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. In this case, respondent's act of accepting from Labao, Jr. a check for ₱3,000,000.00 does not qualify as grave misconduct. It bears stressing that Check Voucher No. 3746 with the handwritten words "Mambusao Hospital SOP TO GOV. TANCO PAID ₱3,000,000.00," as well as the affidavit that Barrientos had executed in support thereof, could not be considered substantial enough to hold respondent guilty of grave misconduct. Apart from being self-serving because of the loyalty of Barrientos to Labao, Jr., no other evidence was presented by Labao, Jr., to prove that respondent solicited money from him and that the check for ₱3,000,000.00 was a bribe to respondent.

4. ID.; ID.; ID.; ID.; AN ACT, TO CONSTITUTE AS MISCONDUCT, MUST NOT BE COMMITTED IN A PUBLIC OFFICIAL'S PRIVATE CAPACITY AND SHOULD BEAR A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF HIS OFFICIAL DUTIES.— [R]ecords are bereft of evidence that respondent received the check from Labao, Jr. in the performance of his official functions. It is basic that an act, to constitute as misconduct, must not be committed in a public official's private capacity and should bear a direct relation to and be connected with the performance of his official duties. Indeed, the fact that a person is a public official or employee does not mean that he is foreclosed from attending to his private affairs, as long as the same are legal and not in conflict with his official functions.

5. REMEDIAL LAW; EVIDENCE; AFFIDAVITS OF DESISTANCE; VIEWED WITH SUSPICION AND RESERVATION

BECAUSE THEY CAN EASILY BE SECURED FROM A POOR AND IGNORANT WITNESS, BUT AFFIDAVITS OF DESISTANCE MAY STILL BE CONSIDERED IN CERTAIN CASES.— [R]ecords disclose that in furtherance of his affidavit of desistance, Labao. Jr. likewise submitted a Manifestation dated October 29, 2015 stating that he filed the affidavit of desistance not only for the reason stated therein, but also because he could no longer prove the charges against respondent and his father, in view of the loss of the check and check voucher due to typhoon *Yolanda* which struck Capiz on November 8, 2013. Labao, Jr. then reiterated that the case against respondent and his father be dismissed. Clearly, it could not be said that Labao, Jr. filed the affidavit of desistance as a mere afterthought as the same was buttressed by the Manifestation he executed two years later. There is also no proof that he was coerced into executing the same. While it is true that affidavits of desistance are viewed with suspicion and reservation because they can easily be secured from a poor and ignorant witness, nonetheless, affidavits of desistance may still be considered in certain cases. Coupled with the Manifestation dated October 29, 2015 wherein Labao, Jr. reiterated his submission that the charges against respondent and his father be dismissed, and absent proof that the affidavit of desistance and manifestation were unduly procured, the same should be considered in favor of respondent.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; TO BE DISCIPLINED FOR GRAVE MISCONDUCT OR ANY GRAVE OFFENSE, THE EVIDENCE AGAINST THE RESPONDENT SHOULD BE COMPETENT AND MUST BE DERIVED FROM DIRECT KNOWLEDGE.— [T]he Court has consistently upheld the principle that in administrative cases, to be disciplined for grave misconduct or any grave offense, the evidence against the respondent should be competent and must be derived from direct knowledge. "Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
M. B. Mahinay & Associates for respondent.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated June 17, 2016 and the Resolution[3] dated July 13, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142743, which reversed and set aside the Decision[4] dated June 1, 2015 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-13-0138, finding Governor Victor A. Tanco, Sr. (Governor Tanco, Sr.) and respondent Vladimir L. Tanco (respondent) administratively liable for Grave Misconduct, and denied the Ombudsman's motion for partial reconsideration-in-intervention.

Factual Antecedents

The present case involves a complaint for Grave Misconduct filed by Leodegario A. Labao, Jr. (Labao, Jr.) against Governor Tanco, Sr. of the Province of Capiz, and his son, herein respondent, who is a Security Officer III in the Office of the Provincial Governor of Capiz.[5]

Records reveal that Labao, Jr. is a private contractor doing business under the name of Kirskat Venture. Sometime in 2011, Kirskat Venture and the Province of Capiz, represented by Governor Tanco, Sr., executed three construction contracts for the expansion of the Mambusao District Hospital, specifically its OR/DR Complex, Emergency Complex and Other Services, and Dietary Services, for the contract prices of ₱14,900,000.00,

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[1] *Rollo*, pp. 12-40.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a member of the Court), with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting, concurring; id. at 47-62.

[3] Id. at 64-67.

[4] Id. at 69-79.

[5] Id. at 48.

₱15,000,000.00 and ₱3,000,000.00, respectively, or a total amount of ₱32,900,000.00.[6]

According to Labao, Jr., the Province of Capiz made an initial payment to him of ₱2,225,576.33 for the aforesaid projects. Labao, Jr. alleged that respondent, upon instruction of Governor Tanco, Sr., demanded from him the amount of ₱3,000,000.00 in exchange for the release of subsequent payments. Labao, Jr. added that respondent informed him that should he fail to pay, Kirskat Ventures would be blacklisted as a contractor from future projects in the Province of Capiz.[7]

Alleging that both Governor Tanco, Sr. and respondent are guilty of grave misconduct for the demand of ₱3,000,000.00 and receipt of the said amount, on April 29, 2013, Labao, Jr., filed his Affidavit-Complaint[8] before the Ombudsman.

In the said Complaint, Labao, Jr. narrated that in the morning of September 19, 2011, respondent went to his office and in the presence of his trusted foreman Ronnie B. Barrientos (Barrientos), respondent told him that Governor Tanco, Sr. wanted him to pay them ₱3,000,000.00 for the Mambusao District Hospital projects, otherwise, no further payments would be released to him, and he would be blacklisted as a contractor. Out of fear and against his will, Labao, Jr., promised to issue a check to Governor Tanco, Sr., but respondent insisted that the check be made payable to him. After respondent left, Labao, Jr. told Barrientos that he was forced to accede to said demand because Governor Tanco, Sr., as the power to disapprove the release of payments, and Kirskat Venture's projects with the Province of Capiz might be affected. Labao, Jr. averred that in the morning of September 21, 2011, he and Barrientos went to the residence of Governor Tanco, Sr., for the purpose of paying the amount demanded. Respondent then inquired if they have the check, and in the presence of Governor Tanco, Sr., Labao, Jr. instructed Barrientos to give the check - UCPB

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[6] Id. at 80.

[7] Id. at 48, 80.

[8] Id. at 80-81.

Check No. 007021135 dated September 21, 2011, for the sum of ₱3,000,000.00 — to respondent. Barrientos subsequently made respondent sign Check Voucher No. 3746, which stated "Mambusao Hospital SOP TO GOV. TANCO PAID ₱3,000,000.00." Labao, Jr., alleged that respondent then waved the check to his father and said it is here, while Governor Tanco, Sr. nodded and smiled. He further alleged that the check was deposited and the amount of ₱3,000,000.00 was credited to the account of respondent, and by reason of the issuance and deposit of the said check, subsequent payments for the Mambusao District Hospital projects were approved by Governor Tanco, Sr. and released to Kirskat Venture.[9]

In his Counter-Affidavit dated June 13, 2013, Governor Tanco, Sr., insisted that the facts presented by Labao, Jr., were fabricated, and said complaint was part of the black propaganda at the height of the 2013 midterm elections campaign. He claimed that the complaint stemmed from the events that preceded the 2013 midterm elections, wherein Labao, Jr. decided to run for mayor in Mambusao and tried to persuade the Governor to refrain from fielding a candidate against him. Governor Tanco, Sr., did not accede to said request, and as a result, Labao, Jr. was upset and organized his own political party and set out to tarnish the Governor's name. Governor Tanco, Sr. specifically denied participation in any transaction purportedly reflected in the check voucher and the check made payable to respondent, and that Labao, Jr. and his foreman did not visit him in his residence for the purpose of delivering the check in the amount of ₱3,000,000.00. He argued that Labao, Jr., as contractor, was aware of the grounds under the law and the procedures for blacklisting a contractor, and such was not under the whims of the Provincial Governor. He also stressed that Labao, Jr. had the copy of the check voucher and had the opportunity to alter its contents to suit his purpose. Governor Tanco, Sr. added that the words across the check voucher were handwritten while the rest of the details were typewritten which showed that the notation was added after respondent signed said check voucher.

[9] Id. at 81.

Finally, he also claimed that his proclamation as Governor after the May 2013 elections impacts the administrative aspect of the present case.[10]

For his part, respondent filed his Counter-Affidavit[11] on July 1, 2013, and denied the accusations against him. In said affidavit, respondent alleged that he had a business relationship with Labao, Jr., where he usually borrowed money from the latter in order to finance his business operations. He stated that every time he borrowed money, Labao, Jr. would issue a check in his favor and in return, respondent would also issue him a check postdated on their agreed date of payment, and they always practice said arrangement in their loan transactions. Respondent added that the amount of ₱3,000,000.00 stated in UCPB Check No. 007021135 dated September 21, 2011, was for a loan similar to the ones he obtained from Labao, Jr. in the past, and as payment, he gave Labao, Jr., UCPB Check No. 0368009 which was postdated to November 30, 2011 for ₱3,000,000.00. Respondent also averred that Check Voucher No. 3746, which he signed for a loan, had been falsified, altered and modified because at the time he signed the same, the words "Mambusao Hospital SOP TO GOV. TANCO" did not exist, and that he would not sign a voucher describing its disbursement as "SOP" because the same connotes an irregular and immoral transaction. Respondent further averred that Labao, Jr. and Barrientos did not go to the residence of Governor Tanco, Sr. since every time he secures a loan from Labao, Jr., he goes to the latter's office. Respondent asserted that Labao, Jr., was an opposition candidate for Mayor of Mambusao, and he filed the case to create a negative issue against Governor Tanco, Sr., who campaigned hard for the Liberal Party. Respondent also asserted that if Labao, Jr. felt aggrieved in 2011, he should have acted immediately and not have waited to file the case at the height of the political campaign. As such, respondent prayed for the dismissal of the complaint.[12]

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[10] Id. at 48-49, 71-72.

[11] Id. at 199-205.

[12] Id. at 204.

Later, or on September 9, 2013, Labao, Jr., filed a Motion to Dismiss and an Affidavit of Desistance, wherein he stated that he was no longer interested in prosecuting the case because he was very ill.[13]

On June 1, 2015, the Ombudsman issued the Decision,[14] despite the affidavit of desistance of Labao, Jr., finding both Governor Tanco, Sr. and respondent guilty of grave misconduct. The Ombudsman found that the said Governor and respondent conspired in demanding and receiving the amount of ₱3,000,000.00 from Labao, Jr., under threat that his collectibles would not be paid, or that his venture would be blacklisted. The Ombudsman based said finding on respondent's admission that he had accepted a check from Labao, Jr., in the amount of ₱3,000,000.00, and that respondent's assertion that said check represents a personal loan obtained from Labao, Jr., was not supported by evidence. It ruled that Governor Tanco, Sr. and respondent had violated Sections 7 (d) and 11 (b) of Republic Act (R.A.) No. 6713, and that the administrative infraction of grave misconduct committed by said parties had been established by substantial evidence. The Ombudsman disposed of the case as follows:

> **WHEREFORE**, **Vladimir L. Tanco** and **Governor Victor A. Tanco, Sr.** are found **guilty** of **Grave Misconduct** under Section 46 (A) (3), Rule 10 of the RRACCS and are hereby meted the penalty of **DISMISSAL FROM THE SERVICE** with all its accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from holding public office as mandated under Section 52 (A), Rule 10 of RRACCS.
>
> In the event that the penalty of dismissal against respondents **Vladimir L. Tanco** and **Governor Victor A. Tanco, Sr.** can no longer be implemented due to retirement, resignation, or for any other reason, the alternative penalty of **FINE** equivalent to their salary for **ONE (1) YEAR** shall be imposed, payable to the Office of the Ombudsman, with the same accessory penalties of dismissal from the service.
>
> **SO ORDERED**.[15]

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[13] Id. at 50, 75.

[14] Id. at 69-79.

[15] Id. at 78-79.

Aggrieved, Governor Tanco, Sr. and respondent filed a Petition for Review before the CA.[16] They alleged, among others, that the present case was politically motivated. They asserted that the Doctrine of Condonation or the Aguinaldo Doctrine, which condoned any alleged misconduct of re-elected public officers, should have been applied to Governor Tanco, Sr. They also argued that there was dearth of evidence to prove grave misconduct because the handwritten and rubber-stamped entries in Check Voucher No. 3746 were falsified, and merely added after respondent affixed his signature thereto, in order to change the nature of what was really a loan transaction into something that was irregular. They added that there were other loan transactions between Labao, Jr. and respondent. Moreover, Governor Tanco, Sr., and respondent also argued that the Ombudsman should have appreciated the Motion to Dismiss and Affidavit of Desistance filed by Labao, Jr., as added proof of his motive for filing the Affidavit-Complaint.[17]

In the assailed Decision dated June 17, 2016, the CA granted the Petition and exonerated Governor Tanco, Sr. and respondent of the charge of grave misconduct. The CA ruled that the condonation doctrine or Aguinaldo doctrine should be applied to Governor Tanco, Sr., since he was re-elected to his former position as Governor of Capiz in the 2013 elections. As such, the Ombudsman's Decision can no longer be implemented against the said Governor. Also, the CA dismissed the complaint against respondent since there was no substantial evidence to hold him administratively liable for grave misconduct. The CA found that the check voucher presented by Labao, Jr. was hardly substantive, and agreed with respondent that it was highly improbable for him to affix his signature in said voucher that would connect him to an illicit transaction. The CA also gave credence to respondent's explanation that he issued two checks in favor of Labao, Jr., as payment for his previous loans, and such facts were not refuted by Labao, Jr. The CA ruled in this wise:

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[16] Id. at 253-286.

[17] Id. at 268, 270-271, 276, 282.

WHEREFORE, the instant petition is **GRANTED**. The June 1, 2015 Decision of the Ombudsman in OMB-C-A-13-0138 is **REVERSED** and **SET ASIDE** and a new one issued absolving both petitioners Victor A. Tanco, Sr. and Vladimir L. Tanco of the charge for grave misconduct.

Consequently, the herein respondents are permanently enjoined from implementing the assailed issuances of the Ombudsman.

SO ORDERED.[18]

An entry of judgment was thereafter issued by the CA on August 31, 2016.

The Ombudsman subsequently filed Urgent Motions to Recall Entry of Judgment and to Resolve Omnibus Motions for Leave to Intervene and to Admit Attached Motion for Partial Reconsideration-In-Intervention.[19] In the assailed Resolution dated July 13, 2017, the CA allowed the Ombudsman to intervene but denied its motion for partial reconsideration-in-intervention. The CA also recalled and lifted the entry of judgment it earlier issued.

Hence, the Ombudsman is before us, raising these errors:

I.

THE [CA] GRAVELY ERRED IN EXONERATING RESPONDENT FROM ANY ADMINISTRATIVE LIABILITY DESPITE ITS FINDING THAT RESPONDENT SOLICITED AND ACCEPTED MONEY FROM [LABAO, JR.], WHICH ACT IS CONTRARY TO LAW.

II.

ASSUMING *ARGUENDO* THAT THE FINDING OF THE [CA] THAT THE MONEY RECEIVED BY RESPONDENT FROM [LABAO, JR.] WERE PURPORTED LOANS AND NOT BRIBE MONEY, THE [CA] GRAVELY ERRED IN EXONERATING RESPONDENT EVEN AFTER FINDING THAT RESPONDENT BORROWED AND ACCEPTED MONEY FROM [LABAO, JR.] IN VIOLATION OF SECTION 7 (D) IN RELATION TO SECTION 11 (B) OF R.A. NO. 6713.

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[18] Id. at 61.

[19] Id. at 64.

III.

THE [CA] GRAVELY ERRED IN GIVING CREDENCE TO [LABAO, JR.]'S AFFIDAVIT OF DESISTANCE - EXECUTED IN VIEW OF [LABAO, JR.]'S ILLNESS, SINCE THE GOVERNMENT IS THE INJURED PARTY IN AN ADMINISTRATIVE CASE WHICH IS IMBUED WITH PUBLIC INTEREST.[20]

The Court's Ruling

The Petition must be denied.

It must be stressed at the outset that in petitions filed under Rule 45 of the Rules of Court, only questions of law may be raised. This is because the Court is not a trier of facts and it is not its function to review evidence on record and assess the probative weight thereof.[21] The task of the Court is limited to the review of errors of law that the appellate court might have committed.[22] However, an exception lies in this case where the findings of the CA contradict those of the Ombudsman. Hence, the issue before Us is whether the CA correctly found that there exists no substantial evidence to hold respondent administratively liable for grave misconduct.

"In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion."[23] In cases before the Ombudsman, jurisprudence teaches that the fundamental rule in administrative proceedings is that the complainant has the burden of proving, by substantial evidence, the allegations in his complaint.[24] Indeed, Section 27 of the Ombudsman Act is absolute in that findings of fact by the Ombudsman when supported by substantial evidence are conclusive. In contrast, when the findings of fact by the

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[20] Id. at 25.

[21] *Carinan v. Spouses Cueto*, 745 Phil. 186, 192 (2014).

[22] *Lim v. Fuentes*, G.R. No. 223210, November 6, 2017.

[23] *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 77 (2015).

[24] *Miro v. Vda. de Erederos*, 721 Phil. 772, 787 (2013).

Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts.[25]

The Ombudsman argues that there was substantial evidence to corroborate Labao, Jr.'s allegation of respondent's solicitation of bribe money, as Barrientos had stated in his affidavit that he was with Labao, Jr. when respondent asked for the money and personally received UCPB Check No. 007021135 dated September 21, 2011 in the amount of ₱3,000,000.00 from Labao, Jr., who required respondent to sign Check Voucher No. 3746.[26]

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[27] "To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling."[28] There is grave misconduct when it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[29]

In this case, respondent's act of accepting from Labao, Jr. a check for ₱3,000,000.00 does not qualify as grave misconduct. It bears stressing that Check Voucher No. 3746 with the handwritten words "Mambusao Hospital SOP TO GOV. TANCO PAID ₱3,000,000.00," as well as the affidavit that Barrientos had executed in support thereof, could not be considered substantial enough to hold respondent guilty of grave misconduct. Apart from being self-serving because of the loyalty of Barrientos to Labao, Jr., no other evidence was presented by Labao, Jr., to prove that respondent solicited

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[25] *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 299 (2015).

[26] *Rollo*, p. 28.

[27] *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 62 (2016).

[28] *Sabio v. Field Investigation Office (FIO), Office of the Ombudsman*, G.R. No. 229882, February 13, 2018.

[29] *Office of the Ombudsman v. Apolonio*, 683 Phil. 553, 571-572 (2012).

money from him and that the check for ₱3,000,000.00 was a bribe to respondent. As correctly found by the CA:

> In this case, the Check Voucher presented by respondent Labao, Jr. to prove that petitioners accepted bribe from him is hardly substantive.
>
> In *Ombudsman vs. Bungubung, et al.*, the High Court had given little weight to a blue book allegedly detailing the monthly *payola* or *balato* paid to PPA officials and employees from July 2000 to February 2001, recorded therein as representation expenses. It ruled that the said blue book is evidently self-serving[.] x x x
>
> x x x x x x x x x
>
> In this case, other than the handwritten notations in the Check Voucher and the check issued in the name of petitioner Vladimir in the amount or P3 Million, no other evidence of great weight was offered to corroborate the allegation of solicitation of bribe.
>
> WE likewise agree with petitioner Vladimir that it is highly improbable for him to affix his signature in a document such as a Check Voucher that would specifically connect him to an illicit transaction."[30]

On the contrary, respondent presented proof of his claim that he regularly borrowed money from Labao, Jr. in his private capacity, to finance his business operations. Respondent presented the checks he issued to Labao, Jr. as payment for his previous loans, specifically UCPB Check No. 0367975 dated June 21, 2011,[31] for ₱5,000,000.00 and UCPB Check No. 0368003 dated September 16, 2011,[32] also for ₱5,000,000.00. Interestingly, Labao, Jr., did not deny that said checks were issued by respondent to him as payment for the loans. Consequently, the CA cannot be faulted in holding that, as between the allegations of Labao, Jr., which were not supported by substantial evidence, and the defenses put up by respondent, which were sufficiently proved and more in keeping with the

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

[31] Id. at 206.

[32] Id. at 207.

natural course of things, the latter bear more weight and should be given credence, to wit:

> WE are more inclined to believe petitioner Vladimir's claim that the P5 Million check he deposited to respondent Labao, Jr.'s account was payment for his loan. It is highly illogical for petitioner Vladimir to return a purported bribe in the amount of P5 Million to respondent Labao, Jr. by depositing a check to the latter's account and then later, on September 21, 2011, demanded and received from respondent Labao, Jr. a P3 Million bribe.
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> x x x x x x x x x
>
> Although the primary defense put up by petitioner Vladimir in this case is denial, the same is supported by his own controverting evidence. Petitioner Vladimir's explanation in issuing two checks in favor of respondent Labao, Jr., i.e., as payment for his previous loans obtained from him, is acceptable and believable as it is in accord with human experience and in keeping with the natural course of things. The issuance of his personal checks in favor of respondent Labao, Jr. dated July 21, 2011 and September 16, 2011 was not refuted by respondent Labao, Jr. Notably, although the latter alleged that a P5 Million check deposited in his account by petitioner Vladimir was a bribe returned to him, respondent Labao, Jr. failed to state with certainty which of the two checks that petitioner Vladimir issued in his favor represented the bribe that was returned; and failed to state petitioner Vladimir's purpose for issuing the other P5 Million check in his (respondent Labao, Jr.) favor.[33]

Furthermore, records are bereft of evidence that respondent received the check from Labao, Jr. in the performance of his official functions. It is basic that an act, to constitute as misconduct, must not be committed in a public official's private capacity and should bear a direct relation to and be connected with the performance of his official duties.[34] Indeed, the fact that a person is a public official or employee does not mean that he is foreclosed from attending to his private affairs, as

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[33] Id. at 60-61.

[34] *Ganzon v. Arlos*, 720 Phil. 104, 114 (2013), citing *Largo v. Court of Appeals*, 563 Phil. 293, (2007).

long as the same are legal and not in conflict with his official functions.

The Ombudsman further posits that the CA should not have considered Labao, Jr.'s affidavit of desistance because the government is the injured party and Labao, Jr. is a mere witness. Also, Labao, Jr., executed the same as a mere after-thought.[35]

Contrary to the claims of the Ombudsman, records disclose that in furtherance of his affidavit of desistance, Labao, Jr. likewise submitted a Manifestation dated October 29, 2015 stating that he filed the affidavit of desistance not only for the reason stated therein, but also because he could no longer prove the charges against respondent and his father, in view of the loss of the check and check voucher due to typhoon *Yolanda* which struck Capiz on November 8, 2013. Labao, Jr. then reiterated that the case against respondent and his father be dismissed.[36] Clearly, it could not be said that Labao, Jr. filed the affidavit of desistance as a mere afterthought as the same was buttressed by the Manifestation he executed two years later. There is also no proof that he was coerced into executing the same.

While it is true that affidavits of desistance are viewed with suspicion and reservation because they can easily be secured from a poor and ignorant witness, nonetheless, affidavits of desistance may still be considered in certain cases.[37] Coupled with the Manifestation dated October 29, 2015 wherein Labao, Jr. reiterated his submission that the charges against respondent and his father be dismissed, and absent proof that the affidavit of desistance and manifestation were unduly procured, the same should be considered in favor of respondent.

Verily, the Court has consistently upheld the principle that in administrative cases, to be disciplined for grave misconduct

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[35] *Rollo*, p. 35.

[36] Id. at 471.

[37] *Daquioag v. Office of the Ombudsman*, G.R. No. 228509, October 14, 2019.

or any grave offense, the evidence against the respondent should be competent and must be derived from direct knowledge. "Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on."[38]

All told, the CA did not err when it rendered the assailed *Decision* and *Resolution* which reversed the findings of the Ombudsman.

WHEREFORE, the instant Petition is **DENIED**. The Decision dated June 17, 2016 and the Resolution dated July 13, 2017 of the Court of Appeals in CA-G.R. SP No. 142743 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

[38] *Office of the Ombudsman v. Caberoy*, 746 Phil. 111, 123 (2014).

SECOND DIVISION

[G.R. No. 236331. September 14, 2020]

RNB GARMENTS PHILIPPINES, INC., *Petitioner*, *v.* **RAMROL MULTI-PURPOSE COOPERATIVE, MYRNA D. DESACADA, MARIA CECILIA N. OLMEDA, CARMEN F. VINZON, ELMER GUANZON, ARNOLD TERNORA, MELCHOR GONZALES, PHILIP BAYUGA, HERJANE B. REYES, and SONIA D. REYES,** *Respondents*.

[G.R. No. 236332. September 14, 2020]

RAMROL MULTI-PURPOSE COOPERATIVE, *Petitioner*, *v.* **MYRNA D. DESACADA, MARIA CECILIA N. OLMEDA, CARMEN F. VINZON, ELMER GUANZON, ARNOLD TERNORA, MELCHOR GONZALES, PHILIP BAYUGA, HERJANE B. REYES, and SONIA D. REYES,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY'S APPEAL FROM A JUDGMENT WILL NOT INURE TO THE BENEFIT OF A CO-PARTY WHO FAILED TO APPEAL BUT WHEN BOTH PARTIES HAVE A COMMONALITY OF INTERESTS, THE APPEAL OF ONE IS DEEMED TO BE THE VICARIOUS APPEAL OF THE OTHER.— The rule is that a party's appeal from a judgment will not inure to the benefit of a co-party who failed to appeal; and as against the latter, the judgment continues to run its course until it becomes final and executory. To this rule, an exception attends, "where both parties have a commonality of interests, the appeal of one is deemed to be the vicarious appeal of the other x x x [, as held by] the Court in *John Kam Biak Y. Chan, Jr. v. Iglesia ni Cristo* x x x. In *Maricalum Mining Corp. v. Remington Industrial Sales Corp.*, the Court illustrated the existence of commonality in the interests of the parties, as when: "a) their rights and liabilities originate from only one source

or title; b) homogeneous evidence establishes the existence of their rights and liabilities; and c) whatever judgment is rendered in the case or appeal, their rights and liabilities will be affected, even if to varying extents."

2. ID.; ID.; ID.; RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN FOR THE COURT, NOT BEING A TRIER OF FACTS, WILL NOT REVIEW THE FACTUAL FINDINGS OF THE LOWER TRIBUNALS AS THESE ARE GENERALLY BINDING AND CONCLUSIVE.— The question of whether RMPC is a labor-only contractor, the existence of an employer-employee relationship between RNB and Desacada, *et al.*, and the determination of liability for illegal dismissal are factual ones, inasmuch as the Court is being asked to revisit and assess anew the factual findings of the LA, the NLRC, and the CA. It must be underscored, however, that under Rule 45 of the Rules of Court, only questions of law may be raised in and resolved by the Court. The Court, not being a trier of facts, will not review the factual findings of the lower tribunals as these are generally binding and conclusive. While there are recognized exceptions, none of them applies in this case.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PERMISSIBLE OR LEGITIMATE JOB CONTRACTING; SUBSTANTIAL CAPITAL OR INVESTMENT AND RIGHT OF CONTROL; THE BURDEN TO HURDLE THE TEST OF INDEPENDENT CONTRACTORSHIP IS CAST UPON THE CONTRACTOR AND IN CASES WHERE THE PRINCIPAL ALSO CLAIMS THAT THE CONTRACTOR IS A LEGITIMATE CONTRACTOR, SAID PRINCIPAL SIMILARLY BEARS THE BURDEN OF PROVING THAT SUPPOSED STATUS.— [P]ermissible or legitimate job contracting or subcontracting x x x [is] defined by the Court in *Norkis Trading Corporation v. Buenavista* x x x. Section 5 of Department Order No. 18-02 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended, provides what constitutes "substantial capital or investment" and "right of control," *viz.*: "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job work

or service contracted out. The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. In *Alba v. Espinosa*, the Court held that: Time and again, the Court has emphasized that "the test of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work." The burden to hurdle this test is cast upon the contractor. In cases where the principal also claims that the contractor is a legitimate contractor, as in this case, said principal similarly bears the burden of proving that supposed status.

4. ID.; ID.; ID.; POWER OF CONTROL; MERELY CALLS FOR ITS EXISTENCE AND NOT NECESSARILY THE EXERCISE THEREOF.— Going now to the tasks performed by Desacada, *et al*., RNB admits that they were engaged as sewers, trimmers, reviser, quality control staff, and sewing mechanic, which, by their nature, are inherently related to and necessary in its business as a manufacturer of garments. It was established that they were made to work inside the premises of RNB using its fabrics and sewing accessories, and had to accomplish their tasks within a specific period of completion, in accordance with the specifications, correct patterns, and quantity dictated by RNB. These circumstances undoubtedly show that RNB has the power of control over Desacada, *et al*. in the performance of their work. It bears stressing that the power of control merely calls for its existence and not necessarily the exercise thereof. As found by the CA, there is dearth of evidence showing that it was RMPC that established Desacada, *et al*.'s working procedure/method, supervised their work or evaluated their performance.

5. ID.; ID.; LABOR-ONLY CONTRACTING; A FINDING THAT A CONTRACTOR IS A LABOR-ONLY CONTRACTOR IS EQUIVALENT TO DECLARING THAT THERE IS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PRINCIPAL AND THE EMPLOYEES OF THE SUPPOSED CONTRACTOR, AND THE LABOR-ONLY CONTRACTOR AS A MERE AGENT OF THE PRINCIPAL, THE REAL EMPLOYER.— In *Allied Banking Corporation*

v. Calumpang, the Court emphasized that: A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the labor-only contractor is considered as a mere agent of the principal, the real employer. In this case, RNB is the principal employer of Desacada, *et al*. and RMPC is a labor-only contractor. Accordingly, RNB is solidarily liable with RMPC for the rightful claims of Desacada, *et al*.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE TERMINATION OF AN EMPLOYEE IS FOR A JUST OR AUTHORIZED CAUSE AND IF THE EMPLOYER FAILS TO MEET THIS BURDEN, THE CONCLUSION IS THAT THE DISMISSAL IS UNJUSTIFIED, AND THUS, ILLEGAL. — The Labor Code places the burden of proving that the termination of an employee was for a just or authorized cause upon the employer. If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, thus, illegal. In this case, the records fully disclose that Desacada, *et al*., were eventually separated, hence dismissed, from employment by reason of the alleged business losses suffered by RNB, as well as the abolition of its sewing line. However, as unanimously found by the LA, the NLRC, and the CA, RNB failed to prove said claims as would authorize their dismissal under the Labor Code. Equally tainting their dismissal with illegality is RNB's failure to inform Desacada, *et al*. of the status of their employment, and their eventual separation from employment. They were miserably left hanging. No notices of termination were given to them by RNB, clearly on the premise that they were not its employees. Thus, the CA did not err in affirming the twin findings of the NLRC and the LA that Desacada, *et al*. were illegally dismissed by RNB from employment.

7. ID.; ID.; ID.; IN LABOR CASES, CORPORATE OFFICERS ARE SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT OF EMPLOYEES ONLY IF SUCH IS DONE WITH MALICE OR IN BAD FAITH.— In labor cases, corporate officers are solidarily liable with the corporation for the termination of employment of employees only if such is done with malice or

in bad faith. In this case, there being no proof or finding by the LA, the NLRC, and the CA that Sy was guilty of malice and bad faith in Desacada, *et al*.'s dismissal, he, as its President, cannot be held solidarily liable with RNB. Accordingly, only RNB and RMPC shall be held jointly and severally liable for the monetary award decreed by the NLRC. Pursuant to the ruling in *Nacar v. Gallery Frames*, the said monetary award shall earn legal interest of 12% *per annum* from 19 October 2011, the date of illegal dismissal, until 30 June 2013, and six percent (6%) from 01 July 2013 until full satisfaction of the award. The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Bernardo Placido & Chan Law Offices for petitioner RNB Garments.

Law Office of Atty. June Reyes for petitioner Ramrol Multi-Purpose Cooperative.

D E C I S I O N

DELOS SANTOS, *J.*:

These consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assail the Decision[2] dated 26 May 2017 and the Resolution[3] dated 28 December 2017 of the Court of Appeals (CA) in CA-G.R. SP Nos. 137376 and 138083. The CA dismissed the petitions for *certiorari* filed by petitioners RNB Garments Philippines, Inc. (RNB) and Ramrol Multi-Purpose Cooperative (RMPC), and affirmed the findings of the National Labor Relations Commission (NLRC) and of the Labor Arbiter (LA), declaring Myrna Desacada

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[1] *Rollo* (G.R. No. 236331), pp. 12-45; *rollo* (G.R. No. 236332), pp. 10-33.

[2] Penned by Associate Justice Pedro B. Corales, with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Manuel M. Barrios, concurring; *rollo* (G.R. No. 236331), pp. 49-67.

[3] Id. at 68-70.

(Myrna), Carmen Vinzon (Carmen), Maria Cecilia Olmeda[4] (Ma. Cecilia), Sonia Reyes (Sonia), Herjane Reyes (Herjane), Elmer Guanzon (Elmer), Arnold Ternora (Arnold), Melchor Gonzales[5] (Melchor), and Philip Bayuga[6] (Philip; collectively, Desacada, *et al.*) to have been illegally dismissed by RNB.

The Antecedents

RNB is a corporation engaged in manufacturing and exporting quality garments, while RMPC is a cooperative duly registered with the Cooperative Development Authority.[7] In pursuit of its business, RNB engaged the services of RMPC, which undertook to manufacture garments in accordance with RNB's specifications. Pursuant to their agreement, the services of Desacada, *et al.* were engaged.[8] They performed their respective tasks as sewers, trimmers, reviser, quality control staff, and sewing mechanic.[9]

On 10 October 2011, RNB decided to stop loading RMPC's sewing line until further notice, claiming to have suffered from "very minimal loading" of orders from its principal vendor, Champan.[10] Allegedly, this led to Desacada, *et al.*'s temporary lay-off for more than six (6) months.[11]

Aggrieved, Desacada, *et al.* filed their individual complaints for illegal dismissal against RNB and RMPC before the NLRC, which were then consolidated by the LA. Elmer, Arnold, Melchor, Philip, and Herjane averred that on different dates (*i.e.*, 19 April 2011, 12 February 2011, 12 December 2010, and 10 November

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[4] Also referred to as Ma. Cecilia N. Olmeda in some parts of the *rollo*.

[5] Also referred to as Melchor Gonzales, Jr. in some parts of the *rollo*.

[6] Also referred to as Philip A. Bayaga in some parts of the *rollo*.

[7] See Certificate of Registration No. 9520-04013629, *rollo* (G.R. No. 236331), p. 74.

[8] Id. at 51.

[9] Id. at 151-153.

[10] See Letter dated 10 October 2011; id. at 87.

[11] Id. at 51.

2010), RMPC, through its Chairman, Ramil Sarol (Sarol), informed them that they were temporarily laid off. However, despite the lapse of six (6) months, they did not receive any recall order from RMPC.[12] On the other hand, Myrna, Carmen, Ma. Cecilia, and Sonia alleged that on 19 October 2011, Sarol verbally dismissed them from employment on the ground that RNB abolished its sewing line.[13]

Denying employer-employee relationship with Desacada, *et al.*, RNB assailed the LA's jurisdiction over the illegal dismissal complaints. RNB pointed to RMPC as Desacada, *et al.*'s employer, claiming the same to be an independent contractor.[14]

For its part, RMPC invoked that it is a legitimate independent contractor duly registered with the Department of Labor and Employment (DOLE). While acknowledging Desacada, *et al.* as its employees, RMPC belied their claims of illegal dismissal. It explained that their employment was merely suspended, invoking the purported suspension of operation coming from RNB's principal vendor.[15]

In their Reply,[16] Desacada, *et al.* averred that RMPC is a labor-only contractor, having no substantial capital in the form of tools, equipment, machineries, and work premises, and that RMPC merely supplied workers to RNB. They argued that their respective functions as sewers, trimmers, reviser, quality control staff, and sewing mechanic were directly related to RNB's principal business. They added that they worked under the direct control and supervision of RNB as to the means and methods of their work.[17]

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[12] Id. at 51-52, 126.

[13] Id. at 52, 385.

[14] Id. at 52, 111-112.

[15] Id. at 52.

[16] Id. at 414-417.

[17] Id. at 415.

Ruling of the Labor Arbiter

In a Decision[18] dated 29 November 2012, the LA ruled in favor of Desacada, *et al.*, finding them as regular employees of RNB, not of RMPC. The *fallo* of the Decision reads:

> WHEREFORE, premises considered, respondents RNB Garments Phils., Inc., Robert Sy and Ramil Sarol are hereby declared guilty of Illegal Dismissal and hereby ORDERED to immediately reinstate all the complainants to their former positions without loss of seniority rights and benefits. Further, the above respondents are jointly and severally liable to pay all complainants the following:
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> 1. Full backwages from October 19, 2011 until actual reinstatement.
> 2. Salary Differential.
> 3. 13th month pay.
> 4. Service Incentive Leave Pay.
> 5. 10% of all sums owing to complainants as attorney's fees.
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>
> SO ORDERED.[19]

In holding that RMPC merely acted as an agent of RNB, the LA underscored that RMPC failed to substantiate that it had substantial capital, machineries or tools in furtherance of its business. The LA also found that Desacada, *et al.* actually worked inside the premises of RNB using its sewing machines.[20]

On the issue of illegal dismissal, the LA sustained the claims of Desacada, *et al.*, holding that RNB failed to prove that the purported abolition of its sewing line was predicated upon a valid and lawful measure to avert its claim of business losses. The LA underscored that RNB merely alleged "minimal loading orders" from its principal vendor. Accordingly, the LA directed RNB to reinstate Desacada, *et al.* to their former positions, and ordered RNB, its President, Robert Sy (Sy), RMPC, and

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[18] Penned by Labor Arbiter Edgar B. Bisana, id. at 122-132.

[19] Id. at 129-130.

[20] Id. at 128.

Sarol to pay them, jointly and severally, their backwages, salary differentials, 13th month pay, service incentive leave pay and 10% attorney's fees.[21]

From the LA Decision, only RNB appealed to the NLRC.

RNB averred that as of 31 December 2012, it had already ceased operations, claiming a drastic decrease in its revenue, and increase in its costs and expenses. It maintained that Desacada, *et al.* were not its employees but of RMPC. Insisting that RMPC is an independent contractor, RNB presented Desacada, *et al.*'s identification cards and payslips issued and signed by RMPC through Sarol; RMPC's Certificate of Registration[22] issued by the DOLE; and RMPC's Audited Financial Statements[23] and corresponding income tax returns (ITR)[24] for the years 2003 to 2010 showing RMPC's supposed substantial capital.[25]

On the issue of illegal dismissal, RNB echoed RMPC's position in the LA, and added that Desacada, *et al.* were apprised of the anticipated changes in RNB's loading orders brought about by a slump in the garment export industry. To RNB, RMPC justifiably placed them on floating status.[26]

Ruling of the NLRC

Initially, the NLRC, in its Resolution[27] dated 30 September 2013, dismissed RNB's appeal for being procedurally infirmed. Upon motion for reconsideration,[28] the NLRC, through its

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[21] Id. at 128-129.

[22] Id. at 85-86.

[23] Id. at 212-247.

[24] *Rollo* (G.R. No. 236332), pp. 137-146.

[25] *Rollo* (G.R. No. 236331), pp. 53-54.

[26] Id. at 54.

[27] Penned by Presiding Commissioner Grace E. Maniquiz-Tan, with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Pacap, concurring; id. at 136-140.

[28] Id. at 141-145.

Resolution[29] dated 30 April 2014, reinstated RNB's appeal. In the same Resolution, the NLRC affirmed the LA Decision and disposed, thus:

> **WHEREFORE**, premises considered, the Motion for Reconsideration is GRANTED and the respondent's appeal is **RE-INSTATED**. However, we **AFFIRM** the November 29, 2012 Decision of Labor Arbiter Edgar B. Bisana subject to the following **MODIFICATIONS**:
>
> 1) The order directing respondent to reinstate complainants is **DELETED** in view of the cessation of RNB's operations effective December 31, 2012. Instead, respondents are ordered to pay complainants backwages and separation pay equivalent to one-half month salary for every year of service from the time of dismissal up to December 31, 2012;
>
> 2) The order for payment of backwages is also modified taking into consideration respondent's cessation of operations on December 31, 2012; and
>
> 3) The award for wage differential covering the period January 15, 2011 to September 15, 2011 is **DELETED**.
>
> The rest of the remaining awards are AFFIRMED.
>
> **SO ORDERED.**[30]

The NLRC agreed with the LA that RNB is the real employer of Desacada, *et al.* In so ruling, the NLRC took into account the following: *(1)* Desacada, *et al.*'s tasks as sewers, trimmers/revisers, quality control staff, sewing mechanic, and bundle boy, respectively, were all directly related, necessary, and desirable to RNB's garment business; and *(2)* Charito Fajardo, production manager of RNB, exercised the right of control over the performance of their work.[31]

The NLRC also found that RNB illegally dismissed Desacada, *et al.* With respect to Elmer, Arnold, Melchor, Philip, and Herjane, the NLRC faulted RNB with constructive dismissal

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[29] Id. at 149-163.

[30] Id. at 162-163. (Emphases in the original)

[31] Id. at 158.

when it failed to recall them for work after the lapse of the six (6)-month period allowed under Article 286[32] of the Labor Code, since they were placed on floating status. Underscoring that the purchase orders from its client Champan continued even after the said floating status, the NLRC was not persuaded that RNB was suffering from substantial "declining orders."[33] The NLRC likewise ruled that RNB was guilty of illegal dismissal with respect to Myrna, Carmen, Ma. Cecilia, and Sonia, for failing to discharge the burden that they were not dismissed on 19 October 2011 as a result of the purported abolition of its sewing line.[34]

Aggrieved, RNB moved for reconsideration.[35] For its part, RMPC also filed a Motion for Reconsideration[36] averring that it never received the LA Decision. On 29 August 2014, the NLRC issued a Resolution[37] denying both motions for reconsideration.

The NLRC found RNB's motion for reconsideration as a mere rehash of its previous arguments. As regards RMPC, the NLRC ruled that the LA Decision had already become final and executory as to RMPC when it failed to file a timely appeal therefrom.[38]

Unfazed, RNB filed a Petition for *Certiorari*[39] with the CA, docketed as CA-G.R. SP No. 137376, maintaining that RMPC is a legitimate and independent labor contractor, hence the true employer of Desacada, *et al.*[40]

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[32] Now Article 301 of the Labor Code as renumbered by Republic Act No. 10151 and DOLE Department Advisory No. 01, series of 2015.

[33] *Rollo* (G.R. No. 236331), p. 159.

[34] Id. at 161.

[35] See *rollo* (G.R. No. 236332), pp. 347-361.

[36] *Rollo* (G.R. No. 236331), pp. 166-180.

[37] Id. at 474-480.

[38] Id. at 57.

[39] Id. at 481-527.

[40] Id. at 58.

For its part, RMPC also filed a separate Petition for *Certiorari*,[41] docketed as CA-G.R. SP No. 138083. RMPC argued that the LA Decision dated 29 November 2012 could not have attained finality, claiming that it did not receive a copy of the Decision, the same being mailed to its previous address.[42]

Ruling of the CA

In the assailed Decision[43] dated 26 May 2017, the CA dismissed both petitions of RNB and RMPC and upheld the rulings of the NLRC, *viz.*:

> **WHEREFORE**, the instant petitions for *certiorari* are **DISMISSED**. The April 30, 2014 and August 29, 2014 Resolutions of the National Labor Relations Commission, Fifth Division, In NLRC LAC No. 03-000904-13 are hereby **AFFIRMED**.
>
> **SO ORDERED.**[44]

The CA agreed with the LA and the NLRC that RNB is the true employer of Desacada, *et al.* In concluding that RMPC merely served as an agent of RNB in engaging Desacada, *et al.*'s services, the CA underscored the following: *(1)* RMPC did not have working capital and/or investments in the form of tools and equipment sufficient to maintain an independent contracting business; and *(2)* Desacada, *et al.*'s respective duties as sewers, trimmers/revisers, quality control staff, sewing mechanic, and bundle boy were directly related to RNB's business, and were all performed in the premises of RNB using its fabric and sewing accessories, in accordance with the specifications, correct patterns, and quantity dictated by RNB.[45]

As to the issue of illegal dismissal, the CA faulted RNB in failing to recall Desacada, *et al.* for work after they were placed on floating status, as well as its failure to prove, much less

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[41] Not attached to the *rollo*.

[42] *Rollo* (G.R. No. 236331), p. 59.

[43] Id. at 49-67.

[44] Id. at 66-67. (Emphases in the original)

[45] Id. at 62-63.

allege, any just and/or authorized cause for their eventual separation, hence dismissal, from employment. It also ruled that RNB failed to show compliance with the twin requirements of procedural due process, *i.e.*, notice and hearing, prior to dismissal.[46]

As regards RMPC's petition, the CA ruled that the LA Decision had already become final and executory against RMPC. The CA faulted RMPC with inexcusable negligence when it failed to appeal from the LA Decision.[47]

Both failing to obtain reconsideration from the CA Decision,[48] RNB and RMPC filed the subject petitions, docketed as G.R. No. 236331[49] and G.R. No. 236332,[50] respectively.

The Arguments of RNB and RMPC

RNB asserts that the CA erred in declaring RMPC as a labor-only contractor.

First, RNB insists that RMPC was duly registered, and had consistently renewed its registration, as a legitimate labor contractor with the DOLE in 2002, having sufficient capital and investment in the form of tools and equipment.[51] RNB also argues that it cannot be faulted in relying in good faith on the said registration, as well as on RPMC's representation as a legitimate labor contractor, prior to engaging its services.[52]

Second, RNB argues that even if Desacada, *et al.*'s duties were directly related to its business as a manufacturer of garments, such fact does not necessarily negate its management prerogative to outsource/contract-out related services. RNB invokes that

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[46] Id. at 64.

[47] Id. at 65-66.

[48] Id. at 70.

[49] Id. at 12-45.

[50] *Rollo* (G.R. No. 236332), pp. 10-33.

[51] *Rollo* (G.R. No. 236331), pp. 27-29.

[52] Id. at 30-32.

in doing so, it did not violate Desacada, *et al.*'s right to security of tenure and payments of their benefits under the law.[53]

Third, RNB denies having control over Desacada, *et al.* in the performance of their respective duties, and claims that RMPC hired its own line leaders to supervise them. Further, RNB claims that its purchase orders with RMPC do not show, except for the end result, that it (RNB) exercised control, or had reserved its right to do so, as regards the manner and means used by Desacada, *et al.* in fulfilling their tasks.[54]

Lastly, RNB argues that the CA erred in affirming the solidary liability of Sy, for the monetary claims of Desacada, *et al.* RNB invokes the lack of finding of malice and bad faith committed by Robert Sy in relation to Desacada, *et al.*'s illegal dismissal claims.[55]

For its part, RMPC essentially corroborated the position and arguments of RNB. On its failure to appeal from the LA Decision, RMPC maintains that the copy of said Decision was improperly sent to its former address. Pleading for relaxation of technicalities, RMPC prays that its position and arguments be considered in the resolution of the present controversy.[56]

The Issues

RNB and RMPC both submit to the Court the following issues:

1. Whether the CA erred in declaring that RMPC is a labor-only contractor;

2. Whether the CA erred in declaring that there exists an employer-employee relationship between RNB and Desacada, *et al.*; and

3. Whether the CA erred in declaring that Desacada, *et al.* had been illegally dismissed.

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[53] Id. at 32-35.

[54] Id. at 35-37.

[55] Id. at 40-41.

[56] *Rollo* (G.R. No. 236332), pp. 28-29.

Additionally, RMPC maintains that the CA erred in sustaining the NLRC in holding that it was already barred from questioning the LA Decision.

Ruling of the Court

The Court denies both petitions.

Preliminary Procedural Consideration, G.R. No. 236332, RMPC's failure to appeal from the LA Decision dated 29 November 2012.

Contrary to the opinion of the CA, the Court holds that the LA Decision had not become final and executory as to RMPC, despite its failure to appeal therefrom.

The rule is that a party's appeal from a judgment will not inure to the benefit of a co-party who failed to appeal; and as against the latter, the judgment continues to run its course until it becomes final and executory.[57] To this rule, an exception attends, "where both parties have a commonality of interests, the appeal of one is deemed to be the vicarious appeal of the other."[58] The Court in *John Kam Biak Y. Chan, Jr. v. Iglesia ni Cristo*[59] explained, *viz.*:

> While it is settled that a party who did not appeal from the decision cannot seek any relief other than what is provided in the judgment appealed from, nevertheless, when the rights and liability of the defendants are so interwoven and dependent as to be inseparable, in which case, the modification of the appealed judgment in favor of appellant operates as a modification to Gen. Yoro who did not appeal. In this case, the liabilities of Gen. Yoro and appellant being solidary, the above exception applies.[60]

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[57] *Concorde Condominium, Inc. v. Philippine National Bank*, G.R. No. 228354, 26 November 2018.

[58] Id.

[59] 509 Phil. 753 (2005).

[60] Id. at 764. (Underscoring supplied)

In *Maricalum Mining Corp. v. Remington Industrial Sales Corp.*,[61] the Court illustrated the existence of commonality in the interests of the parties, as when: "a) their rights and liabilities originate from only one source or title; b) homogeneous evidence establishes the existence of their rights and liabilities; and c) whatever judgment is rendered in the case or appeal, their rights and liabilities will be affected, even if to varying extents."[62]

In this case, the commonality of interests between RNB and RMPC attends, as they were both made parties to the illegal dismissal complaints of Desacada, *et al.*, and were eventually held by the LA and the NLRC as solidarily liable for the monetary claims. Indeed, a contrary ruling by the CA on appeal as regards the core issue of whether or not RMPC is a labor-only contractor would have affected not only the rights and liabilities of RNB, but also of RMPC. A ruling sustaining RNB's position would inure to the benefit of RMPC, which prayed before the LA to be declared as an independent contractor. The same holds true should the Court rule that RMPC is an independent contractor; in which case, such ruling cannot be undermined by the supposed finality of the LA Decision.

The foregoing, notwithstanding, the Court is not inclined to grant RMPC's petition.

The question of whether RMPC is a labor-only contractor, the existence of an employer-employee relationship between RNB and Desacada, *et al.*, and the determination of liability for illegal dismissal are factual ones, inasmuch as the Court is being asked to revisit and assess anew the factual findings of the LA, the NLRC, and the CA. It must be underscored, however, that under Rule 45 of the Rules of Court, only questions of law may be raised in and resolved by the Court.[63] The Court, not being a trier of facts, will not review the factual findings of the

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[61] 568 Phil. 219 (2008).

[62] Id. at 229, citing *Director of Lands v. Reyes*, 161 Phil. 542 (1976).

[63] See *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 228 (2014), citing *"J" Marketing Corp. v. Taran*, 607 Phil. 414, 424-425 (2009).

lower tribunals as these are generally binding and conclusive.[64] While there are recognized exceptions,[65] none of them applies in this case. Even if otherwise, the Court finds no cogent reason to depart from the congruent findings of the LA, the NLRC, and the CA.

RMPC is a labor-only contractor

As defined under Article 106 of the Labor Code, labor-only contracting, a prohibited act, is an arrangement where the contractor, who does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.

On the other hand, permissible or legitimate job contracting or subcontracting, as defined by the Court in *Norkis Trading Corporation v. Buenavista*,[66] *viz.*:

[R]efers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service

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[64] *Cavite Apparel, Incorporated v. Marquez*, 703 Phil. 46, 53 (2013).

[65] These 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) When there is grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When 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 respondent; 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. [*Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016), citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990)].

[66] 697 Phil. 74 (2012).

is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[67]

Section 5 of Department Order No. 18-02 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended, provides what constitutes "substantial capital or investment" and "right of control," *viz.*:

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

In *Alba v. Espinosa*,[68] the Court held that:

Time and again, the Court has emphasized that "the test of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work."[69]

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[67] Id. at 92-93.

[68] 816 Phil. 694 (2017).

[69] Id. at 706-707, citing *Polyfoam-RGC International Corporation v. Concepcion*, 687 Phil. 137, 148 (2012).

The burden to hurdle this test is cast upon the contractor.[70] In cases where the principal also claims that the contractor is a legitimate contractor, as in this case, said principal similarly bears the burden of proving that supposed status.[71]

To show that RMPC had substantial capital or investment, RNB submitted RMPC's Audited Financial Statements. The Court agrees with the CA that such documents cannot be given much credence. As aptly observed by the CA:

> An examination of the AFS shows that RMPC does not have sufficient working capital. Even though its assets reached ₱10,316,724.00 in 2007, it drastically decreased in 2008 to ₱1,446,397.00. Worse, RMPC incurred a balance of ₱9,288,038.92 for the advances as of 2009 and even had to sell the sewing machines, the tools of its trade, to RNB as partial payment of its debt. While the DOLE may have found that the capital and/or investments in tools and equipment of RMPC are sufficient for an independent contractor, this does not mean that such capital and/or investments are likewise sufficient to maintain an independent contracting business.[72]

Indeed, the peculiarity of this drastic and substantial deterioration of RNB's assets over a very short period of time, taken together with its overwhelming debts/liabilities, militates against its purported substantial capitalization to further or maintain its contracting business.

Going now to the tasks performed by Desacada, *et al.*, RNB admits that they were engaged as sewers, trimmers, reviser, quality control staff, and sewing mechanic, which, by their nature, are inherently related to and necessary in its business as a manufacturer of garments. It was established that they were made to work inside the premises of RNB using its fabrics and sewing accessories, and had to accomplish their tasks within

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[70] See *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*, 778 Phil. 72 (2016).

[71] See *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, 681 Phil. 299 (2012).

[72] *Rollo* (G.R. No. 236331), p. 62.

a specific period of completion, in accordance with the specifications, correct patterns, and quantity dictated by RNB. These circumstances undoubtedly show that RNB has the power of control over Desacada, *et al.* in the performance of their work. It bears stressing that the power of control merely calls for its existence and not necessarily the exercise thereof.[73] As found by the CA, there is dearth of evidence showing that it was RMPC that established Desacada, *et al.*'s working procedure/method, supervised their work or evaluated their performance.[74]

Employer-Employee relationship between RNB and Desacada, et al.

In *Allied Banking Corporation v. Calumpang*,[75] the Court emphasized that:

> A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the labor-only contractor is considered as a mere agent of the principal, the real employer.[76]

In this case, RNB is the principal employer of Desacada, *et al*. and RMPC is a labor-only contractor. Accordingly, RNB is solidarily liable with RMPC for the rightful claims of Desacada, *et al.*[77]

Propriety of dismissal

The Labor Code places the burden of proving that the termination of an employee was for a just or authorized cause upon the employer.[78] If the employer fails to meet this burden,

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[73] *Almeda v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 113 (2008).

[74] *Rollo* (G.R. No. 236331), p. 63.

[75] 823 Phil. 1143 (2018).

[76] Id. at 1157-1158.

[77] See *San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543 (2003).

[78] Article 277 (renumbered to Article 292 pursuant to DOLE Department Advisory No. 01, Series of 2015) of the Labor Code.

the conclusion would be that the dismissal was unjustified and, thus, illegal.[79]

In this case, the records fully disclose that Desacada, *et al.*, were eventually separated, hence dismissed, from employment by reason of the alleged business losses suffered by RNB, as well as the abolition of its sewing line. However, as unanimously found by the LA, the NLRC, and the CA, RNB failed to prove said claims as would authorize their dismissal under the Labor Code. Equally tainting their dismissal with illegality is RNB's failure to inform Desacada, *et al.* of the status of their employment, and their eventual separation from employment. They were miserably left hanging. No notices of termination were given to them by RNB, clearly on the premise that they were not its employees.

Thus, the CA did not err in affirming the twin findings of the NLRC and the LA that Desacada, *et al.* were illegally dismissed by RNB from employment.

Lastly, there is merit in RNB's argument that the CA erred in affirming the solidary liability of Sy for the monetary claims of Desacada, *et al.*

In labor cases, corporate officers are solidarily liable with the corporation for the termination of employment of employees only if such is done with malice or in bad faith.[80] In this case, there being no proof or finding by the LA, the NLRC, and the CA that Sy was guilty of malice and bad faith in Desacada, *et al.*'s dismissal, he, as its President, cannot be held solidarily liable with RNB.[81] Accordingly, only RNB and RMPC shall be held jointly and severally liable for the monetary award decreed by the NLRC. Pursuant to the ruling in *Nacar v. Gallery Frames*,[82] the said monetary award shall earn legal interest of

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[79] See *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150 (2011).

[80] See *David v. National Federation of Labor Unions*, 604 Phil. 31, 41 (2009).

[81] See *Alba v. Yupangco*, 636 Phil. 514 (2010).

[82] 716 Phil. 267 (2013). Consequently, the twelve percent (12%) *per*

12% *per annum* from 19 October 2011, the date of illegal dismissal, until 30 June 2013, and six percent (6%) from 01 July 2013 until full satisfaction of the award. The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from finality of this Decision until full payment.[83]

WHEREFORE, the petition in G.R. No. 236331 is **PARTLY GRANTED**, only insofar as the pronouncement of the solidary liability of Robert Sy, President of RNB Garments Philippines, Inc., is concerned. Accordingly, the Decision dated 26 May 2017 and the Resolution dated 28 December 2017 of the Court of Appeals in CA-G.R. SP Nos. 137376 and 138083 are hereby **AFFIRMED** with **MODIFICATION** in that: *(1)* the solidary liability of Robert Sy is deleted, and *(2)* RNB Garments Philippines, Inc. and Ramrol Multi-Purpose Cooperative are jointly and severally liable for the monetary award decreed in the Resolution dated 30 April 2014 of the National Labor Relations Commission. The said monetary award shall earn legal interest of 12% *per annum* from 19 October 2011 until 30 June 2013, and six percent (6%) from 01 July 2013 until full satisfaction of the award. The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from finality of this Decision until full payment.

The petition in G.R. No. 236332 is **DENIED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Hernando,* and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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annum legal interest shall apply only until 30 June 2013. Come 01 July 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*.

[83] Id. at 281.

SECOND DIVISION

[G.R. No. 238954. September 14, 2020]

JAYME LEDESMA[*] @ Jim, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH PHYSICAL INJURIES; ELEMENTS, PRESENT IN CASE AT BAR.— For an accused to be convicted of Robbery with Physical Injuries, the prosecution must prove the following elements: (a) the taking of personal property; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi;* (d) the taking is with violence or intimidation against the person; and (e) on the occasion or by reason of the robbery, any of the physical injuries penalized in subdivisions 1 or 2, Article 263 of the Revised Penal Code shall have been inflicted.

. . .

As correctly found by the CA, all the requirements to sustain a conviction for the crime of Robbery with Physical Injuries are present in the instant case . . . .

Hence, the CA committed no reversible error when it affirmed Ledesma's conviction for Robbery with Physical Injuries.

2. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW UNDER RULE 45; QUESTIONS OF FACT; A QUESTION REQUIRING A REEVALUATION OF THE CREDIBILITY OF WITNESS IS FACTUAL AND IS BEYOND THE SCOPE OF A RULE 45 PETITION.— As a general rule, the Court's jurisdiction in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow [a] review of questions of fact because the Court is not a trier of facts.

In the present case, Ledesma argues that his identity as the culprit was not proved beyond reasonable doubt. He essentially

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

assails the credibility of witnesses, Fausto and Emeliana, as to their identification of him as the perpetrator of the crime, which essentially is a question of fact. It is settled that if the question raised requires a re-evaluation of the credibility of witnesses, the issue is factual, which unfortunately is beyond the scope of a Rule 45 petition. The Court, likewise, do not find the case to fall within any of the exceptions to the rule.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS ARE ACCORDED RESPECT MORE SO WHEN AFFIRMED BY THE COURT OF APPEALS.— [I]t has already been settled that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Wanting a showing that the trial court overlooked facts or circumstances of weight and substance that would affect the result of the case, this Court will not overturn the said trial court's factual findings. This is more so when the findings of the trial court are sustained by the CA.

Here, both the RTC and the CA found the testimonies of Fausto and Emeliana identifying Ledesma as the perpetrator of the crime to be straightforward, unflawed by significant inconsistency, and unshaken by rigid cross-examination. Too, the CA found that there was no shred of evidence to indicate that Fausto and Emeliana were impelled by improper motives to testify falsely against Ledesma.

Consequently, the Court will not depart from the findings of the RTC as affirmed by the CA on the matter of Fausto and Emeliana's credibility as witnesses and their testimony identifying Ledesma as the perpetrator of the crime.

4. ID.; ID.; ALIBI; FOR ALIBI TO PROSPER, THE ACCUSED MUST PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION; ALIBI IS GIVEN LESS PROBATIVE WEIGHT WHEN CORROBORATED BY FRIENDS AND RELATIVES.— Alibi is viewed with suspicion and received

with caution because it can easily be fabricated. For alibi to prosper, respondent must prove not only that he was at some other place when the crime was committed, but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.

Here, Ledesma failed to establish the physical impossibility of him coming to Fausto and Emeliana's *sari-sari* store in time to execute the robbery and on the occasion or by reason thereof, inflict physical injuries upon Fausto and Emeliana, especially that Marissa's store, where he was allegedly present at, was just a kilometer away from Fausto and Emeliana's store and given also that Ledesma owns a motorcycle which made it easier for him to come around.

Ledesma's alibi, being corroborated mainly by his friend Rafael, is all the more taken by this Court with extreme suspicion. The Court ha[s] consistently assigned less probative weight to a defense of alibi when it is corroborated by friends and relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses. Clearly, due to his friendship with Ledesma, Rafael cannot be considered as a disinterested witness.

5. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF ACCUSED; ALIBI CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION BY THE WITNESS.— It is settled that positive identification, where categorical and consistent, and without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi since the latter can easily be fabricated and is inherently unreliable. It is likewise settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit. In the instant case, no allegation was made or proved to show that Fausto and Emeliana had any ill motive to falsely testify against Ledesma.

Consequently, as between Ledesma's defense of denial and alibi, which is inherently weak, and Fausto and Emeliana's positive identification of Ledesma as the perpetrator of the crime, the latter prevails.

6. CRIMINAL LAW; ROBBERY WITH PHYSICAL INJURIES; CIVIL LIABILITY; RESTITUTION; CIVIL INDEMNITY,

MORAL AND TEMPERATE DAMAGES, AWARDED IN THIS CASE.— As to the award of damages, the RTC, as affirmed by the CA, correctly ordered the restitution of the cash taken from Fausto and Emeliana in the amount of ₱25,000.00. Further, the Court finds that since both Fausto and Emeliana have suffered serious physical injuries as a result of the crime, they should each be properly awarded civil indemnity, moral and exemplary damages. In cases of Robbery with Physical Injuries, the amount of damages shall be dependent on the nature/severity of the wounds sustained, whether fatal or non-fatal. Here, both Fausto and Emeliana's wounds do not appear to be fatal. Hence, they shall each be awarded ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages, in line with recent jurisprudence.

There is no doubt that Fausto and Emeliana incurred expenses for their medication and hospitalization. They, however, failed to prove the amount of their expenses with certainty. Nonetheless, it being undeniable that Fausto and Emeliana incurred medication and hospitalization expenses, the Court finds it proper to award them temperate damages in the amount of ₱50,000.00 each.

7. ID.; ID.; AGGRAVATING CIRCUMSTANCES; DWELLING; USE OF UNLICENSED FIREARMS.— The aggravating circumstance of dwelling cannot be appreciated because it was admitted by Erneliana that their store was not actually their dwelling place. She testified that their house was located 38.80 meters away from their store.

The aggravating circumstance of the use of unlicensed firearm cannot, likewise, be appreciated because the prosecution failed to present in court or offer as evidence against Ledesma the alleged unlicensed firearm. Too, the prosecution failed to establish that Ledesma did not have the corresponding license or permit to possess a firearm.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

This Petition for Review under Rule 45 of the Rules of Court assails the Decision[1] dated September 28, 2017 and the Resolution[2] dated March 14, 2018 of the Court of Appeals (CA), Cebu City in CA-G.R. CEB CR. No. 02608 which affirmed the Regional Trial Court (RTC) of Talibon, Bohol, Branch 52's verdict of conviction against petitioner Jayme Ledesma @ Jim (Ledesma) for Robbery with Physical Injuries in Crim. Case No. 12-2707.

The Proceedings Before the Trial Court

Ledesma was charged with Robbery with Physical Injuries under the following Information:

That on or about the 27th day of November 2011, in the Municipality of Ubay, [P]rovince of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm, with intent to gain, and by means of violence against or intimidation of persons, did then and there willfully, unlawfully, and feloniously enter the house of live-in partners FAUSTO BOYLES *y* ANGCO and EMILIANA PUREZA *y* ROSALES, and while thus inside the house, the above accused attacked, assaulted, shot and wounded Fausto Boyles *y* Angco and Emiliana Pureza *y* Rosales, with the use of a firearm which the said accused had then provided himself for the purpose, thereby inflicting upon the person of said Fausto Boyles *y* Angco "ruptured eyeball-left secondary to gunshot wound," which required "evisceration, OS," thereby resulting loss of an eye and permanent deformity, and Emiliana Pureza y Rosales "multiple gunshot wounds," to wit:

"1. Point of Entry: 0.5 x 0.5 centimeter anterior neck, lateral right; Point of Exit: None

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[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Geraldine C. Fiel-Macaraig, concurring; *rollo*, pp. 79-90.

[2] Id. at 100-101-A.

2. Point of Entry: 0.5 x 0.5 centimeter deltoid, anterior right; Point of Exit: Deltoid posterior left

3. Point of Entry: 0.5 x 0.5 centimeter anterior axillary line 2nd ICS; Point of Exit: Deltoid posterior left

4. Point of Entry: suprasternal notch; Point of Exit: Infrascapular area, left," which injuries healed or required medical attendance or incapacitated her for thirty (30) days, and then and there, the aforesaid accused, who, with intent of gain, willfully, unlawfully and feloniously, took, stole and carried away their plastic jar and wallet containing money in the amount of TWENTY FIVE THOUSAND ([₱]25,000.00), Philippine Currency, against their will and consent; to the damage and prejudice of Fausto Boyles and Emiliana Pureza in the said amount and of the People of the Philippines.

That the commission of the crime was attended by the aggravating circumstance of (sic) the crime was committed in the dwelling of the offended party and used of unlicensed firearm in the commission of the crime.

Acts committed contrary to the provisions of Article 293 in relation to 294 (3) of the Revised Penal Code, as amended and with the aggravating circumstance under Article 14 (3) of the same Code and Section 1 of [Republic Act No.] 8294.[3]

Version of the Prosecution

Private complainants Fausto Boyles (Fausto) and Emeliana[4] Pureza (Emeliana) are live-in partners who own a *sari-sari* store located at *Purok* 4, Calanggaman, Ubay, Bohol. Fausto knew Ledesma as he is a resident of an adjacent *barangay* since the latter was in elementary years.[5]

On November 27, 2011, Fausto and Emeliana were at their store. When Fausto was about to close their store at 8:00 in the evening of that day, Ledesma suddenly appeared and held the hand of Fausto from the outside. Ledesma's face was very apparent because he was not covering his face and the store was well-lit both inside and outside. Ledesma proceeded inside

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[3] Id. at 80.

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

[5] *Rollo*, p. 33.

the store holding a gun and shot Fausto hitting the latter in his left eye. Not satisfied, Ledesma hit the head of Fausto using the gun's butt causing Fausto to fall to the floor.[6]

Ledesma announced robbery. Emeliana pleaded him to spare their lives. But just as when she was about to reach for the money from the cabinet, Ledesma shot her twice. Despite being shot twice, Emeliana was still able to get the money (₱25,000.00) and thereafter gave the same to Ledesma. Unexpectedly, Ledesma shot her again, this time causing her to fall to the ground. Fearful of being shot to death by Ledesma, Emeliana feigned dead.

Believing both Fausto and Emeliana were unconscious, Ledesma took several goods from the store. However, upon noticing Emeliana staring at him, whom he thought was already dead, he shot her for the fourth time. Thereafter, he immediately left riding his motorcycle.[7]

Both Fausto and Emeliana were brought to the hospital for immediate medication by their neighbors who heard the gunshots.[8] Fausto lost the use of his left eye and was confined for three weeks while Emeliana suffered four gunshot wounds and was confined for more than a month.[9]

Version of the Defense

Ledesma owns a motorcycle and worked as a *habal-habal* driver. He admitted that he knows Fausto and Emeliana and that the two owns a *sari-sari* store. He claims, however, that from around 7:00 in the evening of November 27, 2011 until 12:00 midnight, he was having a drinking spree with his friends, Florencio Pesay and Rafael Quilaton (Rafael), at the store of Marissa Pesay (Marissa) which was more or less just a kilometer away from Fausto and Emeliana's store. The fiesta of the place was forthcoming at that time.[10]

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[6] Id. at 81.

[7] Id. at 82.

[8] Id.

[9] Id. at 34.

[10] Id. at 40-41.

Ledesma's friend, Rafael, corroborated his alibi. Rafael testified that on November 27, 2011, he had a drinking spree with his friend Ledesma and some other people at the store of Marissa which, according to him was less than a kilometer away from Fausto and Emeliana's store. The drinking spree started from 7:00 in the evening and lasted until 1:00 in the morning of the following day.

The Trial Court's Ruling

In a Decision[11] dated April 16, 2014, the RTC found Ledesma guilty beyond reasonable doubt of Robbery with Physical Injuries, *viz.*:

> WHEREFORE, considering the foregoing, this court hereby finds accused Jaime or Jim Ledesma GUILTY beyond reasonable doubt for the crime of Robbery defined under Article 293 of the Revised Penal Code, in relation to Article 294 (3) of the same Code. In accordance with the penalty set forth under said provision of law, the court hereby sentences the accused to suffer the indeterminate sentence of six (6) years and one (1) day of *[prision mayor]* as minimum to fifteen (15) years of *[reclusion temporal]* as maximum.
>
> Accused, by way of civil liability is likewise directed to give back the money taken in the sum Twenty Five Thousand Pesos (₱25,000.00), Philippine Currency to the private complainants.
>
> As it appears on record that accused is now under detention at the BJMP in Ubay, he shall be credited the full term of his preventive detention subject to an evaluation by the BJMP Jail Warden thereat of his demeanor while detained thereat.
>
> SO ORDERED.[12]

The RTC ruled that Ledesma's offer of denial and alibi as defenses are weak and cannot undermine the positive identification made of him by Fausto and Emeliana. Even if it were true that Ledesma was about a kilometer away having a drinking spree, still, Ledesma failed to show the impossibility of him going to Fausto and Emeliana's store at the time the

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[11] Penned by Acting Presiding Judge Marivic Trabajo Daray; id. at 31-45.

[12] Id. at 44-45.

robbery took place. More, he had a motorcycle which gave him ease in travelling around.

The Proceedings Before the CA

On appeal, Ledesma faulted the RTC for rendering a verdict of conviction against him despite the alleged failure of the prosecution to prove his identity as the culprit of the crime charged. He also argued that his alibi was materially corroborated.[13]

The Office of the Solicitor General defended the verdict of conviction. It maintained that all the elements of the crime charged are present in the case. Too, Ledesma was categorically identified by Fausto and Emeliana as the perpetrator.[14]

The CA's Ruling

The CA affirmed with modification the RTC Decision, *viz.*:

> WHEREFORE, the Decision dated April 16, 2014 of the Regional Trial Court, Branch 52, Talibon, Bohol is AFFIRMED. Consistent with the recent jurisprudence, the Court orders Jayme Ledesma a.k.a. Jim to pay Fausto Boyles and Emeliana Pureza the amount of P25,000.00 as civil indemnity, P25,000.00 as moral damages, and P25,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.
>
> SO ORDERED.[15]

The CA found that the prosecution was able to establish the presence of all the elements of the crime of Robbery with Physical Injuries. Fausto and Emeliana's testimonies were straightforward, unflawed by significant inconsistency, and unshaken by rigid cross-examination. They were not shown to have been impelled by ill motive to implicate and testify falsely against Ledesma. Likewise, the Medico-Legal Certificates of Fausto and Emeliana affirm the truth of their testimonies.

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[13] Id. at 48-63.

[14] Id. at 68, 73.

[15] Id. at 90.

Lastly, the CA held that the aggravating circumstance of dwelling cannot be appreciated because of the prosecution's failure to prove that the *sari-sari* store was also the dwelling place of Fausto and Emeliana. Emeliana herself testified that their house is 38.80 meters away from their store.[16]

Ledesma moved for reconsideration, but the same was denied.[17]

The Present Petition

Ledesma now seeks affirmative relief from this Court and pleads anew for his acquittal. He challenges the sufficiency of Fausto and Emeliana's testimonies identifying him as the perpetrator of the crime charged. He likewise contends that his defense of alibi was materially corroborated.

The Issue

Did the CA err in affirming Ledesma's conviction for Robbery with Physical Injuries?

The Court's Ruling

The Court resolves to deny the instant petition and affirm the CA's Decision dated September 28, 2017 and the Resolution dated March 14, 2018, with modification as to the award of damages.

For an accused to be convicted of Robbery with Physical Injuries, the prosecution must prove the following elements: (a) the taking of personal property; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; (d) the taking is with violence or intimidation against the person; and (e) on the occasion or by reason of the robbery, any of the physical injuries penalized in subdivisions 1 or 2, Article 263 of the Revised Penal Code shall have been inflicted.

As a general rule, the Court's jurisdiction in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is

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[16] Id. at 89.

[17] Id. at 101-A.

limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts.[18]

In the present case, Ledesma argues that his identity as the culprit was not proved beyond reasonable doubt. He essentially assails the credibility of witnesses, Fausto and Emeliana, as to their identification of him as the perpetrator of the crime, which essentially is a question of fact. It is settled that if the question raised requires a re-evaluation of the credibility of witnesses, the issue is factual, which unfortunately is beyond the scope of a Rule 45 petition. The Court, likewise, do not find the case to fall within any of the exceptions to the rule.[19]

At any rate, it has already been settled that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Wanting a showing that the trial court overlooked facts or circumstances of weight and substance that would affect the result of the case, this Court will not overturn the said trial court's factual findings. This is more so when the findings of the trial court are sustained by the CA.[20]

Here, both the RTC and the CA found the testimonies of Fausto and Emeliana identifying Ledesma as the perpetrator of the crime, to be straightforward, unflawed by significant inconsistency, and unshaken by rigid cross-examination. Too, the CA found that there was no shred of evidence to indicate that Fausto and Emeliana were impelled by improper motives to testify falsely against Ledesma.

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[18] *Ablaza v. People*, G.R. No. 217722, September 26, 2018, 881 SCRA 94.

[19] Id.

[20] *People v. Dayaday*, 803 Phil. 370-371 (2017).

Consequently, the Court will not depart from the findings of the RTC as affirmed by the CA on the matter of Fausto and Emeliana's credibility as witnesses and their testimony identifying Ledesma as the perpetrator of the crime.[21]

In a desperate attempt to exculpate himself, Ledesma further argues that his defense of alibi was materially corroborated by his friend Rafael. He claims that at the time the crime took place at the *sari-sari* store of Fausto and Emeliana, he was at the store of Marissa which is just about a kilometer away from Fausto and Emeliana's store, having a drinking spree with his friends, including Rafael who corroborated his claims.

The Court is not persuaded.

Alibi is viewed with suspicion and received with caution because it can easily be fabricated. For alibi to prosper, respondent must prove not only that he was at some other place when the crime was committed, but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.[22]

Here, Ledesma failed to establish the physical impossibility of him coming to Fausto and Emeliana's *sari-sari* store in time to execute the robbery and on the occasion or by reason thereof, inflict physical injuries upon Fausto and Emeliana, especially that Marissa's store, where he was allegedly present at, was just a kilometer away from Fausto and Emeliana's store and given also that Ledesma owns a motorcycle which made it easier for him to come around.

Ledesma's alibi, being corroborated mainly by his friend Rafael, is all the more taken by this Court with extreme suspicion. The Court has consistently assigned less probative weight to a defense of alibi when it is corroborated by friends and relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be

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[21] *Ablaza v. People*, supra.

[22] *People v. Corpuz*, 714 Phil. 337, 346 (2013).

offered preferably by disinterested witnesses.[23] Clearly, due to his friendship with Ledesma, Rafael cannot be considered as a disinterested witness.

It is settled that positive identification, where categorical and consistent, and without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi since the latter can easily be fabricated and is inherently unreliable. It is likewise settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit. In the instant case, no allegation was made nor proven to show that Fausto and Emeliana had any ill motive to falsely testify against Ledesma.[24]

Consequently, as between Ledesma's defense of denial and alibi which is inherently weak, and Fausto and Emeliana's positive identification of Ledesma as the perpetrator of the crime, the latter prevails.

As correctly found by the CA, all the requirements to sustain a conviction for the crime of Robbery with Physical Injuries are present in the instant case, to wit:

a. Ledesma took the money in the amount of ₱25,000.00;
b. The ₱25,000.00 taken by Ledesma belonged to Fausto and Emeliana;
c. Ledesma is presumed to have the intent to gain when he unlawfully took the ₱25,000.00 from Fausto and Emeliana;
d. Ledesma's unlawful act of taking Fausto and Emeliana's money was attended by intimidation and violence by his act of pointing his gun to Fausto and Emeliana and shooting at them; and
e. As a consequence of Ledesma's act of shooting at Fausto and Emeliana, Fausto lost the use of his left eye and

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[23] *People v. Aquino*, 724 Phil. 739, 755 (2014).

[24] Id.; see also *People v. Patalin, Jr.*, 370 Phil. 200, 221 (1999).

> was confined for three weeks while Emeliana suffered four gunshot wounds and was confined for more than a month making her incapacitated to tend their *sari-sari* store. All these were evidenced by the Medico-Legal Certificates of Fausto and Emeliana.

Hence, the CA committed no reversible error when it affirmed Ledesma's conviction for Robbery with Physical Injuries.

As to the award of damages, the RTC, as affirmed by the CA, correctly ordered the restitution of the cash taken from Fausto and Emeliana in the amount of ₱25,000.00. Further, the Court finds that since both Fausto and Emeliana have suffered serious physical injuries as a result of the crime, they should each be properly awarded civil indemnity, moral, and exemplary damages. In cases of Robbery with Physical Injuries, the amount of damages shall be dependent on the nature/severity of the wounds sustained, whether fatal or non-fatal.[25] Here, both Fausto and Emeliana's wounds do not appear to be fatal. Hence, they shall each be awarded ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages, in line with recent jurisprudence.

There is no doubt that Fausto and Emeliana incurred expenses for their medication and hospitalization. They, however, failed to prove the amount of their expenses with certainty. Nonetheless, it being undeniable that Fausto and Emeliana incurred medication and hospitalization expenses, the Court finds it proper to award them temperate damages in the amount of ₱50,000.00 each.

The aggravating circumstance of dwelling cannot be appreciated because it was admitted by Emeliana that their store was not actually their dwelling place. She testified that their house was located 38.80 meters away from their store.

The aggravating circumstance of the use of unlicensed firearm cannot, likewise, be appreciated because the prosecution failed to present in court or offer as evidence against Ledesma the alleged unlicensed firearm. Too, the prosecution failed to

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[25] *People v. Jugueta*, 783 Phil. 806 (2016).

establish that Ledesma did not have the corresponding license or permit to possess a firearm.[26]

WHEREFORE, the instant petition is **DENIED**. The Decision dated September 28, 2017 and the Resolution dated March 14, 2018 of the Court of Appeals, Cebu City in CA-G.R. CEB CR. No. 02608 finding petitioner Jayme Ledesma @ Jim guilty beyond reasonable doubt of the crime of Robbery with Physical Injuries are **AFFIRMED** with **MODIFICATION** in that Jayme Ledesma @ Jim is **ORDERED** to: (1) pay Fausto Boyles and Emeliana Pureza ₱25,000.00 as restitution for the cash taken from them; and (2) pay Fausto Boyles and Emeliana Pureza each, ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. Interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of this Decision until full payment.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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[26] See *People v. Castillo*, 382 Phil. 499, 507-508 (2000).

SECOND DIVISION

[G.R. No. 239015. September 14, 2020]

HAROLD B. GUMAPAC, *Petitioner*, *v.* **BRIGHT MARITIME CORPORATION, CLEMKO SHIPMANAGEMENT S.A. and/or DESIREE SILLAR,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION–STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; WHEN THE PETITIONER DID NOT ATTACH ANY MEDICAL CERTIFICATE TO HIS COMPLAINT AND WAS UNAWARE OF HIS DISABILITY AT THE TIME OF FILING SUCH COMPLAINT, IT IS DISMISSIBLE FOR LACK OF CAUSE OF ACTION.— It bears stressing that when petitioner filed his complaint on September 10, 2013 with the Labor Arbiter, he did not attach any medical certificate showing his illnesses. What is evident on record is that he managed to submit a medical certificate issued by Dr. Tan only on November 14, 2013 or two (2) months after he filed the complaint. Evidently, petitioner has no cause of action as he was unaware of his disability at the time he filed the complaint. x x x Thus, absent any disability grading at the time of filing of the complaint, petitioner has no ground for disability claims as he did not have any evidence to support it.

2. ID.; ID.; ID.; FAILURE OF THE PETITIONER TO COMPLY WITH THE REQUIREMENT TO SUBMIT HIMSELF TO THE COMPANY-DESIGNATED PHYSICIAN IS FATAL TO HIS CLAIM.— [I]t is incumbent upon the seafarer to submit himself to the company-designated physician within three (3) working days for post-employment medical examination as it is a requirement provided under the POEA-SEC. Petitioner failed to provide this Court with any substantial evidence that he complied with the requirements provided under Section 20 of the POEA-SEC and that he submitted himself to a company-designated physician within three (3) working days after his

repatriation in the Philippines. Time and again, it has been held that whoever claims entitlement to the benefits as provided by law should establish his or her right thereto by substantial evidence. Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Upon evaluation of the records of this case, petitioner's bare allegation that he submitted himself to respondents' local manning agency within three (3) days from his repatriation falls short of this standard.

3. ID.; ID.; ID.; PERMANENT AND TOTAL DISABILITY, DEFINED AND EXPLAINED; ELEMENTS THAT MUST CONCUR FOR DISABILITY TO BE COMPENSABLE; WHERE PETITIONER FAILED TO PROVE THAT HIS ILLNESSES ARE WORK-RELATED, HE IS NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS.— Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. Under Article 192(c)(1) of the Labor Code, a disability is deemed both permanent and total when the temporary total disability lasts continuously for more than 120 days, except as otherwise provided in the Rules. x x x For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. x x x A careful perusal of this case shows that petitioner failed to adduce concrete and sufficient evidence to prove that his illness is work-related. The permanent disability grading issued by Dr. Tan cannot be considered as an effective assessment for purposes of the POEA-SEC. It is a well-settled doctrine that if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee. However, We cannot put the burden on respondents when the record is bereft of any evidence showing any violation on their part.

APPEARANCES OF COUNSEL

Panambo & Baldivino Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court questioning the Decision[2] dated July 17, 2017 and the Resolution[3] dated March 21, 2018 denying the motion for reconsideration thereof of the Court of Appeals (CA) in CA-G.R. SP No. 138401. The CA reversed the Decision[4] dated August 29, 2014 and the Resolution[5] dated October 3, 2014 of the National Labor Relations Commission (NLRC), granting Harold B. Gumapac (petitioner) total and permanent disability benefits equivalent to US$60,000.00, sickness allowance in the amount of US$1,860.00, and 10% of the money awards as attorney's fees.

The Facts

Petitioner was hired as Able-Bodied Seaman by Bright Maritime Corporation, in behalf of its foreign principal, Clemko Shipmanagement S.A. (collectively, respondents) and assigned on board the vessel MV Capetan Costas S, under an approved Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) dated October 22, 2012, for a contract period of nine (9) months, +(-) 2 months extendable upon consent of both parties, with a basic pay of US$465.00.[6]

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[1] *Rollo*, pp. 13-46.

[2] Penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring; id. at 49-65.

[3] Id. at 47-48.

[4] Not attached to the *rollo*.

[5] Not attached to the *rollo*.

[6] *Rollo*, pp. 25 and 50.

As part of routinary requirements and prior to boarding the vessel, petitioner submitted himself to pre-employment medical evaluation and was subsequently declared fit to work. He alleged that in the performance of his duties and responsibilities on board the vessel, he was always exposed to the harsh conditions particularly the toxic environment in the engine room usually filled with pollutants and intoxicating chemicals. He was also under severe stress while being away from his family and suffered regular fatigue due to long hours of work, from eight (8) to 16 hours a day, performing the following tasks: (a) measuring the depth of water in shallow or unfamiliar waters, using lead line and telephones or shouting information to the bridge; (b) breaking out, rigging, overhauling, and stowing cargo handling gear, stationary rigging, and running gear; (c) standing guard from the bow of the ship or the wing of the bridge to look for obstruction in the path of the ship; (d) steering the ship and maintaining visual communication with other ships; (e) steering the ship under the direction of the ship's commander or navigating officer, or directing the helmsman to steer, following a designated course; and (f) overhauling lifeboats and lifeboat gear and lowering or raising lifeboats with winch or falls.[7]

Petitioner further alleged that he had been subjected to the same stress, fatiguing duties and responsibilities, and work hazards during his three (3) years of working with respondents.[8]

On January 24, 2013, while supervising the unloading of chemical coated grains, petitioner experienced difficulty in breathing and suffocation. He later became dizzy and was assisted by his crewmates and brought to his cabin for the administration of first aid. The medical report issued by the shipside physician states:

Reason for visiting/complaints: **DIFFICULTIES IN BREATHING SUSPECT DUE TO [ASTHMA]**.[9]

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[7] Id. at 26.

[8] Id.

[9] Id.

Subsequently, petitioner reported to the Master of the vessel and the incident was recorded in the vessel's medical logbook. He was thereafter brought to Marine & Industrial Health Care Services in Louisiana, U.S.A. and examined by Dr. Frank Wilson (Dr. Wilson), who diagnosed him with asthma, *viz.*:

> The above named seaman presented today with documentation stating he had "difficulty breathing suspect due to asthma." Although a chest x ray performed today was normal; Pulmonary function testing showed his FEV (forced expiratory volume) at 54%. It should be near 100. His oxygen saturation level is 93%, it also should be at, or near, 100%. **The seaman's diagnosis is Asthma. He apparently has a history of asthma. He is not fit for sea duty, particularly considering the ship is loading a grain cargo and the complication the cargo can cause to an asthmatic, not to mention the by product(s) thereof. x x x The seaman should be sent home ASAP for further evaluation and treatment, as required.**[10] (Emphasis and underscoring in the original)

On January 28, 2013, petitioner arrived in the Philippines. Within three (3) days from his repatriation, he reported to respondents' manning agent for referral to the company-designated physician to which, he was advised to wait for the approval of the foreign principal for his medical treatment. While waiting, petitioner experienced difficulty in breathing which prompted him to go to Manila East Medical Center in Taytay, Rizal on February 2, 2013. He was confined in the hospital for two (2) days and underwent Echocardiography wherein he was found to be suffering from Hypertension Stage 2 and Multiple Stroke with Residual Left Hemiparesis.[11] The result states:

> INTERPRETATION
>
> Normal left ventricular size with adequate wall motion and contractility.
> Normal right ventricular size with adequate wall motion and contractility.
> Normal left atrium and right atrium.
> Thickened anterior mitral valve leaflet without restriction of motion.
> Mitral annular calcification.

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[10] Id. at 50.

[11] Id. at 27-28, 51.

Thickened aortic [cusps] with discrete calcification at the margin of right aortic cusp and non-coronary cusp without restriction of motion. Structurally normal tricuspid valve and pulmonic valve with good opening and closing motion.
Normal main pulmonary artery.
Normal aortic root.
No pericardial effusion.
Doppler:
Mitral regurgitation — mild
Tricuspid regurgitation — mild
Pulmonic regurgitation — mild
Normal pulmonary artery systolic pressure by [pulmonary] acceleration time
Normal mitral inflow pattern and mitral annular velocity by tissue Doppler imaging[12]

On March 13, 2013, petitioner's attending physician, Dr. Konrad Lazaro (Dr. Lazaro), a neurologist, diagnosed him with Cerebral Infarction and Hypertension. He was then advised to rest and to undergo physical rehabilitation. He was also allowed to travel via plane one (1) month post-stroke (March 25, 2013).[13] During his follow-up check-up on August 24, 2013, Dr. Lazaro certified that petitioner has partially recovered but nevertheless advised the latter to engage in light activities only as he was allegedly susceptible to recurrent stroke.[14]

On November 14, 2013, petitioner underwent a Computed Tomography (CT) Scan with the following result:

IMPRESSION:

No acute infarcts or hemorrhage in the present study. Chronic infarcts, right corona radiata, right capsulo-ganglionic region and the right caudate body.[15]

Not contented, petitioner sought the expertise of Dr. May Donato Tan (Dr. Tan), a cardiologist, to provide a medical opinion

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[12] Id. at 61-62.

[13] Id. at 62-63.

[14] Id. at 51.

[15] Id.

on the result of the CT Scan and to conduct additional tests on his illness. Subsequent examination result revealed the following:

Physical Examination:

General Survey: Conscious, coherent, apprehensive

Vital Signs	: BP: 140/90-150-90 CR: 90/in
HEENT	: non-icteric sclera, pink palpebral conjuctivae
Heart	: gr. 1-2/9 systolic murmur at erb's
Lungs	: clear bs
Abdomen	: no masses palpable
Extremities	: hyperactive knee jerk on the left lower extremity

Impression:

HACVD
HPN Stage I
S/P CVA, to consider infarct with hemorrhage
Bronchial Asthma, in remission

Reason for Permanent Disability:

Seaman Gumapac had 4 episodes of numbness of left lower extremities with the left *(sic)* episode involving both upper and lower extremities over the left side, but despite above symptoms **no brain CT Scan nor a 2D ECHO done for proper evaluation of his condition**. Because of the repeated episodes of recurrent numbness of lower extremity, he is therefore given a permanent disability for he will not be able to perform his job effectively, efficiently and productively as a seaman.[16] (Emphasis in the original)

Due to the medical findings, petitioner was given a permanent disability grading as he will not be able to perform his job effectively, efficiently, and productively as a seaman.[17]

Petitioner later filed a complaint for total and permanent disability benefits against respondents with the Labor Arbiter. He alleged that the illnesses he sustained were work-related as it happened while he was performing his duties and responsibilities as an able-bodied seaman on board the vessel.

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[16] Id. at 63-64.

[17] Id. at 51.

He claimed that his entitlement to total and permanent disability benefits is warranted, considering that he was not able to recover completely since his repatriation on January 28, 2013 and could no longer perform the work he was accustomed to and trained for as evidenced by the permanent disability grading declared by Dr. Tan.[18]

On the other hand, respondents claimed that after the lapse of two (2) days from repatriation and upon oral communication of its local agents with petitioner, the latter refused to follow the required procedure and instructions for treatment and evaluation of his alleged condition. Petitioner also failed to comply with the three (3)-day mandatory reportorial requirement as provided under the POEA-SEC, as well as prevailing jurisprudence. Despite petitioner's non-cooperation, the local manning agent sent out a letter dated February 8, 2013 to the last known recorded address of petitioner to remind him of their instruction to report to the company-designated physician at Ygeia Medical Center for evaluation of his health condition.[19]

After a couple of days, respondents claimed that they were able to get in contact over the phone with petitioner who confirmed receipt of the letter. According to respondents, petitioner explained that he had already a new address and that he was no longer reporting to the local agents and company-designated physician as he opted to engage the services of a personal physician due to alleged numbness of half of his body. This conversation was reduced into writing in a letter dated February 15, 2013 which was sent to petitioner's new address. Thus, respondents averred that they were never given the chance to properly assess and evaluate petitioner's health condition by virtue of his unjust refusal to cooperate and to follow the procedures and instructions relayed to him.[20]

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[18] Id. at 52, 63.

[19] Id. at 52.

[20] Id. at 52-53.

Ruling of the Labor Arbiter

On April 29, 2014, the Labor Arbiter dismissed the complaint against respondents and denied petitioner's claim for total and permanent disability benefits. The Labor Arbiter held that petitioner failed to discharge the burden of evidence that he acquired the illness complained of from his work as an able-bodied seaman during his three (3)-month stint aboard MV Capetan Costas S, and that such illnesses manifested during the effectivity of his employment contract. Moreover, petitioner failed to submit himself to post-employment medical examination as mandated by the POEA-SEC. The Labor Arbiter was of the position that, although petitioner asserted that he reported to the manning agency upon his arrival, it is insufficient to establish his stance for lack of convincing evidence to support such allegation. In addition, petitioner did not have a cause of action for he was not armed with an assessment of total and permanent disability at the time he filed his compliant.[21]

Petitioner, thereafter, filed an appeal before the NLRC docketed as NLRC LAC No. 06-000498-14 (M).[22]

Ruling of the NLRC

On August 29, 2014, the NLRC reversed and set aside the ruling of the Labor Arbiter. The dispositive portion reads:

WHEREFORE, the Appeal for being meritorious is GRANTED. The judgment a quo is REVERSED and SET ASIDE and a NEW ONE entered as follows:

1. Respondents are in solidum ordered to pay complainant Harold B. Gumapac total permanent benefits equivalent to US$60,000.00 payable in peso equivalent, at the time of payment[;]
2. Sickness allowance in the amount of US$1,860.00; and
3. Ten (10%) percent of the money awards as attorney's fees.

SO ORDERED.[23]

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[21] Id. at 53.

[22] Id. at 15.

[23] Id. at 53-54.

Respondents moved for a reconsideration of the case but the same was denied in a Resolution[24] dated October 3, 2014. Consequently, respondents filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 138401.

Ruling of the CA

On July 17, 2017, the CA rendered a Decision[25] reversing the NLRC's Decision and thereby reinstating the Decision of the Labor Arbiter dated April 29, 2014, to wit:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. The assailed Decision of the NLRC dated 29 August 2014 and Resolution dated 3 October 2014 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision of the Labor Arbiter dated 29 April 2014 is **REINSTATED**. Meanwhile, petitioners' prayer for the issuance of temporary restraining order and writ of preliminary injunction is **DENIED** for being moot and academic.
>
> **SO ORDERED**.[26]

Petitioner's Motion for Reconsideration[27] was denied by the CA in its Resolution[28] dated March 21, 2018 for lack of merit. Hence, the present petition.

Issue

The issue for resolution is whether or not the CA erred in finding that petitioner failed to report for his medical referral within the three (3)-day period from his repatriation and in concluding that petitioner failed to adduce evidence showing that his illnesses are work-related which would entitle him to total and permanent disability benefits.[29]

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[24] Id. at 54.

[25] Id. at 49-65.

[26] Id. at 65.

[27] Not attached to the *rollo*.

[28] *Rollo*, pp. 47-48.

[29] Id. at 31-43.

Our Ruling

The Court finds the petition without merit.

In *Gamboa v. Maunlad Trans., Inc.*,[30] the Court held that:

> It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2(a), Rule X of the Amended Rules on Employee Compensation. By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer.[31]

After a thorough and exhaustive review of the records, We find that the CA, in its Decision dated July 17, 2017, did not commit any serious error of judgment that would warrant a reversal from this Court. On the contrary, the CA correctly ruled that the NLRC committed grave abuse of discretion in finding that petitioner is entitled to total and permanent disability benefits since petitioner miserably failed to adduce evidence to support his allegations that his illnesses are work-related and that he has complied with the mandatory three (3)-day reporting to the company-designated physician as a condition precedent under the POEA rules to constitute a cause of action.

In *China Banking Corporation v. Court of Appeals*,[32] We established that:

> Well-settled is the rule that since a cause of action requires, as essential elements, not only a legal right of the plaintiff and a correlative duty of the defendant but also "an act or omission of the defendant in violation of said legal right," the cause of action does not accrue

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[30] G.R. No. 232905, August 20, 2018.

[31] Id.

[32] 499 Phil. 770 (2005).

until the party obligated refuses, expressly or impliedly, to comply with its duty.[33]

In *Philippine National Bank v. Spouses Rivera*,[34] We held that the elements of cause of action 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) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[35]

It bears stressing that when petitioner filed his complaint on September 10, 2013 with the Labor Arbiter, he did not attach any medical certificate showing his illnesses. What is evident on record is that he managed to submit a medical certificate issued by Dr. Tan only on November 14, 2013 or two (2) months after he filed the complaint. Evidently, petitioner has no cause of action as he was unaware of his disability at the time he filed the complaint. Meanwhile, Section 20 (A) (6) of the Amended POEA-SEC, provides:

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

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

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[33] Id. at 774.

[34] 765 Phil. 450 (2016).

[35] Id. at 457.

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. (Emphasis supplied)

Rule X of the Amended Rules on Employees' Compensation (AREC), which implements Title II, Book IV of the Labor Code, states in part:

SECTION 2. *Period of Entitlement*. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at 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. (Emphasis supplied)

Thus, absent any disability grading at the time of filing of the complaint, petitioner has no ground for disability claims as he did not have any evidence to support it. Even assuming that petitioner has a cause of action, his claim for disability benefits should be denied for the following reasons:

Petitioner failed to report for his medical referral within the three (3)-day period from his repatriation.

The POEA-SEC requires the company-designated physician to make an assessment on the medical condition of the seafarer within 120 days from the seafarer's repatriation. Otherwise, the seafarer shall be deemed totally and permanently disabled.[36] Section 20 (A) (3) of the POEA-SEC provides:

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[36] *Phil-Man Marine Agency, Inc. v. Dedace, Jr.*, G.R. No. 199162, July 4, 2018.

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

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 of treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. **In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer.** Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

Given the above provision, it is incumbent upon the seafarer to submit himself to the company-designated physician within three (3) working days for post-employment medical examination as it is a requirement provided under the POEA-SEC.

Petitioner failed to provide this Court with any substantial evidence that he complied with the requirements provided under Section 20 of the POEA-SEC and that he submitted himself to a company-designated physician within three (3) working days after his repatriation in the Philippines. Time and again, it has been held that whoever claims entitlement to the benefits as provided by law should establish his or her right thereto by substantial evidence.[37] Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[38]

Upon evaluation of the records of this case, petitioner's bare allegation that he submitted himself to respondents' local manning agency within three (3) days from his repatriation falls short of this standard.

Petitioner failed to adduce evidence showing that his illnesses are work-related. Hence, he is not entitled to total and permanent disability benefits.

Whether or not petitioner's disability is compensable is essentially a factual issue. Yet this Court can and will be justified in looking into it, considering the conflicting views of the NLRC and the CA.[39]

Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the

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[37] *Malicdem v. Asia Bulk Transport Phils., Inc.*, G.R. No. 224753, June 19, 2019.

[38] *Meco Manning & Crewing Services, Inc.*, G.R. No. 222939, July 3, 2019.

[39] *Bandila Shipping, Inc. v. Abalos*, 627 Phil. 152, 156 (2010).

disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[40]

Under Article 192 (c) (1) of the Labor Code, a disability is deemed both permanent and total when the temporary total disability lasts continuously for more than 120 days, except as otherwise provided in the Rules.[41]

Similarly, Rule VII, Section 2 (b) of the AREC provides:

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

For disability to be compensable under Section 20 (B) (4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[42]

Jurisprudence is replete with cases bearing similar pronouncements of this Court. In *Magsaysay Maritime Corp. v. Cruz*,[43] We concluded that an interim disability grading is merely an initial prognosis and does not provide sufficient basis for an award of disability benefit, thus:

Notably, the September 5, 2008 Report provides: "Interim Disability Grade: If a disability grading will be made today[,] our patient falls under 'Moderate rigidity of two thirds loss of motion or lifting power' — Grade (8) eight." Being an interim disability grade, this declaration is an initial determination of respondent's condition for the time being.

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[40] *Hanseatic Shipping Philippines, Inc. v. Ballon*, 769 Phil. 567, 583-584 (2015).

[41] Article 198 (c) (1) based on the renumbered Labor Code, per DOLE Department Advisory No. 01, Series of 2015.

[42] *Leonis Navigation Co., Inc. v. Obrero*, 794 Phil. 481, 487 (2016).

[43] 786 Phil. 451 (2016).

It is only an initial prognosis of the health status of respondent because after its issuance, respondent was still required to return for re-evaluation, and to continue therapy and medication; as such, it does not fully assess respondent's condition and cannot provide sufficient basis for the award of disability benefits in his favor.

Moreover, in *Carcedo v. Maine Marine Philippines, Inc.*, the Court did not give credence to the disability assessment given by the company-designated doctor as the same was merely interim and not definite. This is because after its issuance, Dario A. Carcedo (seafarer therein) still continued to require medical attention. Similarly, herein respondent needed further treatment and physical therapy even after the Interim Disability Grade was given by the company-designated doctor on September 5, 2008.[44] (Emphasis supplied, citations omitted)

A careful review of the findings of the NLRC and the CA shows that petitioner was not able to meet the required degree of proof that his illness is compensable as it is work-related. The CA correctly ruled that petitioner was not able to sufficiently establish that he is entitled to disability benefits for failing to establish that the illness he sustained was work-related, thus:

The burden of proving the causal link between a claimant's work and the ailment suffered rests on the claimant's shoulder. The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. Thus, a claimant must submit such proof as would constitute a reasonable basis for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. Incidentally, the 2010 amended POEA-SEC defines work-related illness as any sickness which resulted from an occupational disease listed under Section 32-A subject to the conditions found therein x x x.

x x x x x x x x x

This Court is well aware of the principle that consistent with the purposes underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably and liberally in favor of the seafarers,

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[44] Id. at 463-464.

for it is only then that its beneficent provisions can be fully carried into effect. However, this catchphrase cannot be taken to sanction the award of disability benefits and sickness allowance based on flimsy evidence and even in the face of an unjustified non-compliance with the three-day mandatory reporting requirement under the POEA-SEC.[45]

A careful perusal of this case shows that petitioner failed to adduce concrete and sufficient evidence to prove that his illness is work-related. The permanent disability grading issued by Dr. Tan cannot be considered as an effective assessment for purposes of the POEA-SEC. It is a well-settled doctrine that if doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the employee.[46] However, We cannot put the burden on respondents when the record is bereft of any evidence showing any violation on their part.

WHEREFORE, in view of the foregoing, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The Decision dated July 17, 2017 and the Resolution dated March 21, 2018 of the Court of Appeals in CA-G.R. SP No. 138401 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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[45] *Rollo*, pp. 59-65.

[46] See *Cocoplans, Inc. v. Villapando*, 785 Phil. 734, 753 (2016).

SECOND DIVISION

[G.R. No. 239756. September 14, 2020]

RODOLFO C. MENDOZA, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANT OF ARREST; ANY DEFECT IN PETITIONER'S ARREST HAS BEEN CURED BY HIS VOLUNTARY ACT OF ENTERING A PLEA AND ACTIVELY PARTICIPATING IN THE TRIAL. — Herein petitioner claims that he was denied due process as his warrantless arrest was illegal. It is well-settled that failure to move for the quashal of an Information on this ground prior to arraignment bars an accused from raising the same on appeal under the doctrine of estoppel. The CA correctly held that any defect on the arrest of petitioner has been cured by his voluntary act of entering a plea and actively participating in the trial.

2. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA 7610) *VIS-À-VIS* REVISED PENAL CODE (RPC); ELEMENTS OF LASCIVIOUS CONDUCT UNDER SECTION 5(b), ARTICLE III OF RA 7610 AND ELEMENTS OF ACTS OF LASCIVIOUSNESS UNDER THE RPC, ENUMERATED; ELEMENTS OF BOTH CRIMES, PROVEN.— The Court concurs with the CA that all the elements of the crime of Acts of Lasciviousness under the RPC and Lascivious Conduct under Section 5 (b), Article III of RA 7610 have been sufficiently established in the case at bench. x x x The elements of the xxx offense [under Section 5 (b), Article III of RA 7610] are the following: (a) The accused commits the act of sexual intercourse or **lascivious conduct**; (b) The said act is performed with a child exploited in prostitution or **subjected to other sexual abuse**; and (c) The child, whether male or female, **is below 18 years of age.** When the lascivious act is committed against a minor below 12 years old, Section 5 (b), Article III of RA 7610 requires that, in addition to the foregoing requisites, the elements of the crime of Acts of Lasciviousness under Article 336 of the

RPC must likewise be met, to wit: (a) that the offender commits any **act of lasciviousness or lewdness**; (b) that it is done under any of the following circumstances: (i) through force, threat, or intimidation, (ii) when the offended party is deprived of reason or otherwise unconscious, (iii) by means of fraudulent machination or grave abuse of authority, and (iv) **when the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present; and (c) that the offended party is another person of either sex.

3. REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF THE ACCUSED, SUFFICIENTLY ESTABLISHED BY THE TESTIMONY OF THE VICTIM.— Contrary to the assertions of petitioner, though AAA only remembered him by his haircut, she had known him even before the kissing incident. AAA testified that she had known petitioner as he was working at the construction site where she lives and where the incident happened. AAA further testified that she has even seen petitioner at a store near the tricycle terminal where both of them were buying from the same store. It is well-entrenched in this jurisdiction that testimonies of child-victims are given full faith and credit since youth and immaturity are badges of truth and sincerity.

4. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, UPHELD.— [W]hen the issue is one of credibility of witnesses, it is well-settled that the appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide on the issue as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial. When the findings of the RTC are affirmed by the CA, these deserve great weight and are generally binding and conclusive upon the Court. Considering that there is no showing that the RTC overlooked or misapplied facts or circumstances of great weight, the findings and assessment of the RTC, which were affirmed by the CA, as regards the credibility of the witness, will be respected by the Court.

5. CRIMINAL LAW; RA 7610; LASCIVIOUS CONDUCT UNDER SECTION 5(b) OF RA 7610; PENALTY IMPOSED BY THE

COURT OF APPEALS AFFIRMED BUT THE COURT MODIFIED THE AWARD OF DAMAGES IN VIEW OF THE RULING IN *PEOPLE V. TULAGAN*.— Section 5 (b), Article III of RA 7610 provides that the imposable penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal* in its medium period. Applying the Indeterminate Sentence Law, and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum ranging from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, which is *reclusion temporal* in its medium period ranging from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days. The penalty imposed by the CA is proper. However, in consonance with the Court's pronouncement in *People v. Tulagan*, the damages awarded by the CA must be modified in that petitioner shall be liable to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated December 7, 2017 and the Resolution[3] dated May 9, 2018 of

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[1] *Rollo*, pp. 11-40.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Ma. Luisa Quijano Padilla and Maria Filomena D. Singh, concurring; id. at 42-50.

[3] Id. at 52-54.

the Court of Appeals (CA) in CA-G.R. CR No. 39430, which affirmed with modification the Decision[4] dated November 18, 2016 of the Regional Trial Court (RTC) of [redacted], in finding Rodolfo C. Mendoza (petitioner) guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5 (b), Article III of Republic Act No. (RA) 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Facts

Herein petitioner was charged with the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), RA 7610 in an Information that reads as follows:

> That on or about the 8th day of March 2016, in [redacted], Philippines, the said accused, with lewd designs by means of force and coercion, did then and there, willfully, unlawfully and feloniously perform lascivious acts upon the person of one AAA,[5] a nine (9) years (sic) old, minor, by then and there kissing her lips twice, done against her will and without her consent, which act debase, degrade and demean the intrinsic worth and dignity of the said child as a human being.
>
> CONTRARY TO LAW.[6]

When arraigned, petitioner pleaded not guilty to the crime charged. After the pre-trial conference, trial on the merits ensued.

Prosecution's Version of the Facts:

The prosecution presented the child victim, AAA and Police Officer II (PO2) Roygbiv Cristobal as its witnesses. AAA testified

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[4] Penned by Presiding Judge Roslyn M. Rabara-Tria; id. at 72-78.

[5] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims. To note, the unmodified CA Decision was not attached to the records to verify the real name of the victim.

[6] *Rollo*, p. 43.

that on March 8, 2016, at around 1:00 A.M., she woke up to urinate outside of the "barracks" (a house under construction), where she, her elder sister, BBB, and her brother-in-law, CCC, were sleeping. Suddenly, a man, later identified by AAA as petitioner, pulled her by her right arm, brought her to a dark place in front of the barracks and kissed her twice on the lips, with an interval of two (2) minutes. Allegedly, petitioner threatened AAA not to report the incident to the police. When petitioner ran towards a well-lighted place, she recognized petitioner, particularly his haircut. AAA also ran towards her father, who was in [redacted], and told him that somebody kissed her. They reported the incident at *Barangay* [redacted]. *Barangay* Police Security Officer (BPSO) Alvin Sausal assisted them and brought them and petitioner to the [redacted] Police Station for investigation.[7]

Even before the kissing incident, she already saw petitioner many times as he works in the area where she lives but does not know his name. AAA observed petitioner's haircut when both of them were buying food at the same time at the tricycle terminal. AAA testified that it was her sister BBB who told her the name of petitioner.[8]

Defense's Version of the Facts:

The defense presented petitioner as its sole witness. Petitioner interposed the defenses of denial and alibi. Petitioner alleged that he was sleeping at a temporary shelter with five (5) other workers, including CCC, AAA's brother-in-law. Upon waking up, he was surprised to learn that he was being charged for kissing AAA.[9]

The Ruling of the RTC

In its Decision[10] dated November 18, 2016, the RTC held that the prosecution was able to establish and prove the elements

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[7] Id. at 73.

[8] Id. at 84.

[9] Id. at 60.

[10] Id. at 72-78.

of the crime of acts of lasciviousness. The direct, clear and straightforward testimony of AAA was given credence by the RTC compared to petitioner's defense of bare denial. The RTC opined that petitioner's act of kissing a nine (9)-year-old child is morally inappropriate and indecent designed to abuse her.

The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Rodolfo Mendoza y Caryl guilty beyond reasonable doubt of Acts of Lasciviousness [Article 336 of the Revised Penal Code in relation to Sec. 5(b), Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act] and is sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period, as maximum.
>
> Accused is further ordered to pay private complainant AAA [₱]20,000.00 as civil indemnity, [₱]30,000.00 as moral damages and [₱]2,000.00 as exemplary damages.
>
> The amount of damages awarded are subject further to interest of six (6%) percent per annum from the date of finality of this judgment until they are fully paid.
>
> Let Mittimus issue.
>
> SO ORDERED.[11]

The Ruling of the CA

On appeal, petitioner argued that the RTC erred in convicting him considering that his arrest was illegal and that the prosecution failed to establish his identity beyond reasonable doubt. The CA denied his appeal on the following grounds: (a) petitioner is estopped from questioning the illegality of his arrest on appeal due to his failure to object to the illegality of his arrest prior to his arraignment; (b) the prosecution was able to establish the identity of petitioner as even though AAA remembered petitioner mainly by his haircut, she was already familiar with petitioner as she saw him working at the

[11] Id. at 77.

construction site before the incident; and (c) all the elements of the crime of acts of lasciviousness and the elements of sexual abuse under Section 5, Article III of RA 7610 have been proven in this case. The CA, however, modified the penalty imposed on petitioner.

The *fallo* of the now assailed CA Decision[12] is hereby reproduced, thus:

> **WHEREFORE**, the appeal is **DISMISSED**. The Decision dated 18 November 2016 of the Regional Trial Court, [redacted], finding accused-appellant Rodolfo C. Mendoza guilty of the crime of Acts of Lasciviousness or Article 336 of the Revised Penal Code, in relation to Sec. 5(b), Republic Act No. 7610 is **AFFIRMED** with **MODIFICATION** in that he is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term. The Court likewise upholds the civil indemnity subject to interest of six (6%) percent per annum from the date of finality of this judgment until they are fully paid.
>
> **SO ORDERED**.[13]

Aggrieved, petitioner elevated the case before the Court *via* Rule 45 of the Rules of Court submitting the following issues for the Court's resolution:

The Grounds of the Petition

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE ILLEGALITY OF HIS ARREST.

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL

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[12] Id. at 42-50.

[13] Id. at 49.

COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH ALL THE ELEMENTS OF THE CRIME CHARGED.

III.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS IDENTITY BEYOND REASONABLE DOUBT.

The Court's Ruling

The present petition is unmeritorious.

It bears to emphasize that in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court, the Court is only limited to questions of law. The Court is not a trier of facts and its function is limited to reviewing errors of law that may have been committed by the lower courts.[14]

Petitioner admits in his petition questions of fact and he asserts that this case falls under the exception[15] to the general rule considering that the factual findings of the lower courts do not conform to the evidence on record.

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[14] *Calaoagan v. People*, G.R. No. 222974, March 20, 2019.

[15] *Prudential Bank v. Rapanot*, 803 Phil. 294, 306 (2017): (1) when the findings, are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

An evaluation of the case shows that none of the exceptions are present in the case to warrant the review and reversal of the factual findings of the lower courts.

Even assuming that the exceptions are present in the case, the grounds interposed in the petition fail to convince the Court.

Petitioner is estopped from questioning the legality of his arrest.

Herein petitioner claims that he was denied due process as his warrantless arrest was illegal. It is well-settled that failure to move for the quashal of an Information on this ground prior to arraignment bars an accused from raising the same on appeal under the doctrine of estoppel.[16] The CA correctly held that any defect on the arrest of petitioner has been cured by his voluntary act of entering a plea and actively participating in the trial.

All the elements of the crime of Acts of Lasciviousness were duly established and proven.

In the present petition, herein petitioner asserts that the prosecution failed to establish elements of the crime charged, particularly the age or the minority of AAA. Petitioner asserts that, other than the allegation of AAA's age in the Information, the prosecution failed to present her birth certificate or any other authentic documentary evidence to prove her age or minority.

It is well-settled that the presentation of a birth certificate or other pieces of evidence are not at all times necessary to prove the age or minority of the victim. The courts may take judicial notice of the age of the victim especially if the victim is of tender age and it is quite manifest or obvious in the physical appearance of the child. The Court held that the crucial years pertain to the ages of 15 to 17 where minority may seem to be dubitable due to one's physical appearance.[17] In *People v.*

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[16] See *Roallos v. People*, 723 Phil. 655, 669 (2013).

[17] *People v. Tipay*, 385 Phil. 689, 718 (2000).

Rivera,[18] the Court held that the trial court can only take judicial notice of the victim's minority when the latter is, for example, 10 years old or below.[19]

As such, taking judicial notice of the age of AAA by the RTC and the CA is proper. It is worthy to mention that this particular issue is raised for the first time in the instant petition and petitioner never disputed the age of AAA during the proceedings before the RTC and even before the CA.

The Court concurs with the CA that all the elements of the crime of Acts of Lasciviousness under the RPC and Lascivious Conduct under Section 5 (b), Article III of RA 7610 have been sufficiently established in the case at bench.

Section 5 (b), Article III of RA 7610 provides that:

> Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration **or due to the coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse **or lascivious conduct, are deemed to be children exploited in** prostitution and **other sexual abuse**.
>
> The penalty of ***reclusion temporal* in its medium period to *reclusion perpetua*** shall be imposed upon the following:
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> x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, **That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period**[.] (Emphases supplied)

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[18] 414 Phil. 430 (2001).

[19] Id. at 459.

The elements of the foregoing offense are the following:

(a) The accused commits the act of sexual intercourse or **lascivious conduct**;

(b) The said act is performed with a child exploited in prostitution or **subjected to other sexual abuse**; and

(c) The child, whether male or female, **is below 18 years of age**.[20]

When the lascivious act is committed against a minor below 12 years old, Section 5 (b), Article III of RA 7610 requires that, in addition to the foregoing requisites, the elements of the crime of Acts of Lasciviousness under Article 336 of the RPC must likewise be met, to wit:

(a) that the offender commits any **act of lasciviousness or lewdness**;

(b) that it is done under any of the following circumstances:

(i) through force, threat, or intimidation,

(ii) when the offended party is deprived of reason or otherwise unconscious,

(iii) by means of fraudulent machination or grave abuse of authority, and

(iv) **when the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present; and

(c) that the offended party is another person of either sex.[21]

Firstly, petitioner was duly proven to have committed a lascivious or lewd act by kissing a nine (9)-year-old child on the lips against her will and intimidated her in not reporting the incident under threat of harm against her life.

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[20] *Olivarez v. CA*, 503 Phil. 421, 431 (2005).

[21] *People v. Ladra*, 813 Phil. 862, 873 (2017).

Secondly, the prosecution was able to sufficiently establish that AAA was subjected to other sexual abuse when she indulged in a lascivious conduct under the coercion or influence of an adult — petitioner.

As explained in *Caballo v. People*:[22]

> As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "*child exploited in prostitution and other sexual abuse*." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.
>
> In this relation, case law further clarifies that sexual intercourse or **lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will**.[23] (Emphasis supplied)

In relation thereto, the Court further explained the aspect of other sexual abuse in *Quimvel v. People*,[24] as cited in *People v. Eulalio*,[25] *viz.*:

> As regards the second additional element, it is settled that the child is deemed subjected to other sexual abuse when **the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party**. The law does not require physical violence on the person of the victim; **moral coercion or ascendancy is sufficient**.

The petitioner's proposition — that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense

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[22] 710 Phil. 792 (2013).

[23] Id. at 805.

[24] 808 Phil. 889 (2017).

[25] G.R. No. 214882, October 16, 2019.

was committed and, hence, he cannot be prosecuted under RA 7610 — is bereft of merit. **When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice**.[26]

The relative seniority of petitioner over AAA, who was merely nine (9) years old at the time of the incident, clearly established petitioner's moral ascendancy over AAA. As held in *Quimvel*, when the victim of the crime is a child under 12 years old, mere moral ascendancy will suffice to establish influence or intimidation and such elements of force and intimidation are subsumed in coercion and influence.[27]

Petitioner was sufficiently and appropriately identified.

Petitioner contends that his identity was not duly established by the prosecution considering that AAA, who is the prosecution's lone eyewitness, only identified the perpetrator by his haircut and she did not see other unique or identifying marks on the person who kissed her. There was no mention of the physique or the voice of the perpetrator that could have associated petitioner as the assailant.

Contrary to the assertions of petitioner, though AAA only remembered him by his haircut, she had known him even before the kissing incident. AAA testified that she had known petitioner as he was working at the construction site where she lives and where the incident happened. AAA further testified that she has even seen petitioner at a store near the tricycle terminal where both of them were buying from the same store.

It is well-entrenched in this jurisdiction that testimonies of child-victims are given full faith and credit since youth and immaturity are badges of truth and sincerity.[28] Moreover, when the issue is one of credibility of witnesses, it is well-settled that the appellate courts will generally not disturb the factual

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[26] *Quimvel v. People,* supra at 930-931.

[27] Id. at 994.

[28] See *People v. Lagbo*, 780 Phil. 834, 846 (2016).

findings of the trial court considering that it is in a better position to decide on the issue as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[29] When the findings of the RTC are affirmed by the CA, these deserve great weight and are generally binding and conclusive upon the Court.[30] Considering that there is no showing that the RTC overlooked or misapplied facts or circumstances of great weight, the findings and assessment of the RTC, which were affirmed by the CA, as regards the credibility of the witness, will be respected by the Court.

The Penalty and award of damages.

Section 5 (b), Article III of RA 7610 provides that the imposable penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal* in its medium period.

Applying the Indeterminate Sentence Law,[31] and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum ranging from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, which is *reclusion temporal* in its medium period ranging from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.[32]

The penalty imposed by the CA is proper.

However, in consonance with the Court's pronouncement in *People v. Tulagan*,[33] the damages awarded by the CA must

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[29] *People v. Menaling*, 784 Phil. 592, 599 (2016).

[30] See *People v. Galuga*, G.R. No. 221428, February 13, 2019.

[31] Act No. 4103, as amended.

[32] See *People v. Dagsa*, G.R. No. 219889, January 29, 2018, 853 SCRA 276.

[33] G.R. No. 227363, March 12, 2019.

be modified in that petitioner shall be liable to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

WHEREFORE, the instant petition is **DENIED**. The Decision dated December 7, 2017 and the Resolution dated May 9, 2018 of the Court of Appeals in CA-G.R. CR No. 39430 are hereby **AFFIRMED with MODIFICATIONS** in that petitioner Rodolfo C. Mendoza is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 240145. September 14, 2020]

JAIME CAPUETA *y* ATADAY, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA 7610) *VIS-À-VIS* REVISED PENAL CODE (RPC); ELEMENTS OF SEXUAL ABUSE UNDER SECTION 5, ARTICLE III OF RA 7160 AND ELEMENTS OF LASCIVIOUS CONDUCT UNDER ARTICLE 336 OF THE RPC, ENUMERATED; ELEMENTS OF BOTH CRIMES, PROVEN.— The elements of sexual abuse under Section 5 (b), Article III of RA 7610 are as follows: 1. The accused commits the act of sexual intercourse or *lascivious conduct*; 2. The said act is performed with a child exploited in prostitution *or subjected to other sexual abuse*; and 3. The child, whether male or female, is *below 18 years of age*. Concomitantly, pursuant to Section 5(b) of RA 7610, when the victim is under 12 years of age, the perpetrator shall be prosecuted under Article 336 of the RPC for lascivious conduct, which requires the presence of the following elements for its commission: (*a*) the offender commits any **act of lasciviousness or lewdness**; (*b*) the lascivious act is done under any of the following circumstances: (*i*) by using force or intimidation; (*ii*) when the offended party is deprived of reason or otherwise unconscious; or (*iii*) **when the offended party is under twelve (12) years of age**; and (*c*) the offended party is another person of either sex. All the elements of sexual abuse under Section 5 of RA 7610 and Acts of Lasciviousness under the RPC have been proven by the prosecution beyond reasonable doubt in the present case.

2. ID.; ID.; WHILE THE INFORMATION CHARGED THE ACCUSED OF VIOLATION OF SECTION 10(a) OF RA 7610, HIS CONVICTION OF SECTION 5(b), ARTICLE III OF THE SAME ACT DID NOT VIOLATE HIS CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.

— While the Information charged petitioner of violation of Section 10(a) of RA 7610, his conviction of Section 5(b), Article III of the same Act did not violate petitioner's constitutional right to be informed of the nature and cause of accusation against him. x x x In this case, the body of the Information charging petitioner contains an averment of the acts committed which unmistakably describes acts punishable under Section 5(b), Article III of RA 7610. The Information evidently recites the ultimate facts and circumstances constituting the offense for which petitioner was found guilty of. The Information, in fact, specifically alleges that petitioner committed acts of child abuse. Hence, petitioner cannot be said to have not been apprised of the nature and cause of accusation against him. The absence of the phrase "exploited in prostitution or subject to other sexual abuse" or even the specific mention of "coercion" or "influence" is not a bar for the Court to uphold the finding of guilt against an accused for violation of RA 7610.

3. ID.; ID.; HAVING BEEN FOUND GUILTY OF CHILD ABUSE THROUGH LASCIVIOUS CONDUCT UNDER SECTION 5(b) OF RA 7610, THE COURT AFFIRMED THE PENALTY IMPOSED BY THE COURT OF APPEALS BUT MODIFIED THE AWARD OF DAMAGES.— [B]oth the Information and the evidence on record spell out a case of child abuse through lascivious conduct punishable under Section 5(b) of RA 7610. Perforce, the Court finds no reason to reverse the CA's finding of guilt beyond reasonable doubt against petitioner. Anent the proper penalty to be imposed, under Section 5 of RA 7610, the penalty for lascivious conduct, when the victim is under 12 years of age, shall be *reclusion temporal* in its medium period, which ranges from 14 years, eight (8) months and one (1) day to 17 years and four (4) months. Accordingly, applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is 15 years, six (6) months and 20 days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or 12 years and one (1) day to 14 years and eight (8) months. Thus, the CA properly imposed the indeterminate penalty of 12 years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to 15 years, six (6) months, and 20 days of *reclusion temporal* in its medium period, as maximum. The Court, however,

deems it prudent to revise the award of damages in order to conform with recent jurisprudence. In *Tulagan*, the Court has declared that in cases of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of RA 7610, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each, taking into account that the imposable penalties for the said crimes are within the range of *reclusion temporal*. Moreover, in order to deter deleterious and wanton acts of elders who abuse and corrupt the youth, exemplary damages in the amount of ₱50,000.00 should likewise be awarded.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 30, 2018 and the Resolution[3] dated April 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39353. The CA affirmed the Decision[4] dated September 7, 2016 of the Regional Trial Court (RTC) of [redacted], Branch 254, which found Jaime Capueta *y* Ataday (petitioner) guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5 (b)

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[1] *Rollo*, pp. 12-29.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Fernanda Lampas Peralta and Maria Elisa Sempio Diy, concurring; id. at 31-45.

[3] Id. at 47-48.

[4] Penned by Presiding Judge Gloria Butay Aglugub, id. at 63-69.

of Republic Act No. (RA) 7610, also known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Facts

Petitioner was charged with violation of Section 10 (a) of RA 7610 in an Information which reads:

> That on or about November 16, 2008, in the [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously commit acts of child abuse on the person of AAA, a 6-year old minor by touching her legs, arms and private organ, demeaning and degrading her dignity as a child, and which act is prejudicial to her emotional and psychological development against her will and to her damage and prejudice.
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> CONTRARY TO LAW.[5]

Upon arraignment, petitioner pleaded not guilty to the charge. Whereupon, trial ensued.

To prove its case, the prosecution presented as witnesses the victim, AAA;[6] the victim's mother, BBB; and *Barangay Tanod* Arnel Cariaso (*Tanod* Cariaso). The testimony of the Officer-on-Case, Police Officer II Rhona Mea Padojinog (PO2 Padojinog),[7] was likewise presented but her testimony was dispensed with after the prosecution and the defense agreed to stipulate thereon.[8]

The evidence of the prosecution showed that in the afternoon of November 16, 2008, AAA and her brother were at the house

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[5] Id. at 63.

[6] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records, and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims. To note, the unmodified CA Decision was not attached to the records to verify the real name of the victim.

[7] Formerly Police Officer 1 (PO1).

[8] *Rollo*, p. 64.

owned by petitioner's sister. They were playing *bahay-bahayan* with their friend "Len-len" at the foot of the stairs when petitioner came down from the second floor. Upon reaching them at the stairway, petitioner suddenly lifted AAA's skirt, touched her right thigh and vagina, and then left. Horrified by what petitioner did to her, AAA ran home crying and reported the incident to BBB.[9]

When BBB learned about what petitioner had done, she immediately confronted petitioner but the latter denied doing anything wrong and instead uttered invectives at her. Petitioner then threatened to punch BBB prompting the latter to bring her daughter to the *barangay* hall and report to the authorities.[10]

Upon receiving the report of AAA and BBB, *Tanod* Cariaso, together with his fellow *tanods*, apprehended petitioner and brought him to the district hospital for medical examination. Thereafter, the *tanods* accompanied AAA and BBB to the Women and Children's Protection Desk of the [redacted] Police Station where they executed their sworn statements before PO1 Padojinog. Petitioner was then turned over to the police authorities.[11]

After presenting the testimonies of the witnesses, the prosecution formally offered the following documentary evidence: (1) *Sinumpaang Salaysay* of AAA, stating that petitioner had molested her; (2) *Sinumpaang Salaysay* of BBB, stating that she is the mother of AAA and that upon learning what petitioner had done, she accompanied her daughter to the *barangay* hall to report the incident; (3) *Sinumpaang Salaysay* of *Tanod* Cariaso stating that he and his fellow *tanods* arrested petitioner after receiving the report of AAA and BBB; (4) Birth Certificate of AAA showing her date of birth as February 22, 2002; and (5) Investigation Report dated November 18, 2008 prepared by Officer-on-Case, PO1 Padojinog.[12]

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[9] Id.

[10] Id. at 64-65.

[11] Id. at 65.

[12] Id.

In his defense, petitioner denied the charge and testified that in the afternoon of November 16, 2008, he was taking a nap on the second floor of their house. When he had woken up, he wanted to buy some cigarettes. As he was going down the narrow stairway, he tripped and fell to where AAA was standing causing him to accidentally hit AAA. Petitioner then got up and apologized to AAA and then proceeded to the store to buy cigarettes. When petitioner returned home, BBB suddenly began hitting him and accused him of molesting her daughter. BBB thereafter lodged a complaint against him at the *barangay* hall. BBB also demanded for him to pay the amount of ₱50,000.00 by way of settlement, but when he refused, the case was filed against him.[13]

The Ruling of the RTC

The RTC held that while petitioner was charged with violation of Section 10 (a) of RA 7610, the facts established during the course of the trial showed that the crime actually committed by petitioner is sexual abuse through lascivious conduct and found petitioner to be instead guilty beyond reasonable doubt of violation of Section 5 (b), Article III of RA 7610.[14] The RTC then rendered a Decision[15] convicting petitioner, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, the Court hereby finds accused JAIME CAPUETA y ATADAY *GUILTY* beyond reasonable doubt of violation of Section 5(b), Article III of Republic Act No. 7610, and is hereby sentenced to TWELVE (12) YEARS, TEN (10) MONTHS and TWENTY-ONE (21) DAYS of reclusion temporal as minimum, to FIFTEEN (15) YEARS, SIX (6) MONTHS and TWENTY (20) DAYS of reclusion temporal as maximum; and to pay *AAA*, the amount of TWENTY THOUSAND (₱20,000.00) PESOS as civil indemnity; FIFTEEN THOUSAND (₱15,000.00) PESOS as moral damages; and FIFTEEN THOUSAND (₱15,000.00) PESOS as fine, the amounts of which shall all bear interest at the

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[13] Id. at 65-66.

[14] Id. at 66-68.

[15] Id. at 63-69.

rate of six (6%) percent per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[16]

The RTC gave full faith and credence to the testimony of AAA, pointing out that despite her tender age, she did not waiver in her accusation that petitioner molested her by lifting up her skirt and touching her legs, thighs, and vagina. The RTC added that AAA's act in immediately reporting the incident to BBB and to the authorities belied any doubt on her credibility.[17]

On the contrary, the RTC found petitioner's denial of the charge to be unconvincing for being weak in the face of the positive testimony of AAA. The RTC further pointed out that petitioner even admitted being at the scene of the crime at the exact time and date of its commission.[18]

The Ruling of the CA

The CA affirmed the ruling of the RTC that the prosecution had duly proven the elements of the crime of Acts of Lasciviousness, under the RPC, as well as lascivious conduct under Section 5 (b) of RA 7610. The CA held that the prosecution was able to prove AAA's minority at the time of the incident and that petitioner exercised intimidation over AAA and committed lascivious conduct against her by touching her legs, arm, and vagina.[19]

The CA upheld the credibility of AAA noting that she remained consistent in her account of the horrid experience in the hands of petitioner and even maintained that petitioner's act of touching her vagina was intentional.[20] On the other hand, the CA rejected petitioner's denial and lack of intent on the

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[16] Id. at 69.

[17] Id. at 68.

[18] Id. at 68-69.

[19] Id. at 35-42.

[20] Id. at 39-40.

part of petitioner for his failure to present clear and convincing evidence to support his claim.[21]

The CA, however, modified the penalty imposed by the RTC noting the absence of mitigating or aggravating circumstances in the commission of the crime. The CA then rendered the herein assailed Decision,[22] the dispositive portion of which reads:

> **WHEREFORE**, the instant appeal is **DENIED**. The September 7, 2016 *Decision* of the [redacted] Regional Trial Court, Branch 254, (RTC) in the case docketed as Criminal Case No. 08-0956 is hereby **AFFIRMED WITH MODIFICATION** in that the accused-appellant is hereby sentenced to suffer an indeterminate penalty of ***twelve (12) years and one (1) day of reclusion temporal in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of reclusion temporal in its medium period, as maximum***.
>
> All other aspects of the *fallo* of the assailed Decision **STAND**.
>
> **SO ORDERED**.[23]

The Issue

Whether the CA committed grave error in affirming the RTC's ruling that petitioner is guilty beyond reasonable doubt of Acts of Lasciviousness, in relation to Section 5 (b) of RA 7610.

Petitioner's Arguments

Petitioner contends that the prosecution failed to prove all the elements of Section 5 (b) of RA 7610. First, petitioner asserts that criminal intent on his part is wanting since the records are bereft of any evidence showing that he had the intention of touching, either directly or indirectly, the private parts of AAA. Petitioner likewise argues that the Information filed against him did not allege the presence of the second element of Section 5 (b), *i.e.*, that the act is performed with a child exploited

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[21] Id. at 38 and 42-43.

[22] Id. at 31-45.

[23] Id. at 44.

in prostitution or subjected to other sexual abuse, and that neither was there an attempt on the part of the prosecution to prove the same. Thus, his constitutional right to be informed of the nature and cause of accusation against him was violated.

The Ruling of the Court

The Court finds no merit in the petition.

Section 5 (b), Article III of RA 7610 provides:

> **Section 5.** ***Child Prostitution and Other Sexual Abuse***. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:
>
> x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and
>
> x x x x

The elements of sexual abuse under Section 5(b), Article III of RA 7610 are as follows:

1. The accused commits the act of sexual intercourse or *lascivious conduct*;

2. The said act is performed with a child exploited in prostitution *or subjected to other sexual abuse*; and

3. The child, whether male or female, is *below 18 years of age*.[24]

Concomitantly, pursuant to Section 5 (b) of RA 7610, when the victim is under 12 years of age, the perpetrator shall be prosecuted under Article 336 of the RPC for lascivious conduct, which requires the presence of the following elements for its commission: (*a*) the offender commits any **act of lasciviousness or lewdness**; (*b*) the lascivious act is done under any of the following circumstances: (*i*) by using force or intimidation; (*ii*) when the offended party is deprived of reason or otherwise unconscious; or (*iii*) **when the offended party is under twelve (12) years of age**; and (*c*) the offended party is another person of either sex.[25]

All the elements of sexual abuse under Section 5 of RA 7610 and Acts of Lasciviousness under the RPC have been proven by the prosecution beyond reasonable doubt in the present case.

First element. It has been proven beyond reasonable doubt that petitioner committed lascivious conduct against AAA. Lascivious conduct is defined in Section 2 (h) of the Implementing Rules and Regulations (IRR) of RA 7610 as:

> The intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[26]

In this case, the trial court found AAA's testimony that petitioner molested her by lifting up her skirt and touching her legs, thighs, and vagina to have been given in a clear, candid, and categorical manner, worthy of faith and belief. Moreover, AAA positively identified petitioner as her molester.

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[24] *Monroy v. People*, G.R. No. 235799, July 29, 2019.

[25] *Fianza v. People*, 815 Phil. 379, 389-390 (2017).

[26] *Awas v. People*, 811 Phil. 700, 709 (2017).

In *Quimvel v. People*,[27] the Court ruled:

> Well-settled is the rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court. This is so because the observance of the deportment and demeanor of witnesses are within the exclusive domain of the trial courts. Thus, considering their unique vantage point, trial courts are in the best position to assess and evaluate the credibility and truthfulness of witnesses and their testimonies.[28]

Petitioner's defense that he had no criminal intent or lewd design necessarily fails in the face of the competent and firm testimony of AAA that petitioner groped her private parts with the intent of molesting and demeaning her. Moreover, petitioner's alibi that he merely tripped and fell from the stairs causing him to accidentally hit AAA was not only unsubstantiated, it was successfully belied by AAA. Even on cross examination, AAA remained consistent in her testimony that petitioner did not fall or stumble from the stairs but that petitioner in fact approached her, reached for her legs before he lifted her skirt and touched her vagina. As the CA aptly ratiocinated, the fact that AAA went home crying and terrified after what petitioner had done clearly demonstrated that she was intimidated by petitioner and was subjected to an act so malicious and appalling that she felt violated. The Court has repeatedly held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.[29]

Second element. The fact that petitioner performed the lewd acts with a child within the purview of sexual abuse is established.

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[27] 808 Phil. 889, 927-928 (2017).

[28] Id. at 927-928.

[29] *People v. Sanico*, 741 Phil. 356, 374 (2014).

In *Quimvel*, the Court held that Section 5, paragraph (b) of RA 7610 which punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children.[30]

As case law has it, intimidation need not necessarily be irresistible. In *People v. Tulagan*,[31] the Court further explained:

> It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[32]

Moreover, the absence of force or intimidation is immaterial where the victim of the acts of lasciviousness is below 12 years of age,[33] such as in this case.

Third element. AAA's minority was duly established by her birth certificate which shows that she was only at the tender age of six (6) years old when the crime was committed.

Contrary to the contention of petitioner, the Information filed against him sufficiently alleged the element that the lascivious act was committed against a child subjected to sexual abuse. While the Information charged petitioner of violation of Section 10 (a) of RA 7610, his conviction of Section 5 (b), Article III of the same Act did not violate petitioner's constitutional right

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[30] Id. at 917.

[31] G.R. No. 227363, March 12, 2019.

[32] Id.

[33] See *Awas v. People,* supra note 26, at 707.

to be informed of the nature and cause of accusation against him. The Court held in *Tulagan*:[34]

> The failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information.[35]

In *Escalante v. People*,[36] the Court further explained that:

> It is doctrinal that it is not the title of the complaint or information which is controlling but the recital of facts contained therein. The information must sufficiently allege the acts or omissions complained of to inform a person of common understanding what offense he is being charged with — in other words the elements of the crime must be clearly stated. x x x.[37]

In this case, the body of the Information charging petitioner contains an averment of the acts committed which unmistakably describes acts punishable under Section 5 (b), Article III of RA 7610. The Information evidently recites the ultimate facts and circumstances constituting the offense for which petitioner was found guilty of. The Information, in fact, specifically alleges that petitioner committed acts of child abuse. Hence, petitioner cannot be said to have not been apprised of the nature and cause of accusation against him. The absence of the phrase "exploited in prostitution or subject to other sexual abuse" or even the specific mention of "coercion" or "influence" is not a bar for the Court to uphold the finding of guilt against an accused for violation of RA 7610.[38]

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[34] *People v. Tulagan,* supra note 31.

[35] Id.

[36] 811 Phil. 769 (2017).

[37] Id. at 782.

[38] See *Quimvel v. People,* supra note 27.

In fine, both the Information and the evidence on record spell out a case of child abuse through lascivious conduct punishable under Section 5 (b) of RA 7610. Perforce, the Court finds no reason to reverse the CA's finding of guilt beyond reasonable doubt against petitioner.

Anent the proper penalty to be imposed, under Section 5 of RA 7610, the penalty for lascivious conduct, when the victim is under 12 years of age, shall be *reclusion temporal* in its medium period, which ranges from 14 years, eight (8) months and one (1) day to 17 years and four (4) months. Accordingly, applying the Indeterminate Sentence Law,[39] the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is 15 years, six (6) months and 20 days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or 12 years and one (1) day to 14 years and eight (8) months.[40] Thus, the CA properly imposed the indeterminate penalty of 12 years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to 15 years, six (6) months, and 20 days of *reclusion temporal* in its medium period, as maximum.

The Court, however, deems it prudent to revise the award of damages in order to conform with recent jurisprudence. In *Tulagan*, the Court has declared that in cases of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b) of RA 7610, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each, taking into account that the imposable penalties for the said crimes are within the range of *reclusion temporal*. Moreover, in order to deter deleterious and wanton acts of elders who abuse and corrupt the youth, exemplary damages in the amount of ₱50,000.00 should likewise be awarded.

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[39] Act No. 4103, as amended.

[40] *People v. Tulagan,* supra note 31.

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. Accordingly, the Decision dated January 30, 2018 and the Resolution dated April 23, 2018 of the Court of Appeals in CA-G.R. CR No. 39353 are hereby **AFFIRMED** with **MODIFICATION** on the award of damages. Petitioner Jaime Capueta *y* Ataday is **ORDERED** to pay the victim, AAA, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. An interest at the legal rate of six percent (6%) *per annum* is also imposed on the total judgment award computed from the finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Hernando,* and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 241437. September 14, 2020]

ALBAY ELECTRIC COOPERATIVE, INC. (ALECO), *Petitioner*, *v.* **ALECO LABOR EMPLOYEES ORGANIZATION (ALEO),** *Respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EFFECTS OF THE ASSUMPTION ORDER ISSUED BY THE SECRETARY OF LABOR; THE STATUS *QUO* TO BE MAINTAINED REFERS TO THAT WHICH WAS PREVAILING THE DAY BEFORE THE STRIKE; PURPOSE.— The effects of an assumption order issued by the Secretary of Labor are two-fold: (a) it enjoins an impending strike on the part of the employees, and (b) it orders the employer to maintain the status *quo*. In cases where a strike has already taken place, as in this case, the assumption order shall have the effect of: (a) directing all striking workers to immediately return to work (return-to-work order), and (b) mandating the employer to immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike. The status *quo* to be maintained under Article 278 [263] of the Labor Code refers to that which was prevailing the day before the strike. x x x The Court also held in [*San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*] that the purpose of maintaining the status *quo* is to avoid any disruption to the economy while the labor dispute is being resolved in the proper forum. The objective is to minimize, if not totally avert, any damage that such labor dispute might cause upon the national interest by occasion of any work stoppage or slow-down. It follows then, as also demonstrated by the Court in the above case, that the directive to maintain the status *quo* extends only until the labor dispute has been resolved. Thus, as applied in this case, the status *quo* mandated by the Assumption Order extends from the date of its issuance until the Secretary of Labor's resolution of the dispute between the parties on April 29, 2016.

2. ID.; ID.; ID.; AWARD OF BACKWAGES TO VALIDLY RETRENCHED EMPLOYEES IS PROPER AS SATISFACTION OF THE EMPLOYER'S OBLIGATION TOWARDS THEM COVERED BY THE ASSUMPTION ORDER; INCLUSION AND RECKONING POINT IN THE COMPUTATION OF BACKWAGES.— [T]he award of backwages is proper—not as a penalty for non-compliance with the Assumption Order as argued by ALEO—but as satisfaction of ALECO's obligation towards the employees covered by the Assumption Order. On said date, the obligation of the employer to re-admit the striking employees and/or ***pay*** them their respective salaries and benefits arose. However, there is no proof that the affected employees were in fact paid by ALECO their corresponding salaries and benefits. Because of ALECO's failure to perform this obligation, and to give the affected employees what has become due to them as of January 10, 2014, backwages should be awarded. In illegal dismissal cases, backwages refer to the employee's supposed earnings had he/she not been illegally dismissed. As applied in this case, backwages correspond to the amount ought to have been received by the affected employees if only they had been reinstated following the Assumption Order. This shall similarly include not only the employee's basic salary but also the regular allowances being received, such as the emergency living allowances and the 13th month pay mandated by the law, as well as those granted under a CBA, if any. Applying the foregoing discussion, the Court finds that the CA did not err in affirming the award of backwages. Moreover, consistent with *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*, the CA also correctly limited the computation of backwages until April 29, 2016.

APPEARANCES OF COUNSEL

The Law Firm of Marasigan & Associates for petitioner.
Omar M. Mayo, co-counsel for petitioner.
Regala Llagas & Lelis Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Through the present Petition for Review on *Certiorari*[1] (Petition), petitioner Albay Electric Cooperative, Inc. (ALECO) assails both the Decision[2] dated August 10, 2018 of the Court of Appeals, Special Sixteenth Division (CA), in CA-G.R. SP No. 149409, and the Resolution[3] dated January 17, 2018 of the Secretary of the Department of Labor and Employment (Secretary of Labor) in OS-VA-2014-01.

Facts of the Case

The facts of the case, as narrated by the CA in its August 10, 2018 Decision, are as follows:

> [ALECO] is an electric cooperative which holds a franchise for the retail distribution of electricity for the province of Albay, while [respondent ALECO Labor Employees Organization (ALEO)] is the collective bargaining agent of [ALECO]'s employees.
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> As reported by ALECO Finance Manager, Atty. Lynne Rose Baroga, during the Special General Membership Assembly held on March 24, 2012, [ALECO] was suffering from financial distress with its current payables to the Philippine Electricity Market Corporation (PEMC) already amounting to Php134 million. In addition, it has unpaid obligations to the National Grid Corporation of the Philippines (NGCP), Philippine Rural Electric Association (PHILRECA), other suppliers and contractors, as well as its retirees, in the aggregate amount of Php87 million. Overall, [ALECO] then had long term obligations to the foregoing creditors of Php3.1 billion.
>
> Thus, efforts were undertaken to rehabilitate the struggling electric cooperative. [ALECO] was pushing for Private Sector Participation (PSP) as its appropriate rehabilitation strategy, while [ALEO] was

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

[2] Id. at 1120-1134. Penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Edwin D. Sorongon and Ma. Luisa Quijano-Padilla.

[3] Id. at 863-865.

insisting on the Cooperative-to-Cooperative (C2C) rehabilitation scheme. Under the PSP, the current employees of ALECO shall be required to tender their courtesy resignation to give flexibility to the incoming private sector concessionaire, but they shall receive separation pay based on the existing collective bargaining agreement (CBA) with ALEO, and shall have priority in rehiring based on the standards set by the concessionaire.

In a letter dated April 8, 2013 addressed to Atty. Veronica S. Briones ([National Electrification Administration (NEA)] Project Supervisor for ALECO), Bishop Joel Z. Baylon (Chair, Interim Board of Directors for ALECO) and Reynaldo B. Reverente (OIC GM for ALECO), ALEO President Dexter Brutas expressed grievance over the conditions set under the PSP.

Thus, on April 15, 2013, ALEO sought preventive mediation before the National Conciliation and Mediation Board (NCMB), Regional Branch No. 5, for unfair labor practices. The parties, however, failed to settle their differences which constrained [ALEO] to file a notice of strike on April 25, 2013. It conducted a strike vote on May 10, 17 and 20, 2013 with 217 out of 235 members voting for a strike.

Subsequently, in a referendum held on September 14, 2013 to determine the appropriate rehabilitation measure to be undertaken by [ALECO], the PSP was eventually chosen. In a public bidding held earlier, the San Miguel Power Holdings Corporation (San Miguel Power) emerged as the winning bidder and was awarded the concession under the PSP.

Still, ALEO went on strike on September 23, 2013.

Nonetheless, with the PSP adopted, *Notices of Retrenchment* were served on all of [ALECO]'s employees under *Office Memorandum No. 216* dated October 23, 2013.

As the labor dispute continued without any of the parties yielding, [ALECO,] [by virtue of an Interim Board Resolution No. 2014-003, Series of 2014, and] through a letter dated January 7, 2014 signed by Bishop Baylon, formally requested the Secretary of Labor to assume jurisdiction over the controversy. [ALEO] concurred with [ALECO].

The Secretary of Labor assumed jurisdiction on January 10, 2014 and correspondingly issued a *Return-to-Work Order* of even date.[4]

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[4] Id. at 1222-1224. Italics in the original.

Ruling of the Secretary of Labor

In a Resolution dated April 29, 2016, the Secretary of Labor upheld the validity of the retrenchment of ALECO's employees and ordered ALECO to pay them backwages and other benefits computed from January 10, 2014 until the finality of the said Resolution. The Secretary of Labor also ordered ALECO to pay the retrenched employees their separation benefits in accordance with the CBA.

The pertinent dispositive portion of Resolution dated April 29, 2016 reads as follows:

"**WHEREFORE**, premises considered, this Office finds the retrenchment of employees at ALECO **VALID**.

But by virtue of the Assumption of Jurisdiction Order dated 10 January 2014, ALECO is **ORDERED TO PAY** accrued backwages and other benefits reckoned from 10 January 2014, the date of the issuance of the Assumption Order of the Secretary of Labor and Employment directing reinstatement of all ALEO members who have not accepted separation benefits on 25 December 2013, until the finality of this Resolution. Moreover, ALECO is **ORDERED TO PAY** separation benefits, computed pursuant to the Collective Bargaining Agreement (CBA), due them in view of the retrenchment.

[x x x x]

SO RESOLVED."[5]

Both parties sought partial reconsideration of the above Resolution, but were denied in a Resolution[6] dated December 2, 2016. With the denial of its Motion for Reconsideration, ALECO filed with the CA a petition for *certiorari*[7] under Rule 65.

In the meantime, execution proceedings ensued below and the Secretary of Labor issued the Resolution[8] dated January 17,

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[5] Id. at 1121.

[6] Id. at 83-92.

[7] Id. at 28-62.

[8] Supra note 3.

2018 (January 17, 2018 Resolution) which directed the execution of the Resolution dated April 29, 2016 with modification to the effect that the payment of backwages and other benefits shall only cover the period from January 10, 2014 until December 19, 2016, the date of the finality of the Resolution dated December 2, 2016. Accordingly, the Secretary of Labor approved the sheriff's computation of the monetary award covering 78 employees.

Ruling of the CA

In its August 10, 2018 Decision, the CA affirmed the April 29, 2016 and December 2, 2016 Resolutions of the Secretary of Labor with modification on the computation of the backwages. The decretal portion of which reads:

> WHEREFORE, the Court resolves to **GRANT** the Petition in part. The period for computation of the backwages awarded in public respondent Secretary of Labor and Employment's *Resolutions* is hereby fixed to be from the date of the *Return-to-Work Order* on January 10, 2014 up to the issuance of *Resolution* dated April 29, 2016.
>
> Additionally, ALECO is ordered to pay interest at the rate of six percent (6%) per annum on all monetary awards as modified[,] computed from the finality of this *Decision* until fully paid.
>
> **SO ORDERED**.[9]

Aggrieved, ALECO filed the present Petition.

With respect to the August 10, 2018 Decision, ALECO argues that the award of backwages is not proper in this case given the Court's pronouncement in *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT*.[10] Alternatively, ALECO argues that the computation of backwages should only be limited to the period when the striking employees actually reported back to work. Meanwhile, as regards the January 17, 2018 Resolution,

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[9] Id. at 1133.

[10] G.R. No. 190389, April 19, 2017, 823 SCRA 598.

ALECO, citing *Banco Filipino Savings and Mortgage Bank v. Lazaro*,[11] maintains that the base amount for the computation of backwages and separation pay should correspond to the monthly compensation prevailing before the strike and the one prevailing before the retrenchment took effect, respectively. In addition, ALECO questions the inclusion of three groups of employees in the award of backwages for being in excess of the Secretary of Labor's authority under Article 278 [263] of the Labor Code. Finally, ALECO argues that the Secretary of Labor usurped legislative authority when it disallowed all deductions to be made from the separation pay due to the employees.

In its Comment[12] dated July 10, 2019, ALEO counters that the award of backwages is consistent with Section 278 [263] (g) of the Labor Code which prescribes backwages, among others, as disciplinary action for non-compliance with any of the Secretary of Labor's orders. However, relying on *Bani Rural Bank, Inc., et al. v. De Guzman*,[13] ALEO claims that the backwages should accrue until December 19, 2016. With respect to ALECO's challenge on the January 17, 2018 Resolution, ALEO contends that the present Petition is not the proper remedy to do so. Lastly, ALEO challenges the August 10, 2018 Decision for affirming the validity of the retrenchment, as well as the denial of its claims for damages and attorney's fees.

ALECO reiterates its arguments in its Reply[14] dated October 1, 2019, and adds that ALEO can no longer question the legality of the retrenchment and its non-entitlement to damages and attorney's fees since it did not raise these matters in a petition for *certiorari* before the CA.

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[11] G.R. Nos. 185346 & 185442, June 27, 2012, 675 SCRA 307.

[12] *Rollo*, pp. 1156-1177.

[13] G.R. No. 170904, November 13, 2013, 709 SCRA 330.

[14] *Rollo*, pp. 1185-1194.

Issues

The parties submit the following procedural and substantive issues for resolution of the Court:

1. Whether ALECO can assail the January 17, 2018 Resolution of the Secretary of Labor through the instant Petition, and if so:
   a. Whether the computation of monetary award affirmed in the January 17, 2018 Resolution used the correct base amount;
   b. Whether the January 17, 2018 Resolution was correct in including the three groups of employees in the award of backwages; and
   c. Whether the January 17, 2018 Resolution was correct in disallowing deductions from the separation pay.
2. Whether ALEO can still challenge the validity of the retrenchment of ALECO's employees and raise anew its claims for damages and attorney's fees;
3. Whether the CA erred in sustaining the Secretary of Labor's award of backwages; and
4. Whether the CA erred in reducing the period for which ALECO is liable for payment of backwages.

The Court's Ruling

On the procedural matters, the Court finds no merit in the arguments of both parties.

ALECO assails the January 17, 2018 Resolution of the Secretary of Labor for erroneously: (1) forbidding any deductions to be made from the separation pay due to employees/members of ALEO; (2) affirming the allegedly bloated computation of backwages and separation pay; and (3) including three groups of employees (*i.e.*, those terminated for cause before the strike, those deemed separated before the strike in accordance with NEA Guidelines for joining the 2013 Barangay Elections, and those who did not join the strike and reported for work until December 31, 2013) in the award of backwages.

However, it is a long-standing rule that decisions rendered by the Secretary of Labor under the Labor Code, such as the January 17, 2018 Resolution, must be challenged through a petition for *certiorari* under Rule 65 before the CA.[15] Clearly, the present Petition is not the proper remedy to assail the January 17, 2018 Resolution.

Even so, inasmuch as the January 17, 2018 Resolution was issued relative to the execution of the Resolution dated April 29, 2016, which is the subject of the present appeal, the effectivity of the former depends on the disposition of the present Petition, *i.e.*, whether the Resolution dated April 29, 2016 will be reinstated. Otherwise, the January 17, 2018 Resolution will become moot.

Similarly, ALEO cannot assail the validity of the retrenchment of ALECO's employees, as well as the denial of its claims for damages and attorney's fees, through the present proceedings. As correctly held by the CA, the Resolution dated April 29, 2016, insofar as these matters are concerned, is already final.[16] As such, and following the doctrine of finality of judgment, the Resolution dated April 29, 2016 may no longer be modified in these respects even by the Court.[17] While there are exceptions to this doctrine, none of those obtain in this case.[18]

Having addressed the procedural issues, the Court shall now decide the substantive issues regarding the award of backwages.

ALECO argues that the CA erred in sustaining the award of backwages in view of the pronouncement of the Court in *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT* that "[t]he award of reinstatement, including backwages, is awarded

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[15] *PHILTRANCO Service Enterprises, Inc. v. Philtranco Workers Union-Association of Genuine Labor Organizations (PWU-AGLO)*, G.R. No. 180962, February 26, 2014, 717 SCRA 340, 352.

[16] Supra note 9.

[17] *National Power Corporation v. Delta P, Inc.*, G.R. No. 221709, October 16, 2019.

[18] Id.

by a Labor Arbiter to an illegally dismissed employee x x x."[19] In addition, ALECO claims that it complied with the return-to-work order as early as January 14, 2014. As such, it was not only erroneous for the Secretary of Labor and the CA to conclude that it failed to comply with the Order dated January 10, 2014 (Assumption Order), but also to use such conclusion to justify the award of backwages. Alternatively, ALECO argues that backwages should accrue only until February 26, 2014, the date when the returning employees last reported for work. It laments the failure of the Secretary of Labor to resolve the controversy within 30 days as provided in the Labor Code which caused the backwages to accrue excessively, and stresses its inability to pay such allegedly excessive amount in view of the cessation of the electric cooperative's operation under ALECO. ALECO fails to convince the Court.

ALECO cannot fully rely on the case of *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT*. In the said case, the Court did not rule on the entitlement of employees to backwages for the period beginning from the issuance of the return-to-work order until the resolution of the dispute by the National Labor Relations Commission (NLRC). Rather, the ruling was limited to the propriety of reinstating the employees even after the NLRC had declared their dismissal valid, and even after said NLRC ruling had superseded the Secretary of Labor's return-to-work order. As declared by the Court therein — "there is no basis to reinstate the employees who were terminated as a result of redundancy."[20] To be sure, *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT* does not altogether prohibit the award of backwages outside illegal dismissal cases.

That being said, even in the absence of illegal dismissal in this case, the Secretary of Labor has the authority to award and was not mistaken in awarding backwages.

The Secretary of Labor assumed jurisdiction over the labor dispute between the parties on January 10, 2014 and issued a

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[19] Supra note 10 at 625.

[20] Id. at 627.

return-to-work order on even date pursuant to Article 278 [263] (g) of the Labor Code, which provides that:

> Art. 278. [263] Strikes, picketing, and lockouts. — x x x
>
> x x x x
>
> (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. **If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.** The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.
>
> x x x x (Emphasis supplied.)

The effects of an assumption order issued by the Secretary of Labor are two-fold: (a) it enjoins an impending strike on the part of the employees, and (b) it orders the employer to maintain the *status quo*.[21] In cases where a strike has already taken place, as in this case, the assumption order shall have the effect of: (a) directing all striking workers to immediately return to work (return-to-work order), and (b) mandating the employer to immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike.

The *status quo* to be maintained under Article 278 [263] of the Labor Code refers to that which was prevailing the day before the strike. As explained by the Court in *San Fernando*

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[21] *Digital Telecommunications Philippines, Inc. v. Digitel Employees Union (DEU)*, G.R. Nos. 184903-04, October 10, 2012, 683 SCRA 466, 483.

Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI):[22]

Of important consideration in this case is the return-to-work order, which the Court characterized in *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, as "interlocutory in nature, and is merely meant to maintain *status quo* while the main issue is being threshed out in the proper forum." The *status quo* is simply the status of the employment of the employees the day before the occurrence of the strike or lockout.

Based on the foregoing, from the date the [Department of Labor and Employment (DOLE)] Secretary assumes jurisdiction over a dispute until its resolution, the parties have the obligation to maintain the status *quo* while the main issue is being threshed out in the proper forum — which could be with the DOLE Secretary or with the NLRC. This is to avoid any disruption to the economy and to the industry of the employer — as this is the potential effect of a strike or lockout in an industry indispensable to the national interest — while the DOLE Secretary or the NLRC is resolving the dispute.

Since the union voted for the conduct of a strike on June 11, 2009, when the DOLE Secretary issued the return-to-work order dated June 23, 2009, this means that the status *quo* was the employment status of the employees on June 10, 2009. This status *quo* should have been maintained until the NLRC resolved the dispute in its Resolution dated March 16, 2010, where the NLRC ruled that CCBPI did not commit unfair labor practice and that the redundancy program was valid. This Resolution then took the place of the return-to-work order of the DOLE Secretary and CCBPI no longer had the duty to maintain the status *quo* after March 16, 2010.[23]

The Court also held in the above case that the purpose of maintaining the status *quo* is to avoid any disruption to the economy while the labor dispute is being resolved in the proper forum. The objective is to minimize, if not totally avert, any damage that such labor dispute might cause upon the national interest by occasion of any work stoppage or slow-down. It follows then, as also demonstrated by the Court in the above

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[22] G.R. No. 200499, October 4, 2017, 842 SCRA 1.

[23] Id. at 20-21. Citations and emphasis omitted.

case, that the directive to maintain the status *quo* extends only until the labor dispute has been resolved.

Thus, as applied in this case, the status *quo* mandated by the Assumption Order extends from the date of its issuance until the Secretary of Labor's resolution of the dispute between the parties on April 29, 2016.

During this period, the striking employees should report back to work, and the employer should readmit them "*under the same terms and conditions prevailing before the strike.*" Particularly, in this case, the Assumption Order required "*x x x all striking employees, who have not accepted separation benefits, shall, within twenty[-]four (24) hours from receipt of this Order, immediately return to work[,] and the employer shall immediately resume all operations and readmit all workers under the same terms and conditions prevailing before the strike. x x x.*"[24] This obligation on the part of the employer generally requires actual reinstatement.

Here, ALECO claims that it complied with the Assumption Order when it admitted the striking employees to its premises on January 14, 2014. ALECO alleges that no less that the Regional Director of DOLE Region V witnessed the re-admission of these employees, and that this is further evidenced by the attendance sheets signed by the returning employees and the photographs taken on January 14, 2014.[25] However, as pointed out by ALEO, and admitted by ALECO, no actual work was given to the returning employees.[26] Instead, they were merely "confine[d] in a room for over three weeks."[27] Although ALECO claimed that it tendered the salaries of the employees who actually reported back for work, ALECO also admitted that the employees refused to receive the amounts it supposedly tendered because of the parties' failure to agree on the figures.[28]

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[24] *Rollo*, p. 98.

[25] Id. at 12-13.

[26] Id. at 13-14.

[27] Id. at 13.

[28] Id.

In other words, to date, the affected employees are still not paid their wages and benefits for the period they were supposed to be reinstated.

In consideration of the foregoing, the award of backwages is proper — not as a penalty for non-compliance with the Assumption Order as argued by ALEO — but as satisfaction of ALECO's obligation towards the employees covered by the Assumption Order. On said date, the obligation of the employer to re-admit the striking employees and/or ***pay*** them their respective salaries and benefits arose. However, there is no proof that the affected employees were in fact paid by ALECO their corresponding salaries and benefits. Because of ALECO's failure to perform this obligation, and to give the affected employees what has become due to them as of January 10, 2014, backwages should be awarded.

In illegal dismissal cases, backwages refer to the employee's supposed earnings had he/she not been illegally dismissed.[29] As applied in this case, backwages correspond to the amount ought to have been received by the affected employees if only they had been reinstated following the Assumption Order. This shall similarly include not only the employee's basic salary but also the regular allowances being received, such as the emergency living allowances and the 13th month pay mandated by the law, as well as those granted under a CBA, if any.[30]

Applying the foregoing discussion, the Court finds that the CA did not err in affirming the award of backwages. Moreover, consistent with *San Fernando Coca-Cola Rank-and-File Union (SACORU) v. Coca-Cola Bottlers Philippines, Inc. (CCBPI)*, the CA also correctly limited the computation of backwages until April 29, 2016.

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[29] *L.T. Datu & Co., Inc. v. National Labor Relations Commission*, G.R. No. 113162, February 9, 1996, 253 SCRA 440, 454.

[30] *United Coconut Chemicals, Inc. v. Valmores*, G.R. No. 201018, July 12, 2017, 831 SCRA 68, 80.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* dated August 30, 2018 of petitioner Albay Electric Cooperative, Inc. (ALECO) is **DENIED**. The Decision dated August 10, 2018 of the Court of Appeals, Special Sixteenth Division, in CA-G.R. SP No. 149409, is **AFFIRMED**.

Let the records of the case be remanded to the Labor Arbiter for proper computation of the award in accordance with this Decision.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 242901. September 14, 2020]

MA. LUISA R. LOREÑO, *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE REVISED RULES OF COURT; LIMITED ONLY TO REVIEWING ERRORS OF LAW, NOT OF FACT; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— [T]he jurisdiction of the Court in a petition for review under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact. A question of law arises when there is doubt as to what the law is on a certain set 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 solely rely 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, the question posed is one of fact. In this case, the issues raised by Loreño are substantially factual, as it requires a re-examination of the evidence presented.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; THE FAILURE OF AN ACCOUNTABLE OFFICER TO ACCOUNT THE DISCREPANCY IN HER COLLECTIONS AND HER INABILITY TO RETURN THE SAID AMOUNT UPON DEMAND IS A *PRIMA FACIE* EVIDENCE THAT SHE APPROPRIATED THE MONEY TO HERSELF AND CONSTITUTES SERIOUS DISHONESTY, GRAVE MISCONDUCT, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY.— Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Dishonesty becomes serious when it is qualified by any of the circumstances under Section 3 of the

Civil Service Commission Resolution No. 06-0538 x x x. Meanwhile, Grave Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or disregard [of] established rules. Lastly, Conduct Prejudicial to the Best Interest of the Service deals with a demeanor of a public officer which "tarnished the image and integrity of his/her public office." Under Section 46 (A) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for the grave offenses of Serious Dishonesty and Grave Misconduct is dismissal for the first offense. While under Section 46 (B) of the same Rules, the penalty for conduct prejudicial to the best interest of the service is suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense. After a careful review of the records of the case, the Court finds that the offenses charged against Loreño have been substantially proven. Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently. x x x In the case at bar, the COA auditors have sufficiently established that Loreño was an accountable officer within the contemplation of the law, as she was designated as Acting Collecting Officer of ABIS and was bonded in the amount of ₱45,000.00 under Risk No. DIIC-07-08-288 dated 30 August 2007 effective 24 July 2007 to 23 July 2008. x x x Her failure to account the discrepancy in her collections and her inability to return the said amount upon demand from the COA auditors, constitute a *prima facie* evidence that she appropriated the money to herself. Loreño also violated the rules in keeping of accounts and recording of transactions when she failed to submit the reports as required by law. Therefore, the Court finds that the evidence presented was sufficient to prove that Loreño was guilty of the offenses charged against her.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT AND SERIOUS DISHONESTY; INEVITABLY REFLECT ON THE FITNESS OF A CIVIL SERVANT TO CONTINUE IN OFFICE, AND WHEN AN OFFICER OR EMPLOYEE IS DISCIPLINED, THE OBJECT SOUGHT IS NOT THE PUNISHMENT OF SUCH OFFICER OR

EMPLOYEE, BUT THE IMPROVEMENT OF PUBLIC SERVICE AND THE PRESERVATION OF THE PUBLIC'S FAITH AND CONFIDENCE IN THE GOVERNMENT.— [S]erious offenses, such as Grave Misconduct and Serious Dishonesty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government. Indeed, public office is a public trust.

APPEARANCES OF COUNSEL

Marcelino B. Lomoya for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] seeking to annul the Resolutions dated 11 January 2018[2] and 18 October 2018[3] of the Court of Appeals (CA) in CA-G.R. SP No. 149987, which affirmed the Decision[4] dated 28 June 2016 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-15-0318, finding Ma. Luisa R. Loreño (Loreño) guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and thereby imposed upon her the penalty of dismissal from service, and cancellation of

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[1] *Rollo*, pp. 3-15.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring; id. at 21-24.

[3] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Mario V. Lopez (now a Member of the Court) and Pablito A. Perez, concurring; id. at 26.

[4] Penned by Graft Investigation and Prosecution Officer III Bonifacio G. Mandrilla, id. at 61-70.

her civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification to hold public office.

FACTS

This case stemmed from a Complaint[5] filed by the Field Investigation Office I (FIO I) of the Ombudsman charging Loreño with violation of Article 217 of the Revised Penal Code (RPC) and Section 3 (e) of Republic Act No. (RA) 3019,[6] Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. It was alleged that Loreño was a Teacher I assigned at Andres Bonifacio Integrated School (ABIS) in Mandaluyong City. On 12 January 2009, a team from the Commission on Audit (COA) of City Schools of Mandaluyong City submitted an Audit Observation Memorandum on the audit of cash accounts of ABIS covering the period from March 2006 to June 2008. The team's initial audit finding was that the cash accounts of ABIS showed a shortage of ₱263,515.96. Thus, a demand letter, addressed to Loreño and Juanita P. Valle (Valle), former Elementary School Principal III of ABIS, was issued, demanding them to produce the above-mentioned amount immediately. Upon receipt of the letter, both Loreño and Valle denied the cash shortage and requested for a bill of particulars.[7]

On 13 March 2009, the COA constituted a team of auditors to conduct a complete examination of the cash accounts of Loreño, Valle, Evangeline A. Diaz, the incumbent principal, and Bernardita G. Tan, the acting collecting officer. The audit resulted in Loreño's cash shortage amounting to ₱171,240.01, representing the balance of collections from authorized school

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[5] Id. at 35-39.

[6] Section 3. *Corrupt practices of public officers.* — 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.

[7] *Rollo*, pp. 35-36.

contributions/fees and school operating funds. Thus, another demand letter was sent to Loreño for the immediate production of the said amount. However, Loreño failed to produce the missing funds despite demand.[8] Hence, this complaint.

In her Position Paper,[9] Loreño denied that she was an accountable officer and that she was assigned as an Acting Collecting Officer of ABIS during the period of March 2006 to June 2008. She raised the defense that Valle merely asked for her help in counting the money received from teachers authorized to collect money, representing payment of students' identification cards (IDs), and not in any official capacity. She further alleged that the manner the COA auditors conducted the audit was very doubtful when they hauled all the records from ABIS to the COA office at the City School Division in Mandaluyong City and that she was not given an opportunity to refute their findings prior to the submission of the final audit report. Loreño maintained that as a teacher, she does not hold cash on a daily basis and was never designated to carry the responsibility of accounting money, nor was she involved in the disbursement of the Maintenance and Other Operating Expenses (MOOE). Thus, she prayed that the instant administrative complaint against her be dismissed.[10]

RULING OF THE OFFICE OF THE OMBUDSMAN

In a Decision[11] dated 28 June 2016, the Ombudsman found Loreño guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and imposed the ultimate penalty of dismissal from service with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification to hold public office.[12] It ruled that Loreño was an accountable officer, because she was designated as

[8] Id. at 36-37.

[9] Id. at 44-51.

[10] Id. at 45-50.

[11] Id. at 61-70.

[12] Id. at 69.

Acting Collecting Officer of ABIS, tasked to receive money from school collections.[13] That according to the COA auditors, Loreño failed to deposit all her collections during the period of April 2007 to May 2008, in violation of Sections 69,[14] 111,[15] and 112[16] of Presidential Decree No. (PD) 1445.[17] Loreño's

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[13] Id. at 65-66.

[14] Section 69. *Deposit of Moneys in the Treasury.*

(1) Public officers authorized to receive and collect moneys arising from taxes, revenues, or receipts of any kind shall remit or deposit intact the full amounts so received and collected by them to the treasury of the agency concerned and credited to the particular accounts to which the said moneys belong. The amount of the collections ultimately payable to other agencies of the government shall thereafter be remitted to the respective treasuries of these agencies, under regulations which the Commission and the Department (Ministry) of Finance shall prescribe.

(2) When the exigencies of the service so require, under such rules and regulations as the Commission and the Department (Ministry) of Finance may prescribe, postmasters may be authorized to use their collections to pay money orders, telegraphic transfers and withdrawals from the proper depository bank whenever their cash advance funds for the purpose have been exhausted. The amount of collections so used shall be restored upon receipt by the postmaster of the replenishment of his cash advance.

(3) Pending remittance to the proper treasury, collecting officers may temporarily deposit collections received by them with any treasury, subject to regulations of the Commission.

(4) The respective treasuries of these agencies shall in turn deposit with the proper government depository the full amount of the collections not later than the following banking day.

[15] Section 111. *Keeping of Accounts.*

(1) The accounts of an agency shall be kept in such detail as is necessary to meet the needs of the agency and at the same time be adequate to furnish the information needed by fiscal or control agencies of the government.

(2) The highest standards of honesty, objectivity and consistency shall be observed in the keeping of accounts to safeguard against inaccurate or misleading information.

[16] Section 112. *Recording of Financial Transactions.* — Each government agency shall record its financial transactions and operations conformably with generally accepted accounting principles and in accordance with pertinent laws and regulations.

[17] Government Auditing Code of the Philippines.

Motion for Reconsideration[18] was denied in an Order[19] dated 16 January 2017.

Aggrieved, Loreño filed a Petition for Review with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[20] before the CA and argued that the Ombudsman erred in ruling that she was an accountable officer under the law and that the alleged shortage of money was not supported by substantial evidence.

RULING OF THE CA

In a Resolution[21] dated 11 January 2018, the CA denied the petition and affirmed the assailed Decision of the Ombudsman. It held that Loreño falls within the definition of an accountable officer under PD 1445, as she was the Acting Collecting Officer of ABIS in charge of collecting, among others, identification and graduation fees. In addition, Loreño was bonded in accordance with PD 1445, which is only required for accountable officers. Therefore, her failure to deposit her collections and submit the required reports are in contravention of the established rules and regulations in keeping of accounts and recording of transactions. Loreño's failure or inability to produce the alleged shortage constituted a *prima facie* evidence that she used the missing funds for her personal gain.[22]

Loreño moved for reconsideration[23] but was denied in a Resolution[24] dated 18 October 2018. Hence, this petition.

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[18] *Rollo*, pp. 72-77.

[19] Penned by Graft Investigation and Prosecution Officer III Bonifacio G. Mandrilla, id. at 78-81.

[20] Id. at 82-93.

[21] Id. at 21-24.

[22] Id. at 22-23.

[23] Id. at 27-30.

[24] Id. at 26.

ISSUES

(1) Whether or not the CA erred in finding Loreño as an accountable officer as defined under the law.

(2) Whether or not the CA erred in finding Loreño guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

ARGUMENTS OF THE PETITIONER

In support of her petition, Loreño reiterated that she is not an accountable officer, as erroneously found by both the Ombudsman and the CA. Her official designation in ABIS was Teacher I, thus, her duties does not include possession or custody of government funds or property. However, she admitted that as an additional duty, she was tasked by Valle, the school principal, to collect payments mainly for the cost of the school IDs from the students. Loreño also maintained that her duty was merely to collect the said funds, count them, and turn it over to Valle, who was primarily responsible for the safekeeping and custody of the collected funds.[25]

Further, Loreño insisted that there was no substantial evidence to prove that she incurred the shortage of ₱171,240.01. According to her, the alleged shortage was based on assumption, conjectures and utterly devoid of factual or legal basis.[26] The circumstances surrounding the audit was highly irregular as there was no actual cash count conducted by the auditors and there was no face-to-face discussion between her and the said auditors. She also claimed that the records pertaining to the subject audit were brought outside of ABIS and the COA auditors did not issue any acknowledgment receipt.[27] She likewise denied receiving the amount of ₱5,587,297.65, as stated in the demand letter. The said amount does not represent actual cash received by her, but "DO Downloaded Funds."[28]

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[25] Id. at 10-11.

[26] Id. at 9.

[27] Id. at 12.

[28] Id. at 9-10.

Lastly, Loreño denied that she committed serious dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service. The basis of the administrative complaint against her was anchored on the premise that she was an accountable officer and that she incurred a shortage during the COA audit. Unfortunately, the Ombudsman failed to prove by substantial evidence such claims.[29] Thus, she prayed that the Resolutions of the CA be set aside and that the instant complaint be dismissed.

ARGUMENTS OF THE RESPONDENT

In its Comment[30] to the instant petition, the Ombudsman stressed that there was substantial evidence to hold Loreño liable for serious dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service. Contrary to Loreño's claim that there was no factual or substantial basis to hold her liable for the alleged shortage of ₱171,240.01, the records reveal otherwise.[31] As found by the COA auditors, as the Acting Collecting Officer, Loreño was mandated to faithfully comply with the provisions of PD 1445 with regard to the keeping of accounts, recording of transactions, and depositing all her collections.[32]

Also, Loreño's claim that the COA audit was irregular and seriously flawed has no basis, as she failed to specify her legal basis. Hence, the COA findings remain lawful, regular, and conclusive as to their contents.[33]

Therefore, her failure to account for the shortage and to produce it upon demand, and her understating the amounts she collected for the IDs in the official receipts are all indicative of a lack of honesty, integrity and probity as an accountable officer.[34]

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[29] Id. at 12-13.

[30] Id. at 111-125.

[31] Id. at 119.

[32] Id. at 121-122.

[33] Id. at 119-120.

[34] Id. at 121.

RULING OF THE COURT

The petition is bereft of merit.

It must be noted at the outset that the jurisdiction of the Court in a petition for review under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact. A question of law arises when there is doubt as to what the law is on a certain set 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 solely rely 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, the question posed is one of fact.[35] In this case, the issues raised by Loreño are substantially factual, as it requires a re-examination of the evidence presented.

In the case at the bar, the Ombudsman found Loreño guilty of Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, which was affirmed by the CA.

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[36] Dishonesty becomes serious when it is qualified by any of the circumstances under Section 3 of the Civil Service Commission Resolution No. 06-0538,[37] to wit:

> Section 3. Serious Dishonesty. — The presence of any of one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:
>
> a. The dishonest act causes serious damage and grave prejudice to the government.

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[35] See *Javelosa v. Tapus*, G.R. No. 204361, 4 July 2018.

[36] See *Office of the Ombudsman v. Saligumba*, G.R. No. 212293, 15 June 2020.

[37] Issued on 4 April 2006.

b. The respondent gravely abused his authority in order to commit the dishonest act.
c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.
d. The dishonest act exhibits moral depravity on the part of the respondent.
e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.
f. The dishonest act was committed several times or in various occasions.
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.
h. Other analogous circumstances. (Emphasis ours)

Meanwhile, Grave Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or disregard established rules.[38]

Lastly, Conduct Prejudicial to the Best Interest of the Service deals with a demeanor of a public officer which "tarnished the image and integrity of his/her public office."[39]

Under Section 46 (A) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for the grave offenses of Serious Dishonesty and Grave Misconduct is dismissal for the first offense. While under Section 46 (B) of the same Rules, the penalty for conduct prejudicial to the best interest of the service is suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

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[38] See *First Great Ventures Loans, Inc. v. Mercado*, A.M. No. P-17-3773, 1 October 2019.

[39] See *Fajardo v. Corral*, 813 Phil. 149 (2017).

After a careful review of the records of the case, the Court finds that the offenses charged against Loreño have been substantially proven. Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently.[40]

An accountable officer under Article 217 of the RPC must receive money or property of the government which he is bound to account for. It is the nature of the duties of, not the nomenclature used for, or the relative significance of the title to, the position, which controls in that determination.[41] Furthermore, there is a requirement for an accountable officer to be bonded, pursuant to Section 101 of PD 1445, to wit:

> Section 101. *Accountable Officers; Bond Requirement.*
>
> 1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.
>
> 2. Every accountable officer shall be properly bonded in accordance with law.

In the case at bar, the COA auditors have sufficiently established that Loreño was an accountable officer within the contemplation of the law, as she was designated as Acting Collecting Officer of ABIS and was bonded in the amount of ₱45,000.00 under Risk No. DIIC-07-08-288 dated 30 August 2007 effective 24 July 2007 to 23 July 2008.[42] To absolve herself from liability, Loreño denied the allegation that she was an accountable officer. However, in her petition, Loreño admitted that as an additional duty, the school principal tasked her to collect payments for the costs of school IDs from the students.

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[40] Id. at 156.

[41] *Rueda, Jr. v. Honorable Sandiganbayan*, 400 Phil. 142 (2000), citing *Tanggote v. Sandiganbayan*, 306 Phil. 302 (1994).

[42] *Rollo*, p. 65.

She would like this Court to believe that the only purpose of such designation was to count the monies collected and turn it over to the school principal, who was primarily responsible for the safekeeping and custody of the funds. Unfortunately, the records reveal otherwise. Denial is inherently a weak defense.[43]

As found by the Ombudsman, the Report of Cash Examination shows that the Balance per Financial Report for the School Year (SY) 2006-2007 is ₱9,958.99. Under Statement of Accountability of the same cash examination, during the period of 16 April 2007 to 30 May 2008, Loreño collected a total of ₱9,803,353.80. Deducting the credits of accountability of ₱8,830,801.02 and cash in bank of ₱811,271.76, Loreño incurred a shortage of ₱171,240.01. Her failure to account the discrepancy in her collections and her inability to return the said amount upon demand from the COA auditors, constitute a *prima facie* evidence that she appropriated the money to herself. Loreño also violated the rules in keeping of accounts and recording of transactions when she failed to submit the reports as required by law.[44] Therefore, the Court finds that the evidence presented was sufficient to prove that Loreño was guilty of the offenses charged against her.

On a final note, it must be stressed that serious offenses, such as Grave Misconduct and Serious Dishonesty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government. Indeed, public office is a public trust.[45]

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[43] *Executive Judge Eduarte v. Ibay*, 721 Phil. 2 (2013).

[44] *Rollo*, pp. 66-69.

[45] *Office of the Ombudsman-Mindanao v. Martel and Guiñares*, 806 Phil. 649, 666 (2017), citing *Medina v. Commission on Audit*, 567 Phil. 649, 665 (2008).

WHEREFORE, the instant petition is **DENIED**. The Resolutions dated 11 January 2018 and 18 October 2018 of the Court of Appeals in CA-G.R. SP No. 149987, which upheld the Decision dated 28 June 2016 of the Office of the Ombudsman in OMB-C-A-15-0318, are hereby **AFFIRMED**. Petitioner Ma. Luisa R. Loreño is **DISMISSED** from service for Serious Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, with cancellation of her civil service eligibility; forfeiture of retirement and other benefits, except accrued leave credits, if any; perpetual disqualification from re-employment in any government agency or instrumentality, including government-owned and controlled corporation or government financial institution; and barred from taking civil service examinations.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 244242. September 14, 2020]

DEPARTMENT OF HEALTH, represented by its Secretary, *Petitioner*, *v.* **NESTLE PHILIPPINES, INC.,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A WRIT OF *CERTIORARI* MAY ONLY ISSUE TO CORRECT ERRORS IN JURISDICTION OR WHEN THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, FOR ITS MAIN FUNCTION IS LIMITED TO KEEPING THE LOWER COURTS OR QUASI-JUDICIAL BODIES WITHIN THEIR JURISDICTION, AND IT CANNOT BE ISSUED FOR ANY OTHER PURPOSE.— In the case at bench, the Decision of the DOH was assailed through a petition for *certiorari* before the CA. A petition for *certiorari* is governed by Rule 65 of the Revised Rules of Court x x x. [A] writ of *certiorari* may only issue to correct errors in jurisdiction or when there is grave abuse of discretion amounting to lack or in excess of jurisdiction. The nature of a grave abuse of discretion that justifies the grant of *certiorari* is one that involves a defect of jurisdiction brought about, among others, by an indifferent disregard for the law, arbitrariness and caprice, an omission to weigh pertinent considerations, or a decision arrived at without rational deliberation — due process issues that rendered the decision or ruling void. A writ of *certiorari*'s main function is limited to keeping the lower courts or quasi-judicial bodies within their jurisdiction, thus, it cannot be issued for any other purpose.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; WHEN THE RESOLUTION OF A PETITION FOR *CERTIORARI* UNDER RULE 65 IS ASSAILED IN A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45, THE COURT WILL HAVE TO REVIEW THE COURT OF APPEALS DECISION FROM THE PERSPECTIVE OF WHETHER IT CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF

GRAVE ABUSE OF DISCRETION IN THE DECISION BEFORE IT AND NOT ON THE BASIS OF WHETHER THE DECISION, ON THE MERITS OF THE CASE, IS CORRECT.— The limitations in the resolution of a petition for *certiorari* under Rule 65 will affect the Court's scope when presented with a petition for review on *certiorari* under Rule 45, seeking the reversal of a CA decision, which pertained to grave abuse of discretion on the part of a quasi-judicial or administrative body, as in this case the DOH. The Court will have to review the CA decision from the perspective of whether it correctly determined the presence or absence of grave abuse of discretion in the DOH decision before it and not on the basis of whether the DOH decision, on the merits of the case, was correct. Likewise, as a general rule, a petition for review on *certiorari* is only limited to questions of law. Hence, the question of law that will be resolved in the present petition is: *whether the CA properly ruled that the DOH committed grave abuse of discretion amounting to lack or excess of jurisdiction.* x x x [I]n the resolution of a petition for *certiorari*, it is not within the ambit of the CA's jurisdiction to inquire into the correctness of the DOH's evaluation of evidence, unless such was done with grave abuse of discretion. However, a cursory reading of the now assailed CA Decision would show that the CA has no clear findings if the DOH committed grave abuse of discretion warranting the grant of the petition for *certiorari*. x x x [I]t is apparent that the CA proceeded in evaluating the evidence on record and dwelt on errors in judgment committed by the DOH instead of errors of jurisdiction as required in a special civil action for *certiorari*. Notably, the CA has no clear and distinct findings as to the presence of grave abuse of discretion on the part of the DOH.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DOCTRINE OF CONCLUSIVENESS OF ADMINISTRATIVE FINDINGS OF FACT; THE COURTS ACCORD GREAT WEIGHT AND RESPECT, IF NOT FINALITY AND CONCLUSIVENESS, TO FINDINGS OF FACT OF ADMINISTRATIVE BODIES WHEN SUCH ARE SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE ADMINISTRATIVE BODIES ARE DEEMED SPECIALISTS IN THEIR RESPECTIVE FIELDS AND CAN RESOLVE THE CASES BEFORE THEM WITH MORE EXPERTISE AND DISPATCH.— [T]he Court evaluated the records of this

> case and finds that, contrary to the findings of the CA, the evidence available before the DOH and the CAO-NCR were sufficient and substantial to hold Nestle liable x x x. The DOH affirmed the findings of the CAO-NCR that Nestle violated Article 23 (3) of RA 7394 and is thus, liable under Article 40 (a) of the same law. x x x Under the doctrine of conclusiveness of administrative findings of fact, the courts accord great weight and respect, if not finality and conclusiveness, to findings of fact of administrative bodies when such are supported by substantial evidence. The reason behind this is that administrative bodies are deemed specialists in their respective fields and can thus resolve the cases before them with more expertise and dispatch. Simply put, x x x findings of fact of an administrative body is binding to the courts if they are duly supported by substantial evidence. Substantial evidence *is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable*.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Hector L. Hofileña Law Office for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated October 19, 2018 and the Resolution[3] dated January 17, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153068, which reversed and set aside the Decision[4] dated April 17, 2017 and

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[1] *Rollo*, pp. 35-54.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jhosep Y. Lopez and Geraldine C. Fiel-Macaraig, concurring; id. at 55-64.

[3] Id. at 65-66.

[4] Rendered by Secretary of Health Paulyn Jean B. Rosell-Ubial; id. at 67-78.

the Resolution[5] dated September 11, 2017 of the Department of Health (DOH).

The Facts

On October 16, 2007, Myrnanette M. Jarra (Jarra) bought one (1) Nestle Bear Brand Powdered Filled Milk, 150 grams, from Joy Store located along West Riverside, San Francisco Del Monte, Quezon City. When Jarra opened the foil pack, she noticed objects inside it, which appeared to be larvae, and the powder therein looked yellowish and lumpy. On the following day, Jarra filed a complaint before the DOH Consumer Arbitration Office of the National Capital Regional Office (CAO-NCR). During the conciliation proceedings, the Acting Consumer Arbitration Officer requested the Bureau of Food and Drugs (BFAD) for a laboratory test on the subject product.[6]

The BFAD issued Report of Analysis No. FCM07-10-18-151[7] dated October 22, 2007, finding that the sample specimen had live insect larvae and that the cream powder has a strong stale odor rendering it unfit for human consumption.

On January 11, 2016, the CAO-NCR issued a Resolution[8] in favor of Jarra and found that the substantial evidence on record proved that there is clear violation of Republic Act No. (RA) 7394, otherwise known as the Consumer Act of the Philippines, which prohibits the manufacture, importation, exportation, sale, offering for sale, distribution or transfer of any food, drug, devise or cosmetics that is adulterated. The dispositive portion of the Resolution reads:

> IN VIEW OF THE FOREGOING, this Office finds for the complainant. Pursuant to Article 164 of RA 7394, respondent is hereby ordered as follows:
>
> 1. To pay the administrative fine of Php20,000.00;

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[5] Id. at 79-81.

[6] Id. at 82-83, 87.

[7] Id. at 84.

[8] Id. at 87-88.

2. To make an assurance to comply with the provisions of RA 7394 and its implementing rules and regulations;
3. To restitute complainant of two (2) bottles of RC Cola, or alternatively to reimburse the value thereof, at the option of the complainant;
4. To pay complainant Php5,000.00, representing expenses in making or pursuing the complaint;
5. The condemnation of the subject product.

SO ORDERED.[9]

Nestle Philippines, Inc. (Nestle) moved for reconsideration of the Resolution, which was denied in an Order[10] dated June 8, 2016. Thus, Nestle appealed the case before the Office of the Secretary of the DOH.

The Ruling of the Office of the Secretary

On April 17, 2017, the Secretary of Health issued a Decision[11] affirming with modification the assailed Resolution of the CAO-NCR. The dispositive portion of the Decision is hereby reproduced, thus:

WHEREFORE, premises considered, the present appeal is hereby **DENIED**. The assailed Resolution of ACAO-NCR dated December 14, 2015 in BFAD Case No. C-NCR-09-077 for violation of RA 7394 is hereby **AFFIRMED with MODIFICATION**. The award of Php5,000.00 representing expenses in pursuing the complaint as actual damages is hereby deleted. Number three (3) of the dispositive portion of CAO-NCR Resolution dated January 11, 2016 is rephrased as above written.

SO ORDERED.[12]

The Secretary of Health opined that in the absence of clear and convincing proof that there was grave abuse of discretion on the part of the Acting Consumer Arbitration Officer in giving

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[9] Id. at 88.

[10] Id. at 89.

[11] Id. at 67-78.

[12] Id. at 77.

credence to the findings of the BFAD, the findings that the subject product is adulterated shall be upheld. The BFAD is presumed to possess technical expertise and its findings should be accorded great weight and credence.

Nestle's motion for reconsideration of the Decision was denied by the Secretary of Health through Resolution[13] dated September 11, 2017. Thus, Nestle elevated the case before the CA *via* a Petition for *Certiorari*[14] under Rule 65 of the Rules of Court ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOH.

The Ruling of the CA

In its Decision[15] dated October 19, 2018, the CA ruled in favor of Nestle and reversed and set aside the questioned Decision dated April 17, 2017 and the Resolution dated September 11, 2017 of the DOH.

The CA held that the BFAD Report of Analysis did not state whether the sample tested was adulterated while in the custody of Jarra or on account of its defective or unsanitary manufacturing process. It could be assumed that the infestation occurred while in transit or at the time when the product was purchased, packed and transported or when the product was stored or kept in stock by the vendor. The CA ratiocinated that the infestation of the milk product could not have been caused by Nestle's defective handling but by some other unknown reasons.

With the denial of its Motion for Reconsideration[16] of the CA Decision, the DOH elevated the case before the Court *via* Rule 45 of the Rules of Court submitting the following issues for the Court's resolution:

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[13] Id. at 79-81.

[14] Id. at 109-133.

[15] Id. at 55-64.

[16] Id. at 135-144.

I

PETITIONER DOH DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF THE CONSUMER ARBITRATION OFFICE.

II

THE CONSUMER ARBITRATION OFFICER PROPERLY FOUND [NESTLE] LIABLE FOR VIOLATION OF R.A. 7394 ON THE DISTRIBUTION OF ADULTERATED PRODUCTS ON THE BASIS OF SUBSTANTIAL EVIDENCE.[17]

The DOH's Position

In its petition, the DOH asserts that the CA decision and resolution, which reversed the findings and conclusions of the DOH, only relied on mere errors of judgment, which cannot be a proper basis in the issuance of a writ of *certiorari*. There was no finding that the DOH or the CAO-NCR acted with grave abuse of discretion amounting to lack or excess of jurisdiction to justify the grant of a petition for *certiorari*. Also, the CAO-NCR and the DOH based their rulings on substantial evidence, which pointed to the violation of Nestle of RA 7394.

Nestle's Position

In its Comment,[18] Nestle argued that the courts are not bound by the findings of fact of administrative agencies, when there is no evidence in support thereof or when there is clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion, such as in the instant case.

The Court's Ruling

In the case at bench, the Decision of the DOH was assailed through a petition for *certiorari* before the CA. A petition for *certiorari* is governed by Rule 65 of the Revised Rules of Court, which reads as follows:

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[17] Id. at 41.

[18] Id. at 157-162.

Section 1. Petition for *certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

As such, a writ of *certiorari* may only issue to correct errors in jurisdiction or when there is grave abuse of discretion amounting to lack or in excess of jurisdiction. The nature of a grave abuse of discretion that justifies the grant of *certiorari* is one that involves a defect of jurisdiction brought about, among others, by an indifferent disregard for the law, arbitrariness and caprice, an omission to weigh pertinent considerations, or a decision arrived at without rational deliberation — due process issues that rendered the decision or ruling void.[19] A writ of *certiorari*'s main function is limited to keeping the lower courts or quasi-judicial bodies within their jurisdiction, thus, it cannot be issued for any other purpose.[20]

In *Spouses Leynes v. CA*,[21] the Court explained that:

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*.[22]

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[19] See Separate Opinion by Justice Arturo D. Brion in *Risos-Vidal v. Commission on Elections*, 751 Phil. 479, 570 (2015).

[20] *Bugaoisan v. OWI Group Manila*, G.R. No. 226208, February 7, 2018, 855 SCRA 201, 213.

[21] 655 Phil. 25 (2011).

[22] Id. at 41-42.

The limitations in the resolution of a petition for *certiorari* under Rule 65 will affect the Court's scope when presented with a petition for review on *certiorari* under Rule 45, seeking the reversal of a CA decision, which pertained to grave abuse of discretion on the part of a quasi-judicial or administrative body, as in this case the DOH. The Court will have to review the CA decision from the perspective of whether it correctly determined the presence or absence of grave abuse of discretion in the DOH decision before it and not on the basis of whether the DOH decision, on the merits of the case, was correct.[23]

Likewise, as a general rule, a petition for review on *certiorari* is only limited to questions of law.

Hence, the question of law that will be resolved in the present petition is: *whether the CA properly ruled that the DOH committed grave abuse of discretion amounting to lack or excess of jurisdiction*.

Again, in the resolution of a petition for *certiorari*, it is not within the ambit of the CA's jurisdiction to inquire into the correctness of the DOH's evaluation of evidence, unless such was done with grave abuse of discretion. However, a cursory reading of the now assailed CA Decision would show that the CA has no clear findings if the DOH committed grave abuse of discretion warranting the grant of the petition for *certiorari*. In granting the petition for *certiorari*, the CA ratiocinated in this manner:

> By comparison, the BFAD Report which became the sole basis of the decision of the CAO and the DOH is localized to the presence of contamination but nowhere near the exact time or conditions under which the product was exposed to. The document is therefore too ambiguous or incomplete to support the conclusion that the subject milk product was exposed to various contaminants either because of the manufacturer's negligence or because of its unreliable processes. If, as found by the DOH, the subject pack of milk was exposed to adulterants while in petitioner's care, then it is possible that others

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[23] See *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

were handled similarly and therefore exposed to infestation as well. However, no incidents of such nature have been reported since or around the same time as private respondent's discovery of the spoiled product. It is then safe to say that the problem was not borne out of petitioner's defective handling of its products but by some other reason which We know nothing about.[24]

Nestle avers that the CA has the authority to make its own factual determination when the findings of the administrative officials are arrived at arbitrarily or in disregard of evidence. From the foregoing, it is apparent that the CA proceeded in evaluating the evidence on record and dwelt on errors in judgment committed by the DOH instead of errors of jurisdiction as required in a special civil action for *certiorari*. Notably, the CA has no clear and distinct findings as to the presence of grave abuse of discretion on the part of the DOH.

Nonetheless, the Court evaluated the records of this case and finds that, contrary to the findings of the CA, the evidence available before the DOH and the CAO-NCR were sufficient and substantial to hold Nestle liable, to wit: (a) the Complaint filed by complainant Jarra; and (b) the BFAD Report of Analysis which affirmed Jarra's complaint that the milk product contained live larvae and that the milk powder was stale and unfit for human consumption.

The DOH affirmed the findings of the CAO-NCR that Nestle violated Article 23 (3) of RA 7394 and is thus, liable under Article 40 (a) of the same law.

Article 23 (3) and Article 40 (a) of RA 7394 state that:

ARTICLE 23. *Adulterated Food*. — A food shall be deemed to be adulterated:

x x x x

3) if it consists in whole or in part of any filthy, putrid or decomposed substance, or if it is otherwise unfit for food;

x x x x

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[24] *Rollo*, pp. 62-63.

ARTICLE 40. *Prohibited Acts*. — The following acts and the causing thereof are hereby prohibited:

a) the manufacture, importation, exportation, sale, offering for sale, distribution or transfer of any food, drug, device or cosmetic that is adulterated or mislabeled[.]

Under the doctrine of conclusiveness of administrative findings of fact, the courts accord great weight and respect, if not finality and conclusiveness, to findings of fact of administrative bodies when such are supported by substantial evidence.[25] The reason behind this is that administrative bodies are deemed specialists in their respective fields and can thus resolve the cases before them with more expertise and dispatch.[26]

Simply put, a findings of fact of an administrative body is binding to the courts if they are duly supported by substantial evidence. Substantial evidence *is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable*.[27]

In the instant case, there is no doubt that the subject milk product was one of the manufactured and distributed products of Nestle. Upon examination of the BFAD, such milk product was found to be adulterated. Although Nestle presented a Report from its Quality Assurance Department, the CAO-NCR and the DOH gave more credence on the allegations of Jarra and the BFAD Report of Analysis. The DOH held that the BFAD is presumed to possess technical expertise on the given field and its findings cannot be peremptorily set aside. The DOH likewise held that the welfare of the consumers or the "unsuspecting public" is of paramount importance as against the right of the manufacturer. Upon perusal, other than the defense of denial and its self-serving postulations that the

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[25] See *Miro v. Mendoza*, 721 Phil. 772, 784 (2013).

[26] See *Galindez v. Firmalan*, G.R. No. 187186, June 6, 2018, citing *Solid Homes v. Payawal*, 257 Phil. 914, 921 (1989).

[27] *Lim v. Fuentes*, G.R. No. 223210, November 6, 2017, 844 SCRA 60, 70.

infestation could have been caused by other factors, such as the mishandling of the retail store or from Jarra herself, Nestle failed to muster the required burden of proof to persuade the Court that it is not responsible for the spoilage or adulteration of the milk product. Hence, no grave abuse of discretion can be attributed to the DOH in giving more weight on the account of Jarra and the findings of the BFAD over the denials and suppositions of Nestle.

To emphasize, the findings of the DOH may only be set aside *via* a petition for *certiorari*, if there was grave abuse of discretion in the rendering thereof. A judicious review by the Court of the records of the case reveals that there is no grave abuse of discretion on the part of the DOH and its decision is supported by substantial evidence and within the bounds of law. Perforce, the present petition must be granted.

However, the Court finds it necessary to modify the order of restitution rendered by the CAO-NCR, which is affirmed by the DOH. In its Resolution dated January 11, 2016, the CAO-NCR ordered Nestle, among others, to restitute Jarra with two (2) bottles of RC Cola, or alternatively to reimburse the value thereof, at the option of Jarra. Considering that the product in question in the present case is one Bear Brand Powdered Filled Milk (150g pack), it is but equitable to order Nestle to restitute Jarra with the same product.

WHEREFORE, in view of the foregoing, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated October 19, 2018 and the Resolution dated January 17, 2019 of the Court of Appeals in CA-G.R. SP No. 153068 are **REVERSED**. The Decision dated April 17, 2017 and the Resolution dated September 11, 2017 of the Department of Health are **REINSTATED** with **MODIFICATION** in that respondent Nestle Philippines, Inc. is hereby ordered as follows:

1) To pay an administrative fine of ₱20,000.00;

2) To make an assurance to comply with the provisions of Republic Act No. 7394 and its implementing rules and regulations;

3) To restitute complainant Myrnanette M. Jarra with one (1) Bear Brand Powdered Filled Milk (150g pack), or alternatively to reimburse the value thereof at the option of the complainant; and

4) The condemnation of the subject product.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 244437. September 14, 2020]

HEIRS OF AMADEO ALEX G. PAJARES, as substituted by CRISTITA S. PAJARES AND/OR CHRISTOPHERLEX S. PAJARES AND/OR ANABELLE S. PAJARES AND/OR JAYSON S. PAJARES AND/OR JONAH S. PAJARES AND/OR AMADEO ALEX S. PAJARES, *Petitioners, v.* **NORTH SEA MARINE SERVICES CORPORATION, V. SHIPS LEISURE S.A.M. 'LES INDUSTRIES,' AND/OR EDWIN T. FRANCISCO,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; A NON-APPELLANT IS NOT ENTITLED TO AFFIRMATIVE RELIEF; PRINCIPLE, APPLIED.— [P]etitioners failed to appeal the findings of the Panel of VAs. It was North Sea who elevated the Decision of the Panel of VAs *via* a Petition for Review before the CA. Nevertheless, petitioners interposed their dissent to the Panel of VAs' Decision in their Comment and argued that Amadeo is entitled to total and permanent disability benefits and not just financial assistance from North Sea. In the present petition, petitioners reiterated the same arguments raised before the CA. It is well settled and unquestionable that a party who does not appeal or file a petition for review is not entitled to any affirmative relief. Due process and fair play dictate that a non-appellant may not be granted additional award or benefits nor may he or she be allowed to assail or ask the modification of the judgment, which was not appealed by him or her. However, for the purpose of maintaining the assailed judgment, a non-appellant may interpose counter-arguments or counter assignment of errors even if such were not raised by the appellant or even if the issue was not included in the assailed decision. Thus, except for the issue on the award of financial assistance to petitioners, the other issues raised in the present petition cannot be entertained by the Court as these were not raised on appeal or by a petition for review by petitioners before the CA.

2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; WHILE NOT ENTITLED TO DISABILITY BENEFITS, AWARD OF FINANCIAL ASSISTANCE UPHELD PURSUANT TO SOCIAL AND COMPASSIONATE JUSTICE PRINCIPLE.— Even if Amadeo is not entitled to any disability benefits, the Court, has in several instances, awarded financial assistance to separated employees due to humanitarian considerations through the principle of social and compassionate justice for the working class. Hence, the award of financial assistance is essentially subject to the sound discretion of the courts. Considering that Amadeo has rendered several years of service with North Sea and there was no showing that he has derogatory records and that his employment was not severed due to the commission of an infraction but due to a debilitating illness, the Court agrees with the CA in awarding financial assistance to Amadeo. Moreover, North Sea is willing to provide financial assistance to petitioners. In view of the foregoing, the Court upholds the ruling of the CA that the award of US$8,500.00 to petitioners as financial assistance is deemed an equitable concession under the circumstances in the present case.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo Law Offices for petitioners.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated November 16, 2018 and the Resolution[3] dated January 23, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 155044, which

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[1] *Rollo,* pp. 31-75.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Samuel H. Gaerlan (now a Member of the Court) and Maria Filomena D. Singh, concurring; id. at 8-19.

[3] Id. at 21-22.

affirmed with modifications the October 30, 2017 Decision[4] of the Office of the Panel of Voluntary Arbitrators (Panel of VAs) in the complaint for payment of total and permanent disability benefits filed by Amadeo Alex G. Pajares (Amadeo) against North Sea Marine Services Corporation (North Sea), its foreign principal V. Ships Leisure S.A.M. 'Les Industries,' and Edwin T. Francisco (collectively, respondents).

The Facts

Amadeo signed a shipboard employment contract[5] with North Sea to serve as a Suite Attendant on board the vessel Silver Whisper, a cruise line, with a basic monthly salary of US$477.00 for six (6) months.[6]

As a Suite Attendant, Amadeo's responsibilities include the care and upkeep of the cabins, room and messenger services, laundry services, and laundry pick-up and delivery.[7] The heirs of Amadeo, namely: Cristita S. Pajares,[8] Amadeo's wife; and their children, (2) Christopherlex S. Pajares, (3) Anabelle S. Pajares, (4) Jayson S. Pajares, (5) Jonah S. Pajares, and (6) Amadeo Alex S. Pajares (collectively, petitioners) alleged that the housekeeping and cleaning of cabins and bathrooms in cruise lines are similar to five-star hotels, which require the use of strong chemicals to make sure that the room and bathrooms are clean. Thus, Amadeo was exposed daily to the noxious chemicals of the cleaning agents as part of his work. One day, Amadeo suffered severe nose bleeding so he sought the help of the ship's nursing station. When his condition persisted, he was sent to Aleris Hamlet Private Hospital when the vessel docked in Copenhagen. Amadeo underwent a series of tests

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[4] Rendered by Accredited Voluntary Arbitrators Cenon Wesley P. Gacutan, George A. Eduvala, and Raul T. Aquino; id. at 289-304.

[5] Id. at 126.

[6] Id. at 47, 98-99.

[7] Id. at 99, 184-185.

[8] Also referred to as Cristeta S. Pajares in some parts of the *rollo*.

and he was eventually declared unfit for sea duties and was thereafter repatriated.[9]

Upon arrival in the Philippines, Amadeo immediately reported to North Sea, which referred him to the company-designated clinic, Transglobal Health System, Inc. He was further referred to the company-designated physician at the Chinese General Hospital, who diagnosed him with Multiple Myeloma, a type of cancer of the blood.[10]

When he inquired from the company-designated physician if he can still return to his usual work on board the cruise ship, the doctor merely referred him back to North Sea. Amadeo later on learned that North Sea already discontinued his treatment. When he asked for copies of his medical reports, he was denied and was told that the same were confidential. However, a copy of his final medical assessment was lying on the table of the company-designated physician and Amadeo took a snapshot of the same. The company-designated physician did not prohibit him from taking a picture of the assessment, which indicated that he is suffering from a Grade 1 Disability.[11]

Due to North Sea's refusal to provide him a copy of the medical report, Amadeo consulted an independent physician, who, after a series of tests, declared him to be suffering from Multiple Myeloma. He was declared unfit for sea service by the independent physician.[12]

On September 8, 2016, Amadeo sent a letter[13] to respondents informing them of the findings of the independent physician and requested for a third medical opinion.[14] When his request remained unheeded, Amadeo requested for a grievance

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[9] *Rollo*, pp. 38, 100.

[10] Id. at 9, 38-39.

[11] Id. at 10, 39.

[12] Id.

[13] Id. at 128.

[14] Id. at 10, 39-40.

proceeding reiterating his request for copies of his medical records and referral to a third doctor.[15] However, no settlement was arrived at during the mediation and conciliation proceedings. Thus the parties agreed to submit the matter for Voluntary Arbitration in accordance with the company's Collection and Bargaining Agreement (CBA).[16]

The Ruling of the Panel of VAs

The Panel of VAs dismissed the complaint for lack of merit. They upheld the medical findings of the company-designated physician that the illness is not work-related. Although Amadeo alleged that he was able to take a snapshot of the medical report of the company-designated physician, the Panel of VAs observed that the report failed to indicate the diagnosis of Amadeo's illness and is not clear if the illness was categorized as disability Grade 1 nor did it indicate the date of issuance. The counsel for Amadeo only submitted the medical report of the independent physician only after the death of Amadeo without interposing any justifiable reason for the delay in the submission thereof. As such, the Panel of VAs did not lend credence to the report of the independent physician and relied on the medical report of the company-designated physician, which indicated the medical procedures and examinations conducted on Amadeo and the diagnosis of Multiple Myeloma, which was declared as not work-related.[17]

However, for the sake of social and compassionate justice, the Panel of VAs awarded petitioners a financial assistance in the amount of US$20,000.00.[18]

The Ruling of the CA

North Sea elevated the case before the CA questioning the financial assistance awarded to petitioners. On the other hand,

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[15] Id. at 40, 129.

[16] Id. at 40, 102.

[17] Id. at 295-303.

[18] Id. at 302.

in their Comment,[19] herein petitioners did not only sought the reversal of the Decision[20] of the Panel of VAs but also claimed to be entitled to the death benefit provided for under the CBA amounting to US$98,948.00.[21]

In its now assailed Decision,[22] the CA did not give due course to the reliefs prayed for by petitioners in their Comment considering that they failed to appeal the Decision and the Resolution[23] of the Panel of VAs. No modification of judgment could be granted to a party who did not appeal.[24]

The CA affirmed the findings of the Panel of VAs but equitably reduced the award of financial assistance from US$20,000.00 to US$8,500.00. The CA opined that the Supreme Court has granted financial assistance to separated employees for humanitarian considerations. Considering that Amadeo has worked for respondents for several years and was often re-hired due to his excellent performance and work attitude, the award of financial assistance to his heirs is proper. The amount of US$8,500.00 is based on petitioners' allegations in their Position Paper[25] that North Sea offered such amount as financial assistance in a conference before the Panel of VAs on January 25, 2017.[26]

As petitioners' Motion for Reconsideration[27] was likewise denied by the CA in its Resolution[28] dated January 23, 2019, they now come to the Court through this Petition for Review

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[19] Id. at 371-416.

[20] Id. at 289-304.

[21] Id. at 415.

[22] Id. at 8-19.

[23] Id. at 340-341.

[24] Id. at 15.

[25] Id. at 96-125.

[26] Id. at 16-17.

[27] Id. at 417-461.

[28] Id. at 21-22.

on *Certiorari*, submitting the following assignments of error allegedly committed by the CA:

9.1. CONTRARY TO LAW AND IN VIOLATION OF DUE PROCESS AND FAIR PLAY, THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE NOW DECEASED SEAFARER IS ONLY ENTITLED TO FINANCIAL ASSISTANCE.

9.2. CONTRARY TO LAW AND IN VIOLATION OF DUE PROCESS AND FAIR PLAY, THE HONORABLE COURT OF APPEALS FAILED TO ACCOUNT RESPONDENTS AND THEIR COMPANY-DESIGNATED PHYSICIAN FOR THEIR FAILURE TO FURNISH PETITIONER A COPY OF THE FINAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN AT THE DISCONTINUATION OF HIS MEDICAL TREATMENT, DESPITE REQUESTS.

9.3. CONTRARY TO LAW AND JURISPRUDENCE, THE HONORABLE COURT OF APPEALS FAILED TO ACCOUNT RESPONDENTS FOR THEIR FAILURE AND REFUSAL TO REFER PETITIONER FOR A THIRD DOCTOR REFERRAL DESPITE THE LATTER'S INITIATIVE.

9.4. CONTRARY TO LAW AND CURRENT JURISPRUDENCE, THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER DID NOT SUFFER FROM TOTAL AND PERMANENT DISABILITY.

9.5. CONTRARY TO LAW AND CURRENT JURISPRUDENCE, THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS NOT ENTITLED [TO THE] MAXIMUM DISABILITY BENEFIT.[29]

The Issues

The core issues in the present case redound to:

(a) Whether the CA erred in denying petitioners' claim for permanent disability benefits.

(b) Whether the CA erred in declaring that petitioners are only entitled to financial assistance.

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[29] Id. at 41. (Emphasis omitted)

The Court's Ruling

The present petition is denied for lack of merit.

A non-appellant cannot, on appeal, seek affirmative relief.

In the assailed Panel of VAs Decision, the claim for total and permanent disability benefits of the deceased seafarer Amadeo was not granted considering that he failed to present substantial evidence to support his claim. Meanwhile, North Sea was able to present the findings of the company-designated physician, which indicated that Multiple Myeloma is not a work-related illness and that Amadeo's work as a Suite Attendant could not have aggravated such illness. The aforesaid medical findings were supported by the medical records of Amadeo indicating the laboratory tests and treatments he underwent, which were made the basis in the findings that his illness is not work-related.

On the other hand, the Panel of VAs held that Amadeo failed to present convincing proof to rebut the medical findings of the company-designated physician. The counsel for petitioners only submitted medical reports of an independent physician after the death of Amadeo.

Furthermore, petitioners failed to appeal the findings of the Panel of VAs. It was North Sea who elevated the Decision of the Panel of VAs *via* a Petition for Review before the CA. Nevertheless, petitioners interposed their dissent to the Panel of VAs' Decision in their Comment and argued that Amadeo is entitled to total and permanent disability benefits and not just financial assistance from North Sea. In the present petition, petitioners reiterated the same arguments raised before the CA.

It is well settled and unquestionable that a party who does not appeal or file a petition for review is not entitled to any affirmative relief.[30] Due process and fair play dictate that a

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[30] See *Cañedo v. Kampilan Security and Detective Agency, Inc.*, 715 Phil. 625 (2013).

non-appellant may not be granted additional award or benefits nor may he or she be allowed to assail or ask the modification of the judgment, which was not appealed by him or her.[31] However, for the purpose of maintaining the assailed judgment, a non-appellant may interpose counter-arguments or counter assignment of errors even if such were not raised by the appellant or even if the issue was not included in the assailed decision.[32]

Thus, except for the issue on the award of financial assistance to petitioners, the other issues raised in the present petition cannot be entertained by the Court as these were not raised on appeal or by a petition for review by petitioners before the CA.

The petitioners are entitled to financial assistance.

Even if Amadeo is not entitled to any disability benefits, the Court, has in several instances, awarded financial assistance to separated employees due to humanitarian considerations through the principle of social and compassionate justice for the working class.[33] Hence, the award of financial assistance is essentially subject to the sound discretion of the courts.

Considering that Amadeo has rendered several years of service with North Sea and there was no showing that he has derogatory records and that his employment was not severed due to the commission of an infraction but due to a debilitating illness, the Court agrees with the CA in awarding financial assistance to Amadeo. Moreover, North Sea is willing to provide financial assistance to petitioners. In view of the foregoing, the Court upholds the ruling of the CA that the award of US$8,500.00 to petitioners as financial assistance is deemed an equitable concession under the circumstances in the present case.

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[31] See *Santos v. Court of Appeals*, G.R. No. 100963, April 6, 1993, 221 SCRA 42, 46.

[32] See *Nessia v. Fermin*, 292-A Phil. 753 (1993), citing *Medida v. Court of Appeals*, 284-A Phil. 404 (1992).

[33] See *Villaruel v. Yeo Han Guan*, 665 Phil. 212 (2011).

WHEREFORE, the instant petition is **DENIED**. The Decision dated November 16, 2018 and the Resolution dated January 23, 2019 of the Court of Appeals in CA-G.R. SP No. 155044 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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the offender is a public officer or employee; (2) he or she must have acquired a considerable amount of money or property during his incumbency; and (3) said amount is manifestly out of proportion to his or her salary as such public officer or employee and to his or her other lawful income and the income from legitimately acquired property; if the foregoing are proven, the properties unlawfully acquired shall be forfeited in favor of the state. (Department of Finance-Revenue Integrity Protection Service *v.* Office of the Ombudsman, *et al.*, G.R. No. 240137, Sept. 9, 2020) p. 235

— To establish the lawful income we refer to Section 3 of R.A. 1379 which requires that the approximate amount of property the official has acquired during his or her incumbency in his or her past and present offices and employments, and the total amount of his or her government salary and other proper earnings and incomes from legitimately acquired property, must be stated in a petition filed under such law. (*Id.*)

AN ACT ESTABLISHING THE PRE-NEED CODE OF THE PHILIPPINES (R.A. NO. 9829)

Application of — The Insurance Commission has the primary and exclusive supervision and regulation over all pre-need companies; however, Section 57 of Republic Act No. 9829 reads: notwithstanding any provision to the contrary, all pending claims, complaints and cases filed with the SEC shall be continued in its full and final conclusion; it shall also assist the Department of Justice in criminal cases involving matters related to the pre-need industry. (Securities and Exchange Commission, *et al. v.* College Assurance Plan Philippines, Inc., G.R. No. 213130, Sept. 9, 2020) p. 134

Trust fund — The remedial and curative character of R.A. No. 9829 pertains to the right of the planholders to claim against the trust fund; the paramount consideration in requiring the establishment of a trust fund is the protection of the interests of the planholders in investment plans; what is remedial, and curative is this protection

— Jurisprudence has laid down several exceptions that will allow this Court to review the facts of the case; thus, when the petitioner alleges and adequately proves that there is insufficient or insubstantial evidence on record to support the findings of the tribunal or court *a quo*, then this Court may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction. (Asian Institute of Management Faculty Association *v.* Asian Institute of Management, Inc., G.R. No. 219025, Sept. 9, 2020) p. 192

— The factual findings of the trial court, as affirmed by the Court of Appeals, are binding on this Court and will not be disturbed on appeal; more so if the findings are that of a special commercial court which has the expertise and knowledge over matters under its jurisdiction and is in a better position to pass judgment thereon; unless there is abuse in the exercise of its authority, the rehabilitation court's findings of fact should be accorded finality. (Securities and Exchange Commission, *et al. vs.* College Assurance Plan Philippines, Inc., G.R. No. 213130, Sept. 9, 2020) p.134

— The jurisdiction of the Court in a petition for review under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact. (Loreño vs. Office of the Ombudsman, G.R. No. 242901, Sept. 14, 2020) p. 532

— The limitations in the resolution of a petition for *certiorari* under Rule 65 will affect the Court's scope when presented with a petition for review on *certiorari* under Rule 45, seeking the reversal of a CA decision, which pertained to grave abuse of discretion on the part of a quasi-judicial or administrative body, as in this case the DOH. (Department of Health, represented by its Secretary *vs.* Nestle Philippines, Inc., G.R. No. 244242, Sept. 14, 2020) p. 546

Question of law and fact — A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when the doubt

which was thereafter submitted in the case, a professional employment was established between her and complainant. (Zamora *vs*. Gallanosa, A.C. No. 10738, Sept. 14, 2020) p. 334

— An attorney-client relationship is said to exist when a lawyer acquiesces or voluntarily permits the consultation of a person, who in respect to a business or trouble of any kind, consults a lawyer with a view of obtaining professional advice or assistance. (Ingram *vs*. Lorica IV, A.C. No. 10306, Sept. 9, 2020) p. 1

— To constitute professional employment, it is not essential that the client employed the attorney professionally on any previous occasion, or that any retainer be paid, promised, or charged; the fact that one is, at the end of the day, not inclined to handle the client's case, or that no formal professional engagement follows the consultation, or no contract whatsoever was executed by the parties to memorialize the relationship is hardly of consequence. (Zamora *vs*. Gallanosa, A.C. No. 10738, Sept. 14, 2020) p. 334

— To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession. (*Id.*)

Conflict of interest — Another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment. (Ingram *vs*. Lorica IV, A.C. No. 10306, Sept. 9, 2020) p. 1

— Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. (*Id.*)

— One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client; if a lawyer's argument for one client has to be opposed by that same

delay, (3) assertion of right by the accused, and (4) prejudice to the respondent; taking these factors into consideration, the Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the Information by the OMB. (*Id.*)

CERTIORARI

Writ of — A writ of *certiorari* may only issue to correct errors in jurisdiction or when there is grave abuse of discretion amounting to lack or in excess of jurisdiction; the nature of a grave abuse of discretion that justifies the grant of *certiorari* is one that involves a defect of jurisdiction brought about, among others, by an indifferent disregard for the law, arbitrariness and caprice, an omission to weigh pertinent considerations, or a decision arrived at without rational deliberation due process issues that rendered the decision or ruling void. (Department of Health, represented by its Secretary *vs.* Nestle Philippines, Inc., G.R. No. 244242, Sept. 14, 2020) p. 546

— A writ of *certiorari's* main function is limited to keeping the lower courts or quasi-judicial bodies within their jurisdiction, thus, it cannot be issued for any other purpose. (*Id.*)

CO-OWNERSHIP

Rights of co-owners — A deed of partition is unenforceable against the heirs of a co-owner who have not consented and participated in the execution thereof. (Velasco, *et al. vs.* Magpale, represented by Pilipinas Magpale-Uy, G.R. No. 243146, Sept. 9, 2020) p. 285

— An action for partition involves an identification of the particular portion of the property assigned to each co-owner. (*Id.*)

— An action for recovery of possession cannot be based on a void certificate of title arising from a falsified extra-judicial partition. (*Id.*)

— The co-owners' respective shares in the property owned in common can only be ascertained through partition. (*Id.*)

with all other contracts, it must bear the essential requisites enumerated under Article 1318 of the Civil Code, namely, "(i) consent of the contracting parties; (ii) object certain which is the subject matter of the contract; and (iii) cause of the obligation which is established;" in addition, its "terms and conditions must not be contrary to law, morals, good customs, public policy and public order." (Mar Santos, Doing Business Under the Name and Style Total Land Management, Inc. *v.* V.C. Development Corporation, *et al.*, G.R. No. 211893, Sept. 9, 2020) p. 120

— If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise by a writ of execution, or regard it as rescinded and insist upon his original demand; non-fulfillment of the terms of the compromise justifies execution. (*Id.*)

— In *Paraiso Int'l. Properties, Inc. v. Court of Appeals, et al.*, the Court held that the CA committed grave abuse of discretion in disapproving the parties' Compromise Agreement on account of perceived formal defects. (*Id.*)

CONSPIRACY

Existence of — Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; it comes to life at the very instant the plotters agree, expressly or implied, to commit the felony and forthwith, to actually pursue it. (People *v.* Albaran, G.R. No. 233194, Sept. 14, 2020) p. 381

— Conspiracy need not be proved by direct evidence; it may be inferred from the concerted acts of the accused, indubitably revealing their unity of purpose, intent and sentiment in committing the crime; it is not required that there was an agreement for an appreciable period prior to the occurrence, it is sufficient that the accused acted in concert at the time of the commission of the offense and that they had the same purpose or common design, and that they were united in its execution. (*Id.*)

the Court of Tax Appeals and the Court of Appeals is "anathema to the orderly administration of justice" and could not have been the legislative intent. (*Id.*)

— Under Republic Act No. 1125, or An Act Creating the Court of Tax Appeals, as amended by Republic Act No. 9282, the Commissioner of Internal Revenue's rulings on "other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue" are appealable to the Court of Tax Appeals. (*Id.*)

COURT PERSONNEL

Conduct of — All court personnel are expected to exhibit the highest sense of honesty and integrity not only in the performance of their official duties but also in their personal and private dealings with other people to preserve the court's good name and standing; this is because the image of a court of justice is mirrored in the conduct, official or otherwise, of the men and women who work there; thus, any impression of impropriety, misdeed or negligence must be avoided. (Valdez *v.* Court Stenographer I Estrella B. Soriano, 1st MCTC, Bagabag-Diadi, Nueva Vizcaya, A.M. No. P-20-4055, Sept. 14, 2020) p. 344

CRIMINAL PROCEDURE

Information — As of the lascivious conduct, the number of times it was committed or the garments which the accused or the complainant wore at the time of the incident do not generally diminish the complainant's credibility. (People *v.* Jagdon, Jr., G.R. No. 242882, Sept. 9, 2020) p. 261

Probable cause — It is well settled that the determination of the existence of probable cause is a finding of fact which is generally not reviewable by this Court; the Court shall only interfere when there is a clear showing of grave abuse of discretion. (Department of Finance-Revenue Integrity Protection Service *v.* Office of the Ombudsman, *et al.*, G.R. No. 240137, Sept. 9, 2020) p. 235

Substantive due process — Means that the dismissal must be for any of the: (1) just causes provided under Article 297 of the Labor Code or the company rules and regulations promulgated by the employer; or (2) authorized causes under Article 298 and 299 thereof; none of these causes exist in the case at bar. (Agustin *v*. Alphaland Corporation, *et al*., G.R. No. 218282, Sept. 9, 2020) p. 177

EMPLOYMENT, TERMINATION OF

Backwages — Backwages correspond to the amount ought to have been received by the affected employees if only they had been reinstated following the Assumption Order; this shall similarly include not only the employee's basic salary but also the regular allowances being received, such as the emergency living allowances and the 13th month pay mandated by the law, as well as those granted under a CBA, if any. (Albay Electric Cooperative, Inc. (ALECO) *v*. Aleco Labor Employees Organization (ALEO), G.R. No. 241437, Sept.14, 2020) p. 517

lllegal dismissal — Pursuant to Article 294 of the Labor Code, an illegally dismissed employee is entitled to the following reliefs: (1) reinstatement without loss of seniority rights and other privileges; (2) full backwages, inclusive of allowances; and (3) other benefits or their monetary equivalent. (Agustin *v*. Alphaland Corporation, *et al*., G.R. No. 218282, Sept. 9, 2020) p. 177

— The fact that a party did not appeal the decision of the labor arbiter concerning backwages from the time of his illegal dismissal until reinstatement as a regular employee does not bar the awarding of the additional backwages; the grant of additional backwages is necessary in arriving at a complete and just resolution of the case. (*Id.*)

Just or authorized cause — In labor cases, corporate officers are solidarily liable with the corporation for the termination of employment of employees only if such is done with malice or in bad faith. (RNB Garments Philippines, Inc. *v.* Ramrol Multi-Purpose Cooperative, *et al.*, G.R. No. 236331, Sept. 14, 2020) p. 432

interferes or deters an employee from joining, participating, or assisting in the formation and administration of a labor organization constitutes unfair labor practice. (Asian Institute of Management Faculty Association *v.* Asian Institute of Management, Inc., G.R. No. 219025, Sept. 9, 2020) p. 192

— Article 247 of the Labor Code of the Philippines states that: unfair labor practice cases follow the general rule that the one who alleges has the burden of proving it; thus, *onus probandi* lies with petitioner to substantiate its claims of unfair labor practice through substantial evidence; substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (*Id.*)

— Employer is liable for moral and exemplary damages; unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations; for this reason, we find it proper to impose moral and exemplary damages on private respondent. (*Id.*)

— The test of whether an employer has interfered with and coerced employees within the meaning of subsection (a) (1) is whether the employer has engaged in conduct which it may reasonably be said tends to interfere with the free exercise of employees' rights under Section 3 of the Act, and it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining. (*Id.*)

— The unreasonable delay and eventual denial of the application for full professorship, taken together with

pursuant to said section, this does not automatically absolve the employer from the claims of the seafarer. (Mabute for and In Behalf of her Four Minor Children Namely: Marie Jimina, *et al. v.* Bright Maritime Corporation and/or Evalend Shipping Co., S.A., *et al.*, G.R. No. 219872, Sept. 9, 2020) p. 219

Death benefits — Based on Section 20 of the POEA-SEC, death benefits and other remunerations may be claimed when the seafarer died of a: (a) work-related death; and (b) the death occurred during the term of the contract; for death to be considered work-related, it must have resulted from a work-related injury or illness. (Mabute for and In Behalf of her Four Minor Children Namely: Marie Jimina, *et al. v.* Bright Maritime Corporation and/or Evalend Shipping Co., S.A., *et al.*, G.R. No. 219872, Sept. 9, 2020) p. 219

— The mere statement by the company-designated physician that liver cancer is not work-related and cannot develop overnight fail to convince Us to overturn the presumption, especially, with the foregoing discussions. (*Id.*)

Disability benefits — Absent any disability grading at the time of filing of the complaint, petitioner has no ground for disability claims as he did not have any evidence to support it. (Gumapac *v.* Bright Maritime Corporation, *et al.*, G.R. No. 239015, Sept. 14, 2020) p. 469

— It has been held that whoever claims entitlement to the benefits as provided by law should establish his or her right thereto by substantial evidence. (*Id.*)

— It is incumbent upon the seafarer to submit himself to the company-designated physician within three (3) working days for post-employment medical examination as it is a requirement provided under the POEA-SEC. (*Id.*)

— While not entitled to disability benefits, award of financial assistance upheld pursuant to social and compassionate justice principle. (Heirs of Amadeo Alex G. Pajares, as

required by law or made for a legal purpose; there must be a willful assertion of a falsehood in the statement under oath or in an affidavit, which in this case is the SALN. (Department of Finance-Revenue Integrity Protection Service *v.* Office of the Ombudsman, *et al.*, G.R. No. 240137, Sept. 9, 2020) p. 235

Falsification of public documents — Article 171, in general, requires the presence of the following elements: (a) the offender is a public officer, employee, or notary public; (b) he or she takes advantage of his or her official position; and (c) he or she falsifies a document by committing any of the acts enumerated in Article 171. (Department of Finance-Revenue Integrity Protection Service *v.* Office of the Ombudsman, *et al.*, G.R. No. 240137, Sept. 9, 2020) p. 235

— Paragraph 4 of Article 171, in particular, has the following elements: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he or she has legal obligation to disclose the truth of the facts narrated by him or her: and c) the facts narrated by him or her are absolutely false; the penalty for violation of paragraph 4 Article 171 is *prisión mayor* and a fine not to exceed P5,000.00. (*Id.*)

Grave misconduct — Grave Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or disregard of established rules. (Loreño *v.* Office of the Ombudsman, G.R. No. 242901, Sept. 14, 2020) p. 532

— The Court has consistently upheld the principle that in administrative cases, to be disciplined for grave misconduct or any grave offense, the evidence against the respondent should be competent and must be derived from direct knowledge; reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. (Office of the Ombudsman *v.* Tanco, G.R. No. 233596, Sept. 14, 2020) p. 416

foregoing requisites, the elements of the crime of Acts of Lasciviousness under Article 336 of the RPC must likewise be met, to wit: (a) that the offender commits any act of lasciviousness or lewdness; (b) that it is done under any of the following circumstances: (i) through force, threat, or intimidation, (ii) when the offended party is deprived of reason or otherwise unconscious, (iii) by means of fraudulent machination or grave abuse of authority, and (iv) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (c) that the offended party is another person of either sex. (Mendoza *v.* People, G.R. No. 239756, Sept. 14, 2020) p. 487

Lascivious conduct under Section 5(b) — Section 5 (b), Article III of R.A. No. 7610 provides that the imposable penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal* in its medium period; applying the Indeterminate Sentence Law, and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum ranging from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months; the maximum term shall be taken from the medium period of the imposable penalty, which is *reclusion temporal* in its medium period ranging from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days; the penalty imposed by the CA is proper. (Mendoza *v.* People, G.R. No. 239756, Sept. 14, 2020) p. 487

Sexual abuse under Section 5, Article III of R.A. No. 7160 and elements of lascivious conduct under Article 336 of the RPC — The elements of sexual abuse under Section 5 (b), Article III of R.A. No. 7610 are as follows: 1. The accused commits the act of sexual intercourse or lascivious conduct; 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3. The child, whether male or female, is below 18 years of

resident of a third State"; the tax treatment of royalties to a United States entity may be taken in relation to other tax treaties that provide a lower tax rate on the same type of income. (*Id.*)

— Two conditions must be met for the most favored nation clause to apply: first, royalties derived from the Philippines by a resident of the United States and of the third state must be of the same kind or class, in order to avail of the lower tax enjoyed by the third state; second, the tax consequences of royalty payments under the two treaties must be under similar circumstances; this requires a showing that the method employed for eliminating or mitigating the effects of double taxation under the treaty with the United States and the third state are the same. (*Id.*)

Tax sparing — Another form of tax sparing is the so-called "matching credit," where the state of residence agrees, as a counterpart to the reduced tax, to allow a deduction against its own tax of an amount fixed at a higher rate. (Cargill Philippines, Inc. *v.* Commissioner of Internal Revenue, G.R. No. 203346, Sept. 9, 2020) p. 15

— Some states have also adopted the so-called "tax sparing" provision, in relation to tax incentives granted under their respective domestic laws to attract foreign investments; with tax sparing, taxes exempted or reduced are considered fully paid; a non-resident may obtain a tax credit for the taxes that have been "spared" under the incentive program of the state of source, preserving the economic benefits granted by the state of source. (*Id.*)

TREACHERY

Concept — Paragraph 16, Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the

— When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. (*Id.*)

— When the findings of the RTC are affirmed by the CA, these deserve great weight and are generally binding and conclusive upon the Court; considering that there is no showing that the RTC overlooked or misapplied facts or circumstances of great weight, the findings and assessment of the RTC, which were affirmed by the CA, as regards the credibility of the witness, will be respected by the Court. (Mendoza *v.* People, G.R. No. 239756, Sept. 14, 2020) p. 487

— When the issue is one of credibility of witnesses, it is well-settled that the appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide on the issue as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial. (*Id.*)

Testimony of — It is well-entrenched in this jurisdiction that testimonies of child-victims are given full faith and credit since youth and immaturity are badges of truth and sincerity. (Mendoza *v.* People, G.R. No. 239756, Sept. 14, 2020) p. 487

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